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**CONDOMINIUM DECLARATION  
FOR  
BRYAN HEIGHTS CONDOMINIUMS**

**Made and Established on July 19, 2017**



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**CONDOMINIUM DECLARATION  
FOR  
BRYAN HEIGHTS CONDOMINIUMS**

This Condominium Declaration for Bryan Heights Condominiums is made and established on July 19, 2017, by Declarant;

**RECITALS:**

- A. Declarant is the fee simple owner of the Property.
- B. Declarant desires to create a Condominium pursuant to the provisions of the Act.
- C. Declarant intends hereby to establish a plan for the individual ownership of estates in real property consisting of the Units and the appurtenant undivided interests in the Common Elements.

NOW, THEREFORE, Declarant does hereby submit the Property to the provisions of the Act and the Condominium established hereby and does hereby publish and declare that the following terms, provisions, covenants, conditions, easements, restrictions, reservations, uses, limitations and obligations are hereby established and shall be deemed to run with the Property and shall be a burden and benefit to Declarant, the Architectural Reviewer, the Association, the Owners, and their respective heirs, legal representatives, successors and assigns:

**ARTICLE I**

**Definitions**

**Section 1.1 Terms Defined.** As used in this Declaration, the following terms shall have the meanings set forth below:

**“Access Easement.”** An easement as more particularly described in Section 3.8(a) of this Declaration.

**“Acquired Property.”** As defined in Section 13.2 of this Declaration.

**“Act.”** The Uniform Condominium Act, Texas Property Code, Chapter 82, Section 82.001 et seq., as amended from time to time.

**“Additional Assessments.”** Assessments established by the Association to cover Charges owed to the Association by one or more Owners or by one Owner to another Owner, pursuant to the Governing Documents.

**“Affiliate.”** Any Person who controls, is controlled by, or is under common control with another Person.

"Affiliate of Declarant." "Affiliate of a Declarant" as defined in Section 82.003(a)(1) of the Act.

"Allocated Interests." The undivided interests of each Owner in the Common Elements and the Common Expenses allocated to each Unit as reflected on Exhibit "C" attached to this Declaration, as may be reallocated in accordance with the Reallocation Percentages, as required from time to time, pursuant to the provisions of this Declaration.

"Architectural Reviewer." A person(s) or entity as described in **Error! Reference source not found.**, and having the rights and duties as described in Article V hereunder.

"Assessments." The Monthly Assessments, Special Assessments and Additional Assessments, owing to the Association by an Owner or levied against a Unit by the Association.

"Association." Bryan Heights Condominium Association, Inc., a Texas nonprofit corporation organized under the Act and the TBOC and created for the purposes and possessing the rights, powers, authority and obligations set forth in the Governing Documents.

"Board of Directors" or "Board." The board of directors of the Association named in the Certificate of Formation and their successors as duly elected and qualified from time to time.

"Budget." A budget prepared by the Association that includes the anticipated Common Expenses, Parking Expenses and any Additional Assessments for the ensuing fiscal year.

"Building." The building located on the Property in which portions of the Units are located, as shown on the Map.

"Bylaws." The bylaws of the Association, adopted by the Board of Directors, as amended from time to time.

"Certificate of Formation." The Certificate of Formation of the Association filed with the Secretary of State of Texas, as amended from time to time.

"CGL." The broadest available form of commercial general liability insurance (utilizing the then prevailing ISO form or an equivalent form approved by the Board of Directors and reasonably acceptable to Declarant's Mortgagee).

"Charges." Any costs, expenses, dues, interest, fees, late fees, fines, collection costs, attorneys' fees and any other sums arising under the Governing Documents owing to the Association or an Owner from one or more Owners or a Tenant, other than Common Expenses.

"City." The City of Dallas, Texas.

"Common Elements." All portions of the Condominium, including both the General Common Elements and the Limited Common Elements, but excluding the Units.

"Common Elements Easement." An easement as more particularly described in Section 3.8(b) of this Declaration.

"Common Expenses." Expenses for which the Association is responsible, including those related to: (i) maintenance and repair of the applicable Common Elements; (ii) casualty, public liability and other insurance coverages required or permitted to be maintained by the Association under the Governing Documents; (iii) Governmental Impositions levied and assessed against the Common Elements; (iv) utilities relating to the applicable Common Elements; (v) professional services, such as management, accounting and legal services and (vi) such other costs and expenses as may be reasonably related to the proper maintenance, care, operation and management of the Common Elements and the administration of the Association.

"Condominium." The form of real property established by this Declaration with respect to the Property located in the County, in which portions of the Property are designated for individual ownership or occupancy and the remainder of the Property is designated for common ownership or occupancy solely by the Owners of such portions, and initially consisting of twenty-five (25) Units in the aggregate in five (5) Buildings, and which may contain a maximum of one hundred thirty-five (135) Units.

"Condominium Records." The records and books maintained by the County Clerk in the County where condominium declarations and condominium plats and plans are filed in accordance with Section 82.051(d) of the Act.

"Construction Dispute." Any claim, grievance or other dispute involving Declarant or any Affiliate of Declarant, including any construction company which is an Affiliate of Declarant, and arising out of or relating to the construction or design of the Property, including the interpretation or enforcement of any warranty.

"County." Dallas County, Texas.

"Damaged Unit." One or more Units damaged or destroyed by fire or other casualty.

"Declarant." Bryan Heights Development LLC, a Texas limited liability company, whose address for notice is 2911 Turtle Creek Blvd., Suite 300, Dallas, Texas 75219-6243, and any successor or assignee of Declarant evidenced by a written instrument filed for record in the Condominium Records assigning the rights, powers, authority and obligations of Declarant hereunder.

"Declarant Control Period." The period that commences on the date of this Declaration and expires upon the later to occur of: (i) the date which is one hundred twenty (120) days after Declarant has conveyed seventy-five percent (75%) of the Units that may be created hereunder to Owners other than a Declarant, or (ii) December 31, 2092, during which period Declarant may appoint and remove, in its sole discretion,

officers and directors to the Board of the Association; provided that no later than the date which is not later than the 120<sup>th</sup> day after conveyance of fifty percent (50%) of the Units that may be created hereunder to Owners other than Declarant, not less than one-third (1/3) of the directors serving on the Board must be elected by non-Declarant Owners. The Declarant Control Period: (a) is for a number of years; and (b) may be terminated by Declarant at any time.

**"Declarant's Mortgagee."** Any Person that is the holder of any bona fide indebtedness which is the result of an arm's length negotiation, that is secured by a first lien or encumbrance upon any portion of the Condominium owned by Declarant.

**"Declaration."** This Condominium Declaration for Bryan Heights Condominiums, and all amendments hereto, which shall be recorded in the Condominium Records.

**"Design Guidelines."** Any procedural or substantive rules or guidelines that may be adopted by the Architectural Reviewer, from time to time, regarding the planning and construction of Improvements, including, without limitation, Buildings, Units and Common Elements, and the use of Land.

**"Designee."** A Person acting at the request of another Person, including contractors, subcontractors, employees, agents, representatives and licensees.

**"Development Rights."** A right or combination of rights to: (i) add additional real property, Buildings or Units to the Condominium; (ii) create Units, Common Elements, or Limited Common Elements within the Condominium; (iii) sub-divide Units or convert Units into Common Elements or convert the Common Elements into Units; or (iv) withdraw or add real property from or to the Condominium.

**"Dispute."** Any claim, grievance or other dispute, other than a Construction Dispute, arising out of or relating to: (i) the interpretation, application or enforcement of the Governing Documents; (ii) any conflict or dispute arising between or among two or more Owners or an Owner and Declarant or the Architectural Reviewer; (iii) the proper party to bear a maintenance cost or expense or a capital expenditure or the proper amount of the expense, fee or Assessment to be charged or collected; (iv) the rights, obligations and duties of any Owner, Declarant or the Architectural Reviewer under the Governing Documents; (v) the authority of the Association, the Architectural Reviewer or Declarant under any Legal Requirement or under the Governing Documents to: (a) require any Owner to take any action or not to take any action involving such Owner's Unit or (b) alter, subtract from or add to the Common Elements or the Condominium; or (vi) the failure of the Association, in accordance with Legal Requirements and the Governing Documents to: (w) properly conduct elections, (x) give adequate notice of meetings or actions, (y) properly conduct meetings, or (z) allow inspection of books or records. The following shall not be considered "Disputes" unless all parties shall otherwise agree to submit the matter to the dispute resolution provisions of Article XI of this Declaration: (i) any suit by the Association to obtain a temporary restraining order and such ancillary relief as the court may deem necessary to maintain the status quo and preserve the



Association's ability to enforce the provisions of the Governing Documents; (ii) any suit between Owners that does not include Declarant or the Association if such suit asserts a dispute that would constitute a cause of action independent of any of the Governing Documents; (iii) any disagreement that primarily involves title to any Unit or the Common Elements; or (iv) any suit in which the applicable statute of limitations would expire within 180 days of the giving of notice as provided in Article XI of this Declaration unless the Persons against whom the Dispute is made agree to toll the statute of limitations for a period of time necessary to comply with Article XI of this Declaration.

"Easements." Collectively, those Easements described in Section 3.8 and Section 3.9 of this Declaration.

"General Common Elements." All portions of the Common Elements that are not Limited Common Elements, including those more particularly described in Section 2.2(b) of this Declaration.

"Governing Documents." Individually and collectively, the Act, Certificate of Formation, Bylaws, Design Guidelines, Regulations and this Declaration.

"Governmental Authority." Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental entity (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"Governmental Impositions." All real estate and personal property taxes, assessments, standby fees, excises and levies, and any interest, costs or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which at any time prior to or after the execution hereof, may be assessed, levied or imposed upon the Condominium or any Unit therein by any Governmental Authority.

"Improvements." The Building and its infrastructure, and the pavement, fencing, landscaping, facilities, Systems and man-made objects of every type, existing or in the future placed on the Land, including all cable television, cellular phone, internet and other utility or communication installations or equipment.

"Insurance Proceeds." Any and all proceeds that an Owner or the Association is entitled to receive from an insurance company as a result of a casualty loss, including such proceeds in connection with a casualty loss to a Unit, the Common Elements or to improvements within an Easement area established pursuant to this Declaration.

"Insurance Trustee." The Association acting in the capacity of a trustee in accordance with the provisions of Section 7.5 of this Declaration to negotiate losses under any property insurance policies required to be obtained by the Association in this Declaration.

**“Land.”** That certain real property located in the County and more particularly described in Exhibit "A" attached to this Declaration, together with all and singular the rights and appurtenances pertaining thereto, including any additional real property that becomes part of the Property, but excluding, to the extent appurtenant, the Easements.

**“Legal Requirements.”** Any requirements applicable to the Property contained in matters of record and any and all then-current judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to any Owner’s use and enjoyment of the Condominium, any Unit or the Property, including zoning ordinances, subdivision and building codes, flood disaster laws and applicable architectural barrier, health and environmental laws and regulations.

**“Limited Common Elements.”** Those portions of the Common Elements that are allocated by this Declaration and the Map for the exclusive use of less than all of the Units, including those more particularly described in Section 2.2 of this Declaration.

**“Maintenance Standard.”** Good repair in a an attractive and clean condition, including the operation, upkeep, repair and restoration, ordinary wear and tear excepted, to the extent necessary to maintain the Condominium or Unit, as applicable, in a condition reasonably suitable for its intended purpose.

**“Manager.”** Any professional manager or management company with whom the Association contracts for the day-to-day management of either or both of the Property or the administration of the Association and the Condominium.

**“Map.”** The plats and plans on Exhibit "B" attached to this Declaration and made a part of this Declaration, including a survey plat of the Land and dimensional drawings that horizontally and vertically identify and describe the Units and the Common Elements.

**“Monthly Assessment.”** Assessments established and collected by the Association pursuant to Article VIII of this Declaration for payment of the Common Expenses and Parking Expenses when due.

**“Mortgagee.”** Any Person, including Declarant’s Mortgagee, that is the holder, insurer or guarantor of any bona fide indebtedness which is the result of an arm’s length negotiation, that is secured by a first lien or encumbrance upon a Unit and which has provided the Association with written notice of its name, address and a description of the Unit encumbered thereby.

**“Owner.”** Any Person (including Declarant) owning fee title to a Unit, but excluding any Person having an interest in a Unit solely as security for an obligation.

**“Parcel.”** The Property or any building site designated by Plat or otherwise as a separate building site within the Property.

**“Parking Agreement.”** Any Parking Agreement between the Association and the Owner of a Unit with respect to any Parking Spaces that are General Common Elements,

which among other things, gives such Owner access to and the exclusive right to use certain Parking Spaces that are part of the General Common Elements.

**"Parking Expenses."** Costs and expenses directly related to the Parking Spaces or for which the Association is primarily responsible, subject to its right to allocate such expenses to other Owners pursuant to this Declaration, including those relating to: (i) maintenance and repair of the Parking Spaces; (ii) casualty, public liability and other insurance coverages required or permitted to be maintained by the Association; (iii) Governmental Impositions levied and assessed on the Parking Spaces; (iv) utilities relating to the Parking Spaces; and (v) such other costs and expenses as may be reasonably related to the proper maintenance, care, operation and management of the Parking Spaces, including the accounting for such expenses.

**"Parking Spaces."** Collectively, all parking spaces within the Condominium, which are General Common Elements as designated on the Plat; provided, however, in no event shall any parking spaces within an enclosed garage of any Unit be considered Parking Spaces for purposes of this Declaration.

**"Parking Space Easement."** An easement for use of Parking Spaces, as more particularly described in Section 3.8(c) of this Declaration.

**"Past Due Rate."** The maximum lawful rate of interest under Texas law or, if no maximum lawful rate exists, the rate of 18% per annum.

**"Person."** Any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other legal entity, including any Governmental Authority and any fiduciary acting in such capacity on behalf of any of the foregoing.

**"Priority Lien Indebtedness."** Any bona fide indebtedness, which is the result of an arm's-length negotiation, that is secured by a first lien or encumbrance upon the Property and/or a Unit.

**"Property."** The Land and the Improvements.

**"Real Property Records."** The records of the office of the county clerk of the County where instruments concerning real property are recorded.

**"Reallocation Percentage."** The percentage of the undivided interest of each Owner in the Common Elements as set forth on a Supplemental Declaration (if applicable), determined by dividing (i) the square footage of a Unit by (ii) the combined total square footage of all Units, which measurement of the square feet within each Unit shall be done in the same manner as the measurement used to establish the initial Allocated Interests set forth on Exhibit "C" attached to this Declaration.

**"Regulations."** The rules and regulations of the Association initially adopted by the Board of Directors and as amended from time to time, relating to the appearance, use

and occupancy of the Property, including the exterior appearance, use and occupancy of the Units, and certain construction on the Property.

**“Rents.”** Any and all rental or other income received by an Owner in connection with the leasing of such Owner’s Unit or the granting or licensing of a right to use all or any portion of such Unit.

**“Roof Easement.”** An easement as more particularly described in Section 3.8(d) of this Declaration.

**“Roof Easement Area.”** The area shown and designated as the Roof Easement Area on the Map.

**“Signage.”** Any signage, lettering, decorations, banners, advertising or marketing media, awnings, canopies, window covering, or any other form of expression on the Skin or in the interior of the Improvements if the same is visible from the exterior of the Improvements.

**“Signage Rights.”** The right to affix Signage to the Skin, as described in Section 3.4 of this Declaration.

**“Skin.”** The exterior surface of the Improvements or the portions thereof, as applicable, including the roof, but specifically excluding the garage doors and other exterior doors and windows.

**“Skin Easement.”** An easement as more particularly described in Section 3.8(e) of this Declaration.

**“Special Assessments.”** Assessments established and collected from time to time by the Association pursuant to Section 8.1(c) of this Declaration, when due.

**“Special Declarant Rights.”** Rights set forth in Section 82.003(a)(22) of the Act hereby reserved for the benefit of Declarant, including, without limitation the rights to: (i) complete the Improvements shown on the Map; (ii) exercise any Development Right; (iii) make the Condominium a part of a larger condominium or planned community; (iv) maintain the sales and management and leasing offices and models described in Section 3.7(c) of this Declaration and use signs advertising the Units or the Condominium; (v) use any Easement for the purpose of making improvements within the Condominium, on the Property; (vi) appoint and remove any officer or director on the Board of the Association during the Declarant Control Period.

**“Structure.”** All foundations, footings, columns, flat slabs, sheer walls, girders, support beams, post tension cables or rods and including any and all other structural components that support, uphold or are a part of the Building or other Improvement.

**“Supplemental Declaration.”** An instrument executed by Declarant and recorded in the Condominium Records for the purpose of (i) modifying the Allocated Interests, (ii) adding to the Condominium, (iii) withdrawing any portion of the Condominium from

the effect of this Declaration or (iv) any other action as provided in the Governing Documents.

**“Support Easement.”** An easement as more particularly described in Section 3.8(f) of this Declaration.

**“Systems.”** All fixtures, utilities, equipment, pipes, lines, wires, computer cables, conduits, circuits, junction boxes, hangers, pull boxes, terminal points, electronic devices, air compressors, air handlers, chillers and other systems used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, waste water, sewage, audio and video signals, and other utility services including the main switch gear conduits, plumbing chases and mechanical shafts on the Property.

**“Systems Easement.”** An easement as more particularly described in Section 3.8(g) of this Declaration.

**“Taking.”** The taking or threat of taking of all or a portion of the Property for any public or quasi-public use, by eminent domain proceedings or otherwise, by a Governmental Authority or by an action in the nature of eminent domain (whether permanent or temporary) or the sale or other transfer of the Property in lieu thereof.

**“Tenant.”** Any Person having the right to occupy a Unit or a portion of a Unit pursuant to a lease or other occupancy agreement granted by an Owner, or pursuant to a sublease, to the extent allowed by the Governing Documents.

**“TBOC.”** The Texas Business Organizations Code, as amended from time to time.

**“Unit.”** A physical portion of the Condominium that is designated for separate ownership or occupancy (the boundaries of which are depicted on the Map), which, to the extent applicable, is contained within the perimeter walls, floor, ceiling, windows and doors of a Unit depicted on the Map and more particularly described in Section 2.2(a) of this Declaration, and includes: (i) all the Systems that exclusively serve such Unit; (ii) garage doors, entry doors, and windows (including, without limitation, plate glass windows); and (iii) the finish materials, floor covering, wall covering, fixtures and appliances contained in the Unit but excludes (x) any portion of the Structure and (y) any Systems that serve more than one Unit, all as subject to and further described in Section 82.052 of the Act.

**“Utility Easement.”** An easement as more particularly described in Section 3.8(h) of this Declaration.

**“Working Capital Contribution.”** An amount equal to the Monthly Assessment multiplied by a factor of 2.5 to be contributed to the Association by each Owner, not including Declarant as provided in Section 8.11 of this Declaration.

## ARTICLE II

### General Provisions

#### **Section 2.1 Creation of Units; Map.**

(a) The Units. The Property is hereby divided into fee simple estates composed of twenty-five (25) separately designated Units, and each such Unit's undivided interest in and to the Common Elements. Each Unit, together with such Unit's undivided interests in the Common Elements is for all purposes a separate parcel of and estate in real property. The separate parcels of and estates in real property designated hereby shall be created on the date of filing of this Declaration in the Condominium Records, and shall continue until this Declaration is revoked or terminated in the manner provided in this Declaration.

(b) The Map. The Map sets forth the following: (i) a general description and diagrammatic plan of the Condominium; (ii) the location and dimension of all real property subject to the Development Rights; (iii) all major Improvements, including each Unit, showing its location within the Building and floor(s); (iv) the location of Parking Spaces within the Condominium designated as Limited Common Elements for use by certain Owners; and (v) such other information as is desirable or required pursuant to the Act, including a certification as to compliance with the Act. The measurements set forth on the Map as to each Unit are approximate values taken from the plans and specifications for the Property and may not be precisely accurate as to any Unit due to variances in construction and interior floor plans. NEITHER DECLARANT NOR ANY OWNER SHALL BE LIABLE TO ANY OTHER OWNER AS A RESULT OF ANY DISCREPANCIES IN ACTUAL UNIT MEASUREMENTS FROM THOSE SET FORTH ON THE MAP OR IN ANY CONDOMINIUM PURCHASE CONTRACT TO WHICH DECLARANT OR ANY OWNER IS OR WAS A PARTY, AND EACH OWNER, BY ACCEPTING A DEED TO A UNIT, WAIVES ANY SUCH CLAIM OR CAUSE OF ACTION. Upon completion of the construction of the Improvements, Declarant (without the joinder of any other Owner) shall file an amendment to this Declaration, amending the Map to reflect the actual measurements for each Unit and any other changes, and amending Exhibit "C" attached to this Declaration to reflect the Allocated Interests based upon completion of construction.

**Section 2.2 Description of Units and Common Elements.** Subject to the Reservations and Easements created by Declarant in this Declaration, the Units shall consist of the following and any logical extension thereby as determined in Declarant's reasonable judgment:

(a) Units: As depicted on the Map, the Units shall consist of residential townhome units, which include a garage and entry on the first floor, and additional residential areas within second, third and fourth floors of each Unit, and roof balcony accessible from the fourth floor, the boundaries of which are described and depicted on the Map.

(b) General Common Elements. As depicted on the Map, the General Common Elements shall include all the Common Elements that are not Limited Common Elements.

(c) Limited Common Elements. As depicted on the Map, the Limited Common Elements shall include a covered front porch area for each Unit, the boundaries of which are described and/or depicted on the Map.

(d) Descriptions Subject to Map. The descriptions of the Units and the Common Elements set forth in this Section 2.2 represent the general intention of Declarant; provided, however, if a discrepancy exists between the above descriptions and the Map, the Map shall control.

**Section 2.3 Allocation of Interests in Common Elements.** The initial Allocated Interests have been determined by dividing the square footage of each Unit by the square feet of all Units and are shown opposite the Unit in Exhibit "C" attached to this Declaration. If Declarant elects to add or remove Units to the Condominium subsequent to the date hereof, the Allocated Interests of each Owner shall be recalculated in accordance with the Reallocation Percentages pursuant to the provisions of a Supplemental Declaration; provided, however, that such Allocated Interests, as determined by the Reallocation Percentages shall not be effective until the date such Units are added to or removed from the Condominium pursuant to a Supplemental Declaration.

**Section 2.4 Inseparability of Units; No Partition.** Each Unit shall be inseparable, and shall be acquired, owned, conveyed, transferred, leased and encumbered only as an entirety, except for the provisions of Section 3.3 and Section 3.8 of this Declaration. In no event shall a Unit be subject to physical partition, and no Owner shall bring or be entitled to maintain an action for the partition or division of a Unit or the Common Elements. Any purported conveyance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements without the Unit to which such Common Elements are allocated is void *ab initio*.

**Section 2.5 Permissible Relationships; Description.**

(a) Ownership of Units. A Unit may be acquired and held by more than one Person in any form of ownership recognized by the Legal Requirements.

(b) Description of Units. Any contract or other instrument relating to the acquisition, ownership, conveyance, transfer, lease or encumbrance of a Unit shall legally describe such Unit as follows: "Unit [# \_\_\_] of Bryan Heights Condominiums, located in Dallas County, Texas," with further reference to the recording data for this Declaration (including the Map and any amendments to this Declaration in the Condominium Records). Every such description shall be good and sufficient for all purposes to acquire, own, convey, transfer, lease, encumber or otherwise deal with such Unit, and any such description shall be construed to include all incidents of ownership relating to a Unit.

**Section 2.6 Mortgage of Unit.** An Owner shall be entitled from time to time to mortgage or encumber a Unit by creating a lien or liens covering a Unit under the provisions of a

mortgage or deed of trust, but any lien created thereby shall be subject to the terms and provisions of this Declaration, and any mortgagee or other lienholder which acquires a Unit through judicial foreclosure, public sale or any other means shall be subject to the terms and provisions of this Declaration. An Owner that mortgages its Unit shall notify the Association, giving the name and address of said Owner's Mortgagee, and the Association shall maintain such information.

### ARTICLE III

#### Uses, Reservations and Restrictions

**Section 3.1 Permitted Uses.** All uses of the Units shall be subject to and in accordance with the Governing Documents and all applicable Legal Requirements. Except as otherwise provided in the Governing Documents, the Units shall only be used for residential and ancillary purposes permitted under any ordinances, rules or regulations promulgated by any applicable Governmental Authority and to which the Condominium is subject.

**Section 3.2 Prohibited Uses.** No Unit shall be used for any uses prohibited by the Architectural Reviewer. Approval by the Architectural Reviewer of a use with respect to a particular Unit shall not constitute or compel approval by the Architectural Reviewer of the same or a similar use elsewhere within the Condominium.

**Section 3.3 Leases.** The Units (or portions thereof) may be leased. Each lease of a Unit shall be subject to those leasing restrictions set forth by this Declaration or from time to time by Regulations promulgated by the Board, as applicable.

(a) Leasing Homeowners who rent or lease their residence are required to execute a written lease agreement, signed by the tenant and a copy provided to the Association prior to the tenant's possession of the residence. The lease shall contain, at minimum, the following:

- a. Term of Lease. Initial term of the lease shall not be less than one (1) year.
- b. Entire Residence. The property leased includes the entire residence.
- c. Single Family. Lease is restricted to single family. Owner shall provide to the Association or its Managing Agent the names and contact information for the tenants.
- d. Abide by Rules. The Owner must make available to the tenant copies of the CCR's, Rules and Regulations, and all amendments thereto. Tenant must agree to abide by all Association's rules and must acknowledge that failure to do so may constitute a default under the lease terms and agreement. Owner must obtain a signed acknowledgment from the tenant that this section of the CCR's has been explained in detail. The Tenant shall not be allowed access to any secured areas of the Association's website or other official social media platforms. Owner shall not allow tenant to use their secure log in information to access any secured platform established for homeowner use only or owned and/or operated by the Association or its Managing Agent.
- e. No assignment or subleasing is allowed.
- f. Tenant must carry renters insurance.



- g. Owner shall be responsible at all times for his tenant and the maintenance and upkeep of the home and lot. Should the tenant violate a rule and a violation notice is sent, the Owner shall be responsible for ensuring the tenant complies with the rules and the violation noted is immediately abated. Should a fine for non-compliance result, the Owner shall be responsible for payment to the Association for all fines or any monetary expense the Association may incur for the enforcement and abatement of a violation.

**Section 3.4 Signage Rights.** No Owner shall have the right to erect Signage on the Skin of such Owner's Unit unless and until such Owner has obtained approval of the Architectural Reviewer (which may be withheld in the Architectural Reviewer's sole and absolute discretion) and provided that such Signage must be in compliance with the Legal Requirements. Any Signage shall be further subject to such restrictions and requirements as set forth in the Regulations. Each Owner shall be responsible, at its sole expense, for (A) obtaining and maintaining all necessary permits and approvals required under all applicable Legal Requirements with respect to the erection and maintenance of its Signage (if any), (B) keeping and maintaining, or causing to be kept and maintained, its Signage in good condition and repair and (C) keeping or causing to be kept all lighting and other equipment in connection with its Signage (if any) in good working order and condition. The Architectural Reviewer, or the Association at the direction of the Architectural Reviewer, may remove any such Signage, as necessary, in connection with any of its maintenance and repair or other obligations under this Declaration or may require the Unit Owner to do so. The Owner of the Unit utilizing the Signage Rights shall be responsible for the cost of repairing Common Elements or Units if such repairs are necessitated by use or misuse of their Signage Rights. The Architectural Reviewer does not insure equipment or improvements installed pursuant to the Signage Rights and is not liable to any Owner or any other Person for any loss or damage from any cause to the equipment or improvements installed pursuant to the Signage Rights. **THE OWNERS SHALL INDEMNIFY THE ARCHITECTURAL REVIEWER, THE ASSOCIATION, THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND MEMBERS, INDIVIDUALLY AND COLLECTIVELY, AGAINST LOSSES DUE TO ANY AND ALL CLAIMS FOR DAMAGES OR LAWSUITS, BY ANYONE, ARISING FROM THE USE OR MISUSE OF THEIR RESPECTIVE SIGNAGE RIGHTS.**

**Section 3.5 Parking.**

(a) Parking Spaces. Parking Spaces designated as General Common Elements shall be for the non-exclusive use of the Units and for any guests, invitees and employees of the Owners as well as the general public. Use of the Parking Spaces shall be subject to the procedures and regulations set forth in the Regulations (which will be enforced by the Association).

(b) Unit. Each Unit shall have access to a garage as part of such Unit sufficient to park at least two (2) automobiles. The right of a Unit Owner by a Parking Agreement or otherwise of any Parking Spaces shall be subject to the procedures and regulations set forth in the Regulations (which shall be enforced by the Association) and shall be used exclusively for automobile parking purposes and those uses appurtenant to

parking purposes by the Unit Owner, its Tenants and their guests, invitees and employees. Neither the Association nor any other Owner may restrict or prohibit a Unit Owner from parking within the garage area that is part of such Owner's Unit.

**Section 3.6 Compliance with the Governing Documents.** Each Owner, by accepting a deed conveying title to a Unit, and any Tenant by execution of a lease or by occupancy or a Unit shall automatically be deemed to have agreed to strictly comply with the provisions of the Governing Documents and all the Legal Requirements. A failure or refusal of an Owner or a Tenant to so comply with any such provisions, after written notice, shall constitute a Dispute (to the extent so included within the definition of "Dispute" set forth in Section 1.1 of this Declaration) that shall be resolved in accordance with Article XI of this Declaration. In addition, an Owner's voting rights in the Association may by written notice be suspended by the Association during the period of such noncompliance.

**Section 3.7 Rights of Declarant.** In accordance with, and only if permitted by, the Act, Declarant reserves the following rights:

(a) the Development Rights and the Special Declarant Rights, at all times while Declarant or any Affiliate of Declarant owns any Unit or any other real property interest in the Condominium, including an easement interest, except as otherwise expressly provided herein;

(b) the right (but not the obligation), by a Supplemental Declaration, to supplement or modify any Unit by adding additional facilities or deleting facilities, to designate additional portions of the Condominium as part of any Unit, or to combine Units; provided, however, Declarant may not add or delete facilities from any Unit or combine Units, unless Declarant or an Affiliate of Declarant is the owner of such Unit or Units. No such addition or deletion to any such Unit or combination of Units shall affect the interest in the Common Elements, the share of Common Expenses or the voting rights appurtenant to the Units. Any Units which are combined shall be treated for all such purposes as separate Units. Declarant may separate any Units it has combined, at its sole expense, into separate and distinct Units as originally set forth in the survey and the Map. Nothing in this Declaration, however, shall obligate Declarant to add to the Condominium or otherwise take any of the actions to which Declarant is entitled pursuant to this Section 3.7(b);

(c) the right to maintain a model unit and a sales, leasing and/or management office within any Unit or on the Common Elements in connection with the sale, leasing and/or management of Units, in such location as determined by Declarant. Declarant shall have the right to relocate such model unit and/or office from time to time. Declarant shall have the right to authorize placement, upon the Common Elements, of signs designating any such model unit and/or sales, leasing and/or management office and advertising the sale or leasing of the Units. Such signs may be placed in such locations and shall be of such size and character as Declarant may determine;

(d) the right, without the vote or consent of the Architectural Reviewer, the Association or any other Owner, to: (i) make alterations, additions or improvements in,

to and upon any Units owned by Declarant or its Affiliates, whether structural or non-structural; (ii) change the floor plan and layout of any Unit owned by Declarant or its Affiliates. However, in no event shall any such alteration, improvement or change interfere with any structural support of any Unit or the Common Elements or the provision of utility service to any Unit or the Common Elements. All work done in accordance with the provisions of this Section 3.7(d) shall be done in compliance with the Governing Documents and all applicable Legal Requirements; and

(e) For as long as Declarant or its Designees remain liable under any warranty, whether statutory, express or implied, for any act or omission of Declarant or its Designees in the development, construction, sale and marketing of any portion of the Condominium, the right for itself and its Designees, in Declarant's sole discretion and from time to time, to enter the Common Elements and the Units for the purpose of making necessary inspections, tests, repairs, improvements or replacements required for Declarant or its Designees to fulfill any of its warranty obligations, provided that no such entry into a Unit shall unreasonably interfere with the use of such Unit by its Owner. Failure of the Association or any Owner to provide such access may result in the appropriate warranty being nullified and of no further force or effect. Nothing in this Section 3.7(e) shall be deemed or construed as Declarant making or offering any warranty, all of which are disclaimed.

In addition to all other rights granted or reserved to Declarant in the Governing Documents, in order that the development of the Condominium may be undertaken and established as a fully operating mixed-use development, Declarant shall have the following rights, and the Owners, the Architectural Reviewer, and the Association, shall refrain from interfering with Declarant's activities in such regard: (i) Declarant and its Designees shall have the right to conduct any activity or operations on or in connection with the Condominium that Declarant determines to be necessary or advisable in connection with the completion of the development of the Condominium, including the right to alter its construction plans and designs as Declarant deems advisable in the course of development or enlargement of any Improvements;; (ii) Declarant and its Designees shall have the right to erect, construct and maintain on any of the Property owned by Declarant or its Affiliates, such structures as may be reasonably necessary for the conduct of its or their business of completing said development and establishing the Condominium as a community and disposing of the same by sale, lease or otherwise; (iii) Declarant and its Designees shall have the right to conduct on the Property its business of developing, subdividing, grading and constructing Improvements in the Condominium and of disposing of the Units thereon by sale, lease or otherwise; (iv) Declarant shall have the right to determine in its sole discretion the nature of and the types of Improvements to be constructed as part of the Condominium; (v) Declarant shall have the right to file any amendments or any Supplemental Declarations to this Declaration; (vi) Declarant and its Designees shall have the right to modify, change, re-configure, remove and otherwise alter any Improvements located on the Common Elements, except as prohibited or limited elsewhere by the Governing Documents; and (vii) Declarant and its Designees shall have the right to enter upon the Property and operate thereon such vehicles and equipment as shall be necessary in the sole discretion of Declarant or its Designees for such purposes. In general, Declarant shall be exempt from all restrictions set forth in this Declaration to the extent such restrictions interfere in

any manner with Declarant's plans for construction, development, use, sale, lease or other disposition of all or any portion of the Property.

Development Rights may be exercised as to different portions of the Property at different times. Declarant provides no assurance whether any Development Right will be exercised, the portions of the Property as to which Development Rights may be exercised or as to the order of exercise of any Development Rights. The exercise of any Development Right in any portion of the Property does not obligate Declarant to exercise that Development Right in any other portion of the Property.

**Section 3.8 Easements.** Each Owner accepts a deed conveying title to a Unit subject to the Easements granted and reserved, as applicable, in this Section 3.8, which the Easements (and all related rights and obligations related to such Easements arising on or after the date of any transfer) shall run with the Condominium.

(a) Access Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Access Easement over, on and across each Unit as may reasonably be necessary for its own benefit and for the benefit of each Unit, the Architectural Reviewer and the Association, as applicable, for: (i) the maintenance, repair or replacement of any of the Common Elements thereon or accessible therefrom; (ii) the use of a Unit by its Owner, provided no other reasonable means of access exists; (iii) the exercise by Declarant of the Special Declarant Rights or the performance of any obligations of Declarant under the Governing Documents; (iv) the making of emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit; (v) the evacuation of all or any part of the Property in the event of an emergency and (vi) such other reasonable purposes as are deemed by the Architectural Reviewer or the Association to be necessary for the performance of their as described in the Governing Documents.

The Association, the Manager, and each Owner may enter a Unit to the extent reasonably necessary in case of an emergency originating in or threatening the Unit or any other Unit whether or not the Owner or Tenant of such Unit is present at the time. The Person making such entry shall take reasonable precautions to protect such premises and any inventory, fixtures and other personal property contained therein from damage and theft. This right of entry may be exercised by any Manager, the Owners, the Association and their directors, officers, agents and employees, and by all police officers, firefighters and other emergency personnel in the performance of their respective duties. Also, the Association may enter a Unit to perform installations, alterations or repairs to the mechanical, electrical or utility services which, if not performed, would affect the use of other Units or the Common Elements; provided that, if possible, requests for any entry shall be made in advance and at a time convenient to the Owner or manager of the affected Unit and further subject to the foregoing limitations. In case of an emergency, the right of entry is immediate and if an Owner refuses to provide entry, such Owner is liable for the cost of repairs to the Unit or the Common Elements caused by the Association's, any Manager's, or another Owner's chosen method of access under such circumstances.

(b) Common Elements Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Common Elements Easement over, on and across the Common Elements for its own benefit and for the benefit of each Unit (which is an intended beneficiary of such Common Element), the Architectural Reviewer and the Association for ingress and egress from each Unit and for the use of the Common Elements. The Common Elements Easement shall be maintained by the Association in accordance with the Maintenance Standard and Section 6.2 of this Declaration.

