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April 19, 2021

Re: Legal Authority to Amend Bylaws
Holly Lake Ranch Association

You have asked our firm to conduct an analysis of the right of the Holly Lake Ranch Association Board of Directors to amend the Bylaws of the Association in light of the current Bylaws of the Association as well as the Judgment signed by the 294th district court on June 29, 1990.

Texas Business Organizations Code Section 22.102 Provides Authority to Amend the Bylaws

1. Holly Lake Ranch Association is a Texas Non-Profit Corporation and is subject to the provisions of Chapter 22 of the Texas Business Organizations Code.
2. § 22.102 of the Texas Business Organizations Code provides statutory authority for the board of directors of a non-profit corporation to amend the bylaws of that non-profit corporation. That section states as follows:
 - (a) The initial bylaws of a corporation shall be adopted by the corporation's board of directors or, if the management of the corporation is vested in the corporation's members, by the members.*
 - (b) The bylaws may contain provisions for the regulation and management of the affairs of the corporation that are consistent with law and the certificate of formation.*
 - (c) The board of directors may amend or repeal the bylaws, or adopt new bylaws, unless:
 - (1) this chapter or the corporation's certificate of formation wholly or partly reserves the power exclusively to the corporation's members;*
 - (2) the management of the corporation is vested in the corporation's members; or*
 - (3) in amending, repealing, or adopting a bylaw, the members expressly provide that the board of directors may not amend or repeal the bylaw. Tex. Bus. Org. Code § 22.102**
3. § 22.102 was passed by at the 78th meeting of the Texas Legislature and was effective on January 1, 2006.

4. § 22.102(c) states that the Board of Directors may amend or repeal the bylaws or adopt new bylaws, unless one of three limiting processes is in place. None of which limit Holly Lake Ranch Association ability to use this provision to amend its Bylaws.
5. First, per § 22.102(c)(1), the Board may not amend or repeal bylaws under § 22.102(c) if Chapter 22 or the corporation's certificate of formation wholly or partly reserves the power exclusively to the corporation's members. Chapter 22 does not wholly or partly reserve the power to amend the Holly Lake Ranch Association bylaws exclusive to the members of the Association. Likewise, the Holly Lake Ranch Association certificate of formation does not reserve the power to amend the bylaws to the members of the Association.
6. Second, per § 22.102(c)(2) the Board may not amend or repeal bylaws under § 22.102(c) if the management of the corporation is vested in the corporation's members. The management of Holly Lake Ranch Association is not vested in the members. It is vested in the directors of the Association.
7. Lastly, per § 22.102(c)(3) the Board may not amend or repeal bylaws under § 22.102(c) if in amending, repealing, or adopting a bylaw, the members expressly provide that the board of directors may not amend or repeal the bylaw. The members of Holly Lake Ranch Association have not amended, repealed, or adopted a bylaw expressly providing that the board of directors may not amend or repeal bylaws.
8. § 22.102(c)(3) requires that the members of the Association take affirmative action to remove this statutory authority to amend bylaws from the board of directors. Per § 22.102(c)(3), the members must amend, repeal or adopt a bylaw where the members expressly provide that the board of directors may not amend or repeal the bylaw. The members of Holly Lake Ranch Association have taken no such action.
9. As none of the exceptions to Texas Business Organizations Code § 22.102(c) apply to this Association, the Board of Directors has the power granted them in under § 22.102(c) to amend or repeal bylaws.

Article IX, Section 3 of the Bylaws Provides Authority to Amend the Bylaws

10. The Bylaws of the Association were filed of record in the Wood County Clerk's Office on August 8, 2018 at Instrument Number 2018-00007154.
11. Article IV, Section 1 of the Bylaws of the Association states that "*the business and affairs of the Association shall be managed by its Board of Directors, who may exercise all such powers of the Association and do all such lawful acts and things as are permitted by statute or by the Articles of Incorporation or by the Bylaws...*"
12. Article IX, Section 3 of the Bylaws of the Association further provides for the power of the directors of the Association to unilaterally amend the Bylaws. That Article and Section states

that “the Board of Directors shall have the power to alter, amend, or repeal these Bylaws or adopt new bylaws at any regular or special meeting of the Board of Directors;”

Effect of the 1990 Judgment on the Ability of the Association to Amend the Bylaws.

