

**EIGHTH AMENDED AND RESTATED BYLAWS OF THE  
BENTWATER PROPERTY OWNERS ASSOCIATION, INC.**

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**EIGHTH AMENDED AND RESTATED BYLAWS OF THE  
BENTWATER PROPERTY OWNERS ASSOCIATION, INC.**

These Eighth Amended and Restated Bylaws of the Bentwater Property Owners Association, Inc., (the "Bylaws") are adopted by the Board of Trustees of the Association (defined hereinafter) and shall replace in their entirety all previously adopted bylaws, including but not limited to the Seventh Amended and Restated Bylaws of the Bentwater Property Owners Association, Inc. recorded under Clerk's File No. 2018095298 in the Official Public Records of Real Property of Montgomery County, Texas. The property encumbered by these Bylaws is that property located in Bentwater® (defined hereinafter) and comprised of multiple sections in Montgomery County, Texas, and any other property which has been or may be made subject to the authority of Bentwater® Property Owners Association, Inc.

**ARTICLE I. DEFINITIONS**

1. "Association" means and refers to Bentwater Property Owners Association, Inc., a Texas nonprofit corporation, its successors and assigns. This corporation is the identical corporation which is referred to as the "Association" in the Declaration (defined hereinafter). This corporation shall have all the rights, powers, privileges and authority vested in it under said Declaration and shall carry out all the functions and responsibilities therein assigned and those which may hereafter be assigned to the Association. The Association has jurisdiction over all properties located within Bentwater. For purposes of clarity, when "Association" is used herein, that term includes the authority, rights, remedies and obligations of the nonprofit corporation, and the authority of the Board, as defined herein, to carry out the authority, rights, remedies and obligations of the Association.

2. "Bentwater" shall mean the residential development that has been made subject to the jurisdiction of the Association via a dedicatory instrument(s) (as defined by the Texas Property Code).

3. "Board of Trustees" and/or "Board" means the Board of Trustees of the Association.

4. "Common Area" means all real property including improvements erected thereon in accordance with the provisions of said Declaration and these Bylaws within the Subdivision owned by the Association for the common use and enjoyment of the Owners and any other real property and improvements, including, but not limited to, private roads and streets, parks, lakes, lake road crossings, dams, open spaces and greenbelt areas and other facilities within the Common Area to which the Owners are entitled to use.

5. "Control Transfer Date" or "Transfer Date" shall mean July 1, 2017, being the date that the Declarant has relinquished all of its retained rights under the Declaration.

6. "Declaration" shall mean and refer to all recorded covenants, conditions and restrictions filed of record in the Official Public Records of Montgomery County, Texas, affecting property located within Bentwater.

7. "Declarant" means Bentwater on the North Shore, Ltd., a Texas limited partnership and its successors and assigns.

8. "Lot" means each of the lots as designated on a Plat, unless one Owner has purchased and consolidated adjoining lots or one lot and a part of an adjoining lot and a residence, as approved by the Architectural Control Committee, has been built on the adjoining lots, in which case the adjoining lots shall be a single "Lot".

9. "Lot Consolidation" means the process that may be taken by an Owner of two adjacent Lots to consolidate two Lots as one Lot for the purposes of the Association. Any such Lot Consolidation must be approved in writing by the Architectural Control Committee and must be in writing and recorded in the Official Public Records of Montgomery County, Texas. A consolidated Lot shall have only one vote and pay only one Maintenance Charge.

10. "Maintenance Charge" includes the monthly maintenance charge fixed, established and collected as provided in the Declaration.

11. "Majority" means those votes, Members, or other group, as the context may indicate, totaling more than fifty (50%) percent.

12. "Member" shall mean and refer to those persons entitled to membership in the Association as provided herein.

13. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Subdivision, including (1) contract sellers, but excluding those having such interest merely as security for the performance of an obligation; and (2) Builders.

14. "Plat" shall mean and refer to all recorded maps or plats filed of record in the Plat and Map Records of Montgomery County, Texas, for all or any portion of Bentwater.

15. "Subdivision" means and refers to the property described in the Declaration and such additions thereto that have been brought within the jurisdiction of the Association.

Except as otherwise defined in these Bylaws, all terms which are defined in the Declaration shall, when used herein, have the same meaning as that set forth in the Declaration.

## **ARTICLE II. PURPOSES, POWERS AND DUTIES OF THE ASSOCIATION**

### Section 1. Purposes

The purposes for which the Association is formed are to promote and enhance the desirability and attractiveness of the Lots, Common Area, the Subdivision and such other tracts or parcels of land that have been made subject to the jurisdiction of the Association; to exercise the duties and prerogatives of the Association as set forth in the Declaration, together with all amendments thereof, if any, and its Articles of Incorporation; to have and to exercise any and all powers, rights and privileges that a corporation organized under the Texas Business Organizations Code may now or hereafter have or exercise; and to do any and all other things necessary to implement or accomplish the purposes set forth in these Bylaws, to the extent permitted by law.