(c) Parking Space Easement. Declarant hereby grants and reserves a perpetual, assignable, and non-exclusive Parking Space Easement over, on and across the Parking Spaces within the General Common Elements, if any, for its own benefit and for the benefit of the Units for use of the Parking Spaces within the General Common Elements (if any) solely for the parking of vehicles in accordance with the Regulations. The Parking Spaces shall be maintained by the Association as part of the Common Elements of the Condominium in accordance the Maintenance Standard in Section 6.1 of this Declaration. The Parking Space Easement granted herein shall be subject to exclusive rights of an Owner of a Unit to use of Parking Spaces designated by the Map to be a Limited Common Element for such Unit and/or any Parking Space Agreements entered into by the Association pursuant hereto.

(d) Roof Easement. Declarant hereby grants a perpetual and non-exclusive Roof Easement over, on and across the Roof Easement Area: (i) for the benefit of the each Unit for the placement, use and maintenance of air conditioning condenser units serving such Unit in the areas shown on the Map; (ii) for the benefit of each Unit, for the placement, use and maintenance of satellite and telecommunications equipment serving such Unit; and (iii) for the benefit of the Units, for roof balconies or decks, in the areas shown on the Map. The portions of the Roof Easement Area used by an Owner shall be maintained by such Owner and the remaining portions of the Roof Easement Area shall be maintained by the Association in accordance with the Maintenance Standard and Section 6.1 and Section 6.2 of this Declaration.

(e) Skin Easement. All areas of the Skin shall be maintained by the Association as part of the Common Elements in accordance with the Maintenance Standard and Section 6.1 of this Declaration, and Declarant grants a perpetual and non-exclusive Skin Easement over, on and across the Skin of each Building to the Association.

(f) Support Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Support Easement over, on and across the Structure for its own benefit and the benefit of each Unit for support of all portions of the Improvements. The Structure shall be maintained by the Association in accordance with the Maintenance Standard and Section 6.2 of this Declaration.

(g) Systems Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Systems Easement over, on and across the Systems for its own benefit and for the benefit of each Owner and the Association for the use of and the connection to any portion of the Systems intended for such Owner's or the Association's

use, except for any portion of the Systems that are intended to exclusively service a Unit. The Systems which serve more than one Unit shall be maintained by the Association in accordance with the Maintenance Standard and Section 6.2 of this Declaration.

(h) Utility Easement. Declarant hereby grants and reserves a perpetual, assignable and non-exclusive Utility Easement over, on and across the Common Elements: (i) for its own benefit, the benefit of the Association and the benefit of utility companies supplying utility service to the Condominium for supplying utility service to any part of the Condominium and (ii) for its own benefit for the right to grant additional Utility Easements. Declarant may record an easement agreement or easement relocation agreement in the Condominium Records, specifically locating or relocating any Utility Easement subsequent to the recordation of this Declaration, and each Owner, by acceptance of the deed to a Unit, hereby grants Declarant an irrevocable power of attorney, coupled with an interest, with full power and authority to locate or relocate any Utility Easement.

(i) Miscellaneous. None of the Easements granted or reserved in this Section 3.8 shall be used in a manner which materially adversely affects the structural integrity of the Improvements. Except as specifically provided in this Section 3.8, notwithstanding the assignability of the Easements, no Easement may be assigned to any Person that is not the Owner or Tenant of the Unit that is benefited by the respective Easement nor shall any Owner that is benefited by an Easement grant a sub-easement or a license to any area covered by any Easement. Use and availability of any facilities or areas covered by the Easements are subject to the Regulations.

**Section 3.9 Encroachments.** If, as a result of the original construction, reconstruction, repair, shifting, settlement or other circumstance, any portion of the Common Elements encroaches upon a Unit, a perpetual easement over, on and across such Unit for such encroachment and for the maintenance of the same is hereby granted and conveyed to the Association by each Owner at the time each Unit is conveyed to the Owner. If as a result of the original construction, reconstruction, repair, shifting, settlement or other circumstance any portion of a Unit encroaches upon the Common Elements, or upon any adjoining Unit, an irrevocable and perpetual easement for such encroachment and for the maintenance of the same over, on and across such Unit, or such portion of the Common Elements, as applicable, is hereby granted to the Owner of such Unit. Such encroachments and easements shall not be considered or determined to be encumbrances either upon a Unit or upon the Common Elements.

## ARTICLE IV

### Matters Regarding the Association

**Section 4.1 General.** The Association has been incorporated as a nonprofit corporation under the TBOC. In addition to the powers conferred on the Association under the TBOC, the Association may take all actions authorized by the Governing Documents. Any and all actions taken by the Association pursuant to the Governing Documents are binding on all Owners. This Declaration is not intended to place any limitations or restrictions on the power of

the Association or the Board of Directors except as set forth in this Declaration or the Governing Documents.

**Section 4.2 Allocation of Votes in the Association.** Each Owner will automatically be a member of the Association. Unless a different allocation of votes is required by the Act or elsewhere in this Declaration each Owner shall be entitled to one vote per Unit owned by it.

**Section 4.3 Suspended Voting Rights.** All voting rights of an Owner may be suspended during any period that such Owner is delinquent in the payment of any Assessment duly established pursuant to this Declaration, or is otherwise in default under the terms of the Governing Documents.

**Section 4.4 Right of Action by Owners and the Association; Release.** The Owners, acting collectively or individually, shall have the right to maintain actions against the Association for its willful failure to comply with the provisions of the Act, this Declaration or the Bylaws or its willful failure to perform its duties and responsibilities hereunder; provided, however, except as otherwise provided by the Governing Documents, no other action shall be brought against the Association or its Affiliates, parents, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties, by the Owners. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings in the name of any Unit Owner. Subject to the Association's obligations under this Declaration, except as otherwise provided by the Governing Documents, each Owner hereby releases, acquits and forever discharges the Association, and its Affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns and agrees to hold such Persons harmless of and from any and all claims, damages, liabilities, costs and/or expenses (including reasonable attorneys' fees) relating to the construction of, repair or restoration of, or the sale to the Owners of the Units or the Common Elements. This release shall release and forever discharge the Association and its Affiliates, parents, members, subsidiaries, officers, directors, agents, employees, predecessors, successors, contractors, consultants, insurers, sureties and assigns, from all claims and causes of action, whether statutory or under the common law, known or unknown, now accrued, or that arise in the future.

**Section 4.5 Limitation of Liability of Officers, Directors, Employees and Agents of the Association.** No officer, director, employee or agent of the Association shall be liable to any Owner of any Unit or any Tenant, for any claims, actions, demands, costs, expenses (including attorneys' fees), damages or liability, of any kind or nature, except as otherwise expressly set forth in the Governing Documents and such officers, directors, employees and agents shall be indemnified in accordance with the provisions of the Governing Documents.

## ARTICLE V

### ARCHITECTURAL REVIEWER

**Section 5.1 Architectural Reviewer.** The "Architectural Reviewer" (herein so called) shall be the person(s) or entity designated or appointed pursuant to the terms hereunder to review and approve of any and all plans and specifications for Improvements to be constructed

or installed within the Condominium. For as long as Declarant owns at least one Unit in the Condominium (unless Declarant previously relinquishes its rights to the Board), Declarant or its Designee shall perform all of the rights, duties and obligations of the Architectural Reviewer hereunder. From and after the expiration or termination of the Declarant's rights as Architectural Reviewer hereunder, the Board or an architectural control committee established by the Board (the "**Committee**") shall perform all of the rights, duties and obligations of the Architectural Reviewer hereunder. The Architectural Reviewer shall function as the representative of the Association. The Architectural Reviewer shall exist and act for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class residential condominium development. Any one or more of the person(s) acting as the Architectural Reviewer may be removed as Architectural Reviewer hereunder, with or without cause, by the Declarant so long as Declarant owns any Unit (or earlier relinquishes its rights under this Section 5.1 to the Board) and thereafter by the Board of Directors.

**A majority of the Committee or Board comprising the Architectural Reviewer may designate a member to act for it.** No person acting as Architectural Reviewer shall be entitled to any compensation for services performed hereunder nor be liable for claims, causes, causes of action or damages (except where occasioned by gross negligence or willful misconduct) arising out of services performed pursuant to this Declaration.

### **Section 5.2 Architectural Approval.**

(a) **Design Guidelines.** The Architectural Reviewer may, from time to time at its election, publish and promulgate design guidelines (the "**Design Guidelines**"), which shall supplement this Declaration and shall be deemed incorporated herein by reference. The Architectural Reviewer shall have the right from time to time to amend the Design Guidelines, provided such guidelines, as amended, shall be in keeping with the overall quality, general architectural style and design of the Condominium. The Architectural Reviewer shall have the authority to make final decisions in interpreting the general intent, effect and purpose of those matters for which it is responsible in accordance with this Declaration. The Architectural Reviewer shall endeavor to promulgate the Design Guidelines in such a manner that only materials complying with all applicable laws and regulations are specified therein, but each Owner of a Unit (and not the Architectural Reviewer) is responsible for complying with such laws and regulations on his respective Unit. If the Architectural Reviewer should be advised that materials specified by the Design Guidelines do not comply with applicable laws or regulations, the Architectural Reviewer shall use reasonable efforts to inquire into the nature of the non-compliance and to make appropriate revisions of the Design Guidelines.

(b) **Required Approval.** **No Building or other Improvements, including, without limitation, any structure, paving, pools, fencing, hot tubs or improvement of any nature, shall be erected, placed or altered on any portion of the Condominium until the site plan showing the location of such building, structure, driveway, paving or improvement, construction plans and specifications thereof and landscaping and grading plans therefor have been submitted to and approved in writing by the Architectural Reviewer ("**Architectural Approval**") as to: (i) location with respect to Unit boundaries and Common Elements, setback lines and finished grades with respect to**



existing topography, (ii) conformity and harmony of external design, color, and texture with existing structures and existing landscaping, (iii) quality of materials, adequacy of site dimensions, and proper facing of main elevation with respect to nearby streets; (iv) conformity with the applicable Legal Requirements; and (v) the other standards set forth within this Declaration or the Design Guidelines. The Architectural Reviewer is authorized to request the submission of samples of proposed construction materials or colors or proposed exterior surfaces.

(c) Procedure. Final plans and specifications shall be submitted in duplicate to the Architectural Reviewer by the Owner for approval or disapproval. If such plans and specifications meet the approval of the Architectural Reviewer, one complete set of plans and specifications will be retained by the Architectural Reviewer and the other complete set of plans will be marked "Approved" and returned to the Owner. If such plans and specifications do not meet the approval of the Architectural Reviewer, one set of such plans and specifications shall be returned marked "Disapproved," accompanied by a reasonable statement of the reasons for such disapproval. Any modification or change to the approved set of plans and specifications or to construction or reconstruction pursuant thereto which materially affects items (i) through (v) of the preceding Section 5.2(a) must again be submitted to the Architectural Reviewer, for its review and approval. The Architectural Reviewer's approval or disapproval as required herein shall be in writing. If the Architectural Reviewer fails to approve or disapprove such plans and specifications within thirty (30) days after they have been submitted to it, then Architectural Reviewer disapproval shall be presumed.

(d) Architectural Reviewer Discretion. The Architectural Reviewer is authorized and empowered to consider and review any and all aspects of Building construction, construction of other improvements and location, quality and quantity of landscaping within the Condominium, and may disapprove aspects thereof which may, in the discretion of the Architectural Reviewer, adversely affect the living enjoyment or intended use of one or more Owner(s) of its/their Units or the value of the Property. As an example, and not by way of limitation, the Architectural Reviewer may impose limits upon the location of window areas of one Building or Unit that would overlook the enclosed patio area of an adjacent Building or Unit. Also, the Architectural Reviewer is permitted to consider technological advance in design and materials and such comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the Architectural Reviewer. The action of the Architectural Reviewer with respect to any matter submitted to it shall be final and binding upon the Owner submitting such matter, subject to the provisions of Article XI hereof.

(e) Initial Improvements. Declarant shall not be required to obtain Architectural Reviewer approval of the initial Improvements.

**Section 5.3** Variances. Upon submission of a written request for same, the Architectural Reviewer may, from time to time, in its sole discretion, permit Owners to construct, erect, or install improvements which are in variance from the Design Guidelines or covenants or restrictions provided in this Declaration or the Design Guidelines then in effect. In

any such case, variances shall be in basic conformity with and shall blend effectively with the overall quality, general architectural style and design of the community. No member of the Board or the Committee, and no person or entity acting as Architectural Reviewer hereunder shall be liable to any Owner for any claims, cause of action, or damages arising out of the grant of, or the refusal to grant, any variance to an Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the granting of a variance to any Owner shall not constitute a waiver of the Architectural Reviewer's right to strictly enforce this Declaration against any other Owner.

**Section 5.4 Nonconforming and Unapproved Improvements.** The Board of Directors may require any Owner to restore such Owner's Unit and related Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any unapproved improvement) if such improvements were commenced or constructed in violation of this Declaration, including the Design Guidelines. In addition, the Board of Directors may, in its sole discretion, cause the Association to carry out such restoration, demolition and removal if the Owner fails to do so. The Board of Directors may levy the amount of the cost of such restoration, demolition and removal as a special assessment against the Unit upon which such improvements were commenced or constructed (without the necessity of Member approval) and shall have all the rights and remedies to enforce collection thereof provided by law and by this Declaration. Buildings or other improvements initially constructed in accordance with this Declaration and having received any necessary approval of the Architectural Reviewer in connection with their initial construction, may be repaired, maintained and restored in accordance with the standards in force at the time of their initial construction, notwithstanding any subsequent amendment or revision of this Declaration or the Design Guidelines, subject to any restrictions or requirements of the City or other Legal Requirements. If such Units or related Building and Improvements are totally destroyed or totally replaced, the new Building and Units or other new improvements must conform to this Declaration and the Design Guidelines in force at the time of their construction, subject to any restrictions or requirements of the City or other Legal Requirements.

**Section 5.5 No Liability.** Neither Declarant, the Association, the Architectural Reviewer, the Committee, the Board of Directors, nor the officers, directors, members, employees or agents of any of them, shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Reviewer, the Committee, the Board of Directors, or the officers, directors, members, employees or agents of any of them, to recover any such damages and hereby releases, remises, and quitclaims all claims, demands and causes of action arising out of or in connection with any actual or alleged mistake of judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Approval of plans and specifications by the Architectural Reviewer is not approval thereof for engineering or structural design or adequacy of materials. By approving such plans and specifications neither the Architectural Reviewer, the Committee or the members thereof, the Declarant, the Association nor the Board of Directors assumes liability or responsibility for

safety or adequacy of design, compliance with this Declaration, or for any defect to any structure constructed from such plans and specifications.

## ARTICLE VI

### Maintenance, Alterations, Taxes and Utilities

#### **Section 6.1 Maintenance.**

(a) Maintenance of Units. All maintenance, repairs and replacements of, in or to any Unit, ordinary or extraordinary, foreseen or unforeseen, including maintenance, repair and replacement of all Systems which are part of such Unit, shall be performed by the Owner of such Unit in accordance with the Maintenance Standard. .

(b) Maintenance of Common Elements. Except as otherwise provided in the Regulations, all the Common Elements shall be maintained by the Association in accordance with the Maintenance Standard, the cost and expense of which shall constitute a Common Expense and shall be payable as may be set forth herein. The Association shall establish and maintain an adequate reserve fund for such purposes, to be funded by Monthly Assessments and Working Capital Contributions rather than by a Special Assessment; provided, however, that the Association may require Special Assessments for such purposes, in accordance with Section 8.1(c) of this Declaration. Nothing in this Declaration shall be deemed or construed as relieving any Owner from liability or responsibility for damage to the Common Elements caused by the negligence or misconduct of an Owner or an Owner's occupants or invitees. To the extent that any of the foregoing items are a part of the Parking Spaces, the costs of maintenance with respect to such Parking Spaces shall be allocated to the Owners in accordance with Section 8.2 and Section 8.3 of this Declaration.

(c) Maintenance of Easements. All maintenance, repairs and replacements of, in or to any Easement area, ordinary or extraordinary, foreseen or unforeseen, including maintenance, repair and replacement of all Systems which are part of such Easement area, shall be performed by the Owner of such Unit, or Limited Common Element appurtenant thereto, in which the Easement area is located and in accordance with the Maintenance Standard. If the Easement area is located in a General Common Element, then all maintenance, repairs and replacements of, in or to any Easement area, ordinary or extraordinary, foreseen or unforeseen, including maintenance, repair and replacement of all Systems which are part of such Easement area, shall be performed by the Association and be a Common Expense.

(d) Limitation of Liability. The Association shall not be liable: (i) for injury or damage to any person or property caused by the elements or by the Owner or occupant of any Unit, or any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from or over any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder; (ii) to any Owner or occupants of any Unit for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements

or (iii) to any Owner or occupants of any Unit for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section 6.1.

**Section 6.2 Failure of Owner to Maintain Unit or Easements.** If the Association or any Owner fails or neglects to maintain, repair or clean its Unit or the area covered by the Easements as required by Section 6.1 and Section 3.8, respectively, of this Declaration, or any Limited Common Element appurtenant thereto, required to be maintained by such Owner pursuant to this Declaration or any Regulations, and such failure or neglect continues for ten (10) days after such Owner's receipt of written notice of such neglect or failure from the Association (or an Owner, if the obligation is required to be performed by the Association) or immediately in the case of neglect causing immediate damage or harm to persons or property, then the Association (or an Owner, if the obligation is required to be performed by the Association) acting on its own behalf may, but shall not be obligated to, enter the Unit, upon the area covered by the Easement or the Limited Common Element, as applicable, and take appropriate steps to perform, or cause to be performed, the maintenance, repair, cleaning and replacement in the manner as required by this Declaration; provided, however, that if the Association declines to perform such maintenance on behalf of the defaulting Owner, any other Owner shall have the right to enter such Unit or upon the area subject to such Easement and perform or cause to be performed the maintenance required by this Declaration. The defaulting Owner or the Association, as the case may be, shall, upon demand, reimburse the Association or the Owner making such repairs or maintenance, as applicable, for all costs and expenses incurred in exercise of its rights in this Declaration.

**Section 6.3 Disputes.** Any Dispute arising among the Owners as to the proper person to bear a maintenance cost or expense shall be resolved in accordance with Article XI of this Declaration.

**Section 6.4 Additions, Alterations or Improvements by Owner.** Subject to the provisions of the Governing Documents, no Owner (other than Declarant) shall: (a) make any addition, alteration or improvement in such Unit, to the extent visible from any other Unit, the Common Elements or the exterior of the Building, whether structural or non-structural; (b) make any addition, alteration or improvement to any Common Element; (c) change the floor plan and layout of such Unit or (d) make any material changes to the configuration or size of any Unit, create apertures in or otherwise remove or alter any partition wall separating such Unit from any adjoining Unit or relocate the boundaries of such Unit and any adjoining Unit without the approval of the Architectural Reviewer, which approval may be withheld in the sole and absolute judgment of the Architectural Reviewer. However, in no event shall any such alteration, improvement, or change interfere with the structural support of any Unit, the Common Elements or any System serving another Unit. All work done in accordance with this Section 6.4 shall be done in compliance with the plans approved by the Architectural Reviewer, all Legal Requirements and the Governing Documents. **THE OWNER, MAKING OR CAUSING TO BE MADE SUCH ADDITIONS, ALTERATIONS OR IMPROVEMENTS, AGREES, AND SHALL BE DEEMED TO HAVE AGREED, FOR SUCH OWNER, TO HOLD THE ARCHITECTURAL REVIEWER, ITS OFFICERS AND DIRECTORS, DECLARANT AND ALL OTHER OWNERS HARMLESS FROM AND TO INDEMNIFY THEM FOR ANY LIABILITY OR DAMAGE TO THE PROPERTY RESULTING FROM SUCH**

ADDITIONS, ALTERATIONS OR IMPROVEMENTS. ANY OTHER OWNER SUBMITTING PLANS HEREUNDER, BY DISSEMINATION OF THE SAME, AND ANY OWNER, BY ACQUIRING TITLE TO THE SAME, AGREES NOT TO SEEK DAMAGES FROM THE ARCHITECTURAL REVIEWER, ITS OFFICERS AND DIRECTORS, ARISING OUT OF ARCHITECTURAL REVIEWER'S REVIEW OF ANY PLANS HEREUNDER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE ARCHITECTURAL REVIEWER, ITS OFFICERS AND DIRECTORS, SHALL NOT BE RESPONSIBLE FOR REVIEWING, NOR SHALL ITS OR THEIR REVIEW OF ANY PLANS BE DEEMED APPROVAL OF, ANY PLANS FROM THE STANDPOINT OF THE STRUCTURAL SAFETY, SOUNDNESS, WORKMANSHIP, MATERIALS, USEFULNESS, CONFORMITY WITH BUILDING OR OTHER CODES OR INDUSTRY STANDARDS OR COMPLIANCE WITH THE GOVERNING DOCUMENTS AND ALL LEGAL REQUIREMENTS. FURTHER, EACH OWNER AGREES TO INDEMNIFY AND HOLD ARCHITECTURAL REVIEWER AND ITS RESPECTIVE OFFICERS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, DAMAGES, EXPENSES OR LIABILITIES WHATSOEVER, ARISING AS A RESULT OF THE REVIEW OF ANY PLANS HEREUNDER.

**Section 6.5 Mechanic's Liens; Indemnification.** No labor or services performed or materials furnished and incorporated in a Unit or any Common Element shall be the basis for the filing of a lien against any Unit of any Owner not expressly consenting to or requesting the same, or against the Common Elements. **EACH OWNER (TO THE EXTENT ARISING THROUGH SUCH OWNER) SHALL INDEMNIFY AND HOLD HARMLESS EACH OF THE OTHER OWNERS AND THE ASSOCIATION FROM AND AGAINST ALL LIABILITIES AND OBLIGATIONS ARISING FROM THE CLAIM OF ANY MECHANIC'S LIEN AGAINST THE UNIT OF SUCH OWNER, THE UNIT OF SUCH OTHER OWNERS AND/OR THE COMMON ELEMENTS.** All contracts for labor, services and/or materials with respect to any of the Units shall be in compliance with the provisions hereof.

**Section 6.6 Taxes.**

(a) **Payment of Governmental Impositions.** Each Owner shall be responsible for and shall pay when due all Governmental Impositions lawfully levied or assessed against such Unit, except to the extent such Governmental Impositions are being actively and diligently contested in good faith by appropriate legal proceedings, and if requested by the Association, have been bonded or reserved in an amount and manner satisfactory to the Association. Any Governmental Impositions lawfully levied or assessed with respect to the Property not separately assessed to the Owners, shall constitute a Common Expense and shall be payable by the Association when due.

(b) **Notice to Taxing Authorities.** Declarant shall give written notice to the appropriate taxing authorities of the creation of the Condominium established pursuant to this Declaration. Each Owner shall promptly request and diligently pursue from the applicable taxing authority separate tax parcel status and a separate tax identification number for its Unit. **EACH OWNER HEREBY BY ACCEPTANCE OF A DEED TO**

ITS UNIT SHALL BE DEEMED TO HAVE AGREED, FOR SUCH OWNER, TO HOLD THE DECLARANT, ASSOCIATION, AND ALL OTHER OWNERS HARMLESS FROM ANY LIABILITY RESULTING FROM AN IMPROPER ALLOCATION OF TAX BURDEN BY THE LOCAL TAXING AUTHORITY.

(c) Units Not Separately Assessed. If any Governmental Impositions with respect to the Property are not separately assessed to the Owners of a Unit, each Owner shall pay its respective allocated portion of such Governmental Impositions, which allocations shall be determined in the manner set forth in this Declaration when requested by the Association (but in no event prior to 20 days or later than ten days before the date of delinquency, without any additional notice or grace period) to permit the Association to make full payment of such Governmental Impositions prior to the date on which such Governmental Impositions would become delinquent; provided that the Association shall not require any Owner to make any payment to the Association for Governmental Impositions to the extent such amounts have already been deposited by such Owner in accordance with any escrow arrangement.

(d) Failure to Pay Governmental Impositions. The Association or any Mortgagee may pay the portion of Governmental Impositions that any Owner has failed to pay when due, and the Association or such Mortgagee shall have a lien against such Unit to secure repayment thereof, that may be enforced by any means available at law or in equity, including non-judicial foreclosure sale of such Unit in accordance with Texas Property Code Section 51.002 (as now written or hereafter amended); provided, however, no such lien for delinquent Governmental Impositions shall be valid until a notice of such lien is duly recorded in the Real Property Records of the County, notwithstanding any applicable statute, law (including case law), equitable doctrine, ordinance or regulation that permits any such lien to attach absent such recordation in the Real Property Records. Each Owner, by its acquisition of such Unit, grants a power of sale in connection with such lien in favor of the Association or any Mortgagee that makes payment of the Governmental Impositions on behalf of a defaulting Owner. Any lien pursuant to this Section 6.6(d) shall have the same priority as a lien by the Association for Assessments; provided that any such lien for delinquent Governmental Impositions shall be subordinate to the lien of any Priority Lien Indebtedness encumbering such Unit, provided that such Priority Lien Indebtedness was recorded prior to the date such lien for Governmental Impositions was duly recorded (notwithstanding any applicable statute, law (including case law), equitable doctrine, ordinance or regulation that permits any such lien to attach absent such recordation in the Real Property Records).

(e) This Section 6.6 shall terminate and be of no further force or effect whatsoever, upon the later of the date upon which (i) each Unit shall be separately assessed and billed as a separate tax parcel by the tax assessor and (ii) all the Governmental Impositions due and owing prior to all Units being separately assessed and billed as a separate tax parcel by the tax assessor have been paid in full to the appropriate taxing authority; provided, however, that the release of liability in Section 6.6(b) of this Declaration shall survive the termination of this Section 6.6 and remain in effect for the duration of this Condominium's existence.

**Section 6.7 Utilities.** Each Owner shall be responsible for and shall pay all charges for gas, electricity, water and other utilities relating to such services used or consumed at or with respect to the occupancy of the Unit, to the extent such charges are separately metered by the respective utility companies. Any utility charges not so separately metered, and charges relating to such services used in connection with the use and maintenance of the Common Elements, shall constitute a Common Expense and be payable by the Association.

## ARTICLE VII

### Insurance

**Section 7.1 Requirements.** All insurance coverage required to be obtained pursuant to this Article VII or purchased at the election of an Owner or the Association shall:

(a) be in such form, approved by the Association and issued by responsible insurance companies licensed to do business in the State of Texas and shall be rated by Best's Insurance Guide (or any successor publication of comparable standing) as "A-, VI" or better;

(b) not be brought into contribution with insurance purchased by the other Owners or the Association, as applicable; and

(c) provide that insurance trust agreements shall be recognized .

**Section 7.2 Insurance by the Association.** Commencing upon the first conveyance of any Unit to an Owner other than Declarant, the Association shall obtain and maintain (a) insurance coverage required pursuant to the Act and such other insurance coverage as set forth in the Bylaws and (b) at the expense of the Owner incurring such Priority Lien Indebtedness, such other insurance (or additional coverage) as such Owner's Mortgagee shall require. The Association shall carry such other or additional insurance in such amounts and against such risks as the Association shall reasonably deem necessary with respect to the Common Elements or operation of the Association. In addition, each insurance policy maintained by the Association shall provide that: (i) each Owner is named as an insured under such policies with respect to liability arising out of the Owner's ownership of an undivided interest in the Common Elements or membership in the Association; (ii) no action or omission by any Owner, unless validly exercised on behalf of the Association, will void the policy or be a condition to recovery under the policy and (iii) such policy is primary insurance if at the time of a loss under the policy any Owner has other insurance covering the same property covered by the policy. Unless indicated otherwise, the premiums for all insurance coverages maintained by the Association pursuant to this Section 7.2 shall constitute a Common Expense, and shall be payable by the Association.

**Section 7.3 Insurance on Unit.** The Unit Owner shall provide and maintain, at its sole cost and expense, CGL, property insurance, worker's compensation insurance and other insurance, in such limits and upon such terms as described in the Bylaws, and, subject to the other terms of this Article VII, such other or additional insurance in such amounts and against

such risks as the Unit Owner shall reasonably deem necessary with respect to the improvements, facilities and contents within their Unit.

**Section 7.4 Other Units.** Commencing upon the conveyance of any other Unit to an Owner, such Owner shall obtain and maintain, at its sole cost and expense, insurance coverage as required in the Bylaws. Such Owners shall, subject to the other terms of this Article VII, carry such other or additional insurance in such amounts and against such risks as such Owners shall reasonably deem necessary with respect to the Improvements, facilities and contents within such Unit, at their sole cost and expense.

**Section 7.5 Association as Insurance Trustee for the Owners.** By acceptance of a deed to a Unit, each Owner shall be deemed to have irrevocably appointed the Association as the Insurance Trustee. All property insurance policies required to be obtained by the Association as described in this Article VII shall be issued in the name of the Association as Insurance Trustee for the Condominium. Loss payable provisions shall be in favor of the Insurance Trustee as a trustee for the Association, each Owner and each such Owner's Mortgagee. The Insurance Trustee shall not be liable for the payment of premiums, nor the renewal or sufficiency of policies, except those policies required to be purchased and maintained by the Association pursuant to this Article VII and the Bylaws. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated in this Article VII and in Article IX of this Declaration, and for the benefit of each Owner, including Declarant, and such Owner's Mortgagee, if any.

**Section 7.6 Other.**

(a) Neither the Association, Declarant nor any Owner shall be liable for failure to obtain any insurance coverage required by this Declaration or for any loss or damage resulting from such failure, if such failure is because such insurance coverage is not reasonably available.

(b) Neither the Association nor any Owner shall obtain any policy of insurance where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Owner or Mortgagee or become a lien against the Condominium; (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders or members or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Association, Owners or Mortgagees from collecting the Insurance Proceeds.

(c) The insurance purchased by the Association and the other Owners pursuant to this Article VII shall not cover claims against any other Owner or its Designees due to accidents occurring within that other Unit, or casualty, theft or loss to the contents of that other Unit.

(d) Each Owner, their Tenants and their respective Designees waive any claim they might have against the other Owners, their Tenants and their respective Designees, the members of the Board of Directors, any Manager or the Association, and the



members of the Board of Directors, any Manager or the Association waive any claim they might have against an Owner, their Tenants and their respective Designees, for (i) any damage to or theft, destruction, loss or loss of use of any property or (ii) any damage due to personal or bodily injury, to the extent the same is insured against under any insurance policy of the types described in the Bylaws that covers the Property, such Owner's, Tenant's, or the Association's fixtures, personal property, improvements, or business, or is required to be insured against under the terms of the Bylaws, **REGARDLESS OF WHETHER THE NEGLIGENCE OF THE OTHER OWNER, ITS TENANTS, OR THEIR RESPECTIVE DESIGNEES, ANY MEMBER OF THE BOARD OF DIRECTORS, ANY MANAGER OR THE ASSOCIATION (AS APPLICABLE) CAUSED SUCH (X) DAMAGE TO OR THEFT, DESTRUCTION, LOSS OR LOSS OF USE OF, ANY PROPERTY OR INCONVENIENCE OR (Y) DAMAGE TO THE PERSON OR PERSONS DESCRIBED HEREIN.** Each Owner shall cause its respective insurance carrier to endorse all applicable policies waiving each such carrier's rights of recovery under subrogation or otherwise against the other Owners, their Tenants and their respective Designees, the members of the Board of Directors, any Manager and the Association and the members of the Board of Directors, any Manager and the Association shall cause their respective insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the Owners, their Tenants and their respective Designees.

## ARTICLE VIII

### Assessments

**Section 8.1 Monthly and Special Assessments by the Association.** The Association shall possess the right, power, authority and obligation to establish a regular Monthly Assessment for payment of the Common Expenses and such Special Assessments as provided for in this Declaration. In addition, the Association shall have the right, power, authority and obligation to establish Monthly Assessments, Special Assessments and Additional Assessments, as described in Section 6.1(c) and Section 8.1 of this Declaration.

(a) **Common Expenses.** The Association shall possess the right, power, authority and obligation to establish a regular Monthly Assessment sufficient in the judgment of the Association to pay all Common Expenses when due and to maintain an adequate reserve fund for such purposes. Such Monthly Assessments so established shall be payable by the Owners on the first day of each calendar month, and shall be applied to the payment of Common Expenses for which the Association is responsible, including maintenance, repair and care of the Common Elements.

(b) **Budget for Common Expenses.** Prior to the commencement of each fiscal year of the Association, the Association shall prepare and deliver to each of the Owners a Budget. Such Budget shall be in sufficient detail so as to inform each Owner of the nature and extent of the Common Expenses anticipated to be incurred in the upcoming fiscal year, shall include Additional Assessments set forth on budgets prepared therefor by other Owners and received by the Association, and shall be accompanied by a statement setting forth each Owner's monthly share thereof and the date as of which such

Monthly Assessment commences to be payable. No further communication shall be necessary to establish the amount of each Owner's obligation regarding the Monthly Assessment payable hereunder, and the failure of the Association to timely deliver such Budget shall not excuse or relieve an Owner from the payment of the Monthly Assessments contemplated hereby, in which case, each Owner shall continue to pay to the Association an amount equal to such Owner's Monthly Assessment as established pursuant to the most recent Budget delivered to the Owners. Any Budget prepared and delivered to the Owners as contemplated in this Article VIII may be amended as and to the extent reasonably necessary, and the amount of an Owner's Monthly Assessment changed to correspond therewith.

(c) **Special Assessments by Association.** In addition to the Monthly Assessments contemplated by Section 8.1(a) and Section 8.1(b) of this Declaration, the Association shall possess the right, power, authority and obligation to establish Special Assessments from time to time as may be necessary or appropriate in the judgment of the Association to pay non-recurring Common Expenses relating to the proper maintenance, care, alteration, improvement, replacement, operation and management of the Condominium and the administration of the Association.

**Section 8.2 Parking Space Assessments.**

(a) **Parking Costs Expenses.** The Association shall establish a regular Monthly Assessment sufficient to pay the Parking Expenses. Such Monthly Assessments so established shall be payable by the Owners entitled to occupy or use Parking Spaces (subject to reallocation as provided in Section 8.2(a) of this Declaration) on the first day of each calendar month to the Association for application to the payment of Parking Expenses. No Owner entitled under this Declaration to occupy or use all or any portion of the Parking Spaces may waive or otherwise escape liability for Additional Assessments through the Parking Expenses by non-use, whether voluntary or involuntary, of the Parking Spaces or abandonment of the right to use the same. Should any Owner be entitled to the exclusive right to occupy or use any portion of the Parking Spaces as part of Limited Common Elements for such Unit or by a Parking Agreement, such Owner shall be responsible for payment of 100% of the Parking Expenses directly related to such Parking Spaces.

(b) **Special Assessments for Parking Spaces.** The Association may establish Special Assessments as may be necessary in the reasonable judgment of the Board of the Association for the payment of repair and restoration costs of the Parking Spaces following a casualty that exceed the amount of collectible Insurance Proceeds received by the Association therefor. If the Association elects to levy such a Special Assessment, all the Owners entitled to occupy or use any portion of the Parking Spaces shall pay a Special Assessment determined by dividing the total number of the Parking Spaces by the number of Parking Spaces assigned for exclusive use to a Owner, multiplied by the total cost to repair the damage, which shall be collected by the Association.

**Section 8.3 Additional Assessments.** The Association shall possess the right, power, authority and obligation to establish an Additional Assessment sufficient in the Owner's

reasonable judgment to pay Charges due to an Owner or the Association for the ensuing year. Additional Assessments so established shall be payable by the applicable Owners on the first day of each calendar month to the Association, which will in turn deliver the same to the Owner which incurred such Charges. Prior to the commencement of each fiscal year of the Association, each Owner shall prepare and deliver to the Association a budget setting forth the anticipated Charges it will incur for the ensuing year. Such budget shall be incorporated into the Budget and shall be in sufficient detail so as to inform each applicable Owner of the nature and extent of the Charges anticipated to be incurred, and shall be accompanied by a statement setting forth each applicable Owner's monthly share thereof and the date of commencement of payment of such Additional Assessments. No further communication shall be necessary to establish the amount of an Owner's obligation regarding the Additional Assessments payable hereunder, and the failure of any Owner to timely deliver such budget to the Association or the failure of the Association to timely deliver the Budget to an Owner shall in no event excuse or relieve an Owner from the payment of the Additional Assessments contemplated hereby, in which case, an Owner shall pay to the Association an amount equal to such Owner's Additional Assessments as established pursuant to the most recent Budget delivered to such Owner. In addition to the Additional Assessments established in this Section 8.3, each Owner shall possess the right, power and authority to cause the Association to establish an Assessment, from time to time, for one-time or non-recurring Additional Assessments due to such Owner from another Owner.