13. The 294th Judicial District Court found in June 1990 that “the bylaws of the Association are hereby declared to be those bylaws of the Association which were revised on the 17th day of November, 1987...” A copy of that Judgment is attached to this opinion.
14. The remainder of the Judgment is devoid of any other rulings related to the bylaws of the Association. It is devoid of any rulings related to the member’s or board’s authority to adopt or amend bylaws in the future. It was also devoid of rulings related to the application of Section 22.102 of the Texas Property Code, as that statute had yet to be passed.
15. Sixteen years after the signing of this judgment, the Texas Legislature caused Section 22.102 of the Texas Business Organizations Code to go into effect. Twenty-Eight years after the signing of this judgment, the Amended bylaws of the Association went into effect. The effect of both the Amended Bylaws as well as Section 22.102 allows for the Board to adopt and amend bylaws of the Association. The Judgment entered by the 294th Judicial District Court does not constrain this ability in any way.

FILED

CAUSE NO. 490-88

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JO ANNA NELSON, CLERK
DISTRICT COURT
WOOD COUNTY, TEXAS

CLASS A MEMBERSHIP DIRECTORS	§	IN THE DISTRICT COURT OF
OF THE HOLLY LAKE RANCH	§	
ASSOCIATION	§	
	§	
VS.	§	WOOD COUNTY, TEXAS
	§	
THE BOARD OF DIRECTORS OF	§	
THE HOLLY LAKE RANCH	§	
ASSOCIATION	§	294TH JUDICIAL DISTRICT

THE BOARD OF DIRECTORS OF	§	IN THE DISTRICT COURT OF
THE HOLLY LAKE RANCH	§	
ASSOCIATION	§	
	§	
VS.	§	WOOD COUNTY, TEXAS
	§	
ROBERT E. MEAD, JR., REAL	§	
ESTATE HOLDINGS, INC. and	§	
FREEDOM FINANCIAL CORPORATION	§	
LEONARD WITTHOFT, <u>ARLAN</u>	§	
<u>FLAKE</u> , BELINDA SKIDMORE	§	
and DAN WILKINS	§	294TH JUDICIAL DISTRICT

JUDGMENT

On the 29th and 30th day of May, 1990, came on to be heard the above entitled and numbered cause, wherein JACK NOWLIN, GEORGE EBERHART, BILL HOFFMAN, CLAUDE PREWITT, NANCY BURNS, JOE NATHAN, ROB TRIMBLE, ROY CARLSON and TOM FULBRIGHT are Third-Party Plaintiffs, ROBERT E. MEAD, JR. ("MEAD"); ASCENSION RESORTS, LTD., a Texas limited partnership, successor in interest of FREEDOM FINANCIAL CORPORATION and REAL ESTATE HOLDINGS, INC. ("ASCENSION") and HOLLY LAKE RANCH ASSOCIATION,

INC. ("ASSOCIATION") are Third-Party Defendants, and all parties announced to the Court that all matters in controversy had been settled by an agreement, under the terms of which judgment should be entered as hereinafter stated as a compromise and settlement of all causes of action that may exist, in law or in equity, in favor of any party hereto against any other party hereto in anywise arising out of or on any manner connected with the subject matter of the heretofore mentioned lawsuit.

The Court having heard evidence thereon finds that the parties herein have entered into a Compromise Settlement Agreement, compromising all matters in controversy between them, any any of them, which Compromise Settlement Agreement is on file in this case; and the Court further finds that said Compromise Settlement Agreement is reasonable, fair, just, and to the best interest of the parties herein, and said Compromise Settlement Agreement is accordingly, APPROVED.

It is, therefore, ORDERED, ADJUDGED and DECREED that the Compromise Settlement Agreement hereinabove referred to, and which is on file herein, be and the same is hereby in all things sustained with Judgment being entered as follows, and said Compromise Settlement Agreement is accordingly approved and the Court hereby adopts same in its entirety as a part of this Judgment.

IT IS ORDERED, ADJUDGED and DECREED that the bylaws of the ASSOCIATION are hereby declared to be those bylaws of the ASSOCIATION which were revised on the 17th day of November, 1987, amended as follows:

THIRD

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Second Sentence of Article X, Section 7: "The Directors representing the Class B Membership shall be elected at the annual meetings of the members and each Director elected shall hold office until his successor is elected and qualified; in no event shall the Class A member have any right to vote in any election of the directors representing the Class B Membership."

Article II, Section 2: "The Class A member shall be entitled at all times to a total number of votes which exceeds the total number of Class B member votes by ten (10) votes. Each Class B member shall be entitled to cast one (1) vote on any matter presented for a vote of the members. No Class B Member can hold a Class A Directorship."

← WAS I INTEND THAT ? LAST SENTENCE OK

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the ASSOCIATION'S Board of Directors shall be given the full responsibility and use of the ASSOCIATION'S lock box, payroll, accounting, and auditing, all of which shall be handled by ASSOCIATION employees located on the premises of Holly Lake Ranch in Wood County, Texas. The ASSOCIATION shall have the responsibility of collecting property owners' dues beginning on the 1st day of October, 1990. It is provided, however, that in the event collections for any ninety (90) day period decline to an amount less than 95% of the average actual monthly collection for the previous year, ASCENSION shall have the option to collect property owners' dues and shall be reimbursed the cost of collection, which for the purpose of this agreement is \$3.25 per month per account administered.