### Section 2. Powers and Duties as set forth in the Declaration

The duties and powers of the Association that have been established in the Declaration are set forth hereinafter, provided, however, the following provisions have been modified in order to reflect (i) the occurrence of the Control Transfer Date, and (ii) changes made to same by Texas law:

(a) General Duties and Powers of the Association. The Association has been formed to further the common interests of the Members. The Association, acting through the Board or through persons to whom the Board has delegated such powers (and subject to the provisions of the Bylaws), shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve and enhance the Common Areas and to improve and enhance the attractiveness and desirability of the Subdivision. The Association shall have the authority to act as the agent and attorney-in-fact for all Members of the Association and to enter into any and all contracts on behalf of the Members in order to carry out the duties, powers and obligations of the Association as set forth in the Declaration.

(b) Duty to Manage and Care for the Common Area. The Association shall manage, operate, care for, maintain and repair all Common Areas and keep the same in an attractive and desirable condition for the use and enjoyment of the Members. The duty to operate, manage and maintain the Common Areas may include, but not be limited to, the following: establishment, operation and maintenance of a patrol,

alarm monitoring and/or alarm system for the Subdivision; landscaping, (including the installation and maintenance of a sprinkler system); maintenance, repair and replacement of the privately owned roads and streets, roadside ditches and culverts, culvert pipes underneath streets, bridges, traffic control improvements (traffic signals and street lights); and mowing of street rights-of-way and other portions of the Subdivision.

(c) Duty to Pay Taxes. The Association shall pay all taxes and assessments levied upon the Common Areas and shall have the right to contest any such taxes or assessments provided that (i) the Association shall contest the same by appropriate legal proceedings that shall have the effect of preventing the collection of the tax or assessment, and the sale or foreclosure of any lien for such tax or assessment, and (ii) provided that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties that may accrue with respect thereto, if the contest of such taxes is unsuccessful.

(d) Duty to Maintain Casualty Insurance. The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, casualty, fire and extended coverage insurance with respect to all insurable improvements and personal property owned by the Association including coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake and war risk. Casualty, fire and extended coverage insurance with respect to insurable improvements shall, to the extent reasonably obtainable, be for the full insurable value based on current replacement cost.

(e) Disbursement of Proceeds. Proceeds of insurance policies shall be used to replace, repair or reconstruct damaged portions of the Common Area. Any proceeds remaining after defraying such costs of repairs, replacement or reconstruction of the Common Areas shall be retained by and for the benefit of the Association. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee.

(f) Damage and Destruction. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this subsection, means repairing or restoring the damaged or destroyed property to substantially the same condition in which it existed prior to the fire or other casualty.

(g) Repair, Replacement and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired, replaced or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board may, without the necessity of a vote of the Association's Members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from said special assessment exceed the cost of such repair, replacement or reconstruction, such excess shall be deposited for the benefit of the Association.

(h) Duty to Maintain Liability Insurance. The Association shall obtain and keep in full force and effect at all times, to the extent reasonably obtainable, broad form comprehensive liability insurance covering public liability for bodily injury and property damage including, but not limited to, if the Association owns or operates motor vehicles, public liability for bodily injury and property damage arising as a result of the ownership and operations of motor vehicles and director and officer insurance with policy limits and deductibles as set by the Association in its sole and absolute discretion.

(i) General Provision Concerning Insurance. Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. In the event that the Association sustains a loss by reason of fire or other casualty that is covered by a fire and extended coverage insurance policy, and such fire or other casualty is caused in whole or in part by the acts or omissions of any Member or any officer, director, agent, employee, contractor or employee of any Member, then the Association agrees that to the extent the Association is compensated for such loss by its aforesaid insurance proceeds, the Association shall have no right of recovery against any such Member or any officer, director, trustee, agent, employee, contractor or any employee of any such Member; and no third party shall have any such right of recovery by way of assignment, subrogation or otherwise. Insurance policies and insurance coverage shall be reviewed at least annually by the Board to ascertain whether coverage under the policies is sufficient in the light of the current values of the Common Area and in light of the possible or potential liabilities of the Association. Casualty, fire and extended coverage insurance may be provided under blanket policies covering the Common Area.

(j) Other Insurance and Bonds. The Association shall obtain such other insurance as may be required by law, including worker's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

(k) Duty to Prepare Budgets. The Association shall prepare budgets for the Association, which budgets shall include a reserve fund or funds for the maintenance of all Common Areas.