**Section 8.4 Obligation to Pay Assessments.** Each Owner shall be personally obligated to pay the Owner's share of all Assessments duly established pursuant to this Declaration to the Association. Unpaid Assessments due as of the date of the conveyance or transfer of a Unit shall not constitute a personal obligation of the new Owner (other than the new Owner's pro rata share of any reallocation thereof); however, the former Owner shall continue to be personally liable for such unpaid Assessment. No Owner shall be entitled to exemption from liability for the Owner's obligation to pay such Assessments by waiver of the use and enjoyment of the Common Elements or the facilities as to which any Additional Assessments relate, or the Parking Spaces, as applicable, by an abandonment of the Unit or by any other action or otherwise. Any Assessment not paid within five days of the date due shall bear interest at the Past Due Rate, and shall be recoverable by the Association, together with interest as aforesaid and all costs and expenses of collection, including reasonable attorneys' fees, by suit in a court of competent jurisdiction sitting in the County. It shall be the responsibility of the Association to collect any such delinquent Assessment, the existence of which shall be made known by written notice delivered to the defaulting Owner and, where requested, the Owner's Mortgagee.

**Section 8.5 Lien to Secure Payment of Assessments.** Declarant hereby reserves and assigns to the Association a lien, pursuant to the provisions of the Act, against each Unit, the Rents, if any, payable to any Owner and the Insurance Proceeds to which an Owner may be entitled to secure the payment of all Assessments, which lien shall be and constitute a lien and encumbrance, in favor of the Association, upon such Unit, the Rents, and any Insurance Proceeds. The liens established in this Declaration shall be prior and superior to all other liens and encumbrances subsequently created upon such Unit, Rents and Insurance Proceeds, regardless of how created, evidenced or perfected, other than the lien securing the payment of Priority Lien Indebtedness (provided such lien was recorded prior to the date on which the Assessment became delinquent), the liens for Governmental Impositions and any rights of any manager under a management agreement in relation to the Condominium. The liens and

encumbrances created in this Declaration may be enforced by any means available at law or in equity, including a non-judicial foreclosure sale of the Unit of a defaulting Owner; such sale to be conducted in the manner set forth in Texas Property Code Section 51.002 (as now written or as hereafter amended). Each Owner, by acquisition of such Unit, grants to the Association a power of sale in connection with the Association's liens. By written resolution, the Association may appoint, from time to time, an officer, agent, trustee or attorney of the Association to exercise the power of sale on behalf of the Association. The Association may bid for and purchase the Unit, as a Common Expense, at any such foreclosure sale. Payment of proceeds resulting from such foreclosure sale to be applied toward outstanding Assessments shall be in the following order of priority: first, Assessments owing to the Association including all costs, expenses and attorneys' fees relating to the foreclosure; second, Assessments owing the Association for Parking Spaces; and third, Assessments owing to the Owners levying Additional Assessments. The foreclosure of a lien encumbering a Unit in order to satisfy the Priority Lien Indebtedness will extinguish the subordinate lien for any Assessments which became payable prior to the date of such foreclosure sale, provided that in no event shall a defaulting Owner be relieved from liability incurred for past Assessments.

**Section 8.6 Commencement of Obligation to Pay Assessments.** Each Owner, other than Declarant, shall be obligated to commence payment of all Assessments against such Unit on the date the Unit is conveyed to the Owner. If such date is other than the first day of a month, then such Owner shall be obligated to pay only a pro rata share of the Assessment against such Unit based on the number of days during such month that the Owner will hold title to the Unit. Prior to the commencement of the obligation to pay the initial Monthly Assessment, Declarant shall pay all the Common Expenses of the Condominium (excluding portions thereof allocable to reserves and less Assessments payable by the other Owners); provided, however, nothing contained in this Declaration shall prevent Declarant from collecting from the purchaser of a Unit at closing any expenses, such as Governmental Impositions or insurance premiums, to the extent that Declarant prepaid such expenses on behalf of the Unit being purchased.

**Section 8.7 Notice of Default.** If an Owner defaults in the Owner's monetary obligations to the Association, the Association may notify other lienholders of the default and the Association's intent to foreclose its lien. The Association shall notify any holder of a recorded lien or duly perfected mechanic's lien against a Unit which has given the Association a written request for notification of the Owner's monetary default or the Association's intent to foreclose its lien.

**Section 8.8 Alternative Actions.** Nothing contained in this Declaration shall prohibit the Association from taking a deed in lieu of foreclosure or from filing suit to recover a money judgment for sums that may be secured by the lien.

**Section 8.9 Statement of Expenses and Access to Records.** Upon request, the Association shall promptly provide any Owner, contract purchaser or Mortgagee with a written statement of all unpaid Assessments due with respect to such Unit. The Association may impose a reasonable charge for the preparation of such statement to the extent permitted by the Act. The Association shall make available during normal business hours for inspection, upon request by the Owners, Mortgagees, Tenants, prospective purchasers and any of their authorized agents, current copies of the books, records and financial statements of the Association (including, if

such is prepared, the most recent annual audited financial statement available). Any Owner or Mortgagee may have an audited statement of the Association prepared at its own expense.

**Section 8.10 Subordination of Lien for Assessments.** The lien for the payment of Assessments shall be subordinate to the lien of any mortgage or deed of trust that secures Priority Lien Indebtedness that was recorded prior to the date any such Assessment becomes delinquent under the provisions of this Declaration.

**Section 8.11 Working Capital Contributions.**

The purpose of said fund is to ensure that the Association will have adequate cash available to meet expenses contemplated herein, as well as any unforeseen expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts so paid into the working capital fund shall not be considered an advance payment of any Subdivision Regular Assessment, special assessment or other assessments which may be due with respect to such Lot. Working Capital Contribution shall be \$350.00 for each Lot acquired.

(a) Each Owner, other than Declarant, shall, at the time such Owner purchases a Unit from Declarant, contribute an amount to the Association equal to the Working Capital Contribution. Such amount shall be a contribution of working capital to the Association and shall not be considered as an advance payment of any Assessments.

(b) Any purchaser of a Unit from an Owner other than Declarant shall contribute an amount to the Association equal to the Working Capital Contribution at the time of purchase. Such amount shall be a contribution of working capital to the Association and shall not be considered as an advance payment of any Assessments.

**Section 8.12 Resale Certificates.** The Association or Manager shall provide to each Owner in connection with a conveyance of its Units a Condominium Resale Certificate and/or Condominium Information Statement, as required under the Act. The Condominium Resale Certificate shall include (without limitation) (1) the Association's current operating budget and balance sheet; and (2) a disclosure of all fees payable to the Association or its Manager that are associated with the transfer of ownership of a Unit, including a description of each fee, to whom the fee is paid, and the amount of the fee.

## ARTICLE IX

### Loss and Obsolescence

**Section 9.1 Loss or Damage.** The following provisions shall govern if the Common Elements or any part thereof, are damaged or destroyed by fire or other casualty: (a) prompt written notice of any substantial damage or destruction shall be given (i) by the affected Owner or Owners to the Association, and (ii) by the Association to all of the Mortgagees; (b) the Association shall promptly proceed with the full restoration and repair of such damage or destruction unless (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any Legal Requirement; or (iii) the Owners holding at least 80% of the votes in the Association, including each Owner of a Unit to which a Limited Common Element that will not

be rebuilt or repaired is assigned, vote not to rebuild; (c) the amount by which such restoration and repair costs exceed collectible Insurance Proceeds shall be and constitute a Special Assessment payable by the Owners within 60 days of the date notice of such Special Assessment is delivered by the Association, in accordance with Section 8.1(c) and Section 8.2(b), respectively, of this Declaration; (d) any excess Insurance Proceeds remaining after such restoration and repair, or any insurance or sales proceeds available absent such restoration and repair, shall be received and held in trust by the Insurance Trustee in separate accounts for each Owner, as their interests may appear (with any proceeds attributable to Limited Common Elements allocated among the Owners of the Units to which such Limited Common Elements were assigned in this Declaration and any other proceeds allocated in accordance with the Allocated Interests of the Owners), and distributed as follows: (i) first, to the payment of any Governmental Impositions in favor of any assessing entity having authority with respect to the Common Elements or such Unit; (ii) second, to the payment of the balance of the Priority Lien Indebtedness of such Owner; (iii) third, to the payment of any delinquent Assessment with respect to such Unit and (iv) the balance, if any, to each Owner entitled thereto; provided, however, that if the Parking Spaces are damaged Common Elements, the amount by which such restoration and repair costs exceed collectible Insurance Proceeds shall be and constitute a Special Assessment payable by the Owners entitled to use the Parking Spaces within 30 days after the date notice of such Special Assessment is delivered by the Association, in accordance with the sharing allocations and other provisions described in Section 8.2(b) of this Declaration.

**Section 9.2 Damaged Units.** The following provisions shall govern in relation to a Damaged Unit: (a) prompt written notice of any substantial damage or destruction shall be given by the Owner of the Damaged Unit to the Association and the Mortgagee of the Damaged Unit; (b) the Owner of the Damaged Unit shall promptly proceed with the full restoration and repair of such damage or destruction unless: (i) the Condominium is terminated; (ii) repair or replacement would be illegal under any Legal Requirement or (iii) the Owners holding at least 80% of the votes in the Association, including the Owner of the Damaged Unit, vote not to rebuild and (c) except as otherwise provided in Section 9.6 of this Declaration, the Owner of each Damaged Unit shall pay all costs of such restoration, repair and replacement or rebuilding in excess of the net proceeds of the collectible Insurance Proceeds.

**Section 9.3 Obsolescence of Common Elements.** If the Owners holding not less than 100% of the Allocated Interests shall vote, at a meeting of the Association duly called for purposes of considering same, that the Common Elements, or any part thereof, (or any Systems which serve only, or are a part of, individual Units), are obsolete, the Association shall promptly proceed with the necessary replacements and improvements thereto pursuant to a budget established for such purpose, and the cost thereof shall be and constitute a Special Assessment payable by all the Owners within 30 days of the date notice of such Special Assessment is delivered to them by the Association.

**Section 9.4 Obsolescence of the Property.** If the Owners holding not less than 80% of the votes in the Association, at a meeting of the Association duly called for purposes of considering same, determine that the Property is obsolete, the Association, after first obtaining the written consent of 51% of the Mortgagees, shall promptly proceed with the sale thereof in its entirety. Any proceeds from such sale shall be received, held and applied for and on account of the Owners as provided in the Act.

**Section 9.5 The Association as Attorney-in-Fact.** Each Owner, by acceptance of a deed to a Unit, hereby irrevocably makes, constitutes and appoints the Association, and each and every one of its successors in interest hereunder, as the Owner's true and lawful attorney-in-fact, for and in the Owner's name, place and stead, upon the damage or destruction of the Property, or any part thereof, or upon any determination by the Owners made pursuant to this Article IX, to take any and all actions, and to execute and deliver any and all instruments, as the Association may, in its sole and absolute discretion, deem necessary or advisable to effect the intents and purposes of this Article IX, hereby giving and granting unto the Association full power and authority to do and perform all and every act whatsoever requisite or necessary to be done in and about the premises as fully, to all intents and purposes, as an Owner might or could do, hereby ratifying and confirming whatsoever the Association may do by virtue hereof. The Association is hereby authorized, in the name and on behalf of all the Owners, to do and perform all actions necessary or appropriate to effect the intent and purposes of this Article IX as aforesaid, including the power and authority to make and settle claims under any insurance policies maintained by the Association, contract for and with respect to restoration and repair work, contract for and with respect to replacements and improvements to the Common Elements (to the extent authorized as contemplated by Section 9.3 of this Declaration), to contract for and with respect to a sale of the Property (to the extent contemplated by Section 9.4 of this Declaration) and to execute and deliver all instruments necessary or incidental to any such actions.

**Section 9.6 Matters Relating to Restoration and Repairs.** Any restoration and repair work undertaken by the Association or an Owner pursuant to this Article IX shall be performed in a good and workmanlike manner in order to restore the Improvements to a condition similar to that existing prior to such damage or destruction; provided, however, that in no event shall the Association be responsible for restoring, repairing or replacing any improvements to a Unit made by an Owner, or the contents located in such Unit. All such restoration and repair work, whether done by the Association or an Owner, shall be effected in a manner so as to observe all vertical and horizontal Unit boundaries existing prior to such damage or destruction. If an Owner or the Owners decide to rebuild or repair any Unit in excess of its full replacement cost, such Owner or Owners shall be responsible for any such costs exceeding the full replacement value of such Unit; provided, however, that if the Owners holding not less than 67% of the Allocated Interests shall vote to incur such expenses, such additional expenses, to the extent they exceed the replacement value of such Unit, shall constitute a Special Assessment.

## ARTICLE X

### Condemnation

**Section 10.1 General Provisions.** If all or any part of the Property is subject to a Taking, the Association and each Owner affected thereby shall be entitled to participate in proceedings incident thereto at their respective expense. The Association shall give such notice as it receives of such proceeding to all the Owners and to all the Mortgagees which have requested such notice; provided, however, that the failure of the Association to give such notice shall not prejudice the right of any Mortgagee to participate in such proceedings. The expense of participation in such proceedings by the Association shall be a Common Expense. The Association is specifically authorized to obtain and pay for such assistance from attorneys,

appraisers, architects, engineers, expert witnesses and other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings. Any restoration or repair of the Property following a partial Taking shall be performed in accordance with the provisions of this Declaration and shall follow, as nearly as possible, the original plans and specifications for the Property, unless otherwise approved by all the Mortgagees.

**Section 10.2 Taking of All or Substantially All of One Unit.** If a Unit (or a substantial part thereof such that the remnant may not practically or lawfully be used for any purpose permitted by this Declaration) is subject to a Taking, the Owner and any Mortgagee of such Owner shall be entitled to the award for such Taking, including the award for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is acquired, and, after payment thereof, such Owner and any Mortgagee of such Owner shall be divested of all interest in the Property. In such event, the condemned Unit's entire Allocated Interest shall be automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the Taking, unless the decree relating to the Taking provides otherwise. A remnant of a Unit remaining after part of a Unit is the subject of a Taking described in this Section 10.2 shall be a Common Element. If any repair or rebuilding of the remaining portions of the Property is required as a result of such Taking, the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 80% of the votes in the Association either to rebuild or repair the Property or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Property shall be resurveyed, if necessary, and this Declaration shall be amended to reflect such Taking. This Declaration shall in all circumstances be amended to reflect the re-allocated Allocated Interests following the Taking.

**Section 10.3 Partial Taking of a Unit.** If only a portion of a Unit is subject to a Taking, such that the remaining portion of such Unit can practically and lawfully be used for any purpose permitted by this Declaration, the Owner shall be entitled to the award for such Taking, including the award for the value of such Owner's interest in the Common Elements, whether or not such Common Element interest is acquired, and the Allocated Interest of the Unit subject to such Taking shall be reduced and the Allocated Interests of the other Units shall be increased in accordance with the Reallocation Percentage. The Owner of such Unit, at its sole cost and expense, shall promptly repair, restore and rebuild the remaining portions of such Unit as nearly as possible to the condition which existed prior to such Taking.

**Section 10.4 Taking of Common Elements.** If an action is brought to effect a Taking of all or any portion of the Common Elements together with or apart from any Unit, the Board of Directors, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such property to the condemning authority in lieu of such condemnation proceeding unless the action involves a material portion of the Common Elements in which case the agreement of all the Owners shall be required. With respect to any such Taking of the Common Elements only, all damages and awards shall be determined for such Taking as a whole and not for any Owner's interest therein. After the damages or awards for a Taking of the Common Elements are determined, such damages or awards shall be held by the Association,



acting as trustee for each Owner, and their Mortgagees, as their interests shall appear, and any amounts not used for repair or restoration of the remaining Common Elements shall be divided among the Owners in proportion to each Owner's Allocated Interest before the Taking, except that such portion of any such award attributable to the condemnation of a Limited Common Element shall be divided among the Owners of the Units served by such Limited Common Elements, as such Owners' interests existed in the Limited Common Elements condemned. The Owners shall determine by the affirmative vote or written consent of the Owners holding not less than 80% of the votes in the Association either to rebuild or repair the remaining Common Elements or to take such other action as the Owners may deem appropriate. If it is determined that such Common Elements should be replaced or restored by obtaining other land or building additional structures, this Declaration and the Map attached hereto shall be duly amended by instrument executed by the Board of Directors on behalf of the Owners and recorded in the Condominium Records. If all or any portion of the Parking Spaces is/are Taken, the amount of the Parking Expenses allocated to any Owner who is no longer capable of occupying or using the Parking Spaces that are part of the Limited Common Elements for such Owner's Unit arising solely as a result of such Taking, shall be automatically reallocated to the remaining Units in proportion to their share of the Parking Expenses as described in Section 8.2(a) of this Declaration.

**Section 10.5 Taking of Several Units.** If an eminent domain proceeding results in the Taking of all or part of multiple Units, then the damage and awards for such Taking shall be determined and paid for each Unit as described in Section 10.2 and Section 10.3 of this Declaration, and the following shall apply: (a) the Association shall determine which of the Units damaged by such Taking may be practically and lawfully used for any purpose permitted by this Declaration, taking into account the nature of the Property and the reduced size of each Unit so damaged; (b) if the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 80% of the votes in the Association, with the written consent of 51% of the Mortgagees, that it is not reasonably practicable to operate the undamaged Units and the damaged Units which can be practically and lawfully used for any purpose permitted by this Declaration as a mixed-use condominium project in the manner provided in this Declaration, then the Property shall be deemed to be regrouped and merged into a single estate owned jointly in undivided interests by all the remaining Owners, as tenants-in-common, in the percentage of the Allocated Interest of each Owner (after reallocation in accordance with the procedures described in Section 10.2 and Section 10.3 of this Declaration) and (c) if the Condominium is not so terminated, then the damages and awards made with respect to each Unit which can be practically and lawfully used for any purpose permitted by this Declaration shall be applied to repair and reconstruct such Unit as provided in Section 10.3 of this Declaration. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed pro rata against the Owners of those Units which are being repaired or reconstructed. With respect to those Units which may not be practically or lawfully used for any purpose permitted by this Declaration, after payment of the award, such Owner and any Mortgagee of such Owner shall be divested of all interest in the Property and the condemned Unit's entire Allocated Interest shall be automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the Taking, unless the decree relating to the Taking provides otherwise. A remnant of a Unit remaining after part of a Unit is the subject of a Taking, if the remnant of such Unit cannot be practically or lawfully used for any purposed permitted by this Declaration, shall be a Common Element. If any repair or

rebuilding of the remaining portions of the Property (other than Units which can be practically and lawfully used for any purpose permitted by this Declaration) is required as a result of such Taking, the remaining Owners shall determine by the affirmative vote or written consent of the remaining Owners holding not less than 80% of the votes in the Association either to rebuild or repair the Property or to take such other action as such remaining Owners may deem appropriate. If no repair or rebuilding shall be required, or if none be undertaken, the remaining portion of the Property shall be resurveyed, if necessary, and this Declaration shall be amended to reflect such Taking. This Declaration shall in all circumstances be amended to reflect the re-allocated Allocated Interests following the Taking.

**Section 10.6 Complete Taking of Property.** If all of the Property is the subject of a Taking, all damages and awards shall be held by the Association, acting as trustee, for the accounts of all the Owners and their Mortgagees, as their interests shall appear, and shall be paid to or for the accounts of the Owners in proportion to their Allocated Interests and this Condominium shall terminate upon such payment.

**Section 10.7 Payment of Awards and Damages.** Any damages or awards provided in this Article X to be paid to or for the account of any Owner by the Association, acting as trustee, shall be applied first to the payment of any Governmental Impositions past due and unpaid with respect to that Unit; second, to any Priority Lien Indebtedness on that Unit; third, to the payment of any Assessments charged to or made against the Unit and unpaid; and finally to the Owner.

## ARTICLE XI

### Resolution of Disputes and Construction Disputes

**Section 11.1 Mediation.** All Disputes, except those relating to equitable remedies, which are not resolved within 15 days after same have arisen (unless such greater time is provided elsewhere in the Governing Documents) shall be submitted for, or determined by, non-binding mediation. Mediation of any Dispute shall be initiated by any Owner making a written demand therefor to the other Owner or Owners involved in such Dispute and the Association; provided, however, if the Association is a party to any such Dispute the Association shall have the right to elect not to be governed by the provisions of this Article XI by giving to the Owner or Owners, within ten days after the Association's receipt from such Owner or Owners of a demand for mediation of a Dispute, written notice of the Association's election not to be governed by the provisions of this Article XI and to instead exercise the Association's remedies at law or in equity. With respect to such mediation, the parties shall, within ten days after delivery of such written notice to the Association, agree upon a mediator who is: (i) a reputable person actively engaged in the commercial real estate industry for a continuous period of not less than ten years and (ii) not an Affiliate of, or has had material business dealings with any Owner or any member of the Association. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth above shall be appointed by the American Arbitration Association office in Lewisville, Texas. Such mediation shall occur within 30 days after the mediator has been agreed upon or appointed and shall occur at a mutually acceptable location in Lewisville, Texas. The costs of such mediation services shall be shared equally (but each party shall bear the cost of their own travel and attorneys' fees); provided, however, that if the Dispute is not resolved pursuant to such mediation, the provisions of Section 11.2 of this Declaration

shall govern the payment of attorneys' fees and costs and expenses of mediation and arbitration under this Article XI.

**Section 11.2 Final Offer Arbitration.** If the parties are unable to resolve any Dispute at mediation the parties shall submit their Dispute to binding arbitration, no later than 30 calendar days after the parties have reached an impasse at mediation. The parties agree to select a single impartial arbitrator from a list taken from the American Arbitration Association of commercial arbitrators, and if they cannot agree on an arbitrator, each party shall select a person and those two so selected shall then select the single impartial arbitrator who shall thereafter serve as arbitrator with respect to the Dispute. The issues in dispute shall be submitted as "baseball" or final-offer arbitration, whereby each party shall submit what it deems to be its most reasonable position to the arbitrator and the arbitrator shall select one of those two positions. The arbitrator shall have no discretion to select or award a position other than to select one of those submitted by the parties. To the extent rules governing arbitration are deemed necessary by the arbitrator (or by agreement of the parties), the current Rules for Commercial Mediation and Arbitration promulgated by the American Arbitration Association shall apply. The decision of the arbitrator shall be rendered no later than ten days from the initiation of the arbitration procedure. The parties may resort to any court of competent jurisdiction for enforcement of, or any other action relating to, the arbitrator's award. The party or parties whose position is not selected or awarded shall be responsible for all attorneys' fees, costs and expenses (incurred in connection with the mediation and arbitration of a Dispute under this Article XI) of the party whose position is selected or awarded for the arbitration of the Dispute under this Article XI.

**Section 11.3 Construction Disputes.**

(a) **Mediation Required Prior to Arbitration.** Any Construction Dispute not resolved within fifteen days after same has arisen shall be submitted for, or determined by, non-binding mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by any party. Mediation of any Construction Dispute shall be initiated by any party making a written demand therefor to all other parties involved in such Construction Dispute. Any mediation shall be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect at the time the Construction Dispute arises. With respect to such mediation, the parties shall, within 15 days after demand is filed agree upon a mediator who is: (i) a reputable person actively engaged in the construction industry or a lawyer experienced in the practice of construction law for a continuous period of not less than ten years and (ii) not an Affiliate of, or has had material business dealings with any Owner, any member of the Association, or any other party, including Declarant or an Affiliate of Declarant, involved in the mediation. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth above shall be appointed by the American Arbitration Association office in Lewisville, Texas. Such mediation shall occur within 30 days after the mediator has been agreed upon or appointed and shall occur at a mutually acceptable location in Lewisville, Texas. The costs of such mediation services shall be shared equally (but each party shall bear the cost of their own travel and attorneys' fees); provided, however, that if the Construction Dispute is not resolved pursuant to such mediation, the provisions of Section 11.3(d) of this Declaration shall govern the payment

of attorneys' fees and costs and expenses of mediation, arbitration or litigation under this Article XI.

Notwithstanding the forgoing or anything to the contrary contained in this Declaration, an Owner and/or the Association must satisfy the requirements under the Act (including, without limitation under Section 82.119 of the Act) prior to initiating any mediation or arbitration procedures hereunder with respect to Construction Disputes involving Declaration or an Affiliate of Declarant. Such requirements shall include, without limitation, (1) obtaining an inspection and written report from a licensed professional engineer of the applicable Building(s) and/or Unit(s) that are the subject of such Dispute and meets the requirements for such report as set forth in the Act; and (2) obtaining approval from Owners holding at least fifty percent (50%) of the total votes in the Association at a meeting called in accordance with the this Declaration and the Bylaws. In addition, before conducting the inspection, the Association must notify all parties who may be subject to the Construction Dispute of the date and time of the inspection and allow such parties to attend the inspection, and before scheduling the meeting of the Owners to vote on pursuing claims regarding such Construction Dispute, the Association must provide copies of the engineer's report to each party who may be subject to the Construction Dispute and allow each such party at least 90 days to inspect and correct any condition identified in the engineer's report. At least 30 days before conducting the meeting of the Owners, the Association must also provide written notice of the meeting to all Owners, and the notice must include a description of the Construction Dispute, a copy of the engineer's report, and other information pertaining to the cost of repair of the applicable Unit and/or Building(s) that are the subject of the Construction Dispute and the attorneys fees to be incurred in prosecuting the Construction Dispute, and shall include other information as required under the Act.

(b) Arbitration or Litigation. Any Construction Dispute not resolved by mediation as described in Section 11.3(a) of this Declaration shall be resolved by arbitration (as permitted under Section 82.120 of the Act) or litigation, which determination shall be made by Declarant, in Declarant's sole and absolute discretion. If a litigation proceeding has been brought against the Declarant, any election for arbitration shall be made by the Declarant filing a motion to compel arbitration in the litigation proceeding. If an arbitration proceeding has been brought against the Declarant, any election for litigation shall be made by the Declarant giving written notice of such election to the parties involved in the Construction Dispute and the arbitration proceeding, in which case all further action in the arbitration proceeding shall cease and the party bringing such action shall be obligated to commence the appropriate litigation proceeding. Declarant shall make such election no later than 30 days after (i) the parties have reached an impasse at mediation and (ii) citation has been served on Declarant in a litigation proceeding or written notice has been delivered to Declarant initiating the arbitration proceeding. If the Declarant elects for such Construction Dispute to be resolved by litigation, the parties hereby agree that the judge shall be the fact finder in any such litigation. EACH OWNER, BY ACCEPTANCE OF A DEED TO ITS UNIT, ON BEHALF OF ITSELF, ITS TENANTS, THE ASSOCIATION AND ALL PARTIES CLAIMING BY, THROUGH OR UNDER IT, IRREVOCABLY AND

UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY CONSTRUCTION DISPUTE.

(c) Arbitration. If Declarant elects that a Construction Dispute be resolved by arbitration such arbitration shall be governed by the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect, unless the parties mutually agree otherwise. With respect to the arbitration, the parties shall, within 15 days after receipt of Declarant's notice of arbitration referenced in Section 11.3(b) of this Declaration or within 15 days after entry of an order compelling arbitration, agree upon an arbitrator. If the parties cannot agree upon an arbitrator, a demand for arbitration shall be filed in writing with the American Arbitration Association at the office in the County where the Property is located with copies to all parties.

Arbitration shall be conducted with a single arbitrator unless the claim, demand, or amount in controversy exceeds \$750,000, in which case a panel of three arbitrators shall be used. If the amount in controversy exceeds \$750,000 and the parties cannot mutually agree upon three panel members, the parties shall be required to obtain a list of proposed neutral parties through the American Arbitration Association office in the locality where the Property is located. The parties shall then proceed with the selection of panel members in accordance with the American Arbitration Association Construction Industry Arbitration Rules. Any arbitrator(s) utilized, whether appointed or agreed, must be (i) reputable person(s) actively engaged in the construction industry or as a lawyer experienced in the practice of construction law for a continuous period of not less than ten years and (ii) not be an Affiliate of, or have or had material business dealings with any Owner, any member of the Association, or any other party, including Declarant or an Affiliate of Declarant, involved in the arbitration. The arbitrator shall establish reasonable procedures and requirements for the production of relevant documents and require the exchange of information concerning witnesses to be called. The parties shall be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration and the parties may use all methods of discovery available under the Texas Rules of Civil Procedure and shall be governed thereby. There shall be a prehearing meeting between the parties at which the arbitrator shall make and set schedules for discovery and hearings consistent with their powers as set forth herein. The Texas Rules of Evidence shall be applied by the arbitrator but liberally construed to allow for the admission of admissible evidence that is helpful in resolving the controversy. Rulings on the admission of evidence made by the arbitrator at the hearing shall be final and not subject to any appeal. At the time of the award, the arbitrator shall prepare and provide to the parties findings of fact and conclusions of law supporting the award.

(d) General. In no event shall a Construction Dispute be initiated after the date when institution of legal or equitable proceedings based on such Construction Dispute would be barred by the applicable statute of limitations. All demands and all answering statements thereto which include any monetary claim, counterclaim or cross-claim must state the monetary amount being sought. If the monetary amount is unliquidated or has not been fully determined, the demand or answering statement seeking such recovery shall state, in good faith, the minimum amount of such monetary

claim, exclusive of interest and attorneys' fees. In any litigation or arbitration of a Construction Dispute, the Court or the arbitrator(s), as applicable, shall determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in connection with the mediation, arbitration, and/or litigation of such Construction Dispute.

(e) **Consolidation.** A Construction Dispute may be consolidated with similar proceedings and resolved pursuant to the dispute resolution procedures contained in this Article XI to include participation of the contractors, design professionals or any other person or entity if such proceedings involves common issues of law or fact. Consent to consolidate proceedings involving an additional person or entity shall not constitute consent to resolve any claim, dispute or other matter in question other than the Construction Dispute or with a Person not named or described therein. It is expressly understood and agreed that Declarant shall have the right, but not the obligation, to join in any such dispute resolution proceedings any other party whose work or services on or in connection with the Property may be at issue or whose claims(s) involve the design or construction of the Property.

**Section 11.4 General.** With respect to any Dispute or Construction Dispute it is agreed that the dispute resolution provisions of this Article XI shall be the sole remedy of the parties involved in such Dispute or Construction Dispute. Notwithstanding any other provisions of this Declaration, the foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties shall be specifically enforceable under prevailing arbitration law in any court having jurisdiction thereof. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute, claim, controversy or matter that does not constitute a Dispute or Construction Dispute, as applicable. The foregoing agreement to arbitrate any Dispute or Construction Dispute shall not constitute any agreement or consent to arbitration with any Person not named or described in this Declaration; provided that any arbitration proceeding initiated under the terms of Section 11.2 of this Declaration may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Dispute or Construction Dispute, as applicable, and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrator shall be final and binding upon the parties involved in the Dispute or Construction Dispute and such Mortgagees and non-appealable judgment thereon may be entered by any court having jurisdiction.

## ARTICLE XII

### Miscellaneous

**Section 12.1 Revocation or Termination of Declaration.** Except as provided in Section 10.6 of this Declaration, this Declaration may be revoked or the Condominium established hereby may be terminated only by an instrument in writing, duly approved, executed and acknowledged by those Owners holding not less than 80% of the votes in the Association, with the written consent of 51% of the Mortgagees. Any such instrument of revocation or termination shall be duly filed of record in the County. If the Property is to be sold upon

termination, the agreement effecting such termination shall also set forth the terms of such sale and comply with the provisions of the Act.

**Section 12.2 Amendment to Declaration.** During the Declarant Control Period, the Declarant may unilaterally amend this Declaration without the joinder or vote of the Board, the Association, the other Owners, or any other party if such amendment is deemed necessary or desirable, in the Declarant's sole judgment for any purpose. This Declaration may otherwise be amended at a meeting of the Owners at which the amendment is approved by those Owners holding not less than 67% of the votes in the Association, with the written consent of not less than 51% of the Mortgagees. Such amendment shall be evidenced by a written instrument executed and acknowledged by an officer of the Association on behalf of the consenting Owners and by the consenting Mortgagees and filed of record in the County. Any such amendment so effected shall be binding upon all of the Owners; provided, however, that except as permitted or required by the Act, no such amendment shall: (a) cause the alteration or destruction of all or part of any Unit unless such amendment has been consented to by the Owner and the Mortgagee of the Unit which is to be altered or destroyed; (b) create or increase any Special Declarant Rights; (c) except as expressly permitted herein by Declarant, increase the number of Units; (d) change the boundaries of a Unit or (e) change the use restrictions on a Unit unless, such amendment pursuant to (a), (b) or (c) of this Section above has been consented to by 100% of the Allocated Interests. No such amendment shall become effective unless approved by Declarant if Declarant still owns one or more Units and the amendment would, in Declarant's reasonable determination: (i) increase or otherwise modify Declarant's obligations; (ii) reduce or modify any Special Declarant Rights or (iii) materially inhibit or delay Declarant's ability to complete the Improvements or to convey any portion of the Property owned by Declarant.

**Section 12.3 Partial Invalidity.** If any provision of the Governing Documents shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall in no way impair or affect the validity or enforceability of the remainder of the Governing Documents.

**Section 12.4 Conflicts.** If any of the provisions of the Governing Documents shall be in conflict with the provisions of the Act or the TBOC, the provisions of such statutes shall control. If a conflict exists between the provisions of the Governing Documents, such documents shall control in the following order:

- (a) Design Guidelines;
- (b) this Declaration;
- (c) the Certificate of Formation;
- (d) the Bylaws; and
- (e) the Regulations.

**Section 12.5 Captions and Exhibits.** Captions used in the various articles and sections of this Declaration are for convenience only, and they are not intended to modify or affect the meaning of any of the substantive provisions hereof. All exhibits are incorporated in and made a part of this Declaration.

**Section 12.6 Usury.** It is expressly stipulated and agreed to be the intent of Declarant that at all times the terms of this Declaration, the Bylaws and the Regulations shall comply strictly with the applicable Texas law governing the maximum rate or amount of interest payable under any provision of this Declaration, the Bylaws, or the Regulations. If the applicable law is ever judicially interpreted so as to render usurious any amount contracted for, charged, taken, reserved or received pursuant to this Declaration, the Bylaws, the Regulations or any other communication or writing by or between Declarant, the Association and the Owners related to the matters set forth in this Declaration, the Bylaws, or the Regulations, then it is the express intent of Declarant that all amounts charged in excess of the maximum rate allowed by Texas law shall be automatically canceled, *ab initio*, and all amounts in excess of the maximum rate allowed by Texas law theretofore collected shall be refunded, and the provisions of this Declaration, the Bylaws, or the Regulations shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law. The Owners hereby agree that as a condition precedent to any claim seeking usury penalties against Declarant, the Association or any billing Owner, any Person will provide written notice to Declarant, the Association or any billing Owner, advising Declarant, the Association or any billing Owner in reasonable detail of the nature and amount of the violation, and Declarant, the Association or any billing Owner shall have 60 days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to a Person or crediting such excess interest against the obligation then owing by such Person to Declarant, the Association or any billing Owner.

**Section 12.7 Use of Number and Gender.** Whenever used in this Declaration, and unless the context shall otherwise provide, the singular number shall include the plural, the plural number shall include the singular and the use of any gender shall include all genders.

**Section 12.8 Governing Law.** THIS DECLARATION AND THE BYLAWS, CERTIFICATE OF FORMATION, AND REGULATIONS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY ACTION BROUGHT IN CONNECTION WITH THE CONDOMINIUM SHALL BE IN DALLAS COUNTY, TEXAS.

**Section 12.9 Notice.** All notices or other communications required or permitted to be given pursuant to this Declaration shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, (iii) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee or (iv) by facsimile to the addressee with confirmation of delivery. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received at the office or designated place or machine of the intended addressee. For purposes of notice, the addresses of Declarant and the Association shall be as set forth below, the address of each Owner shall be the address of the Unit and the address of each Mortgagee shall be the address provided to the Association; provided, however, that any party shall have the right to change its address for



notice hereunder to any other location within the continental United States by the giving of 30 days notice to the Association in the manner set forth herein:

Declarant: Bryan Heights Development LLC  
2911 Turtle Creek Blvd., Suite 300  
Dallas, Texas 75219-6243

Association: Bryan Heights Condominium Association, Inc.  
c/o Essex Association Management, L.P.  
1512 Crescent Drive, Ste. 112  
Carrollton, Texas 75006

**Section 12.10 Estoppel Certificates.** Each Owner, from time to time but no more often than twice each calendar year, shall have the right to require the Association (as to all items listed below) and the other Owners (as to items (c), (d), (e) and (f) listed below) to deliver to the requesting Owner a written statement addressed to the requesting Owner and its Mortgagee or purchaser of its Unit, as applicable, without payment of any fee or cost certifying: (a) this Declaration is unmodified and in full force and effect (or if modified that this Declaration as so modified is in full force and effect); (b) this Declaration attached to the certificate is a true and correct copy of this Declaration and all amendments hereto; (c) the date through which all Assessments have been paid by the Owner requested to provide the certificate and by the Owner requesting such certificate; (d) to the knowledge of the certifying party, neither the certifying party nor the requesting party is in default of any of its obligations under this Declaration (or if the certifying party knows the certifying party or requesting party to be in default, specifying the defaults and the remaining cure period, if any); (e) the certifying party holds no existing liens against the requesting party's Unit and (f) such other matters as are reasonably requested by the requesting Owner.

