

**CERTIFICATE OF FORMATION OF
FRIO CAÑON COMMUNITY ASSOCIATION,
A TEXAS NONPROFIT CORPORATION**

This Certificate of Formation is submitted for filing pursuant to the applicable provisions of the Texas Business Organizations Code.

1. **Name.** The name of the corporation is FRIO CAÑON COMMUNITY ASSOCIATION (the “Association”).

2. **Type of Filing Entity.** The type of filing entity being formed is a nonprofit corporation.

3. **Purpose.** The Association does not contemplate pecuniary gain or profit to the members thereof. The specific purposes for which the Association is formed are to provide for maintenance, preservation and protection of the Property (which means (a) Frio Cañon, a subdivision located in Real County, Texas (“Frio Cañon”), as more completely described in the plat recorded in Volume 1, Page 158 of the Plat Records of Real County, Texas, and amended by the vacate and re-subdivision plat of Tract 10 of Frio Cañon recorded in Volume 1, Page 160 of the Plat Records of Real County, Texas, and as may be amended from time to time hereafter, (b) Tracts 15, 16, 17, and 18 of Frio Vista Ranch, a subdivision located in Real County, Texas (“Frio Vista Ranch”), as more completely described in the plat recorded in Volume 1, Page 155 of the Plat Records of Real County, Texas, and amended by the re-subdivision plat recorded in Volume 1, Page 156 of the Plat Records, Real County, Texas, and further amended by the vacate and re-subdivision plat of Tracts 15-24 of Frio Vista Ranch, recorded in Volume 1, Page 157 of the Plat Records, Real County, Texas, and being further amended by a correction plat for the vacate and re-subdivision plat of Tracts 15-24 of Frio Vista Ranch, recorded in Volume 1, Page 159 of the Plat Records, Real County, Texas, and as may be amended from time to time hereafter, and (c) such other property as is hereafter included in such term by unilateral amendment of the covenants, conditions, easements and restrictions applicable to the Property (the “Restrictive Covenants”) in accordance with the terms thereof, including exercising the duties and powers associated with maintaining Tract 17 of Frio Vista Ranch, Tracts 20, 23, and 39 of Frio Cañon, and such other property as may hereafter be included in the definition of “Common Areas” by amendment of the terms hereof (collectively referred to herein as the “Common Areas”), and to promote the health, safety and welfare of the property owners in the Property, and for such purposes to:

A. Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Restrictive Covenants.

B. Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Restrictive Covenants; pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed.

C. Have and exercise any and all powers, rights and privileges which a corporation organized under Texas law, subject to the limitations set forth herein and in the Restrictive Covenants.

4. ***Restrictions and Limitations.*** Notwithstanding anything to the contrary herein, the Association may not:

A. Engage in any activity or take any action prohibited by the applicable provisions of the Texas Business Organizations Code or not permitted for a homeowner's association exempt from tax under the Internal Revenue Code (the "Code"), as the same now or may hereafter exist.

B. Pay any dividend or distribute any part of the income of the Association to its members, if any, directors, if any, or officers; provided, however, that the Association may pay compensation in a reasonable amount to its members, directors, or officers for services rendered and may confer benefits upon its members in conformity with its purposes, provided such compensation and benefits are reasonable.

C. Except as otherwise set forth herein, make loans to the Association's directors.

D. Engage in any activity, except to an insubstantial degree, which is not in furtherance of the purpose or purposes of the Association.

5. ***Period of Duration.*** The period of duration of the filing entity is perpetual.

6. ***Initial Registered Office.*** The street address of the initial registered office of the filing entity and the name of its initial registered agent at that address are:

Name: Michael D. Black
Address: PO Box 1054, Leakey, Real County, TX 78873

7. ***Organizer.*** The name and address of the organizer for the filing entity are:

Name: David Dalglish
Address: 4019 Spicewood Springs Road, Austin, Travis County, TX 78759

8. ***Organizational Structure.*** The Association will have members and one class of voting membership. Each separately numbered tract or parcel of land in the Property is allocated one membership in the Association and one vote on each matter to be voted on by the members of the Association. The persons and/or entities that own fee title to each tract in the Property will designate to the Association in writing the name of one person who is entitled to cast votes on behalf of such

tract. The vote for such tract shall be exercised as the fee owners of that tract determine, but in no event shall more than one vote be cast with respect to any one tract. Holders of future interests not entitled to present possession shall not be considered as fee owners for the purposes hereof. Membership shall be appurtenant to and may not be separated from ownership of a tract; and the classes of membership shall be determined as provided in the Restrictive Covenants.

Notwithstanding the above, under the terms and conditions set out in the Restrictive Covenants, an owner of two (2) or more tracts may elect to combine all such tracts into one "Combined Tract" for the purpose of voting rights and assessments under the Restrictive Covenants and with respect to the Association.

Every member of the Association shall have a right and easement of enjoyment in and to any Common Areas which shall be appurtenant to and shall pass with the title to every tract in the Property; provided, however, that all such rights and easements shall be subject to the limitations set forth in the Restrictive Covenants and to the following provisions:

- A. The automatic suspension of voting rights of a tract owner for any period during which any assessment against his tract remains unpaid.
- B. The right of the Association to suspend the right to use any Common Area by a tract owner for any period during which any assessment against his tract remains unpaid; and for a period not to exceed sixty (60) days for each infraction of its published rules and regulations, which rules and regulations may be adopted by resolution of the Association from time to time.
- C. The right of the Association to make rules and regulations concerning the use by members of the Common Areas, all on such terms as the Board of Directors of the Association may determine.
- D. The right of the Association to collect and disburse funds as set forth in the Restrictive Covenants.
- E. The right of the Association to borrow money as necessary or desirable to perform its functions under the Restrictive Covenants, and to mortgage and/or pledge the Common Areas and improvements thereon, accounts receivable and assessments liens as security for such loans upon the approval thereof by members entitled to cast two-thirds (2/3rds) of the votes of the Association; provided, however, that the rights of any such mortgagee in said properties shall be subordinate to the rights of the Owners under the Restrictive Covenants.
- F. The right of the Association to establish rules and regulations governing traffic and parking on the roads and parking areas within the Common Areas, and to establish sanctions for any violation or violations of such rules and regulations.