IT IS ALSO ORDERED, ADJUDGED AND DECREED that the Class A Directors shall not vote on any issue to come before the ASSOCIATION'S Board of Directors whereby ASCENSION or any of its related companies can be potentially involved in contractual relationships with the ASSOCIATION, where the Class A member may directly benefit, excepting matters concerning collection of

dues. This provision applies only to situations involving the furnishing of services (other than collection services), and/or supplies which are available from other sources or supplies if ASCENSION or any of its related companies desire to furnish such services or supplies. In such event, it is ORDERED that the Class A Directors refrain from voting and only the Class B Directors may vote.

IT IS ORDERED, ADJUDGED AND DECREED that a special election for Class B Directors shall be held within sixty days of the date of the execution of ~~the Compromise Settlement Agreement~~ ^{this Judgment} T
~~made reference to hereinabove.~~

IT IS ORDERED, ADJUDGED AND DECREED that the present management contract with Resorts Operation, Inc. be immediately terminated and that any manager of HOLLY LAKE RANCH shall be hired by the ASSOCIATION's Board of Directors; provided, however, that the Class A Directors shall be entitled to vote on any question involving the hiring of a manager or other ASSOCIATION personnel.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ASCENSION shall construct for the use and benefit of the Timeshare Owners a swimming pool of approximate same size as the one currently existing in Holly Park, 1 Putt-Putt Golf Course, 1 horseshoe area, 1 basketball area and 1 volleyball area to be completed within 12 months of the execution of this agreement. IT IS ORDERED that during the period of time that said amenities are being constructed, ASCENSION shall pay a fee to the ASSOCIATION

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for Timeshare Owners of \$2.00 per month per Timeshare Owner, which fee shall continue to be paid until the amenities being constructed are available for use by the Timeshare Owners. At such time the fee to be charged for use by the Timeshare Owners shall be \$2.00 per year, per Timeshare owner, increased by an amount determined by taking the average amount charged property owners during 1981 and increasing the amount charged Timeshare Owners in proportion to the increase in the average dues charged the property owners since 1981, until the date the amenities are available for use so that the fees charged Timeshare Owners (\$2.00 per year, per Timeshare Owner) shall be increased proportionably by the same amount the property owners dues have increased since 1981. IT IS FURTHER ORDERED that the property owners shall have the right to use such new amenities.

IT IS ORDERED, ADJUDGED AND DECREED that all Board members, including Class B Board members, shall have access to all financial information pertaining to the ASSOCIATION, including, but not limited to, salaries paid employees of the ASSOCIATION.

IT IS ORDERED, ADJUDGED AND DECREED that the annual budget of the ASSOCIATION shall provide for the sum of FIVE THOUSAND AND NO/100 (\$5,000.00) DOLLARS to be utilized by the Class B members of the Board of Directors to employ legal counsel in the event the majority of Class B members shall determine that they need legal counsel in connection with an issue pending before the Board of Directors.

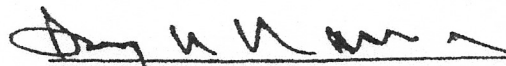
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ASCENSION shall take such steps to ensure that Counter-Plaintiffs shall be reimbursed for reasonable attorneys' fees up to an amount not to exceed TWENTY THOUSAND AND NO/100 (\$20,000.00) DOLLARS.

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entire*
/ The Court acknowledges that the Third-Party Plaintiffs have stated in Open Court that it was their intent to file a derivative action on behalf of all Class B Members of the Association regardless of whether or not their pleadings are legally sufficient to allege ~~that~~ a derivative lawsuit under the laws of the State of Texas. / The Court finds that the Third-Party Plaintiffs have represented that it was their intention to obtain the relief requested in said cause for and on behalf of all Class B Members of the Association, and the Court expressly finds that the Third-Party Plaintiffs have in fact represented (to) all Class B Members of the Association; therefore, the Court finds, and it is the Order of this Court, that this Judgment shall be binding upon not only Third-Party Plaintiffs but all Class B Members of the Association.

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ADDED*
IT IS FURTHER ORDERED by the Court that all costs of Court shall be and the same are hereby adjudged against FREEDOM FINANCIAL CORPORATION; and any relief prayed for by any party hereto and not herein specifically granted shall be and the same is hereby in all things denied.

SIGNED this 29 day of June, 1990.


Tommy W. Wallace
Judge, 294th Judicial District