### ARTICLE XIII

#### Mortgagee Protection Provisions

**Section 13.1 Notice Provisions.** All Mortgagees shall be entitled to receive the following notices in writing from the Association or any Owner exercising rights affecting that Mortgagee's borrower's rights under this Declaration or affecting the Mortgagee's rights, as the case may be, which notice shall be sent promptly following the occurrence of the applicable event:

(a) notice of any proposed action which requires the consent of Mortgagees, which notice shall be given not less than 30 days prior to the desired effective date of such action;

(b) notice of default by the Owner (the beneficial interest in which Unit is held by that Mortgagee) in the performance of such Owner's obligations, delinquency in the payment of Assessments owed by such Owner or Governmental Impositions which remains uncured for a period of 60 days after notice thereof;

(c) notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond required to be maintained hereunder by the Association or by any Owner;

(d) notice of any damage or destruction to or Taking of any portion of the Condominium that affects either a material portion of the Property or a Unit, the beneficial interest in which is held by that Mortgagee, which notice shall be given promptly upon the Association's obtaining knowledge of such damage or destruction;

(e) 60 days notice prior to the Association instituting any foreclosure action on any Unit; and

(f) 30 days notice prior to the effective date of (a) any proposed material amendment to this Declaration or the Map; (b) any termination of an agreement for professional management of the Property following any decision of the Owners to assume self-management of the Property and (c) any proposed termination of the Condominium.

**Section 13.2 Cure Rights.** Any Mortgagee shall have the right, but not the obligation, at any time prior to the termination of this Declaration, and without payment of any penalty, to do any act or thing required of such Mortgagee's borrower hereunder; and to do any act or thing which may be necessary or proper to be done in the performance and observance of the agreements, covenants and conditions of such Owner hereof. All payments so made and all things so done and performed by any Mortgagee shall be effective to prevent a default under this Declaration as the same would have been if made, done and performed by Declarant or any Owner instead of by said Mortgagee. Any event of default under this Declaration which in the nature thereof cannot be remedied by Mortgagee shall be deemed to be remedied if: within 30 days after receiving written notice from the non-defaulting party setting forth the nature of such event of default, or prior thereto the Mortgagee shall have: (a) acquired the property owned by the defaulting party (the "**Acquired Property**") or commenced foreclosure or other appropriate proceedings in the nature thereof, and shall thereafter diligently prosecute any such proceedings, (b) fully cured any default in the payment of any monetary obligations owed the non-defaulting party hereunder within such 30 day period and shall thereafter continue to perform faithfully all such non-monetary obligations which do not require possession of the Acquired Property and (c) after gaining possession of the Acquired Property following a foreclosure or deed in lieu thereof, the Mortgagee performs all future obligations of the defaulting party hereunder as and when the same are due.

**Section 13.3 No Invalidity of Mortgage Lien.** No violation of this Declaration by, or enforcement of this Declaration against, any party shall affect, impair, defeat or render invalid the lien of any mortgage that secures any Priority Lien Indebtedness.

**Section 13.4 Mortgagee Requirements.** The Association agrees to cooperate reasonably with any requesting party in regard to the satisfaction of requests or requirements by a Mortgagee; provided, however, such cooperation shall be at the sole cost and expense of the requesting party, and provided, further, that no party shall be deemed obligated to accede to any request or requirement that materially and adversely affects its rights under this Declaration.

**Section 13.5 Unpaid Assessments.** Each Person holding a mortgage secured by any Priority Lien Indebtedness encumbering any Unit, which Person obtains title to such Unit pursuant to judicial foreclosure, or the powers provided in such mortgage, or a deed in lieu of foreclosure, shall take title to such Unit free and clear of any claims for unpaid Assessments against such Unit which accrued prior to the time such Person acquires title to such Unit, except as otherwise set forth in Article VIII of this Declaration.

**Section 13.6 Books and Records.** All Mortgagees, upon written request, shall have the right to (a) examine the books and records of the Association, including current copies of this Declaration, the Bylaws and the Regulations and financial statements, during normal business hours; (b) receive written notice of all meetings of the Owners and (c) designate in writing a representative to attend all such meetings.

**Section 13.7 Priority of Rights.** No provision of this Declaration shall be construed or applied to give any Owner priority over any rights of any Mortgagee in the case proceeds or awards are not applied to restoration but are distributed to the Owners in the case of a casualty loss, or Taking of, a Unit and/or the Common Elements.

**Section 13.8 Required Percentage.** Any required percentage of Mortgagees in this Declaration shall mean and refer to such percentage of the face amount of the indebtedness held by such Mortgagees and not the number of such Mortgagees.

**[The remainder of this page is intentionally left blank.]**

IN WITNESS WHEREOF, Declarant has duly executed this Declaration on the day and year first above written.

DECLARANT:

BRYAN HEIGHTS DEVELOPMENT LLC,  
a Texas limited liability company

By: [Signature]  
Name: Bryan Heights  
Title: President

STATE OF TEXAS           §  
  §  
COUNTY OF Dallas       §

BEFORE ME, the undersigned authority, on this day personally appeared PROWERS of BRYAN HEIGHTS DEVELOPMENT LLC, a Texas limited liability company, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same for the purposes and consideration therein expressed, and as the act and deed of said limited liability company, and in the capacity therein stated.

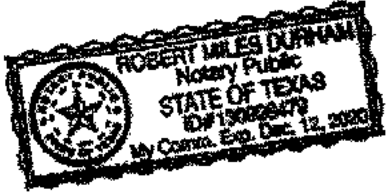
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 19 day of JULY, 2017.

[Signature]  
Notary Public in and for the State of Texas

My Commission Expires: DEC 12, 2020

List of Exhibits:

- Exhibit "A" - Legal Description of the Land
- Exhibit "B" - Map
- Exhibit "C" - Allocation of Ownership Interests



**EXHIBIT "A"**

**Property Description**

# Bryan Heights

## Exhibit 'A'

### LAND - LEGAL DESCRIPTION

Lot 11, Virginia & Grigsby Ave.,  
Scruggs Addition in City Block 5/710

Lot 20, Block 5, of the Scruggs Subdivision

Lots 17 & 18, Block 5/710, of the Scruggs Subdivision

Lot 19, Block 5/710, of the Scruggs Subdivision

PAGE: 1 of 2  
DATE: 7/3/17



1800 VALLEY VIEW LN. STE. 300  
FARMERS BRANCH, TEXAS 75234  
PHONE: 972-333-9455  
EMAIL: [ralphbush@hotmail.com](mailto:ralphbush@hotmail.com)

**EXHIBIT "B"**

**Map**

[see attached.]

# Bryan Heights

## Exhibit 'A'

### LAND - SURVEYOR CERTIFICATION

PAGE: 1 of 2  
DATE: 7/3/17



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FARMERS BRANCH, TEXAS 75234  
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# Bryan Heights

## Exhibit 'A'

### LAND - LEGAL DESCRIPTION

Lot 11, Virginia & Grigsby Ave.,  
Scruggs Addition in City Block 5/710

Lot 20, Block 5, of the Scruggs Subdivision

Lots 17 & 18, Block 5/710, of the Scruggs Subdivision

Lot 19, Block 5/710, of the Scruggs Subdivision

PAGE: 1 of 2  
DATE: 7/3/17



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# Bryan Heights

## Exhibit 'B'

### Notes

1. All hallways, elevators, stairs and landings which are not located in a unit, are general common elements.
2. All Balconies are part of the unit to which attached.
3. The Unit plans show interior wall to interior wall measurements. The actual unit dimensions, which extend into the wall and floor cavities as described in the declaration, and summarized here:

For units on Levels 2 and 3, the lower boundary is the underside of the sub-flooring.

Each unit's upper boundary in the exterior surface of the sheetrock comprising the unit's perimeter ceilings.

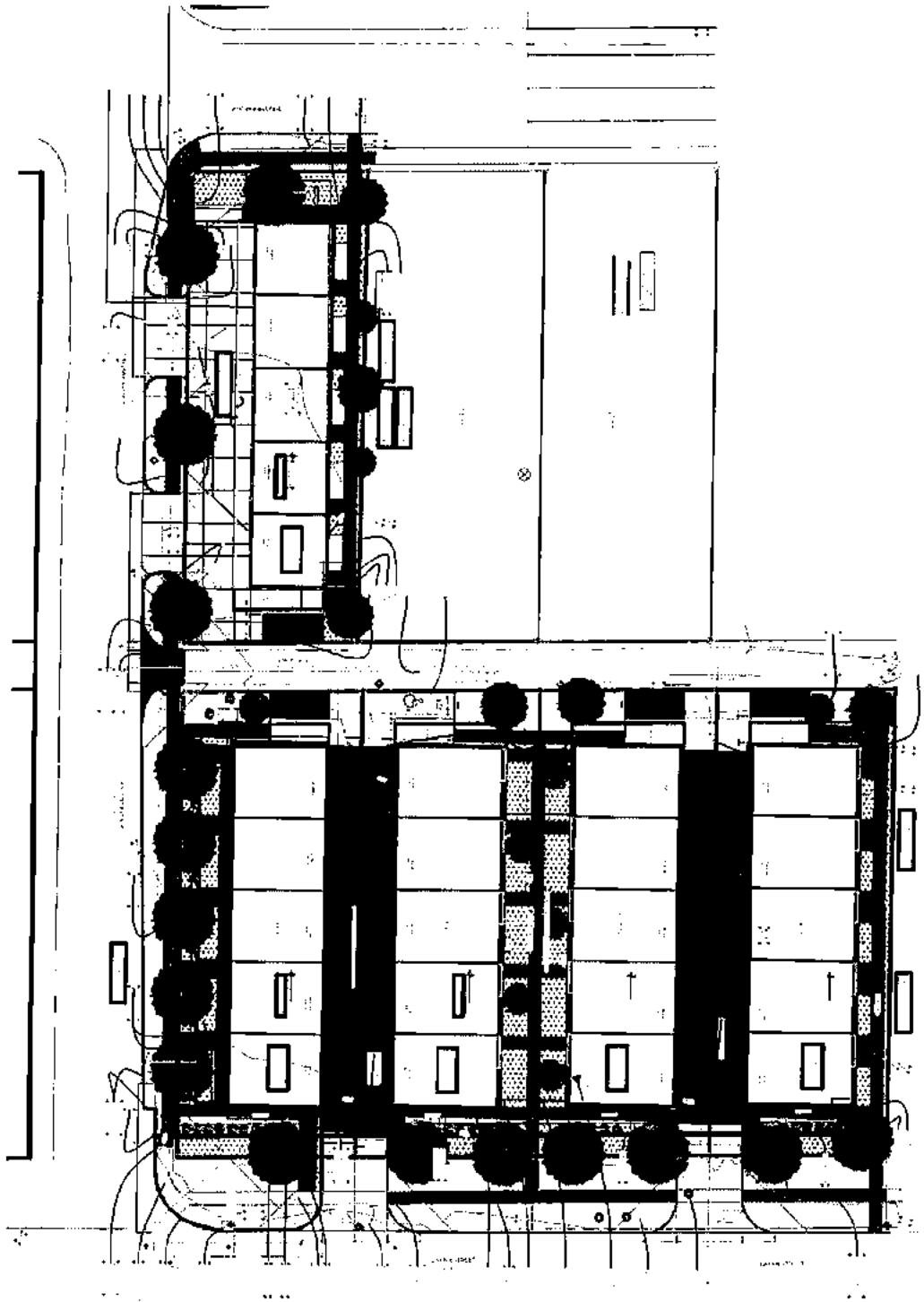
On party-walls, walls between two units, on half of the wall cavity is within the unit's dimensions. The unit's lateral boundaries are the planes defined by the midpoints of the party wall

On all other perimeter walls, the unit's lateral boundaries are the planes defined by the outside-facing surfaces of the sheetrock on the perimeter walls of the living area and by the inside-facing surfaces of the doors and windows in the perimeter cavities, door and windows are not part of the Unit.

4. GCE = General Common Element
5. LCE = Limited Common Element

# Bryan Heights

## Exhibit 'B' LAND - SITE PLAN



SCALE: 1" = 50'-0"

PAGE: 2 of 19  
DATE: 7/3/17

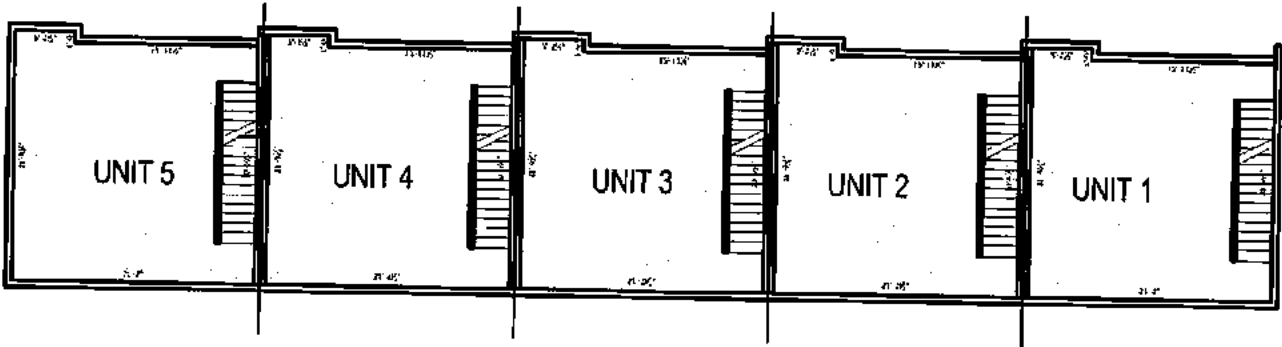


1800 VALLEY VIEW LN. STE. 300  
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PHONE: 972-333-9455  
EMAIL: ralphbush@hotmail.com

# Bryan Heights

## Exhibit 'B'




### LOT 11 - FIRST FLOOR



#### **FLOOR PLAN - GROUND LEVEL**

*Elevations on this level are between 504.4583' and 514.4583' based upon a finished floor elevation of 504.4583' at ground level.*



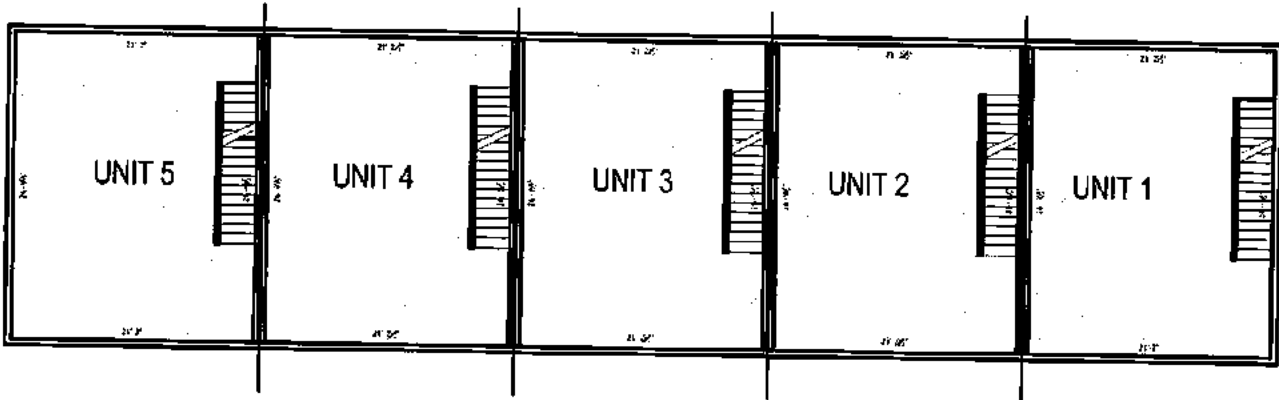
-  GENERAL COMMON ELEMENT
-  UNIT
-  LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

# Bryan Heights

## Exhibit 'B'




LOT 11 - SECOND FLOOR



### FLOOR PLAN - SECOND LEVEL

*Elevations on this level are between 514.4583' and 524.4583' based upon a finished floor elevation of 304.4583' at ground level.*



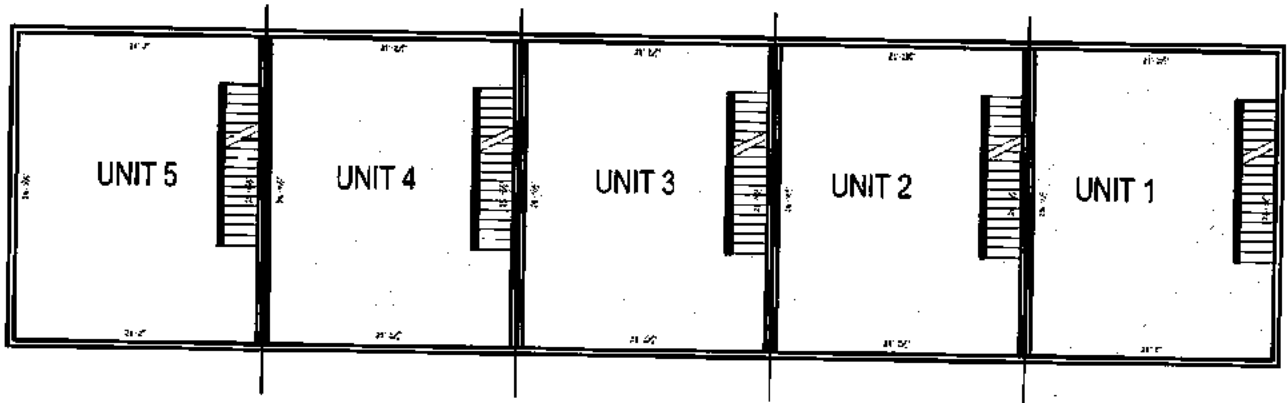
-  GENERAL COMMON ELEMENT
-  UNIT
-  LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

# Bryan Heights

## Exhibit 'B'

LOT 11 - THIRD FLOOR



### FLOOR PLAN - THIRD LEVEL

*Elevations on this level are between 524.4583' and 534.4583' based upon a finished floor elevation of 504.4583' at ground level.*



GCE GENERAL COMMON ELEMENT

UNIT

LCE LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

PAGE: 5 of 19  
DATE: 7/3/17

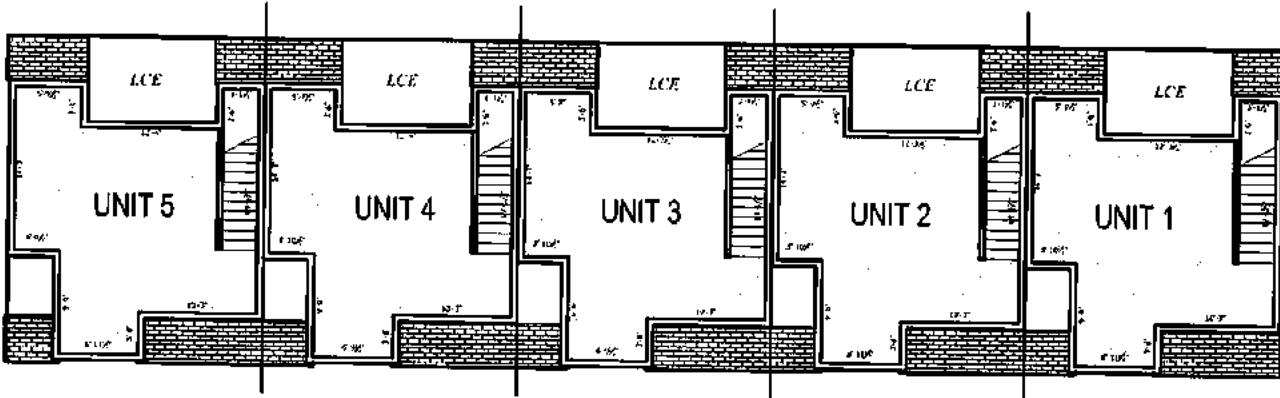
*Ralph Bush Architects*  
Ralph Bush Architects  
1800 Valley View Ln, Ste. 300  
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Phone: 972-333-9455  
Email: ralphbush@hotmail.com

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PHONE: 972-333-9455  
EMAIL: ralphbush@hotmail.com

# Bryan Heights

## Exhibit 'B'




### LOT 11 - FOURTH FLOOR



#### **FLOOR PLAN - FOURTH LEVEL**

*Elevations on this level are between 524.4581' and 534.4583' based upon a finished floor elevation of 504.4583' at ground level.*



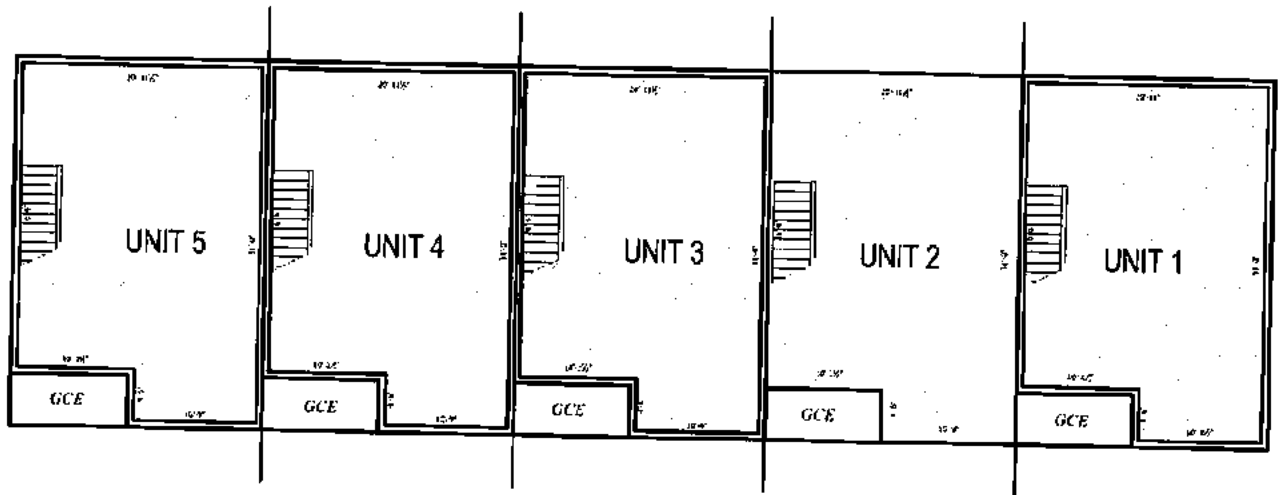
-  GENERAL COMMON ELEMENT
-  UNIT
-  LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

# Bryan Heights

## Exhibit 'B'

### LOT 17 - FIRST FLOOR



#### **FLOOR PLAN - GROUND LEVEL**

*Elevations on this level are between 504.00' and 509.6666' based upon a finished floor elevation of 504.00' at ground level.*



GCE GENERAL COMMON ELEMENT

UNIT

LCE LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

PAGE: 7 of 19  
DATE: 7/3/17



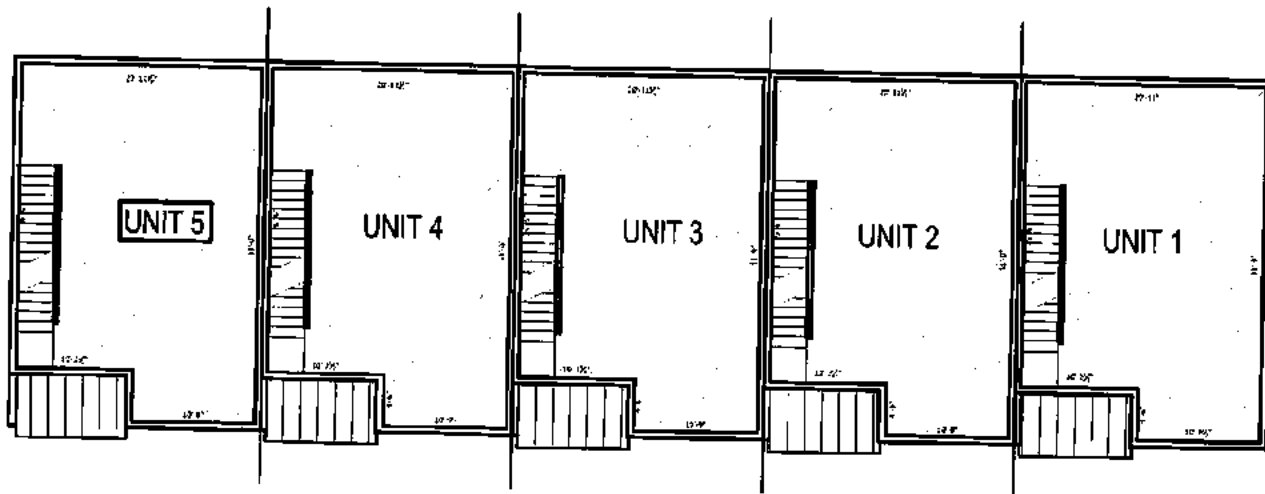
1800 VALLEY VIEW LN. STE. 300  
FARMERS BRANCH, TEXAS 75234  
PHONE: 972-333-9455  
EMAIL: [ralphbush@hotmail.com](mailto:ralphbush@hotmail.com)



# Bryan Heights

## Exhibit 'B'

### LOT 17 - SECOND FLOOR



#### **FLOOR PLAN - SECOND LEVEL**

*Elevations on this level are between 509.666' and 524.333' based upon a finished floor elevation of 504.00' at ground level.*



**GCE** GENERAL COMMON ELEMENT

**UNIT** UNIT

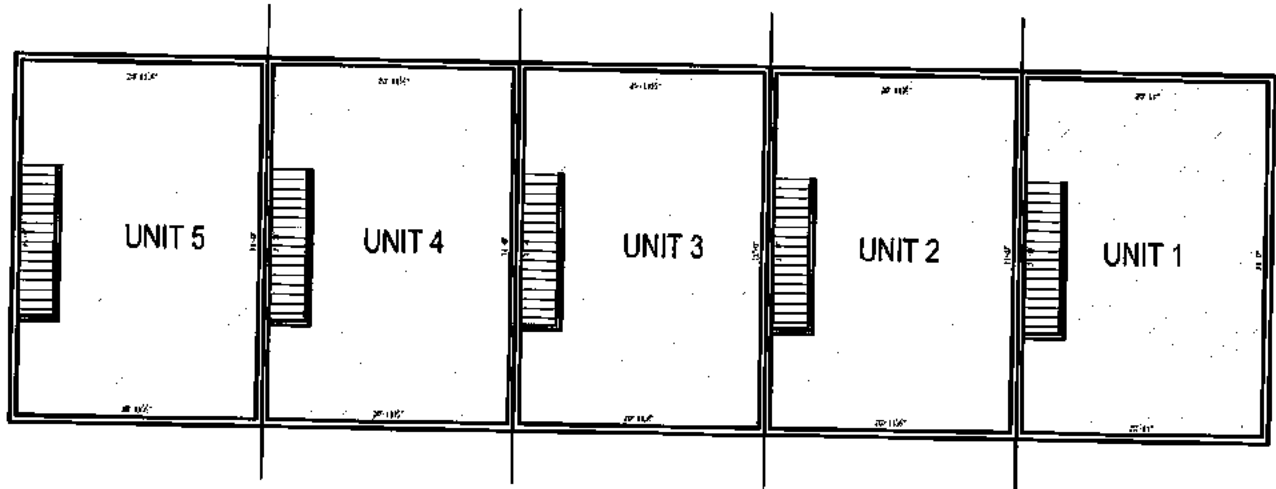
**LCE** LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

# Bryan Heights

## Exhibit 'B'

LOT 17 - THIRD FLOOR



### FLOOR PLAN - THIRD LEVEL

*Elevations on this level are between 524.333' and 534.1666' based upon a finished floor elevation of 514.00' at ground level.*



GCE GENERAL COMMON ELEMENT

UNIT

LCE LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

PAGE: 9 of 19  
DATE: 7/3/17

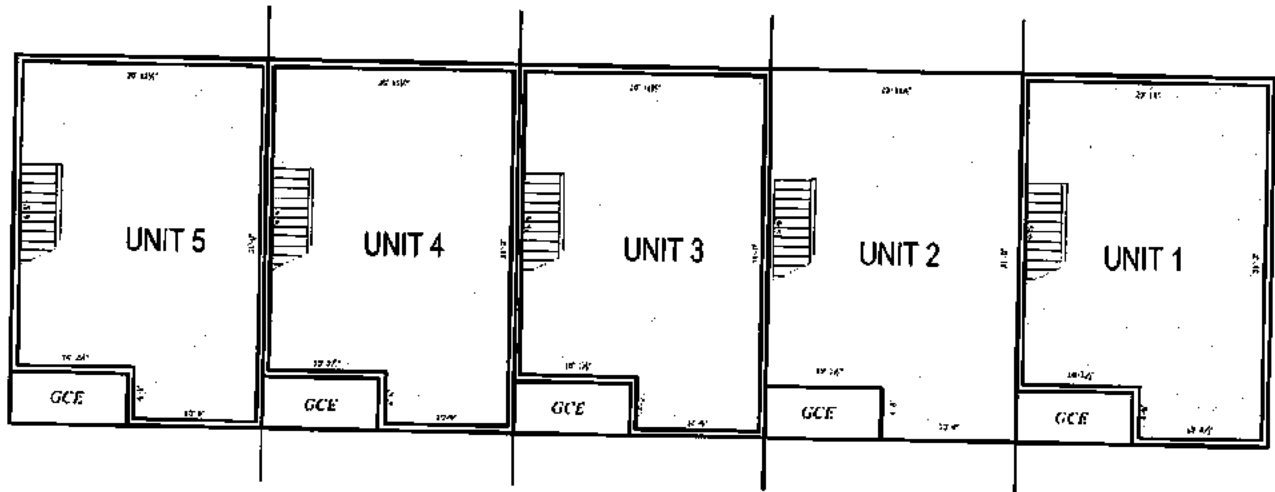


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PHONE: 972-333-9455  
EMAIL: ralphbush@hotmail.com

# Bryan Heights

## Exhibit 'B'




### LOT 18 - FIRST FLOOR



#### **FLOOR PLAN - GROUND LEVEL**

*Elevations on this level are between 504.00' and 509.6665' based upon a finished floor elevation of 504.00' at ground level.*



-  GENERAL COMMON ELEMENT
-  UNIT
-  LIMITED COMMON ELEMENT

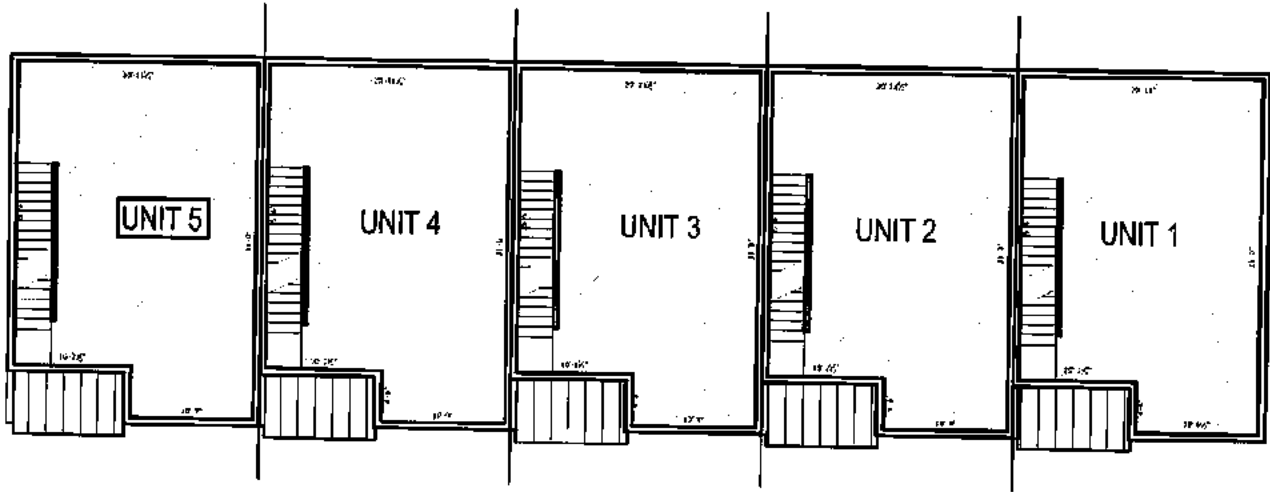
SCALE: 1/16" = 1'-0"



# Bryan Heights

## Exhibit 'B'

### LOT 18 - SECOND FLOOR



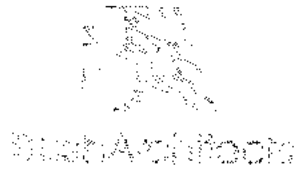
#### **FLOOR PLAN - SECOND LEVEL**

Elevations on this level are between 509.6666' and 524.3333' based upon a finished floor elevation of 504.00' at ground level.



	GENERAL COMMON ELEMENT
	UNIT
	LIMITED COMMON ELEMENT

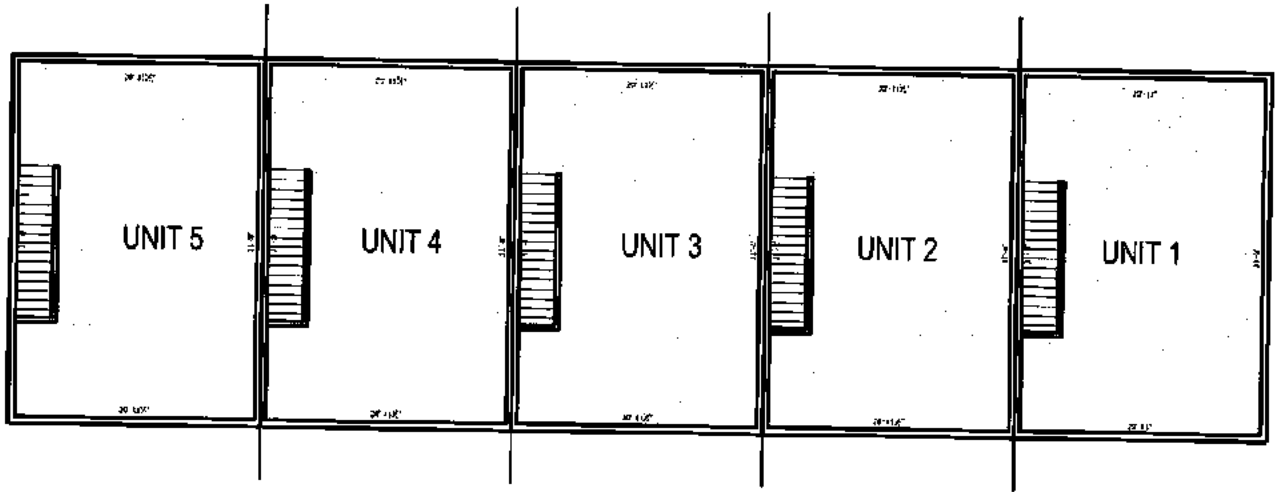
SCALE: 1/16" = 1'-0"



# Bryan Heights

## Exhibit 'B'

LOT 18 - THIRD FLOOR



### FLOOR PLAN - THIRD LEVEL

*Elevations on this level are between 524.333' and 534.166' based upon a finished floor elevation of 504.00' at ground level.*



GCE GENERAL COMMON ELEMENT

UNIT

LCE LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

PAGE: 12 of 19  
DATE: 7/3/17

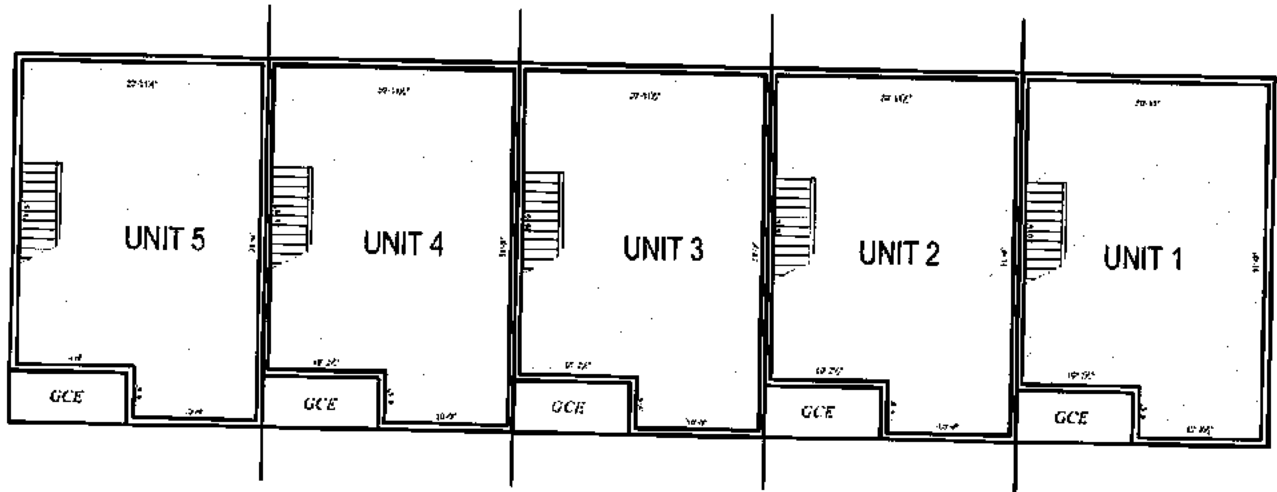


1800 VALLEY VIEW LN. STE. 300  
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PHONE: 972-333-9455  
EMAIL: ralphbush@hotmail.com

# Bryan Heights

## Exhibit 'B'

### LOT 19 - FIRST FLOOR



#### **FLOOR PLAN - GROUND LEVEL**

*Elevations on this level are between 504.2083' and 509.8749' based upon a finished floor elevation of 504.2083' at ground level.*



- GCE GENERAL COMMON ELEMENT
- UNIT
- LCE LIMITED COMMON ELEMENT

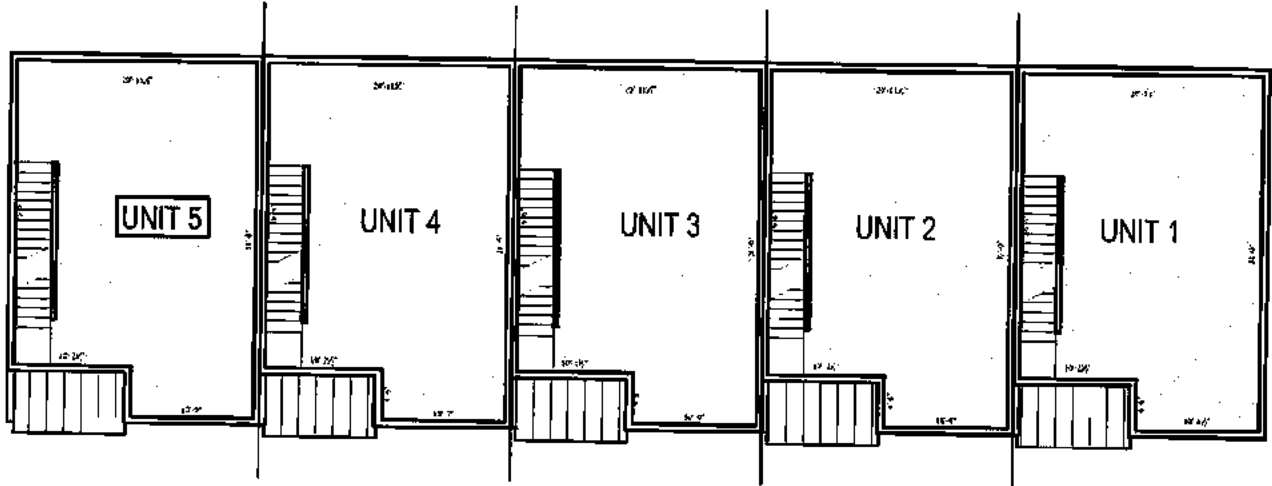
SCALE: 1/16" = 1'-0"



# Bryan Heights

## Exhibit 'B'




### LOT 19 - SECOND FLOOR



#### **FLOOR PLAN - SECOND LEVEL**

Elevations on this level are between 509.8749' and 524.5416' based upon a finished floor elevation of 504.2083' at ground level.