(l) Duty to Levy and Collect the Maintenance Charge. The Association shall levy, collect and enforce the Maintenance Charge and other charges and assessments as elsewhere provided in the Declaration.

(m) Duties with Respect to Architectural Approvals. The Association shall perform the administrative functions required to assist the Architectural Control Committee, as provided in the Declaration.

(n) Power to Acquire Property and Construct Improvements. The Association may acquire property or an interest in property (including leases, improvements and personal property) for the common benefit of Owners. The Association may construct improvements on the Property and may demolish existing improvements.

(o) Power to Adopt Rules and Regulations. The Association may adopt, amend, repeal and enforce rules and regulations, fines, levies and enforcement provisions as may be deemed necessary or desirable with respect to the interpretation and implementation of the Declaration, the operation of the Association, the use and enjoyment of the Common Areas and the use of any other property within the Common Area, including Lots. Any such rules and regulations shall be reasonable and uniformly applied (as to all Owners, if applicable, and to Owners of similarly restricted Lots). Such rules and regulations shall be effective only upon adoption by resolution of the Board. Notice of the adoption, amendment or repeal of any rule or regulation shall be given by posting any such rule or regulation on the Association website, and copies of the currently effective rules and regulations shall be made available to each Member upon request and payment of the reasonable expense of copying the same. Each Member shall comply with such rules and regulations and shall see that such Member's related users comply with such rules and regulations. In the event of conflict between the rules and regulations and the provisions of the Declaration, the provisions of the Declaration shall prevail.

(p) Power to Enforce Declaration and Rules and Regulations. The Association (and any Owner with respect only to the remedies described in (ii) and (iii) below) shall have the power to enforce the provisions of the Declaration and the rules and regulations and shall take such action as the Board deems necessary or desirable to cause such compliance by each Member and each related user. Without limiting the generality of the foregoing, the Association shall have the power to enforce the provisions of the Declaration and of the rules and regulations of the Association by any one or more of the following means:



(i) by entry upon any property within the Subdivision after notice and hearing (unless a bona fide emergency exists in which event this right of entry may be exercised without notice (written or oral) to the Owner in such manner as to avoid any unreasonable or unnecessary interference with the lawful possession, use or enjoyment of the improvements situated thereon by the Owner or any other person), without liability by the Association to the Owner thereof, for the purpose of enforcement of the Declaration or the rules and regulations;

(ii) by commencing and maintaining actions and suits to restrain and enjoin any breach or threatened breach of the provisions of the Declaration or the rules and regulations, by mandatory injunction or otherwise;

(iii) by commencing and maintaining actions and suits to recover damages for breach of any of the provisions of the Declaration or the rules and regulations;

(iv) by exclusion, after notice and hearing as may be required by law, of any Member or related user from use of any recreational facilities within the Common Areas during and for up to sixty (60) days following any breach of the Declaration or such rules and regulations by such Member or any related user, unless the breach is a continuing breach in which case such exclusion shall continue for so long as such breach continues;

(v) by levying and collecting, after notice and hearing as may be required by law, an assessment against any Member for breach of the Declaration or such rules and regulations by such Member or related user which assessment reimburses the Association for the costs incurred by the Association in connection with such breach or in connection with remedying such breach;

(vi) by levying and collecting, after notice and hearing as may be required by law, reasonable and uniformly applied fines and penalties, established in advance in the rules and regulations of the Association, from any Member or related user for breach of the Declaration or such rules and regulations by such Member or related user; and

(vii) by taking action itself to cure or abate such violation and to charge the expenses thereof if any, to such violating Members, plus attorney's fees incurred by the Association with respect to exercising such remedy.

Before the Board may invoke the remedies provided above, it shall give notice and afford the Owner a hearing, as may be required by law. If, after the hearing (as may be required by law), a violation is found to exist, the Board's right to proceed with the listed remedies shall become absolute. Each day a violation continues shall be deemed a separate violation. Failure of the Association or of any Owner to take any action upon any breach or default with respect to any of the foregoing violations shall not be deemed a waiver of the right to take enforcement action thereafter or upon a subsequent breach or default.

(q) Power to Provide Public Functions. The Association shall have the power, but not the obligation, to acquire, construct, operate, manage, maintain, repair and replace utilities and additional public facilities, and to provide other Functions as more particularly described in the Declaration.