G. The right of the Association to control the visual attractiveness of the Property covered by the Restrictive Covenants.

9. **Governing Authority.** Management of the affairs of the Association is to be vested in its board of directors. The number of initial directors shall be five (5). The number of directors shall be set by the bylaws of the Association as may be amended from time to time, provided that the number of directors may never be less than three. The names and addresses of the persons who are to serve as directors until the first annual meeting or until their successors are elected and qualified are:

<u>Name:</u>	<u>Address:</u>
David Dalglish	4019 Spicewood Springs Road Austin, TX 78759
Sheryl L. Dalglish	4019 Spicewood Springs Road Austin, TX 78759
Michael D. Black	13 Niles Road Austin, TX 78703
Dawn Saunders Black	13 Niles Road Austin, TX 78703
Garry Merritt	PO Box 441 Leakey, TX 78873

Other than initial directors, directors of the Association must also be members of the Association. If at any time, a director ceases to be a member, his or her directorship shall at such time become vacant. At each election for directors, every member entitled to vote at such election shall have the right to vote, in person or by proxy, for as many persons as there are directors to be elected; members are expressly precluded from cumulating their votes for directors.

10. **Actions Without A Meeting.** Any action required by the Texas Business Organizations Code to be taken at a meeting of the members or directors of the Association or any action that may be taken at a meeting of the members or directors or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of members, directors, or committee members as would be necessary to take that action at a meeting at which all of the members, directors, or members of the committee were present and voted.

11. **Amendment.** The Declarant (as such term is defined in the Restrictive Covenants) may from

time to time unilaterally amend or repeal any provision of this Certificate of Formation for any purpose until December 31, 2009. Otherwise, the power to amend or restate this Certificate of Formation is reserved exclusively to the Members. Except with respect to unilateral determination by Declarant before December 31, 2009, this Certificate of Formation may be amended or restated only (a) with the affirmative vote of at least two thirds (2/3) of the votes entitled to be cast with respect to matters to be voted on by the Members, and (b) at a regular or special meeting of the Members duly called for such purpose at which a quorum of the Members is present in person or by proxy. Notice of all such meetings of the Members shall be given as provided in the Bylaws of the Association and shall contain the proposed amendment or restatement of this Certificate of Formation.

12. ***Indemnification.*** To the full extent permitted by the applicable provisions of the Texas Business Organizations Code and other applicable law, the Association shall advance expenses to and indemnify any present and former directors, officers, employees, and agents of the Association and persons serving or formerly serving at the request of the Association as directors, officers, partners, venturers, proprietors, trustees, employees, agents or similar functionaries of another foreign or domestic corporation, employee benefit plan, other enterprise or entity against judgments, penalties (including excise and similar taxes), fines, settlements and reasonable expenses actually incurred by the person in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative, any appeal in such action, suit or proceeding and any inquiry or investigation that could lead to such an action suit or proceeding, because the person is or was acting in one of the capacities set forth above.

13. ***Contracts or Transactions with Interested Directors, Officers and Members.*** This provision applies only to a contract or transaction between the Association and one or more of its directors or officers, or between the Association and an entity or other organization in which one or more of the Association's directors or officers is a managerial official or has a financial interest. An otherwise valid contract or transaction is valid notwithstanding that a director, officer, or member of the Association is present at or participates in the meeting of the board of directors, of a committee of the board, or of the members that authorizes the contract or transaction, or votes to authorize the contract or transaction, if: (1) the material facts as to the relationship or interest and as to the contract or transaction are disclosed to or known by (a) the Association's board of directors, a committee of the board of directors, or the members, and the board, the committee, or the members in good faith and with ordinary care authorize the contract or transaction by the affirmative vote of the majority of the disinterested directors, committee members or members, regardless of whether the disinterested directors, committee members or members constitute a quorum; or (b) the members entitled to vote on the authorization of the contract or transaction, and the contract or transaction is specifically approved in good faith and with ordinary care by a vote of the members; or (2) the contract or transaction is fair to the Association when the contract or transaction is authorized, approved, or ratified by the board of directors, a committee of the board of directors, or the members. Common or interested directors or members of the Association may be included in determining the presence of a quorum at a meeting of the board, a committee of the board, or

members that authorizes the contract or transaction.

14. ***Member Consent Required For Fundamental Action.*** The affirmative vote of at least two thirds (2/3) of the members of the Association entitled to vote shall be sufficient to approve a Fundamental Action (as the term is defined by Section 22.164 of the Texas Business Organizations Code, as amended from time to time).

15. ***Distribution of Assets Upon Winding Up.*** After all liabilities and obligations of the Association in the process of winding up are paid, satisfied and discharged, the property of the Association shall be applied and distributed in accordance with section 22.304, Texas Business Organizations Code. On dissolution, the Association's assets shall be distributed to an organization exempt from taxes under Internal Revenue Code Section 501(c)(3) to be used to accomplish the general purposes for which the Association was organized.

16. ***Effective Date of Filing.*** This certificate of formation becomes effective when the document is filed by the Secretary of State.

This document is signed subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Signed on December 19, 2007.

David Dalglish