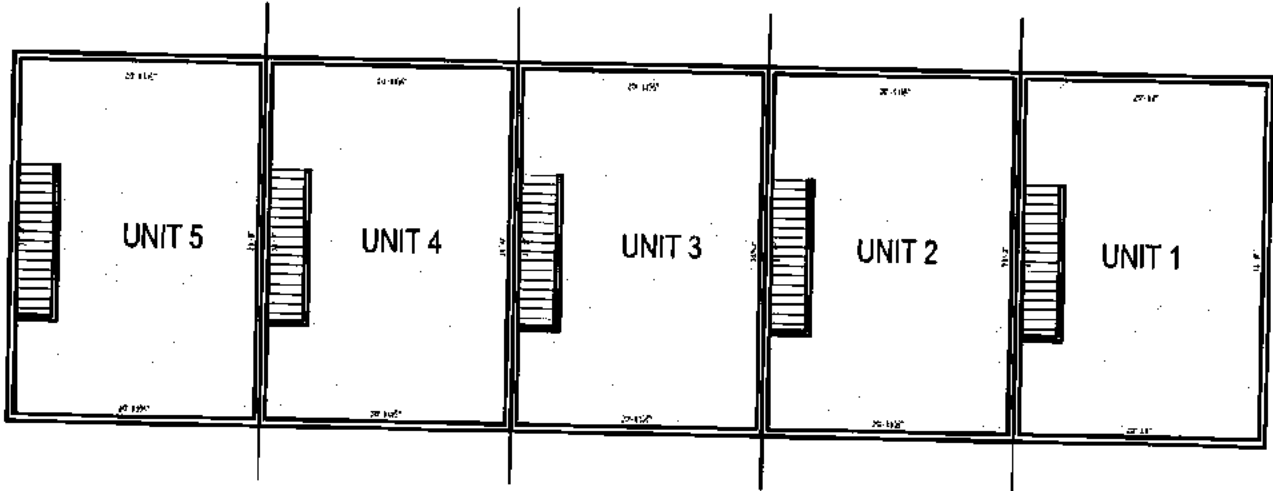
-  GCE GENERAL COMMON ELEMENT
-  UNIT
-  LCE LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

# Bryan Heights

## Exhibit 'B'

### LOT 19 - THIRD FLOOR



#### FLOOR PLAN - THIRD LEVEL

*Elevations on this level are between 524.5416' and 524.3749' based upon a finished floor elevation of 504.2083' at ground level.*



**GCE** : GENERAL COMMON ELEMENT

**UNIT** : UNIT

**LCE** : LIMITED COMMON ELEMENT

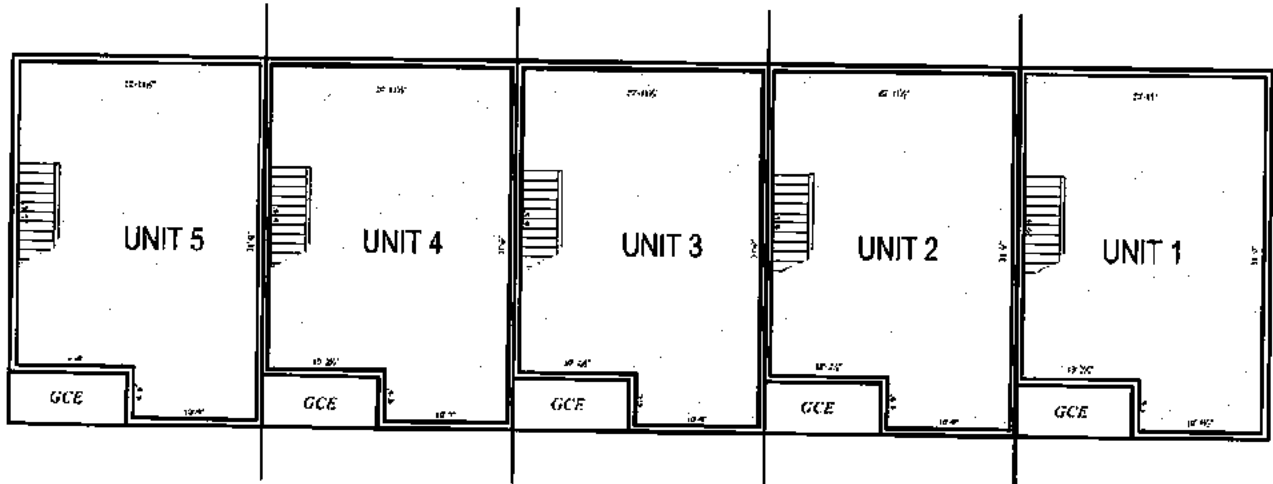
SCALE: 1/16" = 1'-0"



# Bryan Heights

## Exhibit 'B'




### LOT 20 - FIRST FLOOR



#### **FLOOR PLAN - GROUND LEVEL**

*Elevations on this level are between 504.2083' and 509.5749' based upon a finished floor elevation of 504.2083' at ground level.*



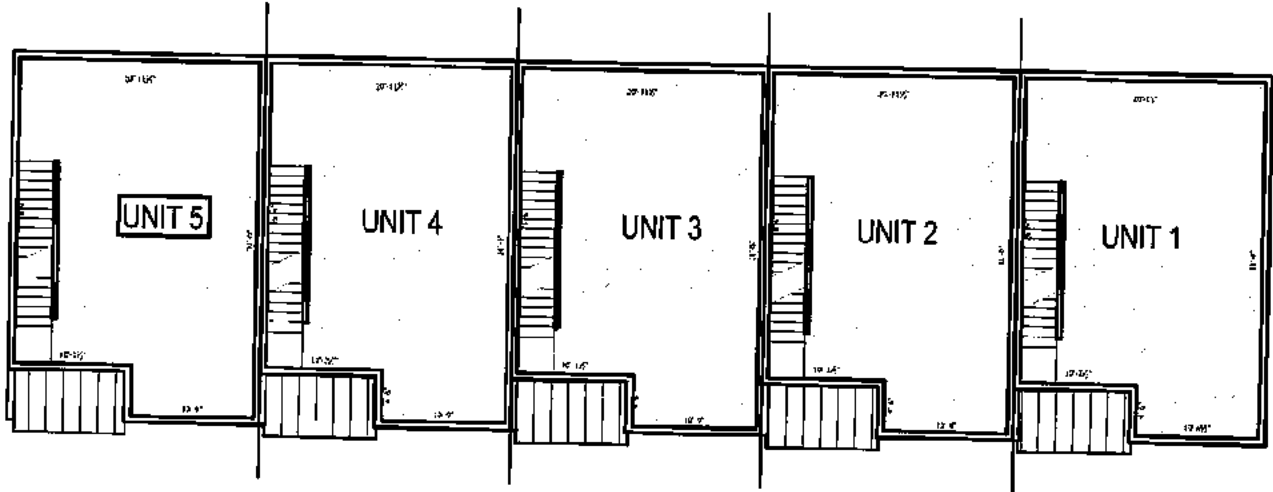
-  GENERAL COMMON ELEMENT
-  UNIT
-  LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

# Bryan Heights

## Exhibit 'B'




### LOT 20 - SECOND FLOOR



#### **FLOOR PLAN - SECOND LEVEL**

*Elevations on this level are between 509.8749' and 524.5416' based upon a finished floor elevation of 504.2083' at ground level*



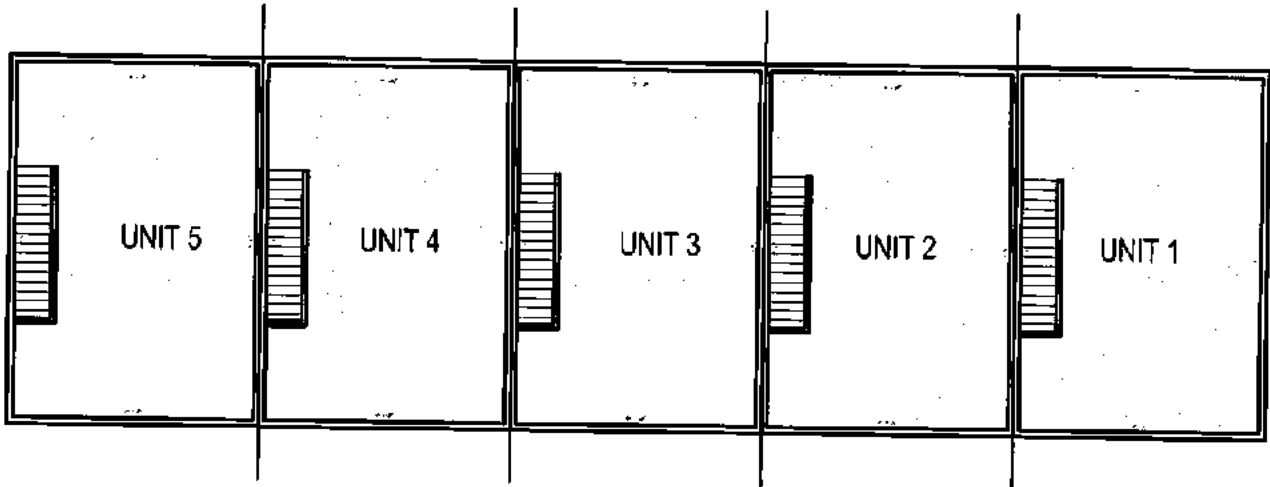
-  GENERAL COMMON ELEMENT
-  UNIT
-  LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

# Bryan Heights

## Exhibit 'B'


### LOT 20 - THIRD FLOOR





#### **FLOOR PLAN - THIRD LEVEL**

*Elevations on this level are between 524.5416' and 533.3749' based upon a finished floor elevation of 504.2083' at ground level.*



 GENERAL COMMON ELEMENT

 UNIT

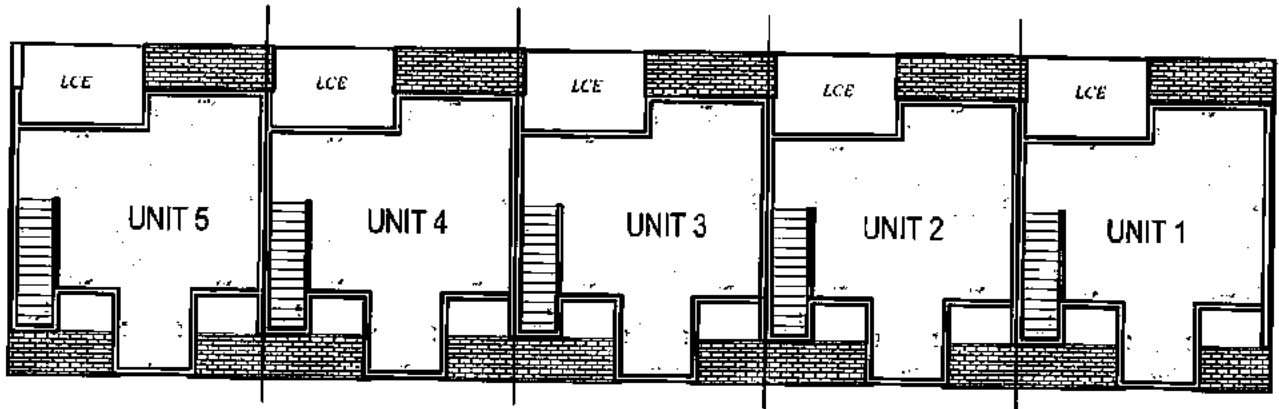
 LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

# Bryan Heights

## Exhibit 'B'

### LOT 20 - FOURTH FLOOR



#### FLOOR PLAN - FOURTH LEVEL

*Elevations on this level are between 533.3749' and 539.7083' (Mid point of slope) based upon a finished floor elevation of 504.2083' at ground level.*



GCE GENERAL COMMON ELEMENT

UNIT

LCE LIMITED COMMON ELEMENT

SCALE: 1/16" = 1'-0"

PAGE: 19 of 19  
DATE: 07/3/17

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EMAIL: ralphbush@hotmail.com

# Bryan Heights

## Exhibit 'C'

<b>Allocation of Ownership Interests</b>		
<b>LOT 11: BLDG</b>		
UNIT NUMBER	SQUARE FEET OF UNIT	PERCENTAGE OWNERSHIP
1	2,155	19.99%
2	2,154	19.98%
3	2,154	19.98%
4	2,154	19.98%
5	2,159	20.03%
<b>LOT 17: BLDG</b>		
UNIT NUMBER	SQUARE FEET OF UNIT	PERCENTAGE OWNERSHIP
1	2,032	20.03%
2	2,027	19.98%
3	2,027	19.98%
4	2,027	19.98%
5	2,032	20.03%
<b>LOT 18: BLDG</b>		
UNIT NUMBER	SQUARE FEET OF UNIT	PERCENTAGE OWNERSHIP
1	2,032	20.03%
2	2,027	19.98%
3	2,027	19.98%
4	2,027	19.98%
5	2,032	20.03%
<b>LOT 19: BLDG</b>		
UNIT NUMBER	SQUARE FEET OF UNIT	PERCENTAGE OWNERSHIP
1	2,032	20.03%
2	2,027	19.98%
3	2,027	19.98%
4	2,027	19.98%
5	2,032	20.03%
<b>LOT 20: BLDG</b>		
UNIT NUMBER	SQUARE FEET OF UNIT	PERCENTAGE OWNERSHIP
1	2,533	20.04%
2	2,523	19.96%
3	2,523	19.96%
4	2,523	19.96%
5	2,537	20.07%



# Bryan Heights

## Exhibit 'C'

LOT 11: BLDG		Monthly Assessment	\$2,500.00
UNIT NUMBER	SQUARE FEET OF UNIT	MONTHLY ASSESSMENT	
1	2,155	\$100.00	
2	2,154	\$100.00	
3	2,154	\$100.00	
4	2,154	\$100.00	
5	2,159	\$100.00	
LOT 17: BLDG			
UNIT NUMBER	SQUARE FEET OF UNIT	MONTHLY ASSESSMENT	
1	2,032	\$100.00	
2	2,027	\$100.00	
3	2,027	\$100.00	
4	2,027	\$100.00	
5	2,032	\$100.00	
LOT 18: BLDG			
UNIT NUMBER	SQUARE FEET OF UNIT	MONTHLY ASSESSMENT	
1	2,032	\$100.00	
2	2,027	\$100.00	
3	2,027	\$100.00	
4	2,027	\$100.00	
5	2,032	\$100.00	
LOT 19: BLDG			
UNIT NUMBER	SQUARE FEET OF UNIT	MONTHLY ASSESSMENT	
1	2,032	\$100.00	
2	2,027	\$100.00	
3	2,027	\$100.00	
4	2,027	\$100.00	
5	2,032	\$100.00	
LOT 20: BLDG			
UNIT NUMBER	SQUARE FEET OF UNIT	MONTHLY ASSESSMENT	
1	2,533	\$100.00	
2	2,523	\$100.00	
3	2,523	\$100.00	
4	2,523	\$100.00	
5	2,537	\$100.00	

PAGE: 2 of 2  
DATE: 7/3/17

  
Bryan Heights  
Architects

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FARMERS BRANCH, TEXAS 75234  
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EMAIL: ralphbush@hotmail.com

**BYLAWS**  
**OF**  
**BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.**

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**BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.**

**BYLAWS**

**ARTICLE I**

**Name and Address**

**Section 1.1 Name.** The name of this association shall be **BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.** (the "Association").

**Section 1.2 Address.** The office of the Association shall be at the place to be designated by the Board of Directors, subject to transfer upon notice to the Members of the Association.

**Section 1.3 Registered Agent.** The Association shall have and continuously maintain in the State of Texas a registered agent whose office is identical with such registered office, as required by the Texas Nonprofit Corporation Act. The registered office may be, but need not be, identical to the principal office in the State of Texas, and the registered office may be changed from time to time by the Board of Directors.

**ARTICLE II**

**Applicability**

These Bylaws shall be applicable to the Association. In accordance with the terms of the Declaration, Declarant (for such time as Declarant is the owner of any portion of the Property), and all present and future Owners shall be Members of the Association and all Owners and any other persons permitted to use the Common Elements shall be subject to these Bylaws and to any rules and regulations adopted from time to time by the Board of Directors. Ownership of any Condominium Unit, or rental or occupancy of any portion of a Condominium Unit, in the Property shall be conclusively deemed to mean that the Owner, tenant or occupant has accepted, ratified and will comply with these Bylaws, the Declaration and the Regulations (if any).

**ARTICLE III**

**Purpose**

The purpose of the Association is to protect and enhance the value of the Property, including providing for the management, maintenance, repair and replacement of the Common Elements. The Association does not contemplate pecuniary gain or profit to its Members as a result of membership in the Association.

**ARTICLE IV**

**Definitions and Interpretation**

**Section 4.1 Definitions.** The following terms shall have the meanings set forth below:

"Act" means the Uniform Condominium Act, Texas Property Code, Chapter 82, Section 82.001 et seq., as amended from time to time.



"Board of Directors" mean those persons serving as Directors pursuant to Article VII of these Bylaws and their successors as duly elected and qualified from time to time.

"Code" means the Internal Revenue Code of 1986, as amended.

"Common Expenses" means all costs and expenses, including allocations to the Working Capital Fund, reserves or financial liabilities of the Association that are incurred pursuant to the provisions of the Declaration, these Bylaws or a resolution duly adopted by the Board of Directors or the Owners.

"Condominium Unit" means the Unit which is designated for residential purposes, together with an undivided interest appurtenant to the Unit, in and to the Common Elements.

"County" means Dallas County, Texas.

"Declaration" means the Condominium Declaration for Bryan Heights Condominiums, and all recorded amendments thereto.

"Director" means a member of the Board of Directors.

"First Lien Indebtedness" means any indebtedness secured by a first and prior lien or encumbrance upon an Owner's Unit.

"First Mortgagee" means any Person which is the holder, insurer or guarantor of First Lien Indebtedness which has provided the Association with written notice of its name, address and the description of the Owner's Condominium Unit on which it holds the First Lien Indebtedness.

"Land" means that certain lot, tract or parcel of land located in the County, and more particularly described in the Declaration together with all and singular the rights and appurtenances pertaining thereto.

"Manager" means any experienced and professional manager or management company with whom the Association contracts for the day-to-day administration of the Association and the Condominium.

"Member" means each Owner and Declarant.

"Minute Book" means the minute book of the Association, which shall contain the minutes of all annual and special meetings of the Association and the Board of Directors and all resolutions of the Board of Directors.

"Owner" means any Person (including Declarant) owning fee title to a Condominium Unit, but does not include any person having an interest in a Condominium Unit solely as security for an obligation.

"Owner's Unit" means each Condominium Unit owned by an Owner, together with the unrestricted right of ingress and egress thereto.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Regulations” means the rules and regulations of the Association initially adopted by the Board of Directors and relating to the appearance, use, and occupancy of the Property, including exterior appearance, use and occupancy of the Units, as amended from time to time.

“Systems” includes, but is not limited to, all fixtures, equipment, pipes, lines, wires, computer cables, conduits and other systems used in the production, heating, cooling and/or transmission of air, water, gas, electricity, communications, waste water, sewage, and audio and video signals.

“Unit” means a physical portion of the Condominium that is designated for separate ownership or occupancy (the boundaries of which are depicted on the Map), and includes (i) all Systems which exclusively serve such Unit, and (ii) the finish materials, fixtures and appliances contained in the Unit, but excludes (x) any of the structural components of the Building in which such Unit is located and (y) Systems which serve more than one Unit, all as subject to and further described in Section 82.052 of the Act.

“Working Capital Fund” means a fund to be established and maintained by the Association for the purpose of meeting expenditures of the Association or purchasing any additional equipment or services deemed necessary by the Association for operation of the Condominium or for any other purpose deemed necessary by the Association.

Any capitalized term that is not defined in this Section shall have the meaning set forth in the Declaration.

**Section 4.2 Interpretation.** In the event of a conflict of interpretation between the provisions set forth in these Bylaws and the Declaration, the Declaration shall govern. In the event that the provisions of the Texas Business Organizations Code (the “TBOC”) are hereafter amended or changed, both the Declaration and these Bylaws shall be interpreted in a manner which conforms to the provisions of the TBOC with respect to nonprofit entities, it being the intention to preserve the status of the Association as a bona fide nonprofit entity.

## **ARTICLE V Member**

### **Section 5.1 Membership.**

(a) Each Owner shall automatically be a Member of the Association, and shall possess one vote with respect to each Condominium Unit owned by such Owner and each vote shall be equal in weight.

(b) In cases where more than one Person owns an interest in a Condominium Unit, all such Persons shall arrange among themselves for one of their number to exercise the voting rights herein established. If only one of the Persons is present at a meeting of the Association, that Person may cast that Condominium Unit’s vote. If more than one of the Persons is present

and after one Person casts the vote, another Person present makes prompt protest to the person presiding over the meeting, such vote shall not be counted unless such Persons can unanimously agree on such vote by the end of the meeting. Each Person owning a portion of the fee interest in a Condominium Unit may vote or register protest to the casting of votes by the other Persons owning portions of the fee interest in the same Condominium Unit through a proxy duly executed by such Owner. An Owner may not revoke a proxy except by giving actual notice of revocation to the person presiding over the meeting.

**Section 5.2 Affirmative Vote.** Except as otherwise provided herein or in the Declaration, the Members shall be entitled to vote upon any decision or resolution and the majority of votes cast shall determine the passage of any decision or resolution. A vote may be cast either in person or by proxy, by Members of record who are entitled to vote. Notice and quorum requirements shall be as set forth herein. Cumulative voting shall not be permitted.

**Section 5.3 Membership List.** The Secretary shall be responsible for maintaining, at the principal office of the Association, an updated list of Members and their last known addresses as provided by each Member. The list shall also show opposite each Member's name the address of the Condominium Unit(s) owned. The list shall be revised by the Secretary to reflect changes in the ownership of Condominium Units occurring prior to the date of the annual or special meeting. The list shall be open to inspection by all Members and other persons lawfully entitled to inspect the list during regular business hours up to the date of the annual or special meeting. The Secretary shall also keep current and retain custody of the Minute Book.

**Section 5.4 Proxies.** Votes may be cast by written proxy or by ballot. Written proxies may be submitted by United States mail, delivered to the office of the Association, delivered directly to the Secretary or delivered in such other manner as directed by the Association. A proxy vote shall be defined as a written vote submitted by a Member which either states the specific vote of the Member with respect to the issues, resolutions or election being voted on by the Members at the annual or special meeting or which is written permission for the Board of Directors or a specific Director to exercise the Member's vote(s) as the Board of Directors or the specific Director sees fit.

## **ARTICLE VI Meetings of the Association**

**Section 6.1 Place of Annual and Special Meetings.** All annual and special meetings of the Association shall be held at the principal office of the Association or at another suitable and convenient place permitted by law and fixed by the Board of Directors from time to time and designated in the notices of the meetings.

**Section 6.2 Date of Annual Meetings.** Annual meetings of the Association shall be held in March each year on a date as shall be fixed by the Board of Directors by written notice to the Members. The Members may transact any business which may properly come before the meeting.

**Section 6.3 Notice of Annual Meetings.** The Secretary shall mail notices of annual meetings to each Member directed to the most recent post office address provided to the

Association by such Member, as shown on the records of the Association, by regular mail, postage prepaid. This notice shall be mailed not less than ten (10) or more than sixty (60) days before the date of the meeting and shall state the date, time and place of the meeting, the purpose or purposes thereof and the items on the agenda, including the specific nature of any proposed amendment or change to the Declaration, the Certificate of Formation or these Bylaws.

**Section 6.4 Special Meeting.** A special meeting of the Association may be called by the President, a majority of the Directors, or upon presentation to the Secretary of a petition stating the specific purpose of the special meeting, which petition has been signed by Members having not less than 33% of the votes entitled to be cast at such meeting.

**Section 6.5 Notice of Special Meetings.** The Secretary shall mail notice of any special meeting of the Association to each Member in the manner provided in Section 6.3 of these Bylaws. The notice shall state the same items required by Section 6.3 of these Bylaws for notices of annual meetings. No business shall be transacted at any special meeting except as stated in the notice thereof.

**Section 6.6 Member Quorum.** At any duly convened meeting of the Association, a quorum shall be present if Persons entitled to cast at least 10% of the votes that may be cast are present in person or proxy at the beginning of the meeting.

**Section 6.7 Agenda.** The agenda at all meetings of the Association shall include: (a) roll call; (b) proof of notice of meeting or waiver of notice; (c) approval of the minutes of the preceding meeting; (d) reports of officers and committees; (e) election of Directors, if applicable; (f) unfinished business; (g) new business; (h) adjournment.

**Section 6.8 Action Without Meeting by Written Ballot.** Any action which may be taken by the vote of the Members at a regular or special meeting, other than the election of Directors, may be taken without a meeting if done in compliance with relevant provisions of the Texas Business Corporation Act, the Texas Nonprofit Corporation Act and the Miscellaneous Corporate Statutes. If an action is taken without a meeting, the Board of Directors shall distribute a written ballot to every Member entitled to vote on the matter. The ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the Association. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the proposal at a regular or special meeting authorizing the action.

**Section 6.9 Administration of Affairs.** Subject to the provisions of the Act, the Texas Nonprofit Corporation Act, the Declaration and these Bylaws, the Association shall be governed by the Board of Directors.

**ARTICLE VII**  
**Board of Directors**

**Section 7.1 Authority; Number of Directors.**

(a) The affairs of the Association shall be governed by a Board of Directors. The number of Directors shall be fixed by the Board of Directors from time to time. The initial Directors shall be three in number and shall be those Directors named in the Certificate of Formation. The initial Directors shall serve until their successors are elected and qualified.

(b) Each Director shall be a Member, or in the case of corporate or partnership ownership of a Condominium Unit, a duly authorized agent or representative of the corporate or partnership Owner. The corporate or partnership Owner shall be designated as the Director in all correspondence or other documentation setting forth the names of the Directors.

**Section 7.2 Term of Directors and Compensation.** Except as otherwise set forth herein, each Director elected by the Members shall serve for a term of two years and may serve an unlimited number of consecutive terms. Each Director shall continue to hold office until his successor is elected and qualified. The Directors shall serve without compensation for such service.

**Section 7.3 Vacancies on Board of Directors.** If the office of any elected Director shall become vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, the Member which elected the Director for whom the office is now vacant, shall choose a successor within ten days of the vacancy. The successor Director shall fill the unexpired term of the directorship being vacated. At the expiration of the term of his position on the Board of Directors, the successor Director shall be re-elected or his successor shall be elected in accordance with these Bylaws.

**Section 7.4 Removal of Directors by Members.** Elected Directors may be removed, with or without cause, by the Member which elected the Director at any time; provided notice of the removal has been given to the entire Board of Directors, and the successor Director is elected in accordance with Section 7.3. Members may not remove any Director appointed by Declarant in accordance with the Declaration.

**Section 7.5 Organizational Meeting of the Board of Directors.** No later than 20 days following each of (a) the establishment of the Association, and (b) each annual meeting of the Members of the Association, the Board of Directors shall hold a regular meeting for the purposes of organization, election of officers and transaction of other business. Notice of this meeting shall be given to all Directors in accordance with Section 7.8 of these Bylaws, except for the initial meeting, which shall be called by Declarant.

**Section 7.6 Place of Meetings.** All meetings of the Board of Directors shall be held at the principal office of the Association or at any other place or places designated at any time by resolution of the Board of Directors or by written consent of all of the Directors. A special meeting of the Board of Directors may be held by any method of communication, including electronic and telephonic, by which each Director may hear and be heard by every other Director, and any such meeting may involve consideration of any action, including any action

involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Member before the Member has an opportunity to attend a meeting of the Board of Directors to present the Member's position on the issue.

**Section 7.7 Regular Board of Directors Meetings.** Regular meetings of the Board of Directors may be held at any time and place permitted by law as from time to time may be determined by the Board of Directors. Notice of regular meetings of the Board of Directors shall be given to each Director personally, by telegram, telephone, electronic mail, facsimile or by United States mail, with postage prepaid, directed to him at his last known post office address, as the same appears on the records of the Association, at least ten but not more than 20 days before the date of the meeting. This notice shall state the date, time, place and purpose of the meeting. Special meetings of the Board of Directors may be held by conference telephone; provided, however, at any regular meeting of the Board of Directors, not more than one Director may participate by telephone.

**Section 7.8 Special Board of Directors Meetings.** Special meetings of the Board of Directors may be called by the President on his own accord or by the President or the Secretary upon the written request of any one Director, on three days' prior notice to each Director.

**Section 7.9 Waiver of Notice.** Before any meeting of the Board of Directors, whether regular or special, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to giving the required notice. All written waivers shall be filed in the Minute Book of the Association or made a part of the minutes of the meeting. Attendance by a Director at any meeting of the Board of Directors shall likewise constitute a waiver by him of the required notice. If all Directors are present at any meeting of the Board of Directors, no notice of the meeting shall be required and any business may be transacted at the meeting except as prohibited by law or these Bylaws.

**Section 7.10 Directors Quorum.** At all duly convened meetings of the Board of Directors, all of the Directors shall constitute a quorum for the transaction of business, except as otherwise expressly provided in these Bylaws subject to the limitations set forth in the Declaration. The acts of a majority of the Directors present at the meeting at which a quorum is present shall be the acts of the Board of Directors.

**Section 7.11 Consent in Writing.** Any action by the Board of Directors, including any action involving a vote on a fine, damage assessment, appeal from a denial of architectural control approval, or suspension of a right of a particular Member before the Member has an opportunity to attend a meeting of the Board of Directors to present the Member's position on the issue, may be taken without a meeting if all of the Directors shall unanimously consent in writing to the action. Such written consent shall be filed in the Minute Book. Any action taken by such written consent shall have the same force and effect as a unanimous vote of the Directors.

**Section 7.12 Records.** The Board of Directors shall cause a complete record of all of its acts and the corporate affairs of the Association to be kept and to present a general report thereof to the Members at each annual meeting of the Association or at any special meeting where a general report is requested in writing by one-third of the Members entitled to vote.

**Section 7.13 Powers and Duties.** Subject to the Act, the Board of Directors shall have and exercise all powers and duties necessary for the proper administration of the affairs of the Association. In the performance of its duties as the governing body of the Association, subject to limitations set forth in the Declaration, the Board of Directors shall have all powers enumerated in Section 82.102 of the Act, and in addition to those powers and duties set forth in the Act and the Declaration, the Board of Directors shall have the powers and duties including, but not limited to, those enumerated below. Each Director individually and the Board of Directors collectively shall perform the duties and powers of the Board of Directors in good faith as a fiduciary of the Association, in a manner which the Director believes to be in the best interest of the Association and with the care of a person of ordinary prudence under similar circumstances, including, but not limited to, reasonable inquiry, skill and diligence.

(a) Duties:

(i) provide for the operation, maintenance, management, insurance, cleaning, sanitation, renewal, replacement, care and upkeep of the Common Elements and all property, real or personal, of the Association;

(ii) determine the Common Expenses and any other charges comprising the operating expenses of the Association, establish the amount of Monthly Assessments, as the same may increase or decrease, and assess the same against the Owners in accordance with the provisions of the Declaration and these Bylaws;

(iii) levy and collect, in addition to Monthly Assessments, Special Assessments in amounts which the Board of Directors deems proper, whenever the Board of Directors is of the opinion it is necessary to do so in order to meet increased operating or maintenance costs or additional capital expenses or because of emergencies subject to the limitations specified in the Declaration;

(iv) use and expend any sums collected from Monthly Assessments and Special Assessments for the operation, maintenance, renewal, care and upkeep of the Common Elements;

(v) maintain the Common Elements;

(vi) maintain a reserve fund out of Monthly Assessments adequate for the periodic maintenance, repair and replacement of the Common Elements subject to the limitations specified in the Declaration;

(vii) maintain the Working Capital Fund;

(viii) pay all taxes and assessments levied or assessed against any property that may be owned by the Association, exclusive of any taxes or assessments levied against any Owner or otherwise properly chargeable to the Owner;

(ix) collect delinquent Assessments against any Owner's Unit and the Owner thereof, whether by suit or otherwise and to abate any nuisance and enforce the terms of

the Declaration and the observance of the Regulations by injunction or other legal action or means which the Board of Directors may deem necessary or appropriate;

(x) establish operating, escrow and other accounts in the name of the Association as the Board of Directors may deem appropriate from time to time and as may be consistent with generally accepted accounting principles;

(xi) adopt a budget for each fiscal year which shall contain estimates of the costs and expenses of the Association and the proposed Monthly Assessments which initial budget and certain increases shall be approved by Owners as required in the Declaration;

(xii) cause a complete review of the books and accounts of the Association to be made by a competent independent public accountant at the end of each fiscal year and at any other time or times deemed necessary;

(xiii) maintain accounting records in accordance with generally accepted accounting principles;

(xiv) make and enforce compliance with the Regulations relative to the operation, use and occupancy of the Property, including, but not limited to, penalties to be levied for violations of these Bylaws, the Declaration and the Regulations which the Board of Directors shall adopt, and to amend the same from time to time as and when approved by appropriate resolutions which shall be binding on the Owners, tenants and occupants of Condominium Units, their successors in title and assigns. A copy of the Regulations and copies of any amendments thereto shall be delivered or mailed to each Owner and any tenant or occupant of an Owner's Unit promptly upon the adoption thereof.