(r) Power to Provide Special Services for Members. The Association shall have the power, but not the obligation, to provide special or additional services to a Member or group of Members. Any service or services to a Member or group of Members shall be provided pursuant to an agreement in writing, which shall provide for payment to the Association by such Member or group of Members of the reasonably estimated costs and expenses of the Association of providing such services, including its proportionate share of the overhead expenses of the Association and shall contain reasonable provisions

assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors or assigns of the Member or group of Members and that the payment for such services shall be secured by a lien on the property of the Member or group of Members as provided for in the Declaration. Such additional or special services may also be deleted upon request of such Member or, if a group of Members requested such additional or special services, upon approval of such Members owning a majority of the Lots that were receiving such special or additional services.

(s) Power to Grant Easements. In addition to any blanket easements described in the Declaration, the Association shall have the power to grant access, utility, drainage, water facility and other such easements in, on, over or under the Common Area. Additionally, the Association shall have the power to grant access, utility, drainage, water facility and other similar easements in, on, over and under Lots provided that such easements do not unreasonably interfere with the rights of the Owner of such Lots.

(t) Power to Convey and Dedicate Property to Government Agencies. The Association shall have the power to grant, convey, dedicate or transfer any Common Areas or facilities to any public or governmental agency or authority for such purposes and subject to such terms and conditions as the Association shall deem appropriate, which power may be exercised by the Association, with the approval of not less than two-thirds (2/3) of the votes cast at a meeting of the Members where a quorum is present. The Association may, subject to the limitations of the preceding sentence, convey property to a public or governmental agency or authority in lieu of such property being condemned by such public or governmental agency or authority.

(u) Power to Borrow Money and Mortgage Common Area. The Association shall have the power to borrow money and to encumber the Common Area as security for such borrowing, subject to the limitations provided elsewhere in the Declaration and the Bylaws with respect to required approvals and consents to such action. With respect to any deed of trust encumbering the Common Area, the lender's rights thereunder shall be limited to a right, after taking possession of such Common Area following the lender's foreclosure of the deed of trust, to charge reasonable admission and other fees as a condition to the continued enjoyment by the Members and, if necessary, until the mortgage debt is satisfied, whereupon the exclusive possession of such Common Area shall be returned to the Association.

(v) Power to Employ Managers. The Association shall have the power to retain and pay for the services of a managing agent, a General Manager, a Controller, or any other manager or managers to undertake the management of any of the Functions for which the Association has responsibility under the Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers or functions to any such manager. Notwithstanding any delegation to a manager of any duties, powers or functions of the Association, the Association and its Board shall remain ultimately responsible for the performance and exercise of such duties, powers and functions.

(w) Power to Engage Employees Agents and Consultants. The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal, accounting and other professional services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under the Declaration.

(x) Power to Charge Fee. The Association and its agents shall have the power to charge fees for any additional or special services the Association provides to the Members or to other individuals or entities, so long as such services are not required to be performed by the Association under the Declaration.

(y) General Corporate Power. The Association shall have all of the ordinary powers and rights of a Texas non-profit corporation including, without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in the Declaration, the

Articles of Incorporation, Bylaws or other dedicatory instruments. The Association shall also have the power to do any and all lawful things that may be authorized, required or permitted to be done under the Declaration, the Articles of Incorporation, Bylaws and other dedicatory instruments and to do and perform any and all acts that may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under the Declaration, the Articles of Incorporation, Bylaws and other dedicatory instruments.

### Section 3. Powers as set forth in these Bylaws

In addition to the powers and duties enumerated above, the Board shall be responsible for the affairs of the Association and shall have all of the powers necessary for the administration of the Association's affairs. The Board may delegate to one (1) or more of its Trustees the authority to act on behalf of the Board on all matters relating to the duties of any manager that might arise between meetings of the Board. The Board shall have the power to perform or cause to be performed, the following, in way of explanation, but not limitation:

- (a) Exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in the Declaration and Articles of Incorporation or authorized by law and pay all expenses incidental thereto.
- (b) Enforce the decisions and rulings of the Board, enforce all restrictions, covenants, easements, and liens provided in the Declaration, and pay all of the expenses in connection therewith.
- (c) Own, lease, provide, control, maintain and operate the Common Areas.
- (d) Construct and maintain private streets, roads, rights-of-way and easements.
- (e) Pay legal and other expenses incurred in connection with the enforcement of all recorded charges, covenants, restrictions and conditions affecting said property to which the Maintenance Charge applies.
- (f) Provide access gate services.
- (g) To have the right without the obligation to provide for the exterior maintenance of all residences, to the extent provided for by the Declaration, and may send invoices or take other necessary action to collect the cost of such exterior maintenance from the Owner of the Lot.
- (h) Fix, levy, collect and enforce payment by any lawful means, of all charges and assessments, including, but not limited to, the Maintenance Charge pursuant to the terms of the Declaration, including, but not limited to, the right to foreclose the lien against any property created by failure to pay said charges; pay all expenses in connection therewith and all administrative and other expenses incident to the conduct of the business of the Association, including all licenses, taxes, assessments or other governmental charges levied or imposed against the property of the Association.
- (i) Do all other things necessary or desirable in the opinion of the Association to keep the property in the Subdivision in neat and good order, or which it considers of general benefit to the Owners of the Lots, it being understood that the judgment of the Board with respect to the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

(j) Set and establish the amount of the Maintenance Charge, which may be imposed by the Association annually and shall be due as designated by the Board and shall hold and administer the Maintenance Fund and expend such Maintenance Funds for the purposes contemplated by and in accordance with the terms and provisions of said Declaration and these Bylaws.

(k) Acquire by gift, purchase or otherwise, own, hold, improve upon, build, enjoy, operate, maintain, convey, sell, lease, transfer, mortgage, dedicate for public use, or otherwise dispose of real or personal property, including improvements and personal property, in connection with the business of the Association, all in accordance with the terms of the Declaration and these Bylaws. The Association may construct improvements on the Property and may demolish existing improvements.

(l) Borrow money in the name of the Association, for the purpose of carrying out the corporate affairs, with the consent (either by written instrument or by voting at a meeting duly called for such purpose) of a majority of the Board.

i. The Board, on behalf of the Association, may pledge the Association's assessments and assign the Association's lien rights as collateral for any loan obtained by the Board on behalf of the Association;

ii. The Board may mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred with the consent (either by written instrument or by voting at a meeting duly called for such purpose) of a majority of the Board, provided however,

i. For loans in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00), not less than two-thirds (2/3) of the Board (either by written instrument or by voting at a meeting duly called for such purpose), may mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, and

ii. For loans in excess of Five Hundred Thousand and 00/100 Dollars (\$500,000.00), not less than two-thirds (2/3) of the Board (either by written instrument or by voting at a meeting duly called for such purpose) with not less than a majority of a quorum of the total membership's consent, may mortgage, pledge, deed in trust or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

However, in no event may the Association lend, contract for a loan or issue evidences of indebtedness to any of its Trustees, officers, Members or Disqualified Persons (as that term is defined in Section 4946[a] of the Internal Revenue Code of 1954 [the "Code"]). Moreover, the Trustees of the Association who vote for or assent to the making of a loan to a Trustee or officer of the Association or to such Disqualified Person and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until repayment thereof.

(m) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes subject to the terms of the Declaration.

(n) Exercise jurisdiction and control over all property subject to the Declaration and any other property made subject to the jurisdiction of the Association in accordance with the terms of the Declaration.

(o) Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board, without the consent of the President.

- (p) Assess, collect and administer sub-association assessments, if any.
- (q) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement or summary thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Members who are entitled to vote.
- (r) Supervise all officers, agents and employees of the Association, and see that their duties are properly performed.
- (s) As more fully provided in the Declaration, to:
  - (1) fix the amount of the Maintenance Charge against each Lot no later than during the month preceding the due date of the Maintenance Charge; and
  - (2) at the discretion of the Board foreclose the lien against any Lot for which Maintenance Charges or any other charges or assessments provided for in the Declaration are not paid within thirty (30) days after due date or to enforce any other remedy provided for in the Declaration against the Owner personally obligated to pay the same.
- (t) Issue, or to cause an appropriate officer to issue, upon written request by any person, a certificate or letter setting forth whether or not any Maintenance Charge or other charge or assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates or letters. If a certificate or letter states that a Maintenance Charge or assessment has been paid, such certificate shall be conclusive evidence of such payment.
- (u) Opening of bank accounts on behalf of the Association and designating the signatories required.
- (v) Enforcing by legal means the provisions of the Declaration, including the provisions concerning architectural control, these Bylaws, the rules and regulations adopted by the Association and any other dedicatory instrument and bringing any proceedings that may be instituted on behalf of or against the Owners concerning the Association.
- (w) Paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners.
- (x) Keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred.
- (y) Maintaining a membership register reflecting, in alphabetical order, the names, property addresses and mailing addresses of all Members.
- (z) Making available upon request to any prospective purchaser, any Owner, any first mortgagee, and the holders, insurers, and guarantors of a first mortgage on any property, for any proper purpose during normal business hours by advance appointment, copies of the Declaration, the Articles of Incorporation, the Bylaws, rules governing such property, and all other books, records, and financial statements of the Association for a reasonable charge; and making copies thereof available for a reasonable charge.

- (aa) Permitting utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Property.
- (bb) Compromise, participate in mediation, submit to arbitration, release with or without consideration, extend time for payment, and otherwise adjust any claims in favor of or against the Association.
- (cc) Commence or defend any litigation in the Association's name with respect to the Association or any Association property.