(b) Powers:

(i) employ and dismiss personnel of the Association, and purchase or arrange for those services, machinery, equipment, tools, materials and supplies as, in the opinion of the Board of Directors, may from time to time be necessary for the proper operation and maintenance of the Common Elements;

(ii) subject to Section 7.16 of these Bylaws, enter into contracts for professional management of the Property and the Association, at such prices and upon such terms as may be determined by the Board of Directors, to perform those duties and services which the Board of Directors may lawfully delegate;

(iii) employ or retain and receive advice from professional counsel and consultants, including, but not limited to, landscape architects, architects, engineers, planners, biologists, lawyers and accountants, which the Board of Directors may deem necessary for any proper purposes of the Association, and fix the compensation for professional advice or services, including, but not limited to, those hereinbefore or hereinafter referred to in these Bylaws. The Board of Directors shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements



and other financial data, in each case prepared or presented by any of the following: (A) one or more officers or employees of the Association whom the Board of Directors reasonably believes to be reliable and competent in the matter presented; (B) counsel, public accountants or other persons as to the matters which the Board of Directors reasonably believes to be within the professional or expert competence of this person; and (C) a committee of the Board of Directors duly designated in accordance with law, as to matters within its designated authority, which committee the Board of Directors reasonably believes to merit confidence. The Board of Directors shall not be considered to be acting in good faith if it has knowledge concerning the matter in question that would cause this reliance to be unwarranted;

(iv) name as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with which the Association may enter into any insurance trust agreement or any successor to this trustee (each of which shall be referred to herein as the "Insurance Trustee"), to be given exclusive authority to negotiate losses under any policy providing property or liability insurance coverage. The Association or any Insurance Trustee or substitute Insurance Trustee designated by the Association shall have the exclusive power to act as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including the collection and appropriate disposition of the proceeds thereof, the negotiation of losses, execution of releases of liability and the execution of all documents and the performance of all other acts necessary to accomplish these purposes;

(v) establish depositories for the funds of the Association with the bank or banks as shall be designated from time to time by the Board of Directors and in which monies of the Association shall be deposited. Withdrawal of monies shall be only by check signed by those persons who are authorized by the Board of Directors to sign checks on behalf of the Association;

(vi) invest monies of the Association in any investments which the Board of Directors deems to be reasonably prudent;

(vii) borrow and repay monies and give notes, mortgages or other security (except for mortgages or security on any Common Elements) upon the terms which are deemed reasonable by the Board of Directors;

(viii) acquire by purchase, gift, annexation or lease, real or personal property, if, at any time in the future, the Board of Directors deems it to be proper and not inconsistent with the terms hereof to do so (but only with the consent of 100% of the votes of the Members);

(ix) grant and reserve easements, leases, licenses or concessions where necessary or desirable for utilities, routes of ingress and egress, or any other purpose, over the Common Elements and to amend the Map to show such interests;

(x) establish a form of estoppel certificate acceptable to the Association for delivery to prospective purchasers and lenders and an appropriate charge for furnishing such certificate; and

(xi) do all things incidental and necessary to the accomplishment of the foregoing.

The duties and powers imposed on the Board of Directors by this Section shall not be amended so as to reduce, eliminate or expand any duties or powers of the Board of Directors without the affirmative vote of 100% of the votes of Members voting at the meeting called to consider such amendment.

**Section 7.14 Annual Budget and Assessments.** Copies of the proposed budget setting forth the proposed annual Common Expenses, proposed reserves and proposed Assessments for the next fiscal year of the Association shall be prepared by the Board of Directors and distributed to all Members at least 30 days prior to the beginning of each fiscal year of the Association and shall be available to all Members for inspection during regular business hours at the Association's office. If the proposed budget is subsequently amended before the Assessments are made, a copy of the amended budget shall also be distributed and made available for inspection. Reserves shall include reasonable amounts to be credited, allocated or accumulated for replacement of those Common Area improvements or facilities that require replacement, renovation or rehabilitation periodically. Subject to the provisions of the Declaration, nothing herein contained shall be construed as restricting the right of the Board of Directors, at any time and in its sole discretion, to levy a Special Assessment in the event that the budget as originally adopted shall appear to be insufficient to pay the cost of the operation or management of the Property or in the event of emergencies.

**Section 7.15 Management Certificate.** If all of the Board of Directors determine that it is in the best interest of the Association to hire a professional manager for the Property in accordance with Section 7.16 of these Bylaws, the Association shall record in the County a certificate, signed and acknowledged by an officer of the Association stating:

- (a) the name of the Condominium;
- (b) the name of the Association;
- (c) the location of the Condominium;
- (d) the recording data for the Declaration;
- (e) the mailing address of the Association, or the name and mailing address of the person or entity managing the association; and
- (f) other information the Association considers appropriate.

Such certificate shall be recorded within 30 days after the Association receives notice of a change in any of the information listed in (a) through (e) herein.

**Section 7.16 Manager.** To facilitate management of the Property and the administration of the Association, the Board of Directors may delegate to a Manager responsibility for matters of a routine nature, provided only that (a) the initial Manager shall be selected by Declarant and shall thereafter be selected by the Board of Directors, and (b) an agreement evidencing such relationship shall in no event exceed a period of one year, renewable by agreement of the parties thereto for successive one year periods only, and shall be subject to termination by either party with or without cause and without payment of a termination fee upon not more than 30 days' prior written notice. After a Manager has been appointed, no decision by the Association to manage its own affairs without a manager shall be effective unless and until approved by an affirmative vote of the Members holding not less than 100% of the votes allocated by the Declaration.

**Section 7.17 Open Meeting.** Meetings of the Association and the Board of Directors shall be open to all Members. Subject to applicable law, the Board of Directors shall have the right to adjourn a meeting and reconvene in private, closed executive session to consider any actions involving personnel, pending litigation, contract negotiations, or enforcement actions, or upon the request of an affected party, or to consider matters that are confidential in the opinion of the Board of Directors; provided, however, the Board of Directors shall announce the general nature of the business to be considered in such executive session prior to adjourning the meeting.

## **ARTICLE VIII Officers**

**Section 8.1 Officers.** The officers of the Association shall be a President, Secretary and Treasurer. The offices of President and Secretary may not be held by the same person. The Secretary may be eligible to hold the office of Treasurer. The President and Secretary shall not be representatives of the same corporate Owner/Member. The President and Treasurer must also be Directors. The Secretary need not be a Director.

**Section 8.2 Election.** Except as set forth herein, the officers of the Association shall be elected at the organizational meeting held pursuant to Section 7.5 of these Bylaws and annually thereafter, and shall hold office until their successors are elected or appointed by the Board of Directors; provided that each officer may be removed, either with or without cause, whenever in the best interest of the Association, and his successor elected at any annual or special meeting of the Board of Directors called for that purpose. The President, Secretary and Treasurer shall each serve for a term of two years and the remaining officers shall serve for a term of one year. Should the Board only consist of three Directors and Officers the President and Secretary shall serve two year terms. The Board of Directors may, from time to time, appoint other officers who, in its judgment, are necessary. Any officer may resign at any time by giving written notice to the Board of Directors or to the President or Secretary of the Association. Any resignation shall take effect as of the date of the receipt of this notice or any later time specified therein; unless specified therein, the acceptance of a written resignation shall not be necessary to make it effective.

**Section 8.3 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to that office.

**Section 8.4 President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and the Board of Directors. The President shall have the general powers and duties usually vested in the office of the president of a community association, including, but not limited to, the power to appoint committees from the Members from time to time as he may deem appropriate to assist in the conduct of the affairs of the Association provided, however, no such committee shall have the right to exercise the full authority of the Board of Directors. The President shall be an ex-officio member of all standing committees, if any. The President shall execute deeds, contracts and other instruments, in the name and on behalf of the Association and under its corporate seal when a seal is required, except when these documents are required or permitted by law to be otherwise executed, and except when the signing and execution thereof shall be delegated by the Board of Directors to another officer or agent of the Association.

**Section 8.5 Secretary.** The Secretary shall attend all meetings of the Board of Directors and all meetings of the Members and record all votes and the minutes of all meetings and proceedings, including resolutions, in the Minute Book. The Secretary shall perform the same duties for any committees when required. The Secretary shall have charge of the Minute Book, the records of the Association and any papers which the Board of Directors shall direct the Secretary to keep; shall perform all duties incident to the office of Secretary, including, but not limited to, the sending of notice of meetings to the Members, the Directors and members of any committees, and shall perform any other duties which may be prescribed by these Bylaws or by the Board of Directors or the President. The Secretary shall also have custody of the corporate seal and shall affix the same to any instrument requiring it when authorized by the Board of Directors and shall attest or certify the same when appropriate. The Secretary shall keep, or cause to be kept, at the principal office of the Association, a membership register showing the following: (a) the names and addresses of all Directors; (b) the names and addresses of all Members as provided by the Members; (c) the Condominium Unit that is owned by each Member; and (d) the vote of each Member. The Secretary shall prepare, execute and cause the recordation of amendments to the Declaration on behalf of the Association except when the preparation, execution and recordation thereof shall be delegated by the Board of Directors to another officer or agent of the Association. Nothing shall prohibit the functions of the Secretary to be delegated to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The delegation of the duties of the Secretary shall not relieve the Secretary from any responsibility related to overseeing and reviewing any duties performed by the agent.

**8.6 Treasurer.** The Treasurer shall have the responsibility for the Association's funds and securities, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies, checks and other valuable effects in the name of and to the credit of the Association in those depositories which may be designated from time to time by the Board of Directors. The Treasurer shall disburse the funds of the Association, as the Treasurer may be ordered to do from time to time by the Board of Directors or by the President, and shall render to the President and the Directors at the regular meetings of the Board of Directors, or whenever they or either of them shall require, an account of his transactions as Treasurer and of the financial condition of the Association. Nothing shall prohibit the functions of the Treasurer to be delegated to an agent of the Association provided this delegation is approved by resolution of the Board of Directors. The delegation of the duties

of the Treasurer shall not relieve the Treasurer from any responsibility related to overseeing and reviewing any duties performed by the agent.

**8.7 Compensation.** The officers of the Association shall serve without compensation except that they shall be entitled to reimbursement for all expenses reasonably incurred in the discharge of their duties.

**ARTICLE IX**  
**Indemnification of Directors,**  
**Officers and Other Authorized Representatives**

THE ASSOCIATION SHALL INDEMNIFY EVERY DIRECTOR AND OFFICER AND ANY OTHER AUTHORIZED REPRESENTATIVE OF THE ASSOCIATION AGAINST, AND REIMBURSE AND ADVANCE TO EVERY DIRECTOR, OFFICER, AND AUTHORIZED REPRESENTATIVE FOR, ALL LIABILITIES, COSTS AND EXPENSES' INCURRED IN CONNECTION WITH SUCH DIRECTORSHIP OR OFFICE OR REPRESENTATION AND ANY ACTIONS TAKEN OR OMITTED IN SUCH CAPACITY TO THE GREATEST EXTENT PERMITTED UNDER THE TEXAS BUSINESS ORGANIZATION CODE AND ALL OTHER APPLICABLE LAWS AT THE TIME OF SUCH INDEMNIFICATION, REIMBURSEMENT OR ADVANCE PAYMENT; PROVIDED, HOWEVER, NO DIRECTOR OR OFFICER SHALL BE INDEMNIFIED FOR: (A) A BREACH OF DUTY OF LOYALTY TO THE ASSOCIATION OR ITS MEMBERS; (B) AN ACT OR OMISSION NOT IN GOOD FAITH OR THAT INVOLVES INTENTIONAL MISCONDUCT OR A KNOWING VIOLATION OF THE LAW; (C) A TRANSACTION FROM WHICH SUCH DIRECTOR OR OFFICER OR AUTHORIZED REPRESENTATIVE RECEIVED AN IMPROPER BENEFIT, WHETHER OR NOT THE BENEFIT RESULTED FROM AN ACTION TAKEN WITHIN THE SCOPE OF DIRECTORSHIP OR OFFICE OR REPRESENTATION; OR (D) AN ACT OR OMISSION FOR WHICH THE LIABILITY OF SUCH DIRECTOR OR OFFICER OR AUTHORIZED REPRESENTATIVE IS EXPRESSLY PROVIDED FOR BY STATUTE..

**ARTICLE X**  
**Association Books and Records**

The Association shall keep or cause to be kept (a) detailed financial records of the Association in sufficient detail to enable the Association to prepare a resale certificate in accordance with the provisions of Section 82.157 of the Act, (b) the plans and specifications used to construct the Condominium, (c) the name and mailing address of each Owner of a Unit; (d) voting records, proxies and correspondence relating to all amendments to the Declaration, and (e) the minutes of all meetings of the Association and the Board of Directors. All books and records of the Association shall be available for inspection by the Owners, the First Mortgagees, and their respective agents and representatives, during normal business hours. All books and records of the Association shall be kept in accordance with generally accepted accounting principles, consistently applied, and shall be audited at least once a year by an independent certified public accountant. If requested in writing by an Owner or First Mortgagee, the Association shall furnish such requesting Owner or First Mortgagee copies of the audited financial statements of the Association within 90 days following the end of each fiscal year of

the Association. The Board of Directors shall further make available for the inspection by Owners, the First Mortgagees, and their respective agents and representatives, during normal business hours, the current version of the Declaration, these Bylaws, the Certificate of Formation, the Regulations and all other documents affecting the Association, the Owners, or the Property, as well as all amendments thereto and revisions thereof. Declarant shall furnish copies of the information set forth in this Section to the Association on the date the first Unit is conveyed to an Owner. For purposes of this paragraph, "available" shall mean available for inspection, upon reasonable advance request of not less than 24 hours, during regular business hours at the office of the Association or the office of the manager of the Association. The cost of any copies shall be reimbursed to the Association at a rate set by the Board of Directors.

## **ARTICLE XI Dissolution and Termination**

Upon dissolution of the Association, the real and personal property of the Association shall be distributed pursuant to the provisions of the Certificate of Formation or, if no such provision is made, distributed to one or more organizations which are exempt from taxation under Section 501(c)(3) of the Code.

## **ARTICLE XII Insurance**

**Section 12.1 Types of Insurance.** Commencing upon the first conveyance of any Unit to an Owner other than Declarant, the Association shall obtain and maintain, as a Common Expense, the insurance coverages specified in the Declaration, subject to such changes as all of the Directors shall determine, from time to time, to be in the interest of the Members.

**Section 12.2 Named Insured.** The name of the insured under the insurance policies shall be set forth substantially as follows:

"Bryan Heights Condominium Association, Inc. for the use and benefit of the individual owners (which owners may be designated by name if required by law)."

Notwithstanding the foregoing, the policies may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with which the Association has entered into an insurance trust agreement for the use and benefit of the Owners. Loss payable provisions shall be in favor of the Association (or such Insurance Trustee) as a trustee for each Owner and each such Owner's First Mortgagee. Each Owner and such Owner's First Mortgagee, if any, shall be beneficiaries of such policies in the percentage set forth as such Owner's Allocated Interest.

**Section 12.3 Mortgagee Coverage.** Insurance policies shall contain such mortgagee protection clauses as may be required by the First Mortgagees. No such policies or the constituent documents of the company issuing them shall contain any provisions requiring contributions or making assessments against the Association, the Owners, or any First Mortgagee (or any successor or assign of any First Mortgagee) and none of such policies or such constituent documents shall provide that loss payments are contingent upon any action by such company's

board of directors, policy holders or members. None of such policies shall contain any limiting clauses (other than insurance conditions) which could prevent any Owner or First Mortgagee from collecting insurance proceeds.

**Section 12.4 Waiver of Subrogation.** The Association and each Owner by his possession or acceptance of title to a Unit hereby waives any and every claim which arises or may arise in its or his favor against any other Owner or the Association for any and all loss of, or damage to, its or his property located within or upon, or constituting a part of, the Condominium, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent such loss or damage is recoverable thereunder. Inasmuch as the foregoing mutual waivers will preclude the assignment of any of such claim by way of subrogation (or otherwise) to an insurance company (or any other party), the Association and each Owner immediately shall give to each insurance company which has issued policies of insurance to such Owner, written notice of the terms of this mutual waiver, and cause such policies to be endorsed, if necessary, to prevent the invalidation of such coverages by reason hereof.

**Section 12.5 Unit Insurance by Owners.** An Owner is responsible for obtaining and maintaining, at its sole cost and expense, insurance covering all alterations, additions, betterments and improvements to its Unit and all other personal property located thereat or constituting a part thereof. Nothing herein will be deemed or construed as prohibiting an Owner, at his sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverages as he may deem necessary or appropriate.

### **ARTICLE XIII Miscellaneous**

**Section 13.1 Fiscal Year.** The fiscal year of the Association shall be the calendar year unless the Board of Directors shall determine otherwise.

**Section 13.2 Amendments to Bylaws.**

(a) These Bylaws may be amended from time to time by the affirmative vote or written consent in lieu of a meeting of a majority of the Directors or by the affirmative vote, in person or by proxy, of all of majority the Members voting at the meeting called to consider such amendment.

(b) Members must be given notice of the meeting required by Section 13.2(a) above not later than the tenth (10<sup>th</sup>) day and not earlier than the sixtieth (60<sup>th</sup>) day preceding the date of the meeting. Any such notice shall include the specific amendment or other change proposed to be made to these Bylaws.

(c) Notwithstanding any other provision of these Bylaws, at no time shall any amendment be made to these Bylaws so as to affect or change any power granted to Declarant without the prior written consent of Declarant.

**Section 13.3 Inspection of Bylaws.** The Association shall keep in its principal office the original or a copy of these Bylaws, as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members during normal business hours.

Adopted as of 7/19/ 2017.

[Signature]  
Secretary of the Association

THE STATE OF TEXAS Colorado  
COUNTY OF San Miguel

This instrument was acknowledged before me on the 19 day of July 2017, by Michael Harvey, Secretary of BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC., a Texas nonprofit corporation, on behalf of said corporation.

[Signature]  
Notary Public - State of Texas Colorado

My Commission Expires:  
April 28, 2020

OLENA A STEELE  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20164008610  
COMMISSION EXPIRES APRIL 28, 2020



Exhibit A  
To  
Bylaws

BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.

Consent in Lieu of Organizational Meeting

**CONSENT OF DIRECTORS IN LIEU OF  
ORGANIZATIONAL MEETING  
OF  
BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.**

The undersigned, being all of the members of the Board of Directors of Bryan Heights Condominium Association, Inc., a Texas non-profit corporation (hereinafter referred to as the "Association"), do hereby consent, pursuant to the Texas Business Organization Code, to the adoption of the following resolutions:

**1. DIRECTORS**

RESOLVED, that each of the undersigned, being all of the directors of the Association, as named in its Certificate of Formation filed with the Secretary of State of the State of Texas on June 6, 2017, does hereby accept appointment to such office and does hereby agree to serve as a director of the Association until the first annual meeting of the members and until said director's successor or successors have been duly elected and qualified or until his or her earlier death, resignation, retirement, disqualification or removal from office.

**2. BYLAWS**

RESOLVED, that the form of bylaws are approved and adopted as the Bylaws of the Association, and the Secretary of the Association is instructed to insert the original thereof in the minute book of the Association.

**3. OFFICERS**

RESOLVED, that each of the following-named persons be and they hereby are elected as officers of the Association for the office or offices set forth below opposite his or her name, and to hold any such office to which elected until the first annual meeting of the Board of Directors of the Association and until his or her successor should be chosen and qualified in his or her stead, or until his or her earlier death, resignation, retirement, disqualification or removal from office:

Bradley Winters	-	President
Robert Durham	-	Vice President
Michael Harvey	-	Secretary/Treasurer

**4. REGISTERED OFFICE; REGISTERED AGENT**

RESOLVED, that the registered office of the Association be established and maintained at c/o Essex Association Management, LP, 1512 Carrollton Drive, Suite 112, Carrollton, Texas 75006, and that Ron Corcoran is hereby appointed as registered agent of the corporation in said office.

## 5. BOOKS AND RECORDS

RESOLVED, that the Secretary of the Association be and hereby is authorized and directed to procure all necessary books and records of the Association.

## 6. ORGANIZATIONAL EXPENSES

RESOLVED, that the President of the Association or other officer be and hereby is authorized and directed to pay all fees, expenses and costs incident to or necessary for the incorporation and organization of the Association and to reimburse any person who may have paid any of such fees, expenses and costs.

## 7. CORPORATE SEAL

RESOLVED, that a corporate seal is not adopted at this time and that no impression of a corporate seal is required on any Association document.

## 8. DEPOSITORY RESOLUTIONS

RESOLVED, that an account shall be established in the name of the Association with a financial institution to be determined by the Board (the "Bank"), under the rules and regulations as prescribed by said Bank wherein may be deposited any of the funds of this Association, whether represented by cash, checks, notes or other evidences of debt, and from which deposit withdrawals are hereby authorized in the name of the Association by any one of the following persons:

Bradley Winters, President  
Robert Durham, Vice President  
Michael Harvey, Secretary/Treasurer  
Ron Corcoran, Essex Management

BE IT FURTHER RESOLVED, that the Bank is hereby authorized to honor any and all withdrawal items against the Association's funds, although payable to the officer or agent signing or countersigning the same and whether presented for encashment or for credit to the personal account of such officer or agent or any other person, and said Bank need make no inquiry concerning such items and/or the disposition of the money, items, or credit given therefor.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of and effective the 19<sup>th</sup> day of July, 2017.

  
\_\_\_\_\_  
Bradley Winters, Director

  
\_\_\_\_\_  
Robert Durham, Director

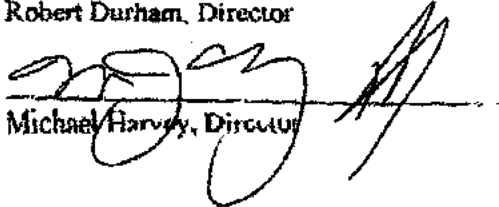
  
\_\_\_\_\_  
Michael Harvey, Director

Exhibit B  
To  
Bylaws

BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.

Certificate of Formation

**FILED**  
In the Office of the  
Secretary of State of Texas  
JUN 06 2017

**CERTIFICATE OF FORMATION  
OF**

**BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC** Corporations Section

The undersigned natural person, being of the age of eighteen (18) years or more, a citizen of the State of Texas, acting as organizer of a non-profit corporation under the Texas Business Organization Code, does hereby adopt the following Certificate of Formation for such non-profit corporation:

**ARTICLE I  
ENTITY NAME AND TYPE**

The filing entity being formed is a non-profit corporation. The name of the entity is: Bryan Heights Condominium Association, Inc. (hereinafter called the "Association").

**ARTICLE II  
DURATION**

The Association shall exist perpetually.

**ARTICLE III  
PURPOSE AND POWERS OF THE ASSOCIATION**

The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to, the Texas Business Organization Code, and does not contemplate pecuniary gain or profit to its members. The Association is formed for the purpose of exercising all of the powers and privileges, and performing all of the duties and obligations, of the Association as set forth in that certain "Condominium Declaration for Bryan Heights Condominiums" recorded or to be recorded in the Official Public Records of Dallas County, Texas, as the same may be amended from time to time (the "Declaration"). Without limiting the generality of the foregoing, the Association is organized for the following general purposes:

- (a) to fix, levy, collect, and enforce payment by any lawful means all charges or assessments arising pursuant to the terms of the Declaration;
- (b) to pay all expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against the Association's property; and
- (c) to have and to exercise any and all powers, rights, and privileges which a corporation organized under the Texas Business Organization Code may now, or later, have or exercise.

The above statement of purposes shall be construed as a statement of both purposes and powers. The purposes and powers stated in each of the clauses above shall not be limited or

restricted by reference to, or inference from, the terms and provisions of any other such clause, but shall be broadly construed as independent purposes and powers.

**ARTICLE V  
REGISTERED OFFICE; REGISTERED AGENT**

The street address of the initial registered office of the Association is c/o Essex Association Management, LP, 1512 Carrollton Drive, Suite 112, Carrollton, Texas 75006. The name of its initial registered agent at such address is Ron Corcoran.

**ARTICLE VI  
MEMBERSHIP**

Membership in the Association shall be dependent upon ownership of a qualifying property interest as defined and set forth in the Declaration. Any person or entity acquiring such a qualifying property interest shall automatically become a member of the Association, and such membership shall be appurtenant to, and shall run with, the property interest. The foregoing shall not be deemed or construed to include persons or entities holding an interest merely as security for performance of an obligation. Membership may not be severed from or in any way transferred, pledged, mortgaged, or alienated except together with the title to the qualifying property interest, and then only to the transferee of title to said property interest. Any attempt to make a prohibited severance, transfer, pledge, mortgage, or alienation shall be void.

**ARTICLE VII  
VOTING RIGHTS**

Voting rights of the members of the Association shall be determined as set forth in the Declaration. No owner, other than the Declarant under the Declaration, shall be entitled to vote at any meeting of the Association until such owner has presented to the Association evidence of ownership of a qualifying property interest in the Property. The vote of each owner may be cast by such owner or by proxy given to such owner's duly authorized representative.

**ARTICLE VIII  
ORGANIZER**

The name and street address of the organizer is:

<u>NAME</u>	<u>ADDRESS</u>
Hilary Tyson	2925 Richmond Ave., 14 <sup>th</sup> Floor Houston, Texas 77098

**ARTICLE IX  
BOARD OF DIRECTORS**

The affairs of the Association shall be managed by an initial Board of Directors consisting of three (3) individuals, who need not be members of the Association. The Board

shall fulfill all of the functions of, and possess all powers granted to, Boards of Directors of nonprofit corporations pursuant to the Texas Business Organization Code. The number of Directors of the Association may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

<u>NAME</u>	<u>ADDRESS</u>
Bradley Winters	2911 Turtle Creek Blvd., Suite 300 Dallas, Texas 75219
Robert Durham	2911 Turtle Creek Blvd., Suite 300 Dallas, Texas 75219
Michael Harvey	2911 Turtle Creek Blvd., Suite 300 Dallas, Texas 75219

All of the powers and prerogatives of the Association shall be exercised by the initial Board of Directors named above.

**ARTICLE X  
LIMITATION OF DIRECTOR LIABILITY**

A director of the Association shall not be personally liable to the Association for monetary damages for any act or omission in his capacity as a director, except to the extent otherwise expressly provided by a statute of the State of Texas. Any repeal or modification of this Article shall be prospective only, and shall not adversely affect any limitation of the personal liability of a director of the Association existing at the time of the repeal or modification.

**ARTICLE XI  
INDEMNIFICATION**

Each person who acts as a director or officer of the Association shall be indemnified by the Association against any costs, expenses and liabilities which may be imposed upon or reasonably incurred by him in connection with any civil or criminal action, suit or proceeding in which he may be named as a party defendant or in which he may be a witness by reason of his being or having been such director or officer or by reason of any action alleged to have been taken or omitted by him in either such capacity. Such indemnification shall be provided in the manner and under the terms, conditions and limitations set forth in the Bylaws of the Association.

**ARTICLE XII  
DISSOLUTION**

The Association may be dissolved with the written and signed assent of not less than eighty percent (80%) of the total number of votes of the Association. Upon dissolution of the



Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.

**ARTICLE XIII  
ACTION WITHOUT MEETING**

Any action required by law to be taken at any annual or special meeting of the members of the Association, or any action that may be taken at any annual or special meeting of the 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 the number of members having the total number of votes of the Association necessary to enact the action taken, as determined under the Declaration or this Certificate.

**ARTICLE XIV  
AMENDMENT**

Amendment of this Certificate of Formation shall be by proposal submitted to the membership of the Association. Any such proposed amendment shall be adopted only upon an affirmative vote by the holders of a minimum of sixty-seven percent (67%) of the total number of votes of the Association, as determined under the Declaration. In the case of any conflict between the Declaration and this Certificate, the Declaration shall control; and in the case of any conflict between this Certificate and the Bylaws of the Association, this Certificate shall control.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand, effective this 22<sup>nd</sup> day of May, 2017.

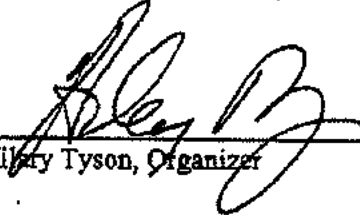
  
\_\_\_\_\_  
Hilary Tyson, Organizer

Exhibit C  
To  
Bylaws

BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.

C-1 Records Retention and Copying Policy

C-2 E-mail Registration Policy

Exhibit Attachment C-1  
To  
Bylaws

C-1 Records Retention and Copying Policy

**BRYAN HEIGHTS CONDOMINIUM OWNERS ASSOCIATION, INC.**

**Dedicatory Instrument**

**Records Production and Copying Policy**

**WHEREAS, the Board** of Directors (the "Board") of Bryan Heights Condominium Owners Association, Inc. (the "Association") wishes to adopt reasonable guidelines to establish Records Production and Copying Policy for the Association; and

**WHEREAS, the Board** wishes to adopt these reasonable guidelines in compliance with Section 209.005 of the Texas Property Code ("Section 209.005") regarding Owner access to Association documents and records ("Records"); and

**WHEREAS, the Board** intends to file these guidelines in conjunction with their Bylaws in the real property records of each county in which the subdivision is located, in compliance with Section 209.005 of the Texas Property Code; and

**NOW, THEREFORE, IT IS RESOLVED** that the following guidelines for Records Production and Copying are established by the Board:

1. Association Records shall be reasonably available to every owner. An owner may also provide access to Records to any other person (such as an attorney, CPA or agent) they designate in writing as their proxy for this purpose. To ensure a written proxy is actually from the owner, the owner must include a copy of his/her photo ID or have the proxy notarized.
2. An owner, or their proxy as described in section 1, must submit a written request for access to or copies of Records. The letter must:
  - a. be sent by certified mail to the Association's address as reflected in its most recent Management Certificate filed in the County public records; and
  - b. contain sufficient detail to identify the specific Records being requested; and
  - c. indicate whether the owner or proxy would like to inspect the Records before possibly obtaining copies or if the specified Records should be forwarded. If forwarded, the letter must indicate the format, delivery method and address:
    - i. format: electronic files, compact disk or paper copies
    - ii. delivery method: email, certified mail or pick-up
3. Within ten (10) business days of receipt of the request specified in section 2 above, the Association shall provide:
  - a. the requested Records, if copies were requested and any required advance payment had been made; or
  - b. a written notice that the Records are available and offer dates and times when the Records may be inspected by the owner or their proxy during normal business hours at the office of the Association; or
  - c. a written notice that the requested Records are available for delivery once a payment of the cost to produce the records is made and stating the cost thereof; or
  - d. a written notice that a request for delivery does not contain sufficient information to specify the Records desired, the format, the delivery method and the delivery address; or

- e. a written notice that the requested Records cannot be produced within ten (10) business days but will be available within fifteen (15) additional business days from the date of the notice and payment of the cost to produce the records is made and stating the cost thereof.
4. The following Association Records are not available for inspection by owners or their proxies:
    - a. the financial records associated with an individual owner; and
    - b. deed restriction violation details for an individual owner; and
    - c. personal information, including contact information other than an address for an individual owner; and
    - d. attorney files and records in the possession of the attorney; and
    - e. attorney-client privileged information in the possession of the Association.

The information in a, b and c above will be released if the Association receives express written approval from the owner whose records are the subject of the request for inspection.

5. Association Records may be maintained in paper format or in an electronic format. If a request is made to inspect Records and certain Records are maintained in electronic format, the owner or their proxy will be given access to equipment to view the electronic records. Association shall not be required to transfer such electronic records to paper format unless the owner or their proxy agrees to pay the cost of producing such copies.
6. If an owner or their proxy inspecting Records requests copies of certain Records during the inspection, Association shall provide them promptly, if possible, but no later than ten (10) business days after the inspection or payment of costs, whichever is later.
7. The owner is responsible for all costs associated with a request under this Policy, including but not limited to copies, postage, supplies, labor, overhead and third party fees (such as archive document retrieval fees from off-site storage locations) as listed below: (Please go to the Attorney General web-site for current charges) <https://texasattomeygeneral.gov/ogicharges-for-public-information>
8. Any costs associated with a Records request must be paid in advance of delivery by the owner or their proxy. An owner who makes a request for Records and subsequently declines to accept delivery will be liable for payment of all costs under this Policy.
9. On a case-by-case basis, in the absolute discretion of the Association, and with concurrence of the owner, the Association may agree to invoice the cost of the Records request to the owner's account. Owner agrees to pay the total amount invoiced within thirty (30) days after the date a statement is mailed to the Owner. Any unpaid balance will accrue interest as an assessment as allowed under the Declarations.
10. On a case-by-case basis where an owner request for Records is deemed to be

minimal, the Association or its managing agent reserves the right to waive notice under section 2 and/or fees under section 4.

11. All costs associated with fulfilling the request under this Policy will be paid by the Association's Managing Agent. All fees paid to the Association under this Policy will be reimbursed to the Association's Managing Agent or paid directly to the Association's Managing Agent.

This is to certify that the foregoing Records Production and Copying Policy was adopted by the Board of Directors the 19<sup>th</sup> day of July, 2017, in accordance with Section 209.005 of the Texas Property Code, and supersedes any policy regarding records production which may have previously been in effect.

BRYAN HEIGHTS CONDOMINIUM  
OWNERS ASSOCIATION, INC

Exhibit Attachment C-2  
To  
Bylaws

C-2 E-mail Registration Policy

**BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.**  
**EMAIL REGISTRATION POLICY**

Terms used but not defined in this policy will have the meaning subscribed to such terms in that certain Declaration of Covenants, Conditions and Restrictions for Bryan Heights Condominium Association, Inc. recorded or to be recorded in the Official Public Records of Dallas County, Texas, as the same may be amended from time to time.

**Purpose.** The purpose of this Email Registration Policy is to facilitate proper notice of annual and special meetings of members of the Association pursuant to Section 209.0051(e) of the Texas Property Code.

**Email Registration.** Should the owner wish to receive any and all email notifications of annual and special meetings of members of the Association, it is the owner's sole responsibility to register his/her email address with the Association and to continue to keep the registered email address updated and current with the Association. In order to register an email address, the owner must provide their name, address, phone number and email address through the method provided on the Association's website, if any, and/or to the official contact information provided by the Association for the community manager.

**Failure to Register.** An owner may not receive email notification or communication of annual or special meetings of members of the Association should the owner fail to register his/her email address with the Association and/or properly and timely maintain an accurate email address with the Association. Correspondence to the Association and/or Association manager from an email address or by any method other than the method described in Paragraph No. 2 above will not be considered sufficient to register such email address with the Association.

**Amendment.** The Association may, from time to time, modify, amend, or supplement this Policy or any other rules regarding email registration. 1



**EXHIBIT D**

**BRYAN HEIGHTS  
CONDOMINIUM ASSOCIATION, INC**

**RULES & REGULATIONS  
AND DESIGN GUIDELINES**

**EFFECTIVE**

**July 19, 2017**

**DEDICATORY INSTRUMENT OF  
BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.**

**RULES AND REGULATIONS OF THE  
BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC**

**SECTION 1. AUTHORITY**

1. Bryan Heights Condominium Association ("Association"), acting through its Board of Directors, has adopted the following Rules and Regulations ("Regulations") and Design Guidelines. These Regulations may be amended from time to time by Resolution of the Board of Directors without consent of joinder of the Members.
2. Wherever in these Regulations reference is made to "UNIT OWNERS" such term shall apply to the owner of any Unit, to his or her family, tenants whether or not in residence, servants, employees, agents, visitors and to any guests, invitees or licensees of such Unit Owner, his or her family or tenant of such Unit Owners. Wherever in these Regulations reference is made to the Association, such reference shall include the Association and the Managing Agent when the Managing Agent is acting on behalf of the Association.
3. The UNIT OWNERS listed in paragraph 2 above shall comply with all the Regulations hereinafter set forth governing the buildings, balconies, drives, recreational areas (if applicable), grounds, parking areas and any other appurtenances.
4. The Association reserves the right to alter, amend, modify, repeal or revoke these Regulations and any consent or approval given hereunder at any time by Resolution of the Association or amendment of the document.
5. Proposed amendments to Rules and Regulations shall be adopted by approval of a General Resolution which shall be read and acted upon in any regular or special meeting of the Board. To be adopted, a General Resolution shall have the majority approval of the Board.
6. General Resolutions adopted by the Board shall be retained for the record in the Book of Resolutions or in the records of the Association and shall be attached to the Minutes of the meeting at which they were adopted or approved.

**SECTION 2. ASSOCIATION GENERAL**

1. **Fees and Charges.** All charges and assessments imposed by the Association are due and payable on the first day of each month, unless otherwise specified. Payments are encouraged by Automatic Electronic Funds Transfer from bank accounts or can be sent by mail with check or money order made payable to Bryan Heights Condominiums at the address on the payment coupons provided. Cash shall not be accepted. Refer to the Collections Policy attached herein as **Exhibit Attachment B** for more information on the collection procedures which may apply regarding delinquencies. As required by Texas State Statute, an Alternative Payment Policy (Payment Plan Policy has been adopted by the Board and is attached herein as **Exhibit Attachment A**.

**DEDICATORY INSTRUMENT OF  
BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.**

2. **Complaints.** Complaints regarding actions of other Unit Owners shall be made in writing to the Management or the Board of Directors. No Unit Owner shall direct, supervise or in any manner attempt to assert control over or request a favor of any employee of the Managing Agent or the Association. Complaints should be submitted under the contact us tab of the Association's website at [www.essexhoa.com](http://www.essexhoa.com).
3. **Leasing.** Property Owners who lease their units are subject to the leasing terms as set forth in Article 3, Section 3.3(a) of the Covenants, Conditions, and Restrictions ("CCR's / Declaration") and as they may be amended from time to time.
4. **Fire Code.** All radio, television or other electrical equipment of any kind or nature installed or used in each Unit shall fully comply with all rules, regulations, requirements or recommendations of the Board or any city, county, or state regulation. The Unit Owner alone shall be liable for any damage or injury caused by any radio, television or other electrical equipment in such Unit which is the direct cause of any fire or other damage to the Owner's or surrounding Units. Fire alarms shall be kept operational in all units at all times.
5. **Littering.** Littering is a nuisance and unsightly. Unit Owners are requested to help keep Bryan Heights clean and attractive by using trash receptacles at all times. Any Unit Owner seen littering may be charged a fine of not less than \$50.00 per occurrence and is subject to the Notice and Fining Policy of the Association and as it may be amended from time to time and is incorporated herein. The Board, if deemed appropriate, may amend any policy herein included as part of this document or as an Exhibit Attachment. Each policy may be amended as a stand-alone document without the need to amend the entire Dedicatory Instrument.
6. **Action Request Form/Comment Report.** Requests and comments may be submitted on the Association's website or at [www.essexhoa.com.s](http://www.essexhoa.com.s).