Section 4. Area

The activities of the Association shall be limited to the (i) area known as and to be known as Bentwater, and (ii) such other areas as may hereafter voluntarily or through the operation of conditions, covenants, restrictions, easements, reservations or charges pertaining to the same be placed under or submitted to the jurisdiction of the Association.

**ARTICLE III. ASSOCIATION: MEMBERSHIP, MEMBER MEETINGS, QUORUM,  
VOTING, PROXIES**

Section 1. Membership

The Articles of Incorporation initially created two classes of Membership in the Association, such classes being the Class A Membership and Class B Membership. The Class B Membership terminated on July 1, 2017. As such, only one class of Membership remains in the Association. Every person or entity who is a record Owner of any Lot which is subject to the Maintenance Charge (or could be following the withdrawal of an exemption therefrom as further provided for in the Declaration), including contract sellers (under a contract for deed), shall be a Member of the Association. The foregoing is not intended to include persons or entities holding an interest in property merely as security for the performance of an obligation or those having only an interest in the mineral estate. Membership shall be appurtenant to, and may not be separated from, the ownership of any Lots. Regardless of the number of persons who may own a Lot (such as husband and wife or joint tenants, etc.), there shall be but one membership for each Lot.

Except as otherwise expressly governed by statute, the Articles of Incorporation of the Association, or as otherwise provided in these Bylaws or in the Declaration, all actions to be taken or authorized by the Members shall be deemed validly taken or authorized upon adoption by the vote of a plurality of the Members present, in person, by electronic ballot, absentee ballot, or by proxy, at any properly called meeting at which a quorum is present in person, by electronic ballot, absentee ballot, or by proxy.

Section 2. Place of Member Meetings

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board.

Section 3. Annual and Special Meetings of the Members

Regular annual meetings shall be set by the Board.

Special meetings of the Members may be called by the President or by a Vice President. In addition, it shall be the duty of the President to call a special meeting of the Members if so directed by resolution of a majority of a quorum of the Board or upon a petition signed by Members representing at least fifteen percent (15%) of the total votes of the Association. The notice of any special meeting shall state the date, time, place, and subject matter of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Trustees to be elected by the membership may be elected at the annual meeting, at a special meeting of Members called for that purpose, or prior to the annual meeting or special meeting, as determined by the Board.

#### Section 4. Notice of Member Meetings

Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, fax, email, or other electronic media, to each Member not less than ten (10) nor more than sixty (60) days before the date of such meeting by or at the direction of the President, the Secretary, or the officers calling the meeting. Such notice must contain a general description of the topics or issues to be discussed.

For an election or vote of Members not taken at a meeting, the Association shall give notice of the election or vote to all Members entitled to vote on any matter under consideration. The notice shall be given not later than the 20<sup>th</sup> day before the latest date on which a ballot may be submitted to be counted.

Notice to a Member by email or facsimile must be sent to the email address or facsimile number provided to the Association in writing by that Member. It is a Member's duty to keep an updated e-mail address, and if so desired a facsimile number, registered with the Association. In instances where Members have not provided an email address or facsimile number to the Association in writing, the Association may send notice to such Members at any address on file with the Association for such Members. If emailed, the notice of meeting shall be deemed to be delivered as of the date and time shown on a confirmation that the email was successfully transmitted. If faxed, the notice of meeting shall be deemed to be delivered as of the date and time shown on a written confirmation that the facsimile was successfully transmitted. For any given meeting, the Board may use any combination of the alternative methods for providing notice to the Members. If a fax or emailed notice to a Member cannot be deemed delivered to the Member due to email address or fax number failure, delivery shall be deemed successful by the notice posted to all Members on any Internet website maintained by the Association.

Notwithstanding anything contained herein to the contrary, the Association may use an alternative method to provide notice to Members provided that the Member to whom the notice is provided has affirmatively opted to allow the Association to use the alternative method of providing notice.

For the purpose of determining the Members entitled to notice of a meeting, the membership of the Association shall be determined on the date the notice of meeting is first given.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail first class postage pre-paid addressed to the Member at his or her address as it appears on the records of the Association. One notice, addressed to multiple Members at the same address, shall suffice if more than one (1) Member resides at any address.

Section 5. Waiver of Notice

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, either in person or by proxy, shall be deemed waiver by such Member of notice of the time, date, and place thereof, and of any business transacted thereat, unless such Member specifically objects to lack of proper notice in writing at the time the meeting is called to order. Further, casting a vote by any means authorized in these Bylaws by a Member on any issue to be voted upon at the meeting shall be deemed a waiver by such Member of notice of the meeting.

Section 6. Adjournment of Member Meetings

If any meeting of the Members cannot be held because a quorum is not present, either in person or by proxy, the presiding officer or a majority of the Members who are present at such meeting, in person or by proxy, may adjourn the meeting to a time not less than ten (10) nor more than sixty (60) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted. All votes cast by Members prior to the originally called meeting by proxy, or by any means authorized in these Bylaws, on issues to be considered at the meeting shall be valid and may be counted at the reconvened meeting at which a quorum is present; provided that a Member who cast a vote on an issue by proxy or by any means authorized in these Bylaws may change that Member's vote at any time prior to the time that a call for a vote on the issue is made at the reconvened meeting at which a quorum is present. A Member may change his vote by attending the reconvened meeting in person, submitting a proxy at the reconvened meeting which either directs or authorizes the proxy holder to vote in a different manner, or changing the Member's vote by any means for voting authorized in these Bylaws. Notice for any reconvened meeting shall be given to Members in the manner prescribed for regular meetings.

Section 7. Quorum

Ten percent (10%) of the Members eligible to vote, present in person by proxy, by absentee or electronic ballot, shall constitute a quorum for any action, except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be satisfied by those Members in attendance. No such subsequent meeting shall be held more than sixty (60) days following the initial or first meeting.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment.

Section 8. Proxies, Absentee Ballots and Electronic Ballots

At all meetings of Members where a vote is taken, each Member may vote in person, or by any other method permitted by statute and as approved by the Board. The Association is not required to provide a Member with more than one voting method; provided however that as required by statute a Member must be permitted to vote by absentee ballot or proxy.

All proxies shall be in writing, signed, and filed with the Secretary, or the Secretary's designee at the Association, seventy-two hours before the appointed time of each meeting, or by any earlier date or time specified in the notice of meeting. Every proxy shall be revocable and shall automatically cease upon (i) conveyance by the Member of the Member's interest in the property; (ii) receipt of notice by the



Secretary of the death or judicially declared incompetence of a Member; (iii) receipt of written revocation; or (iv) expiration of eleven (11) months from the date of the proxy. In the case of a Member's execution of more than one proxy, the proxy with the latest date shall be valid. Proxies not delivered prior to the start of any meeting or by any earlier date or time if specified in the notice of meeting, shall not be valid. Notwithstanding anything contained in these Bylaws to the contrary, a proxy may only be issued by a Member to another Member.

The Board is vested with the authority to determine, in its sole discretion but subject to statute, if Members may vote on any issue to be voted upon by the Members under these Bylaws by absentee ballot that is delivered or mailed to the Association or transmitted to the Association by facsimile or by electronic communication over the Internet or the Association network, provided that absentee ballots must be in writing, signed and filed with the Secretary, or the Secretary's designee at the Association, seventy-two hours before the appointed time of each meeting, or by any earlier date or time specified in the notice of meeting.

The Board shall have the authority to adopt an electronic voting policy. The mechanism for voting by electronic communication must provide a sufficient method of identifying the Member and verifying the Members' vote, and for which the Member may receive a receipt of the electronic transmission and receipt of the Member's ballot, and for allowing a Member to authorize another Member to vote by proxy for such Member. Any requirement imposed by the Articles of Incorporation, these Bylaws, a duly adopted Board policy, or by applicable law for a signature on any proxy or absentee ballot may also be satisfied by a digital signature meeting the requirements of such documents or applicable law.

#### Section 9. Conduct of Meetings

The President of the Association and in the event of his/her absence, his or her designee, shall call meetings of the Members to order and shall act as Chairman of such meetings. In the absence of the President and the Vice President of the Association, the Members present may appoint a chairman. The Secretary of the Association or in his/her absence, an Assistant Secretary, shall act as Secretary of all meetings of the Members and shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting and all transactions occurring at the meeting. In the absence of the Secretary and an Assistant Secretary, the presiding officer may appoint any person to act as Secretary of the meeting. The Association's minute book may be in the form of an online database.

#### Section 10. Voting

At all meetings of the Members, all questions shall be decided in accordance with the second paragraph of Article III, Section 1, provided that a quorum as specified in Article III, Section 7 is established.

Subject to the provisions herein, each Member shall be entitled to one (1) vote per Lot or Consolidated Lot at each meeting of the Members. Joint owners of a Lot shall designate in writing to the Association the party authorized to cast the membership vote for such joint owners, which written designation shall remain in effect until modified by a similar written designation or until the Lot is sold. If a joint owner fails to designate in writing the authorized owner to vote, the vote of the first joint owner received shall be counted and any subsequent joint owner votes will not be considered. The attorney-in-fact of any Member or the executor, administrator or legal representative of any deceased Member shall be entitled to cast the vote of such Member at any meeting of Members or by any written instrument. At all meetings of Members, all questions, except those the manner of which is otherwise expressly governed by statute, the Articles of Incorporation of the Association, the Declaration or the Bylaws, shall be decided by the vote

of a plurality of the Member of the Association present in person or by proxy and entitled to vote, provided that a quorum is present.