**SECTION 3. RESTRICTIONS**

1. **Residential Uses Only.** Except as otherwise provided no part of the Condominium shall be used for any purpose except housing and the common purposes described in Article 3, Section 3.1 of the Declaration, and any amendment thereof which may occur from time to time.
2. **Common Elements.** There shall be no obstruction of the Common Elements. Nothing shall be stored on the Common Elements or Limited Common Elements without the prior consent of the Architectural Control Committee ("ACC") except as may be provided herein or in the Declaration.
3. **Insurance Requirements.** Nothing shall be done or kept in any of the Common Elements or Limited Common Elements that will increase the rate of insurance for the building or contents thereof applicable for residential use without the prior written consent of the ACC. No Unit Owner shall permit anything to be done or kept in his or her Unit or on the Common Elements or Limited Common Elements that will result in the cancellation of insurance on the building or contents thereof or that would be in violation of any public law, ordinance or regulation. No gasoline or other explosive or flammable material may be kept in any Unit or storage area. No waste shall be deposited on the Common Elements. Unit Owners are subject to the terms and requirements for insurance as outlined in Article VII of the Declaration.

**DEDICATORY INSTRUMENT OF  
BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.**

- 4. Garbage.** All garbage must be placed in either individual receptacles or in the case of commercial community bins, within the bins only. Any Unit Owner found discarding garbage or oversized items of any kind outside the individual garbage receptacle or community bins will be fined a minimum of \$100.00 per occurrence. Bulky items may be placed out for removal only on the day of a scheduled pickup. No garbage or trash shall be placed on the floor or elsewhere on any Common Element or Limited Common Element. No garbage cans, containers or bags of any kind shall be placed in public view with the exception of pickup days. If the Association is asked to retrieve and dispose of any garbage left out by a Unit Owner which was not placed in a proper container or does not adhere to the Rules and Regulations or the Declaration the Unit Owner will be billed back for the charges associated with the cleanup, said charges being added to the Unit Owner's account.

The Association will attempt to provide advance notice notwithstanding if the garbage or discarded items are emitting a foul smell or believe to contain dangerous or unsafe items of any kind, no such advance notice shall be given and the Association shall exercise steps to clean up the area utilizing "emergency self-help actions." Unit Owners are at all times subject to the Notice and Fining Policy of the Association and as it may be amended from time to time as well as the Declaration, all Rules and Regulations, and Resolutions.

- 5. Storage Areas.** All items must be placed inside the garage or unit. No storage of any item is allowed outside the garage or unit. It is absolutely prohibited to store gasoline, solvents, charcoal lighter or similar liquids anywhere within the buildings or grounds of the Bryan Heights Condominium community. Any items left on the Common Elements will be removed. Items will be held for a period of not more than five (5) business days at which time if not claimed the Association or its Managing Agent shall dispose of the items as they deem appropriate and shall have no further liability to the Owner for any cost, reimbursement, or replacement of such item. Removal or disposal costs may be billed back to the Unit Owners account in the Association's sole discretion, payment of which is due to the Association upon request which shall be issued by way of notice and/or statement of account.
- 6. Plumbing.** The toilets and other water and sewer apparatuses shall be used only for the purposes for which designed, and no lawn sweepings or trash of any kind, matches, rags, ashes or other improper articles shall be thrown therein. The cost of repairing any damage resulting from misuse of any such apparatus, if caused by a Unit Owner, shall be borne by such Unit Owner.
- 7. Cleanliness.** Each Unit Owner shall keep his Unit in a good state of preservation, repair and cleanliness at all times and shall not sweep or throw or permit to be swept or thrown there from, or from the doors, windows or balconies thereof, any dirt or other substances. This includes shaking rugs, dust cloths, mops, etc., over balcony railings.
- 8. Structural Integrity.** Nothing shall be done in any Unit or on the Common Elements which may impair the structural integrity of the building or which may structurally change the building nor shall anything be altered or constructed on or removed from the Common Elements or Limited Common Elements, except upon the prior written consent of the Architectural Review Board.

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**9. Activities.**

- a. No noxious or offensive activity shall be carried on in any Unit, Common Elements, or Limited Common Elements, nor shall anything be done therein that may be or become an annoyance or nuisance to the other occupants. No Unit Owner shall make or permit any disturbing noises in the building or in any other part of the condominium complex or do or permit anything to be done that will interfere with the rights, comforts or convenience of other occupants.
- b. Except for emergency repairs, no major noise-producing work, especially construction/repair work, shall be carried out inside any Unit before 8:00 a.m. or after 6:00 p.m. from Monday through Friday and before 10:00 a.m. and after 6:00 p.m. on Saturdays. No Sunday work shall be performed. Initial construction by Developer or Builders is excluded. Except during construction / repair work, all Unit occupants shall keep the volume of any sound producing devices in their Units sufficiently reduced at all times so as not to disturb other Unit occupants. Portable sound producing devices may be used only with earphones in any part of the condominium complex other than in individual units. The volume level of sound systems in motor vehicles shall not be audible to non-occupants while on the Bryan Heights premises.
- c. Smoking is prohibited:
  - 1) The Board may designate smoking and nonsmoking areas in Common Elements and Limited Common Elements which may be identified by signs posted. This does not prohibit smoking on balconies, terraces, or patios which are limited common elements that specifically serve an Owners Unit.
  - 2) Within 25 feet of every fire riser room or other electrical room or panel existing in or on any building.

**10. Professional Uses.**

- a. With the exceptions noted below, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designed for profit, altruism, exploitation or otherwise, shall be conducted, maintained or permitted on any part of the Condominium without prior written consent of the Board of Directors and only in compliance with all applicable laws and regulations.
- b. However, prior written consent by the Board of Directors shall not be required for work at home by telecommuters, writers, editors, artists and others whose work-related communication with the outside is solely by mail, telephone, personal computer, or other electronic means.
- c. No unit shall be used or rented for transient hotel or motel purposes or in any event for bed and breakfast or day to day activities. All Unit Owners are subject to the leasing rules and regulations as outlined in Article III, Section 3.3(a) of the Declaration and as any such rules may be further adopted by Resolution of the Board or amended.
- d. The only advertising of any kind permitted at Bryan Heights shall be controlled by the Association.

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- e. Advertising instructions for real estate and estate sale open houses must receive advance approval in writing by the Declarant or the Board of Directors.
- 11. Window Treatments.** Curtains, draperies or blinds may be installed on windows and balcony enclosures so long as they receive the prior written approval of the ACC. Certain guidelines with regard to style and color may apply. The Association may require uniformity in all windows which may be viewed from a street or another unit.
- a. **Decorations, Signs, and Items on Doors.** Most if not all the exterior of a unit, including doors, windows and masonry of a unit and balconies, patios, or terraces, may be considered Common Elements or Limited Common Elements and as such may be subject to certain rules and regulations as well as restrictions on use or modification.
- b. No Unit Owner shall cause or permit anything to be hung, displayed or exposed on the exterior of a Unit (except for door decorations per e. below and approved door signs per f. below), Common Elements or Limited Common Elements, appurtenant thereto, whether through or upon windows, doors or masonry of such unit without the express written consent of the ACC.
- c. Unit Owners may hang plants, lights, pictures and similar items on an enclosed balcony but not on patios, terraces and unenclosed balconies, without the express written consent of the ACC. What is appealing to some may not be appealing to others therefore; careful review and consideration will be made of each request on a case by case basis.
- d. No item shall extend beyond the vertical plane defined by the inner edge of the balcony rail or by the inner edge of the wall, fence or railing that define the outer edge of balcony, terrace or patio.
- e. **Door decorations are permitted so long as they meet certain criteria. When units are in close quarters allowing the display of certain religious or holiday items may be viewed by other Unit Owners or passersby the chances of someone being offended increase. This may lead to situations that have the potential to cause volatile or disturb the peaceful living environment of the Unit Owners and Residents therefore, the Declarant during the Declarant Control Period and thereafter, the Board of Directors shall have sole discretion as to whether or not any door or door frame decoration or display will be permitted. ALL DECORATIONS OR DISPLAYS REGARDLESS OF THE CONTENT MUST RECEIVE THE PRIOR WRITTEN PERMISSION OF THE ACC. ANY ITEMS THAT DOES NOT HAVE WRITTEN PERMISSION TO BE DISPLAYED MAY BE REMOVED BY THE ACC OR BOARD WITHOUT ANY LIABILITY TO THE ACC, BOARD, OR THE ASSOCIATION.**

Upon written permission, an owner may be able to display or affix on the entry to the owner's or resident's dwelling one religious item, the display of which is motivated by the owner's or resident's sincere religious belief. No such display may defame, criticize, ridicule, deride, mock, tease, or attempt to provoke another Unit Owner. Any such actions will result in immediate disciplinary actions by the ACC and the immediate removal of the item(s). Any future requests for display of such items will NOT be considered.

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(a) If displaying or affixing of a religious item on the entry to the owner's or resident's dwelling violates any of the following or above covenants, The Association may remove the item(s) displayed:

- (1) threatens the public health or safety;
- (2) violates a law;
- (3) contains language, graphics, or any display that is patently offensive to another Unit Owner or a passerby;
- (4) is in a location other than the entry door or door frame or extends past the outer edge of the door frame of the owner's or resident's dwelling; or
- (5) individually or in combination with each other religious item displayed or affixed on the entry door or door frame has a total size of greater than 7 square inches

(b) No owner or resident is authorized to use a material or color for an entry door or door frame of the owner's or resident's dwelling or make an alteration to the entry door or door frame that is not authorized by the Association, the Declaration or otherwise expressly approved by the ACC.

f. **Door Signs.** Only door signs which may be required by a local, county, or state law or regulation are allowed such as but, not limited to, Medical, Legal, Security, and Safety notices. Required medical notices (such as oxygen in use or contagion), legal notices, security notices, and notices to the Fire Department about pets or individuals needing special assistance are permitted if attached in 4 x 6 inch or smaller magnetic sleeves or other attachments that are not permanent and do not mar the door finish. Use of all such signs must be submitted along with supporting documentation to the ACC. Unit Owner must seek prior written approval before affixing any such sign. Signs affixed by any security, law, fire enforcement individual, the ACC, Board, or the Association are excluded from this rule.

**12. Clothes line, clothes rack or any other device** shall not be used to hang any items on any balcony or window nor shall such devices be used anywhere on the Common Elements or Limited Common Elements. Balconies shall not be used for drying clothes or as storage areas. No balcony shall be enclosed or covered by a Unit Owner without the approval of the ACC. Floor mats, rugs, or other items shall not be placed outside the unit in the doorway without the express written consent of the ACC.

**13. Unlawful Use.** No Unit shall be used for any unlawful purpose and no Unit Owner shall do or permit any unlawful act in or upon his Unit.

**14. Cooking on Balconies.** The use of any type of cooking appliance on the balconies, including charcoal burners, electric/lava rock grills or gas grills of any kind is strictly prohibited. Some cooking appliances or devices may be allowed on rooftop patios or open patios where the local city and fire department regulations do not prohibit the use of such cooking appliances.

**15. Landscaping.** The planting of plants, flowers, trees, shrubbery and crops of any type is prohibited anywhere on the Common Elements or Limited Common Elements. The Association

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shall provide the maintenance and upkeep of the front lawns / yards of each unit and no alterations of any kind without the prior written consent of the ACC are allowed. No fences may be erected around a unit, or any Common Elements or Limited Common Elements except by the Association. Fences shall be constructed ONLY at the discretion of the Declarant during the Declarant Control Period and thereafter, only with the prior written consent of the ACC.

**16. Solicitation.**

- a. Solicitors are not permitted in the buildings. If any Unit Owner is contacted by a solicitor on the Property, Management must be notified immediately. Door to door solicitation of any type is prohibited. Some holiday activities may be allowed such as but, not limited to, halloween candy and/or "Trick or Treat" solicitation. If an Activities Committee is established the Committee shall set the standards and rules for such activities and if no such Committee exists such activities shall be decided upon at the sole discretion of the Board of Directors.
- b. Placing items under doors or at doors is permitted for the following:
  - 1) Official documents from the Bryan Heights Condominium Association and its committees or Managing Agent;
  - 2) Delivery of newspapers requested/subscribed to by residents;
  - 3) Package delivery messages from United Parcel, Federal Express, etc.;
- c. Door to door distribution of privately prepared flyers is permitted only if the person or Unit Owner distributing the flyers has received prior written permission of the Board of Directors or the ACC.
- d. No door to door distribution or document delivery other than those allowed above is permitted. Except in cases where physical obstruction makes this impossible, documents distributed in accordance with the above rules must be pushed completely under apartment doors if possible or rolled up or placed in such a way they will not blow away or be visible to passersby.

**17. Painting, Wallpapering, Decorating**

- a. Painting, wallpapering, and decorating (which does not involve any structural change) within a Unit's boundaries as may be defined in the Declaration, do not require ACC approval. Such painting, wallpapering and decorating are not covered by the Association's insurance coverage and should therefore be insured by the Unit Owner. **Window Coverings may require the prior written approval of the ACC. Check with your Association's Managing Agent before purchasing window coverings and prior to installation.**
- b. Painting, wallpapering and decorating of the Common Elements or Limited Common Elements by a Unit Owner is not permitted, and any applications or other apparatuses of any kind must receive the prior written approval of the ACC. Violations of these rules will not be tolerated.



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**18. Unit Entry Doors, Doorbells, Knockers, Handles, and Locks**

- a. With the exception of locks, changes or additions to the Unit entry doors as originally installed are not permitted without the express written consent of the ACC.
- b. Occupants must apply to the ACC to add or change anything on a door that will change the look or physical workings of and to the door. Locks generally will be approved so long as they are in keeping with the scale of the door and match the color of the other hardware on the door.
- c. Repainting the interior Unit side of entry doors is permitted without ACC approval. Repainting of the exterior side of any door or window by owners or occupants is prohibited.

**19. Terrace, Patio and Balcony Areas**

- a. The following items and activities are prohibited on any patio, terrace or balcony areas without the express written consent of the ACC. Unit Owners must keep in mind that condominium living places you in close quarters with other Unit Owners and therefore may be offensive or considered a nuisance to your neighbors and nearby Unit Owners:

Bird Feeders or Statuaries;

Clothing for Airing or Drying;

Items or furnishings which may be pushed or blown off the balcony;

Tires;

Screens, Shutters, Enclosures or Shade Umbrellas;

Charcoal cookers, braziers, hibachis, or grills, or any gasoline or other flammable liquid or liquefied petroleum gas fired or electric stove or grill or similar device;

Major Appliances or other mechanical devices or equipment;

Painting of the terrace, patio, balcony, railing or any other part thereof;

Storage Containers;

Any items on top of the patio walls or railings.

- b. The following items may be placed on enclosed balcony areas if such enclosures exist without approval from the ACC:

- 1) Indoor/outdoor carpeting or floor covering of a non-permanent type, provided that nothing may extend beyond the edge of the balcony;
- 2) Floor planters or flower boxes not exceeding twenty-five pounds each and an aggregate of not more than one hundred pounds with a height not to exceed the balcony railing or brick patio wall. Planters not exceeding five pounds may be fastened to the walls provided that the top of the plant container does not extend above the railing. Pole planters are permitted provided that the pots are not more than thirty-six (36) inches from the interior balcony door.
- 3) Small appliances such as radios provided the noise levels are controlled to prevent disturbing the other residents.

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- 4) United States flags may be displayed in accordance with US code but in no instance may extend beyond the edge of the balcony or terrace. Additional information (US CODE) outlining expected respect for the flag may be obtained from the Managing Agent.
  - 5) A reasonable number of fixtures and decorations may be fastened to the walls above the railing level only upon prior written consent of the ACC. Nothing may be attached to either the inside or the outside of the railing.
- c. The following items may be considered for placement on patio, terrace or balcony areas only upon prior written approval of the ACC:
- 1) Non-Permanent types of floor covering; provided that the plans for use of the floor covering is submitted and approved by the ACC prior to installation; however, if covering could result in damage or increased wear to balcony, approval will be denied;
  - 2) Hangers, fans or any other items installed in the slab above.
  - 3) Rotary fan installation requires advance approval by an application providing the following information:
    - a) name of unit owner;
    - b) Unit number;
    - c) type of fan;
    - d) approved by (underwriters laboratory, or other);
    - e) installation weight; and
    - f) proposed location.

**20. Exterior Antennas.** Exterior antennas are prohibited except for such as may be installed by or on behalf of the Association. **Satellite dishes are permitted only after receiving prior written permission of the ACC. Placement of satellite dishes may be limited or restricted.**

#### **SECTION 4. PET RULES**

##### **1. RESTRICTIONS**

- a. The maintenance, keeping, boarding and/or raising of animals, livestock, poultry or reptiles of any kind, regardless of number, shall be and is prohibited within any unit or upon the Common Elements, except that the keeping of small, orderly domestic pets (e.g. dogs, cats) which do not to exceed two per unit without the approval of the Board of Directors, and caged birds, is permitted, so long as noise levels are kept at a minimum. Other rules and regulations may apply in the Declaration or Rules and Regulations of the Association. Strict compliance with these rules will be carried out by notice of violation and fines for non-compliance.
- b. Pets must be leashed and physically restrained at all times that they are outside of the unit.
- c. Keeping or maintaining of pets for commercial purposes or for breeding is prohibited.

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- d. No pit bulls or other animals which are known to be aggressive shall be kept in any unit or upon the Common Elements of the Condominium or brought on to the property at any time. The immediate removal of any animal that attacks or attempts to attack another Unit Owner or resident of Bryan Heights will be required. Any refusal on the Owner's part to remove the animal upon written consent of the Board of Directors will be met with any and all applicable enforcement rights or provisions available including but, not limited to, notifying authorities and animal control. Fines not to exceed \$1,000.00 shall be levied against any Unit Owner who keeps an animal suspected or known to be dangerous or violent. A second fine of \$1,000.00 will be levied upon any Unit Owner or Resident who is requested to remove a dangerous or violent animal and fails or refuses to do so. Fines will be levied to the Unit Owner's account and shall be due and payable upon receipt of notice from the Association or its Managing Agent. Animals that attack or harm another Resident or Unit Owner will be reported to the local authorities and the immediate removal of the animal will be requested.
- e. All residents of the Condominium who keep dogs of any kind are required to provide for the Association a fully executed Certificate of Vaccination and Identification of Breed. Such Certificate of Vaccination and Identification of Breed, duly executed by a veterinarian, shall be used to determine whether a dog is or is not of a dangerous or violent breed. Unit Owners may submit a photo of the animal in lieu of certificate of identification of breed from the veterinarian.

**2. REGISTRATION.**

All pets shall be registered, licensed and inoculated as required by law. Pet Registration Forms may be available from the Managing Agent or on the Agent's website at [www.essexhoa.com](http://www.essexhoa.com). All pets must be vaccinated against rabies by age four months and that all dogs four months or older must be licensed and that all dogs and cats wear a collar bearing the name, address, and contact information of the Unit Owner or Resident.

**3. NUISANCE.** A pet may be owned and maintained in a Unit so long as it is in compliance with the Rules and Regulations and is not a nuisance and does not unreasonably disturb other residents. Pet actions and/or conditions which may constitute a nuisance include, but are not limited, to the following:

- a. Abnormal or unreasonable crying, barking, scratching, making or causing other noises of sufficient volume to reasonably disturb other residents, unless temporarily provoked by external causes, such as activation of the fire alarm system, ambulance, or fire truck.
- b. Damaging, soiling, urinating or defecating upon the Common Elements (other than in pet exercise areas if such are made available) or otherwise being hygienically offensive.
- c. Molesting, attacking or interfering with the freedom of movement of persons on the Common Elements, or in any other manner, creating a dangerous situation.
- d. Attacking Residents, Unit Owners, or other pets.

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**4. OWNER RESPONSIBILITY**

- a. Pet owners assume full responsibility for any property damage, injury, or disturbance their pet may cause.
- b. Any resident who keeps or maintains any pet upon any portion of the property shall be deemed to have indemnified and agreed to hold the Association and each Unit Owner free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium.
- c. Residents agree to comply with the Rules and Regulations and Declaration regarding animals causing unsanitary conditions. Any pet owner or pet custodian of any dog or cat shall be responsible for the removal of excreta deposited by such dog or cat anywhere on the grounds or in the facility.
- d. The above area restrictions shall not apply to Service Animals. These animals may accompany their owner to any areas of the Condominium where the animal's owner is permitted.

**5. ENFORCEMENT**

- a. Management has the primary responsibility for maintaining compliance of the pet rules above. Violations and violators should be reported in writing to the Agent's office by phone or on the website at [www.essexhoa.com](http://www.essexhoa.com). When a complaint is filed, management will notify the pet owner of the complaint.

Action by the ACC or Managing Agent may include any of the enforcement measures authorized under the Declaration, Rules and Regulations, or the Declaration. Where a pet owner continues to violate the pet rules or is unable to prevent a pet from causing a nuisance or unreasonable disturbance or noise, the pet owner(s) may be directed to permanently remove the pet from the property upon five (5) days written notice from the Managing Agent. Due process procedures of the Association apply. Animals that are considered dangerous will be reported to the local authorities and the immediate removal of the animal requested.

**SECTION 5. UNIT ACCESS**

1. **GENERAL.** All personal property placed in any portion of the building or any place appurtenant thereto outside the Unit Owner's unit, shall be at the sole risk of the UNIT OWNER, and the Association shall in no event be liable for the loss, destruction, theft or damage of such property.

**2. UNIT ACCESS**

**a. Keys and Key Control.**

**No Master Key. The Association does not hold or possess a master key system to be used for Units in the Condominium or for any cluster style mailboxes or mail kiosk.**

- 1) **Emergency Access.** The Unit Owner shall provide access to their unit when requested or as necessitated by an emergency such as the fact or threat of fire, flood, or any other condition which may adversely affect the Common Elements

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or other Units. In case of an emergency wherein property, life or limb is in jeopardy, emergency personnel may enter any Unit as required by the situation. The Association shall make a reasonable attempt to contact the Unit Owner prior to entering the Unit, consistent with the circumstances. For this reason Unit Owners shall be required to keep an up-to-date e-mail and telephone number on file with the Managing Agent at all times.

- 2) **Common Area Doors.** The Association reserves the right to change periodically locks to any Common Area doors should the same exist or be installed at any time in the future by the Association. The Association will issue or reissue keys therefore as may be needed.
- 3) **Unit Owner Liability.** In the event a Unit Owner fails to provide the Association with access as described above, and emergency access to the Unit as described above is necessary in the absence of the occupant, the Unit Owner shall bear all costs related to entry to the Unit and damage caused by the perceived emergency to that Unit, any other Unit or the Common Elements or Limited Common Elements and sustain whatever additional liabilities may be related to the occurrence.
- 4) **Preventive Maintenance.** Agents of the Association and any contractor or workman authorized by the Board of Directors may enter any room or Unit in the building at any reasonable hour of the day after reasonable notification of the Unit Owner for the purpose of exercising and discharging their respective powers and responsibilities. A schedule may be promulgated showing dates and contractor preventive maintenance to be performed will be announced when and if unit access is required.

## **SECTION 7. VEHICLES AND PARKING**

### **1. GENERAL**

- a. Pursuant to Declaration, Unit Owner may be subject to Parking Space Assessments or Special Assessments as described in Article VIII, Section 8.2(a), (b) of the Declaration. A Parking Agreement as described in Article I may be required especially for parking spaces that are part of the General Common Elements. Unit Owners should utilize their garages and driveways for parking at all times. Parking on the street, if allowed, should be for temporary purposes and shall not be for more than twelve hour periods at any time. If on street parking is prohibited by the City or local authorities, any violation of the rule will be reported to the local authorities. Unit Owners who lease their units may forfeit all outside Common Element parking privileges. This does not apply to owners of multiple units in which the owner resides in one of the owned units.
- b. All vehicles must have current license and safety stickers and be in operating condition. Absolutely NO work on vehicles of any kind may be done within the community except to change the occasional tire in the case of a flat tire or other minor repairs where the vehicle would otherwise be unable to move in order to transport vehicle to a shop for maintenance or repairs such as a broken windshield which needs to be replaced before vehicle can be driven. All permissible repairs must take place in the Unit Owners garage

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or on their driveway only unless the vehicle was parked in a guest parking space or on the street when it became inoperable.

- c. All Unit Owners shall observe and abide by all parking and traffic regulations as may be posted in or around the Association or by municipal authorities as well as those contained in any Rules and Regulations of the Association. Vehicles parked in violation of any such regulations may be towed away at the Unit Owner's sole risk and expense.
- d. Unnecessary sounding of vehicle horns and playing at excessive volume of radios, tape players, or other sound producing devices is prohibited.
- e. Vehicle rules apply to all vehicles, whether those of the resident, resident's family members, invitees, or any guest. The owner and/or resident is responsible for violations by their contractors, family members, invitees, and guests. This includes any vehicle owned or used by residents' friends or family members and parked on the property for any length of time.

**2. PARKING**

- a. **Automobiles, Mopeds, and Motorcycles.** Unless otherwise authorized by the Association, the parking areas may not be used for any purpose other than parking automobiles, mopeds, or motorcycles. No buses, oversized trucks, semi-trucks, tow trucks, trailers, boats, recreational or commercial vehicles shall be parked in the parking areas or in driveways except as approved by Management. **Small commercial vehicles with advertisement that can be parked inside the garage will be allowed.**
- b. **Compact Car Spaces.** Some parking spaces may have been designed for smaller cars. Drivers of oversized vehicles should use discretion in choosing parking spaces for their vehicles and only park in designated areas. No vehicle may extend beyond the white lines defining the length and width of the parking space.
- c. **Avoid Obstructions.**
  - 1) No vehicle shall be parked in such a manner or in any area that causes it to obstruct the safe, free-flow of moving vehicular traffic or obstruct the movement of other vehicles into and out of marked parking spaces.
  - 2) No vehicle shall be parked so as to impede the movement of emergency vehicles on any roadway or to obstruct the entrance or exit, pedestrian or garage door of any unit.
  - 3) No vehicle shall be parked so as to impede access to any building or fire main water pipe system.
- d. **Restrictions.**
  - 1) No vehicle shall be parked in violation of any posted sign.
  - 2) No vehicle shall be parked on any grassy or landscaped area, or on any area designated for pedestrian use.
  - 3) Trailers, house trailers, campers, recreational vehicles or boats may not be parked or stored in any Limited Common Element or outside Common Element area, unless prior permission has been obtained from the Association Office. Permission to park vehicles of this type on the property, if given, shall be for a very limited time for the purpose of loading and unloading only and shall be handled on a case-by-case basis. No vehicles of this category shall be permitted on the property permanently.

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- 4) No junk or derelict vehicle shall be parked anywhere within the community at any time. Any vehicle that cannot be operated in its existing condition due to malfunctioning or missing parts, damage or destruction, or that has a deteriorated body condition, shall be deemed to be junk or derelict, regardless of the display of valid state license/registration or inspection.
- 5) Any vehicle, the owner of which cannot be identified and/or located from Association Office records or official logs, shall be deemed an abandoned vehicle.
- 6) Vehicles that present a hazard or nuisance by operating noise or exhaust emission are prohibited.
- 7) Repairing and/or maintaining vehicles, including the painting thereof, is not permitted at any time the only exceptions being those found in 1(b) above. Fluid changes and other operations which might soil the driveway, streets, or any Limited Common Element or outside Common Element are not considered minor repairs and are prohibited. The intentional drainage of any motor vehicle fluid is prohibited.
- 8) Washing of vehicles by hose is not permitted in Limited Common Element or outside Common Element. This does not preclude cleaning of windows and vehicle lights.
- 9) Vehicles may not be parked on the property with "For Sale" signs displayed except in the private driveways of the Unit Owner.
- 10) No signs, initials, numbers, storage containers, or any other additions or alterations to either Limited Common Element or outside Common Element parking spaces may be painted, displayed, or erected without the prior written consent of the ACC. This restriction does not prohibit a uniform numbering or lettering system that may be applied to these parking spaces by the Association.
- 11) Limited Common Element parking may have specific and designated uses such as guest parking only. All Unit Owners and Residents shall abide by all parking rules of the Association. Failure to comply will result in a notice of non-compliance and may result in a fine against the owner or operator of the vehicle.
- 12) Handicapped Spaces. Any spaces designated as handicapped parking spaces are reserved for the use of vehicles displaying a current handicap sticker. Any Owner or Resident who violates this rule will be turned into local law enforcement and fined by the Association.

**6. VEHICLE OPERATION**

- a. Vehicles operated on the property of Bryan Heights shall be operated in a safe and prudent manner so as not to endanger the life, limb, or property of another person.
- b. Vehicle operators shall yield the right-of-way at all times to pedestrians and exercise extreme caution when driving in areas where there may be no designated walkways for pedestrians.
- c. All stop signs and traffic directional signs shall be obeyed by all vehicle operators.
- d. The screeching of tires and revving of vehicle engines is prohibited.

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- e. All vehicles operated within the community shall be operated by a person holding a valid driver's license or permit.

**7. ENFORCEMENT**

- a. **Authority.** In accordance with the Association's Declaration, these Rules and Regulations and any amendment thereof the Board of Directors authorizes Management to enforce all provisions and restrictions of this Vehicle Policy, and promulgates the Enforcement Procedures herein to accomplish such enforcement in a manner that is consistent and equitable to all residents, guests, and visitors.
- b. **Indemnity.** If any vehicle owned or operated by a Unit Owner, any member of his or her family, or by such Unit Owner's tenants, guests, invitees or licensees shall be parked, operated or abandoned in such a manner as to violate the Condominium Declaration, Rules and Regulations or Resolutions of the Board of Directors, the Association shall be held harmless by such Unit Owner for any and all damages or losses that may ensue, and any and all rights in connection therewith that the owner or driver may have under the provisions of state or local laws and ordinances are hereby expressly waived. The Unit Owner, any member of his or her family, or Unit Owner's tenants, guests, invitees or licensees shall indemnify the Unit Owners Association against any liability which may be imposed on the Unit Owners as a result of such parking, operation or abandonment and any consequences thereof.

**d. Enforcement Procedures**

- 1) Management shall direct a compliance officer to issue a violation to any vehicle parked in violation of any Provision of the Condominium Declaration, Rules and Regulations or Resolutions. The notice shall contain (1) time and date of the violation, (2) nature of the violation and location, (3) descriptive vehicle data as to make, model, color, state license number and expiration, which may be fulfilled by using a photograph of the vehicle and / or license plate number.
- 2) The Association will track and monitor all parking violations. After the third violation involving the same vehicle, unit owner, or resident the Association may instruct the Managing Agent to send an official letter to the vehicle owner, addressing the violations documented, request immediate remedial action, and inform the vehicle owner that any further repeat violations will result in the next step of Enforcement Procedures described herein. In the case of repeat violations by Owners, tenants, guests, visitors or contractors, the Unit Owner will be sent a copy of the letter sent to the violator. The Covenants Committee will be provided a copy of this correspondence.
- 3) When notification has been made in accordance with paragraphs 1 and 2, and the violation has not been corrected within ten (10) days, and the vehicle owner has not contacted the Association Office to discuss the situation and establish terms and timeframe for resolution, the vehicle in violation may be removed from the property by a tow truck, at the expense and risk of the vehicle owner. If the vehicle is removed from the property, Management shall notify the vehicle owner as soon as possible thereafter. Notification will be by first-class mail. If the vehicle does not warrant removal but, continues to violate a rule or regulation the Managing Agent may be instructed to issue fines for non-compliance upon



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the Unit Owner. Fines may be issued as a one-time fine or levied in increments notwithstanding, no fine for non-compliance of a vehicle rule shall be less than \$10.00 per day for every day the vehicle remains in non-compliance of the rules.

- 4) Paragraphs 1 through 3 are not applicable in the case of a vehicle, the owner of which cannot be identified and which is parked so as to:
- a) impede the movement of emergency vehicles on any roadway or to obstruct the entrance or exit of pedestrian or garage doors, mail kiosks, or of any building.
  - b) obstruct the free movement of another vehicle that is properly parked.
  - c) park without regard to posted handicapped parking signs or in any way to impede access to an area reserved for handicap parking.
  - d) when a vehicle is parked in an area designated to be clear to facilitate maintenance work in which notices were issued and signs were posted.
  - e) when a vehicle is parked on any grassy or landscaped area.

In such cases the vehicle so parked will be subject to immediate removal by towing at the expense and risk of the vehicle owner. Management will officially document this action. In the event the vehicle owner inquires about the status of the vehicle, he or she will be informed of the occasion for the vehicle's removal and be provided recovery information.

- 5) Prior to removal of a vehicle from the property by towing, in which the vehicle owner cannot be identified Management shall notify the local City or County Police Department of the situation and planned action. If the City or County Police Department retains the decision to delay removal from the property to permit a records check to be conducted to determine if the vehicle has been reported stolen or the vehicle owner is being sought the Association shall not remove the vehicle and shall suspend any further non-compliance actions until the authorities give the Association the clearance to move forward.

**SECTION 8. ARCHITECTURAL DESIGN REVIEW GUIDELINE**

**1. GENERAL**

- a. No exterior alteration or addition may be made without prior application to and approval of the Board of Directors or ACC, as appropriate, except as noted in this Resolution or as may be outlined in Article V of the Declaration. The Architectural Reviewer shall function as the representative of the Association. The Architectural Reviewer shall exist and act for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class residential condominium development
- b. Interior Unit changes which do not affect party walls or any major structural component of the unit may be done by Unit Owner without the need to obtain written permission of the ACC notwithstanding, no window coverings, blinds, or items which may be viewed from the outside of the unit may be changed or altered without the express written consent of the ACC.

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- c. Certain changes and additions are prohibited. Absolutely NO changes or alterations to the exterior of a building are allowed by a Unit Owner. No building or other improvements, including, without limitation, any structure, paving, fencing, or improvements of any nature, shall be erected, placed, or altered on any portion of the unit until the Unit Owner has received a written approval. NO changes or alterations are allowed to landscaping.

**a. Electrical Wiring.**

- 1) If a change to the electrical wiring in a Unit does not affect another Unit or the Common Elements, ACC approval is not required; provided, however, that necessary permits have been obtained by applicant and further that a copy has been provided to the Managing Agent.
- 2) If any proposed change to the electrical wiring in a Unit would affect another Unit or the Common Elements, or increase the load on the electrical system of the building, the Unit Owner must seek and obtain prior approval of the ACC.
- 3) In addition to the information required on the application, the application shall contain the following:
  - a) A diagram of the existing wiring system;
  - b) A diagram of the proposed wiring system;
  - c) The existing electrical load of the Unit;
  - d) The electrical load under proposed system;
  - e) A statement as to whether other Unit(s) or Common Elements would be affected by the change and description of how other Unit(s) or Common Elements would be affected;
  - f) Identification of the licensed electrician who will perform the work;
  - g) A time schedule for beginning and completing the proposed change;
  - h) A copy of all applicable permits.
- 4) The Association shall have no responsibility for any damage to person(s) or property resulting from or related to any change in wiring from that originally installed, whether or not such change has the approval of the ACC, since the ACC cannot control quality of workmanship relative to the change, or errors or omissions of pertinent information on the application.

**b. Plumbing**

- 1) If a change to the plumbing system of a Unit does not affect another Unit or the Common Elements or increase the water consumption of that Unit, approval of the ACC is not required; provided, however, that necessary permits must be obtained by applicant with a copy provided to the Management.
- 2) If the proposed change to the plumbing system of a Unit would affect another Unit or the Common Elements, or increase the water consumption of the Unit, the Unit Owner must seek and obtain prior approval of the ACC.

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- 3) In addition to the information required on the application, the application shall also contain the following:
  - a) A diagram of the existing plumbing system;
  - b) A diagram of the proposed plumbing system;
  - c) The water consumption under the existing system;
  - d) The water consumption under the proposed system;
  - e) A statement as to whether other Units or the Common Elements would be affected by the change and a description of how other Units would be affected;
  - f) Identification of the licensed plumber who will perform the work;
  - g) A time schedule for beginning and completing the proposed change;
  - h) A copy of all applicable permits.
- 4) The Association shall have no responsibility for any damage to person(s) or property resulting from or related to any change in plumbing from that originally installed, whether or not such change has the approval of the ACC, since the ACC cannot control quality of workmanship relative to the change, or errors or omission of pertinent information on the application.

## **2. REQUEST FOR REVIEW PROCEDURES**

### **a. Requirements for All Applications for exterior modification of any kind**

- 1) Each Unit Owner shall submit his proposal for any addition, alteration or improvement to his Unit or Lot in writing, using a Architectural Modification Request Form available online at [www.essexhoa.com](http://www.essexhoa.com). This procedure is mandatory regardless of the proposed change. Failure to submit and obtain approval of any modification will result in a notice of non-compliance and carry fines which may be levied in lump sum or increments. The proposal shall contain a description of the project, including, as applicable, the height, width, length, size, shape, color, materials and location of the proposed improvement. Sketches of the proposed treatment and/or photographs of similar completed projects will aid in consideration. The proposal should include a letter describing the proposed addition or alterations.
- 2) Each alteration or addition must be specifically approved even though the intended alteration or improvement conforms to the condominium Declaration, Rules and Regulations or this Resolution, and even when a similar or substantially identical alteration or addition has previously been approved.
- 3) The applicant shall be informed in writing of the decision. Absolutely NO verbal approvals shall be given or shall be valid.
- 4) The reason(s) for approving or not approving the proposal shall be stated as part of the written decision.

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- 5) The applicant is free to request reconsideration, if new or additional information which might clarify the request or demonstrate its acceptability can be provided.
  - 6) Copies of all Requests for Review will be filed according to Unit number or address along with the written decision, which shall state the basis for such decision, and a statement of action taken, if any.
  - 7) Since the Association cannot control work performed within a Unit, the Unit Owner is responsible for assuring that any changes or additions are made in conformance with the Condominium Declaration and this Resolution. Failure to comply subjects the Unit Owner to the remedies set forth in the Declaration, Rules and Regulations and the Resolutions.
  - 8) Approval of any project by the Association does not waive the necessity of obtaining the required governmental permits.
  - 9) Obtaining a governmental permit does not waive the need for Association approval.
  - 10) The Association shall not knowingly approve a project which is in violation of applicable building or zoning codes.
- b.** Upon determination by the Association that a project is in fact in violation of building or zoning codes, the approval previously granted by the Board of Directors or the ACC shall be void. The Committee shall thereupon deliver notice to the owner to cease all work on the project immediately. The owner shall promptly submit a new request to the ACC showing how the owner proposes to bring the project into compliance with the applicable building or zoning code. The ACC and/or the Board of Directors, as applicable, may approve the request, or the ACC and/or the board may disapprove the request. If the request is disapproved or the project cannot be brought into compliance with the applicable building or zoning code, the property shall be restored to its original condition within sixty (60) days from the date of notice sent by the Board or ACC. Such restoration shall be at the Unit Owners sole cost and responsibility.
- c. Additional Requirements for Major Modifications. For major structural changes, the following may also be required by the Committee:**
- 1) Where the change affects common utilities (including, without limitation, temporary interruption of utility service), applicants are required to coordinate arrangements with the Management Company prior to commencement of work. In any case, common utility service, if applicable, may not be interrupted except between the hours of 8:00 A.M. and 5:00 P.M. on weekdays. Service may not be interrupted on weekends or generally observed holidays.
  - 2) Applicants are responsible for removal of debris generated in the course of the change.
  - 3) No sawing, hammering or other noisy construction activities are permitted except between the hours of 8:00 A.M. to 6:00 P.M. on weekdays excluding holidays and 10:00 A.M. to 6:00 P.M. on weekends and holidays. This excludes builders or Developer during the construction period.
  - 4) The committee shall act on the submission and respond within thirty (30) days after written receipt of the completed applications.

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**d. Denial of Request. Requests may be denied for any of the following reasons:**

- 1) Incomplete or unclear application, in which case it will be returned to applicant with appropriate instructions for re-application;
- 2) Other Unit(s) or Common Elements would be adversely affected by the proposed change;
- 3) A determination that the change would significantly increase water consumption or adversely impact the common water drainage system.
- 4) A determination that the change would significantly increase Common Element electrical consumption or adversely affect the building circuits.
- 5) Other reasons stated and supported by the ACC or Board, as applicable. During the Declarant Control Period the Declarant has the sole discretion as to ACC approvals regardless of the improvement. The Declarant or his ACC representative may deny an application solely on aesthetic purposes or for any reason. No Unit Owner may attempt to veto, challenge, or revoke a decision of the Declarant during the Declarant Control Period.

**e. Administrative Requirements**

- 1) Applicant must inform the Managing Agent of the date on which construction starts.
- 2) If applicant desires to make changes during construction, a revised application must be submitted to the ACC which shall promptly act upon the revised application.
- 3) Applicant must provide the ACC with notice of completion.
- 4) Upon completion, the board or ACC may inspect the Unit and Common Elements and, if satisfied that construction is in compliance with approved plans, will issue a Certificate of Compliance if requested.

- f. Completion of Structure.** Construction in accordance with an approved plan or specification must be commenced within six (6) months after such approval, and completed within six (6) months after date of commencement unless otherwise authorized by the ACC. If not commenced and completed as provided herein, then the approval will require an extension be made. Construction must be completed as approved; any deviation will be considered a violation. Fines for non-compliance with all ACC Rules and Regulations shall be levied; the minimum such fine being \$1,000 and the maximum fine depending upon the violation being \$5,000.

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**4. PROCEDURES FOR MONITORING ARCHITECTURAL COMPLIANCE.**

The ACC shall periodically survey the property for compliance with design standards. Inspections shall take place bi-monthly unless the ACC or the Board of Directors believes it in the best interest of the Association to increase the number of inspections.

**SECTION 9. DUE PROCESS PROCEDURES**

- 1. Violation Notice (Warning):** Homeowners will be notified when a violation occurs. A minimum of one (1) notice of not less than ten (10) days each will be required except in the case of emergencies where it can reasonably be assumed that the safety, health, welfare and protection of the Owner, a neighbor or neighborhood, or the community in part or as a whole is at risk or recurring violations within a six (6) month period. Violations which present hazards for residents, are damaging property, creating an ongoing nuisance or can be considered an emergency requiring immediate correction shall be subject to self-help actions by the Association as described in the Declaration should Owner fail to cure the violation. Self Help actions considered an emergency requiring immediate attention will be addressed within seventy-two (72) hours or less by the Association. A notice in the case of an emergency may be delivered by hand, electronic mail, or U.S. mail. Any costs for initiating Self Help to cure a violation including the costs of postage and handling shall be assessed to the Owner's account. ***\*\*The Association may, but is not obligated, to provide more than one initial notice of violation. Should additional violation notices be sent, each notice shall allow a period of not more than ten (10) days in which to correct the violation. \*\****
- 2. Notice of Assessment of Fine (Hearing Notice):** If after the initial notice (or subsequent notices if given) the violation continues, the Owner will be notified that a fine will be levied against his/her account. ***This notice shall be mailed certified and regular U.S. mail*** and shall include the amount of the fine to be levied and shall contain verbiage pursuant to Chapter 209.006 and 209.007 of the Texas Property Code as amended from time to time regarding an Owner's right to request a hearing before a committee (or the Board in the absence of a committee).

Notice must describe the violation or property damage that is the basis for the fine for such violation, and state any amount due the Association from the Owner and Owner shall be given a reasonable time to cure the violation. Owner shall have thirty (30) days to request a hearing in writing from the date of notice. The Association or its Managing Agent shall set the hearing within thirty (30) days of receipt of the written request and the Owner shall be notified in writing of the hearing date, time and place not less than ten (10) days prior to the hearing date.

The Board or Owner may request a postponement, and if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. If the Hearing is to be held before a Committee appointed by the Board, the Owner shall have the right to appeal to the Board of Directors should the Owner

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disagree with the Committee's decision. Notice of an Appeal Hearing before the Board of Directors must be submitted by the Owner in writing. An Owner is liable to the Association for certain charges, including reimbursement of attorney's fees incurred by the Association.

3. **"Damage Assessment"**: Violations that result in property damage or cause the Association to incur cleanup costs will result in a "Special Individual Assessment" on the Unit Owner's account. Non-payment of this type of assessment may result in additional fees, and collection actions as allowed by law. Any attorney fees or other costs incurred by the Association will be assessed to the Owner's account. Notices for Special Individual Assessment shall follow the same protocol for Fine Warning Notices sent in Section 2 above.
4. **Suit and Board Discretion**: Failure to comply with the Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation. The Board or ACC may use its sole discretion in determining whether to pursue a violation of the Documents, provided the Board or ACC does not act in an arbitrary or capricious manner.

**FINE SCHEDULE**

**The costs of curing or abating a violation are at the expense of the Owner or other person responsible for the violation. At the Board's sole discretion, a fine may be levied against a renter or lessee other than the Owner however, should the renter or lessee fail to pay the fine within the time allotted, the Unit Owner shall be responsible for the fine which shall be added to the Owner's account.**

**Each fine notice shall contain the minimum verbiage as required by the Texas State Property Code or the Declaration and Bylaws and must advise the Owner of his/her right to request a hearing pursuant to Section 209.006 and 209.007 of the Texas Property Code. Additionally, notices prior to levying a fine shall notify Owners serving in active military of their rights under Chapter 209 of the Texas Property Code wherein active military personnel may have special rights of relief related to enforcement actions under federal law, including Servicemembers Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the Owner is serving on active military duty. Fine Notices shall be mailed certified and regular U.S. mail.**

**The table below is intended to establish a base fining structure. The Board shall have the right to instruct or adopt a different fining structure so long as the fines imposed do not exceed the maximum fine limit of \$1,000 per violation occurrence for any fine not subject to a different fining structure as may be outlined in the Declaration, this Resolution or Rules and Regulations of the Association. Fines for some violations such as those involving pets, vehicles, and architectural changes / improvements may have a different fine structure. Fines may be assessed based on the severity of a violation or for continual or recurring violations within a six month period. Fines may be levied in lump sum or**

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increments at the sole discretion of the Board of Directors. Each day the violation continues to exist shall constitute a separate violation.

An Owner who continually violates the Association's Declaration, Rules and Regulations or Bylaws, or who damages Association property may be assessed greater fines which may include a one-time fine up to the maximum fine amount at the sole discretion of the Board or ACC so long as the fine amounts levied are commensurate to the violation or the history of recurring violations recorded against an Owner.

**1st Fine:** First fine for a violation not cured by the Owner after the initial fine warning notice has been given shall not be less than \$50.00, then;

**2<sup>nd</sup> Fine:** After a minimum of five (5) business days, the Board or its Managing Agent shall inspect the Owner's property for compliance. If the violation remains, a letter shall be sent to the violating Owner advising that a second fine in the amount of \$100.00 shall be assessed to the Owner's account, then;

**3<sup>rd</sup> Fine:** After a minimum of five (5) additional business days, the Board or its Managing Agent shall inspect the Owner's property for compliance. If the violation remains, a letter shall be sent to the violating Owner advising that a third fine in the amount of \$150.00 shall be assessed to the Owner's account.

**4<sup>th</sup> & After:** If compliance is not met after the end of a minimum of five (5) business days from the date the third fine letter is sent, the Owner will receive one (1) final notice advising that fines shall escalate at the rate of \$25.00 every week for each week the violation remains until the maximum fine amount of \$1,000 is reached at which time the violation process shall start over and shall be treated as a recurring violation subject to additional fines as outlined in this section so long as the violation remains. Each day the violation continues to exist shall constitute a separate violation.

4. The maximum fine amount is based on a per violation occurrence and can be assessed each time a violation occurs whether or not it is the same or similar kind or whether it is a recurring violation.

**f. Notice of Hearing.** If Owner submits a written request for a hearing, all fines shall be suspended until after the hearing. If the Association has a Managing Agent, notice shall be served through the Managing Agent who shall set the hearing date and time and place and shall notify the Owner via U.S. mail. The Board shall appoint a Hearing Committee who shall oversee the first hearing and who shall render a decision based upon the facts and/or testimonies provided. The Hearing Committee shall render their findings and subsequent results from the hearing in writing no more than ten (10) days from the date of the hearing and the Managing Agent shall notify the Owner via U.S. mail of the decision.



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The Association or its Managing Agent shall wait five (5) business days prior to proceeding and complying with any instructions and/or findings in an effort to give the Unit Owner the opportunity to submit an appeal to the Board of Directors. If the Hearing Committee rules in favor of the Association, after the five day waiting period, all fines or other violation actions suspended pending the hearing outcome may resume unless the Hearing Committee instructs otherwise.

If the Hearing Committee rules in favor of the Owner, all violation actions shall cease and no further fines shall be assessed. The Hearing Committee must note in their findings whether any fine(s) previously assessed to the Owner's account will be waived. If the hearing is held by a committee appointed by the Board, the Owner shall have the right to appeal the decision of the committee to the Board of Directors and the decision of the Board of Directors shall be final. If the hearing is held by the Board of Directors in the absence of a committee, the decision of the Board of Directors is final.

Attend a hearing before the Committee as hereinafter provided;

- 1) Owner should show up prepared to present their case before the Hearing Committee. Owners who are late to the Hearing and have not made provision for arriving late forfeit their right to a Hearing and must request a new date for Hearing be set. Owner's may bring one witness who must wait outside the area where the Hearing is being held until called in for testimony by the Hearing Committee or Board ;
- 2) No unruly behavior, profanity, violent, or abusive behavior will be tolerated. Any such action will result in the Hearing being called off and the Owner will be requested to leave. If an Owner or witness threatens physical harm to a Member of a Hearing Committee or Board the Hearing shall be automatically cancelled and shall not be rescheduled. The Owner forfeits any and all remedies or entitlement to another Hearing.

Any objections to the form or substance of the complaint shall be considered by the Committee and a written notice shall be provided to the Unit Owner within ten (10) days of the Hearing date. Should the Hearing Committee need more time to deliberate the facts the Unit Owner will be notified in writing (electronic communication acceptable) that more time by the Hearing Committee is needed. The notice shall state the number of additional days required and provide the Unit Owner with the new date by which the Unit Owner can expect a written notice of the Hearing Committee's decision.

**g. Cease and Desist Request.** If the Committee, after receipt and investigation of the Complaint, makes a finding of fact in writing that the public interest of the Condominium or the health, safety and/or welfare of its UNIT OWNER will be irrevocably harmed by delay, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the Committee shall give notice of the proposal to issue a temporary cease and desist order to the person. The temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

If the Committee determines, subsequent to the notice and hearing, that a person has violated any provision of the Condominium Act, the Condominium Declaration, Rules and Regulation or any Resolutions, it may issue an order requiring that person to cease and desist from such unlawful violation.

**DEDICATORY INSTRUMENT OF  
BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.**

- h. Amended or Supplemental Complaints.** At any time prior to the hearing date, the Committee may file or permit the filing of an amended or supplemental complaint. All parties shall be notified thereof in the manner provided herein. If the amended supplemental complaint presents new charges, the Committee shall afford the respondent a reasonable opportunity to prepare proper defense thereto.
- i. Discovery.** Upon written request to the other party, made at least five (5) days prior to the hearing, either party is entitled to: (1) obtain the names and addresses of witnesses to the extent known to the other party; and (2) inspect and make a copy of any statements, writings and investigative reports relevant to the subject matter of the hearing. Nothing in this Section, however, shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential.
- j. Statements.** Sworn statements may be introduced into evidence by a party if a copy of the statement is mailed or delivered to the opposing party at least five (5) days prior to the introduction of the statement. A sworn statement wherein the signature of the attestee is notarized, if introduced as evidence, shall be given the same effect as if the author had testified. If an opportunity to cross-examine the statement's author is requested the attestee must appear in person or otherwise the statement shall be null and void and may not be used as evidence at any Hearing.
- k. Constraints on the Committee.** It shall be incumbent upon each member of the Committee to make a determination as to whether that member is able to function in a disinterested and objective manner in consideration of the base before it. Any member incapable of objective consideration of the case shall disclose the same to the Committee and the Board and shall not participate in the proceedings. Any member of the Committee has the right to challenge any other member he believes is unable to function in a disinterested and objective manner.

In the event of such a challenge or issue as outlined in k. above, the Board shall meet to determine the sufficiency of the challenge. If the Board finds the removal of a Hearing Committee Member is warranted a Board Member shall serve in the Committee Member's place. If the Hearing Committee is the Board the Board shall appoint another Member of the Association to serve on the Hearing panel for that Hearing procedure only. All decisions of the Board in this regard shall be final.

**l. Hearing.**

- 1) Each party shall have the right to do the following, but may waive any or all of these rights:
  - a) make an opening statement;
  - b) introduce evidence, testimony and witnesses;
  - c) cross-examine opposing witnesses;
  - d) rebut evidence and testimony;
  - e) make a closing statement.
- 4) All witnesses may be cross-examined by the Hearing Committee regardless of whether they testify in their own behalf.

**DEDICATORY INSTRUMENT OF  
BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.**

5) Whenever the Committee has commenced to hear the matter and a member of the Committee withdraws prior to a final determination, the remaining members shall continue to hear the case and the Committee Chairperson shall name a replacement for the withdrawing member. Oral evidence shall be taken only on oath or affirmation administered by the hearing officer.

**m. Decision.** To be effective a decision of the Committee shall be a majority vote. The decision shall normally be issued within ten (10) days of the conclusion of the hearing. The decision shall be in writing. Copies of the decision shall be distributed to the Unit Owner.

**n. Suspension of Privileges.** Disciplinary action imposed by the committee may include suspending or conditioning the Unit Owner's right to use the Common Elements or General Common Elements, or recreational facilities if any should exist. Such suspension shall be for a period of not more than ninety (90) days. Other disciplinary actions may include fines which may be imposed for so long as the violation continues.

## **2. APPEALS**

**a. Rights of Owners.** Final decisions of the Hearing Committee may be appealed by any Unit Owner provided that an Appeal Petition is filed with the Board within twenty (20) days following the decision of the Hearing Committee. An Appeal filed more than twenty (20) days after the decision of the Hearing Committee shall stand in its entirety.

The Board will hear the appeal within thirty (30) days of the request. In the event that the Board elects to hear the appeal, a hearing de novo (anew) shall be scheduled by the Board and notice thereof given to the Unit Owner. The Board will review all previous statements and writings and may require all witnesses to attend for testimony.

**b. Notice of Hearing.** In the event that the Board elects to conduct a new hearing, notice of hearing shall be given as provided in writing not less than ten (10) days prior to the hearing date.

**c. Hearing Procedures.** All of the rights and procedures set forth in above shall apply to appeal hearings conducted by the Board with the substitution of the words "Board" wherever the words "Committee" appears.

**d. Decision.** If the Board conducts a hearing as a result of the Appeal Petition, the decision of the Board shall be by a majority vote. Such decision shall be issued within ten (10) days of the conclusion of the hearing and shall be in writing. **Decisions of the Board are final.**

**e. Further Action.** An Owner must exhaust all available remedies of the Association prescribed by this resolution before resorting to a court of law for relief with respect to an alleged violation of any type. The foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board.

**DEDICATORY INSTRUMENT OF  
BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.**

**3. RESIDENT**

- a. If the person charged with a violation of the Condominium Act, Condominium Declaration, Rules and Regulations or Resolutions of the Board is a resident, the owner of the unit in which the resident resides shall be considered a respondent and as a party to the action shall receive certified copies of the following:
- 1) Notice that the Association suspended the right of the resident to use an Association facility to include any limited or general common element.
  - 2) Any correspondence sent to resident by the Association shall be sent to the Unit Owner.
  - 3) The Unit Owner must make the request for hearing on behalf of the tenant.
  - 4) Any written response by the Committee or Board or, if a preliminary investigation by the Committee or Board indicates further action is necessary, all correspondence shall be sent to the tenant and the Unit Owner. Any request for action including but, not limited to, cease and desist, shall be complied with and it shall be the Unit Owner's responsibility to ensure his tenant's compliance. Any failure on the part of the tenant or Unit Owner to comply shall be considered a breach of the lease and/or restrictions and/or rules and regulations regarding the leasing of a unit within Bryan Heights Condominium Association.

**4. CONSTRUCTION**

- a. This resolution is intended to assure that due process is provided to Owners in proceedings before the Committee and the Board to enforce the Condominium Declaration, Rules and Regulations and Resolutions and to serve as a guideline for such proceedings.
- b. The Committee or the Board, as appropriate, may determine the specific manner in which the provisions of this resolution are to be implemented, provided that due process is protected.
- c. **Any inadvertent omission or failure to conduct proceedings in exact conformity with this resolution shall not invalidate the results of such proceedings, as long as a prudent and reasonable attempt has been made to assure due process according to the general steps set forth in this resolution**
- d. "Due process," as used in this resolution, refers to the following basic rights:
- 1) The charges shall be provided to the Owner and also to the Resident, if applicable.
  - 2) A hearing, if requested, shall be held at which witnesses may appear and be cross-examined and at which evidence may be introduced.
  - 3) An opportunity to appeal shall be available.
  - 4) Basic principles of fairness shall be applied.

**EXHIBIT ATTACHMENT "A"**  
**ALTERNATIVE PAYMENT POLICY**  
**(PAYMENT PLAN POLICY)**  
**FOR**  
**BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.**

**BRYAN HEIGHTS CONDOMINIUM OWNERS ASSOCIATION, INC.**

**Dedicatory Instrument**

**Alternative Payment Schedule Guidelines for Certain Assessments**

**WHEREAS**, the Board of Directors (the "Board") of Bryan Heights Condominium Owners Association, Inc. (the "Association") wishes to adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the Association for delinquent regular or special assessments or any other amount owed to the Association; and

**WHEREAS**, the Board wishes to adopt these reasonable guidelines in compliance with Section 209.0062 of the Texas Property Code; and

**WHEREAS**, the Board intends to file these guidelines in conjunction with the Bylaws of the Association in the real property records of each county in which the subdivision is located, in compliance with Section 209.0062 of the Texas Property Code; and

**NOW, THEREFORE, IT IS RESOLVED** that the following guidelines are established by the Board:

- I. Upon the request of a delinquent owner, the Association shall enter into an alternative payment schedule with such owner, subject to the following guidelines:
  - a. An Alternative Payment Schedule is only available to owners who have delinquent regular assessments, special assessments or any other amount owed to the Association.
  - b. An Alternative Payment Schedule will not be made available in the following cases: (1) to owners who have failed to honor the terms of a previous Alternative Payment Schedule during the two years following the owner's default of such previous Alternative Payment Schedule; (2) to owners who have failed to request an Alternative Payment Schedule prior to the 30 day deadline to cure the delinquency as set forth in the Association's letter sent pursuant to Tex. Prop. Code § 209.0064(b); and/or (3) to owners who have entered into an Alternative Payment Schedule within the previous 12 months. Notwithstanding the foregoing, the Board has discretion to allow any owner to enter into an Alternative Payment Schedule notwithstanding an Owner who defaults on a payment plan may not be eligible for another payment plan for up to 2 years at the Board's sole discretion.
  - c. During the course of an Alternative Payment Schedule, additional monetary penalties shall not be charged against an owner so long as the owner timely performs all obligations under the Alternative Payment Schedule and does not default. However, the Association may charge reasonable costs for administering the Alternative Payment Schedule ("Administrative Costs") and, if interest is allowed under the Declaration, then interest will continue to accrue during the term of the Alternative Payment Schedule. The Association may provide an estimate of the amount of interest that will accrue during the term of the Alternative Payment Schedule.

- d. The total of all proposed payments in an Alternative Payment Schedule must equal the sum of the current delinquent balance, the estimated interest, and any Administrative Costs; and may include any assessments that will accrue during the term of the Payment Plan.
- e. All payments under an Alternative Payment Schedule shall be due and tendered to the Association by the dates specified in the Alternative Payment Schedule, and shall be made by cashier's checks or money orders.
- f. The minimum term for an Alternative Payment Schedule is 3 months from the date of the owner's request for an Alternative Payment Schedule. The Association is not required to allow an Alternative Payment Schedule for any amount that extends more than 18 months from the date of the owner's request for an Alternative Payment Plan.
- g. Any owner may submit to the Board a request for an Alternative Payment Schedule that does not meet the foregoing guidelines, along with any other information he/she believes the Board should consider along with such request (e.g. evidence of financial hardship). The Board, in its sole discretion, may approve or disapprove such a request for a non-conforming Alternative Payment Schedule. An owner who is not eligible for an Alternative Payment Schedule may still request an Alternative Payment Schedule, and the Board, in its sole discretion, may accept or reject such a request.

h, Default

1. The following shall result in an immediate default of an Alternative Payment Schedule:
  - i. The owner's failure to timely tender and deliver any payment when due under the Alternative Payment Schedule;
  - ii. The owner's failure to tender any payment in the full amount and form (e.g., cashier's check or money order) as specified in the Alternative Payment Schedule; or
  - iii. The owner's failure to timely comply with any other requirement or obligation set forth in the Alternative Payment Plan.
  - iv. The owner's failure to make payment in a timely manner on all other assessments and charges of the Association as they are billed or become due.
2. Any owner who defaults under an Alternative Payment Schedule shall remain in default until his/her entire account balance is brought current.
3. The Association is not required to provide notice of any default.
4. Owners are not entitled to any opportunity to cure a default.

5. While an owner is in default under an Alternative Payment Schedule, the owner's payments need not be applied to the owner's debt in the order of priority set forth in Tex. Prop. Code § 209.0063(a). But, in applying a payment made while the owner is in default, a fine assessed by the Association may not be given priority over any other amount owed to the Association.
  6. The failure by the Association to exercise any rights or options shall not constitute a waiver thereof or the waiver of the right to exercise such right or option in the future.
- i. All other terms of an Alternative Payment Schedule are at the discretion of the Board of Directors.

This is to certify that the foregoing Alternative Payment Schedule Guidelines for Certain Assessments was adopted by the Board of Directors on the 19<sup>th</sup> day of July, 2017, in accordance with Section 209.0062 of the Texas Property Code.

BRYAN HEIGHTS CONDOMINIUM OWNERS ASSOCIATION, INC.

Alternative Payments Schedule Policy



**EXHIBIT ATTACHMENT "B"**

**POLICIES AND PROCEDURES FOR THE COLLECTION OF  
ASSESSMENTS AND OTHER CHARGES  
OF THE ASSOCIATION  
FOR  
BRYAN HEIGHTS CONDOMINIUM ASSOCIATION, INC.**

Bryan Heights Condominium Owners Association, Inc. (the "Association") has adopted the following policies and procedures for the collection of assessments and other charges of the Association. The policies and procedures detailed herein will be implemented on behalf of the Board of Directors by its Managing Agent (the "Management Company") as agent for the Association unless otherwise stated.

### **Obligation to Pay Assessments**

Membership in the Association is mandatory pursuant to the terms and conditions of the Declaration. A property owner is legally obligated to pay the Assessments to the Association even if the Association's facilities or amenities are not used by the property owner per Article 8 of the Declaration. The property owner may not withhold assessment payments even if the association is not providing maintenance or other services mandated by the Association's governing documents.

### **Due Dates**

Assessments are due on the 1st day of each calendar month and are delinquent if not paid by 10<sup>th</sup> day of each month.

### **Invoices**

The association may, but shall not be required to, invoice a property owner as a condition to an owner's obligation to pay assessment or other charges of the Association. As a matter of course, assessments are invoiced by statements. **Non-receipt of an invoice (statement) shall in no way relieve the property owner of the obligation to pay the amount due by the due date.** Property owners who do not receive their invoice (statement) are responsible for contacting the Management Company prior to the due date to request a replacement. Property owners are responsible for notifying the Management Company of their mailing address at the time of acquiring property ownership and any subsequent mailing address change thereafter.

**Written Notice of Delinquency.** Subsequent to an Owner becoming delinquent, and prior to referring the account to the Association's legal counsel for collection, the Association will send written notice of the delinquency to the Owner via certified mail (the "Delinquency Notice or sometimes known as 30 Day Demand Letter"). The Delinquency Notice shall: (i) detail each delinquent amount and the total amount owed; (ii) describe the options the Owner has to avoid having the account referred to the Association's legal counsel, including the availability of a payment plan, and (iii) provide the Owner a period of at least thirty (30) days to cure the delinquency before further collection action is taken.

### **Late Payment Charges and Collection Fees**

**Late Charges.** In the event any assessment, or any portion thereof, is not paid in full by the Delinquency Date, late charges in an amount up to \$25.00 shall be assessed against the Owner's account each month and every month until the assessment is paid in full. Such late charge, as and when levied, is secured by the Assessment Lien described in the Declaration, and will be subject to recovery in the manner provided herein for assessments. The Board may, in its sole discretion, waive the collection of any late charge; provided, however, that the waiver of any late charge shall not constitute a waiver of the Board's right to collect any or late charges or any other charges in the future.

**Collection Fees.** In the event any assessment, or any portion thereof, is not paid in full by the Delinquency Date, collection fees in an amount not less than \$15.00 per month shall be assessed against the Owner's account each month and every month until the assessment is paid in full. Collection fees are charges by the managing agent for the collection of delinquent accounts and may not be waived by the Board without the consent of the managing agent. Such collection fee, as and when levied, is secured by the Assessment Lien described in the Declaration, and will be subject to

recovery in the manner provided herein for assessments. Managing Agent may and probably will have additional fees related to collection efforts performed on a delinquent account which may include but, are not limited to demand letter fees and payment plan set up and monitoring fees. These fees shall be assessed against the Owner's account. Such collection fees, as and when levied, is secured by the Assessment Lien described in the Declaration, and will be subject to recovery in the manner provided herein for assessments. Payment of collection fees may be subject to further guidelines or restrictions as they may be set forth in the management contract between the Association and Managing Agent.

#### **Return Payment Charges**

A non-negotiable fee equal to the amount of charge levied by the Bank to the Association will be assessed to the property owner for any payment processed that is not honored by a bank or financial institution for any reason including but not limited to insufficient funds notwithstanding, the minimum such charge shall be \$25.00. Such return payment charge shall be due and payable immediately upon demand. Any applicable late payment charges, which would have been assessed if the payment had not been made, may also be applied to the property owner's account. The payment of the outstanding account balance may be required to be paid with a money order or cashier's check. Personal checks will not be accepted to satisfy an outstanding account balance when an insufficient fund check makes up a portion of the balance.

#### **Referral of Delinquent Accounts to Lien Services or Collection Agencies**

Collection Agencies. In the event an account has not been paid in full following thirty (30) days from the date Delinquency Notice was mailed to the Owner, the Association's agent may refer the account to a collection agency for collection, including reporting delinquent account to any credit bureau or other agency providing credit histories to authorized entities. All costs incurred by the Association for using the services of a collection agency, or administering the referral and handling of the account to a collection agency, are deemed costs of collection of the Association. Such costs of collection, when incurred by the Association and added to an Owner's account, are secured by the Assessment Lien described in the Declaration, and will be subject to recovery in the manner provided herein for assessments.

#### **Referral of Delinquent Accounts to Attorneys**

Remedies and Legal Actions. If an Owner fails to cure the delinquency within the thirty (30) day period stated in the Delinquency Notice, the Association may, at its discretion and when it chooses, refer the delinquency to legal counsel for the Association. Any attorney's fees and related charges incurred by virtue of legal action taken will become part of the Owner's assessment obligation and may be collected as such as provided herein. Upon direction of the Board or the Association's agent, legal counsel for the Association may pursue any and all available legal remedies with regard to the delinquencies referred to it including, but not limited to, the following:

**Notice Letter.** The initial correspondence to a delinquent Owner from the Attorney.

**Notice of Lien.** If an Owner fails to cure the delinquency indicated in the Notice Letter, upon being requested to do so by the Board and/or Management, counsel may prepare and record in the Official Public Records of Denton County, a written notice of assessment lien (referred to as the "Notice of Lien") against the Lot. A copy of the Notice of Lien will be sent to the Owner, together with an additional demand for payment in full of all amounts then outstanding.

**Foreclosure.** In the event that the Owner fails to cure the delinquency, the Board may direct legal counsel to pursue foreclosure of the lien. In any foreclosure proceedings, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees.

**Expedited Foreclosure Pursuant to Rules 735 & 736 of the Texas Rules of Civil Procedure.** The Board may decide to foreclose its lien by exercising its power of sale granted by the Declaration. In such event, counsel may commence expedited foreclosure lawsuit under Rules 735 and 736 of the Texas Rules of Civil Procedure ("Expedited Foreclosure"). Upon receipt from the Court of an order authorizing foreclosure of the Lot, counsel may post the Lot at the Denton County Courthouse for a foreclosure sale. The Association shall have the power to bid on the Owner's Lot and improvements at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. The Association may institute, a personal judgment suit against the former Owner for any deficiency resulting from the Association's foreclosure of its assessment lien.

**Judicial Foreclosure.** The Association may file suit for judicial foreclosure ("Judicial Foreclosure") of the assessment lien, which suit may also seek a personal money judgment. Upon receipt from the Court of an order foreclosing the Association's assessment lien against the Lot, the sheriff or constable may post the Lot for sheriff's sale. The Association shall have the power to bid on the Owner's Lot and improvements at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

**Lienholder Notification.** In pursuing Expedited Foreclosure or Judicial Foreclosure, the Association shall provide the 61-day notice letter to inferior lienholders pursuant to Section 209.0091 of the Texas Property Code.

The Association may file suit for a money judgment in any court of competent jurisdiction.

**Bankruptcy.** Upon notification of a petition in bankruptcy, the Association may refer the account to legal counsel.

All rights and remedies provided in this Policy and herein above are cumulative and not exclusive of any other rights or remedies that may be available to the Association, whether provided by law, equity, and the Association's governing documents or otherwise. In order to expedite the resolution of a delinquent account, the Board may, at any time, compromise or waive the payment of interest, late charges, handling charges, collection costs other than collection fees, unless approved by the managing agent, legal fees or any other application charge.

### Use of Regular Mail / Certified Mail

In the event the Association shall send a delinquency notice or demand notice to a property owner by regular mail, certified or certified, return receipt requested, the association will use the property address unless the owner has contacted the Association or its Managing Agent and has provided updated mailing address information. Once the notice(s) have been placed in a U.S. mail receptacle or given to a U.S. postal representative, the notice will be considered to have been duly delivered. It is the sole responsibility of the owner to provide and maintain up to date mailing address information with the Association and/or its Managing Agent.

### Waivers

The Association may grant a waiver of any provision herein upon petition in writing by a property owner showing a personal hardship. Such relief granted a property owner shall be appropriately documented in the files with the person representing the Association granting the relief and the conditions of the relief. In addition, the Association is hereby authorized to extend the time for the filing of lawsuits and liens, or to otherwise modify the procedures contained herein, as the Association shall determine appropriate under the circumstances. **The Association reserves the right to consider each petition or make its determination regarding referral to an attorney or a third party collection service on a case by case basis.** Costs owed to the Managing Agent for their efforts in the processing, handling and collections of an account cannot be waived by the Association without the consent of the Managing Agent.

### Effective Date and Enforcement

The foregoing collection procedure has been adopted by the association and is effective as of the date recorded. **Nothing specified in this document shall require the Association to take specific actions.** The foregoing collection procedures is a directive by the Board of the Association to the Management Company and is intended to be a guide to collection of Assessments owed to the Association. The Board of the Association may at any time revise the foregoing collection procedure and may at any time direct the Management Company to proceed differently with collection of an individual account based on circumstances applicable to that account and advice and guidance from the Management Company or the Association's attorney. ***Failure by the Management Company or the Board of the Association to follow the foregoing collection procedure shall not in any way affect the property owner's obligation to pay all Assessments when due, along with all applicable late payment charges and costs of collection.*** To obtain any information regarding this collection procedure or to obtain the most up-to-date collection procedure, a property owner should contact the Management Company. In the event that any provision herein shall be determined by a court with jurisdiction to be invalid or unenforceable in any respect, such determination shall not affect the validity or enforceability of any other provision, and this Policy shall be enforced as if such provision did not exist. Furthermore, in the event that any provision of this Policy is deemed by a court with jurisdiction to be ambiguous or in contradiction with any law, this Policy and any such provision shall be interpreted in a manner that complies with an interpretation that is consistent with the law. In the event any provision of this Policy conflicts with the Declaration, the Declaration controls.

This collection policy was adopted by the Board of Directors on July 19, 2017 and is intended to supplement and/or enhance any existing policy outlined in the Declaration. In the event of a discrepancy between this policy and the Declaration, the policy with the higher standard shall prevail unless directed otherwise by the Declarant or Board of Directors.

[1] A Statement of Account and / or a delinquency notice will not be sent in cases whereby the Management Company has received notice of a property owner bankruptcy filed in the U.S. Bankruptcy Court, a Notice of Foreclosure on the owner's property or when an active payment plan is in place and being paid as agreed

[2] The Management Company will continue to post assessments and applicable late payment penalties to the account. The attorney or lien service may, however, have other charges not reflected on the account or may have entered into payment arrangements not reflected on the account. The Management Company will adjust the account as instructed by the attorney or lien service as notified or at the time of closure.

**Filed and Recorded  
Official Public Records  
John F. Warren, County Clerk  
Dallas County, TEXAS  
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