At any election where there are an equal number of nominees as there are positions to be filled, the Board may determine that election by ballot or vote is not required and may declare that the nominees are elected by unanimous consent or acclamation.

Votes cast by Members must be in writing signed by the Member if the vote is cast (i) outside of a meeting, (ii) in an election to fill a position on the Board, (iii) on a proposed adoption or amendment of a Dedicatory Instrument (as defined in the Texas Property Code), (iv) on a proposed increase in the amount of the Maintenance Charge or proposed adoption of a special assessment, or (v) on the proposed removal of a Board member.

A proxy, or ~~absentee~~ or electronic ballot may be counted toward a quorum of Members present (as if in attendance at a meeting) (1) for the purpose of establishing a quorum only for items appearing on the ballot; (2) may not be counted, even if properly delivered, if the Member attends any meeting to vote in person, so that any vote cast at a meeting by a Member supersedes any vote submitted by absentee or electronic ballot previously submitted for that purpose; and (3) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.

#### **ARTICLE IV. BOARD OF TRUSTEES: ELECTION, NUMBER, POWERS, BOARD MEETINGS**

##### Section 1. Governing Body; Composition

The affairs of the Association shall be governed by the Board of Trustees, and subject to the restrictions imposed by any law, by the Articles of Incorporation of the Association, the Declaration, or by these Bylaws, the Board may exercise all of the powers of the Association. Each Trustee shall have one (1) vote, and all actions to be taken by the Trustees shall require a majority vote for approval, except as otherwise provided in the Declaration, these Bylaws or by law. Not more than one (1) representative of a corporation or other entity may serve on the Board at any given time. Notwithstanding anything contained herein to the contrary, if the Board is presented with written documented evidence from a database or other record maintained by a governmental law enforcement authority that a Trustee was convicted of a felony or crime of moral turpitude not more than 20 years before the date the Board is presented with the evidence, that Trustee is immediately ineligible to serve on the Board and is automatically considered removed from the Board, and prohibited from future service on the Board. No Trustee may serve on the Architectural Control Committee while serving as a Trustee.

All Trustees must be Members of the Association. In the case of a Member that is a corporation, limited liability company, or partnership, the person designated in writing by either proxy or a resolution to the Secretary of the Association as the representative of such corporation, limited liability company, or partnership shall be eligible to serve as a Trustee. At least four (4) of the five (5) Trustees must reside in Bentwater.

##### Section 2. Number of Trustees

The number of Trustees in the Association shall be not less than three (3) nor more than seven (7). The Board currently consists of five (5) Trustees. The number of Trustees may be increased or decreased

within the parameters set forth above by written consent of a majority of the Trustees, without the approval of the Members. A decrease in the number of Trustees elected by the Members may not cut short a sitting Trustee's term of office without that Trustee's written consent. An increase in the number of Trustees to be elected by the Members, shall be effectuated at the next annual or special meeting of the Members where the increased positions on the Board shall be filled by a vote of the Members as provided herein for the election of Trustees, and further provided that the staggering of terms be sustained in a manner similar to that set forth in these Bylaws.

### Section 3. Term of Office and Election of Trustees

At the June 24, 2017 special meeting of the Members, the Members elected five (5) new Trustees. In order to establish the staggering of terms, two (2) Trustees were elected for a term of one (1) year, two (2) Trustees were elected for a term of two (2) years and one (1) Trustee was elected for a term of three (3) years (such terms more particularly described in the Board Resolution pertaining to such election). At annual meetings thereafter (provided there will be no election of Trustees held at the September 2017 annual membership meeting), the term of office of each Trustee position up for election by the Members shall be for three (3) years from the date of such election, with the understanding that a Trustee may be reelected for additional three-year terms. Each Trustee shall continue to hold office until his/her successor is appointed or elected and qualified.

At no time shall more than forty percent (40%) or two-fifths (2/5) of the total number of Trustees be added to the same elected term.

Notwithstanding anything contained herein to the contrary, in an election of Trustees in which election there are more candidates than vacant positions and where two or more candidates receive the same number of votes resulting in a tie, the winner of the election shall be chosen by lot (i.e., the names of the candidates who are running for a Trustee position and have received the same number of votes shall be written on separate pieces of paper by the presiding officer of the meeting, the pieces of paper shall be folded by the presiding officer and placed in a container provided by the then-serving Board; the presiding officer shall ask for a volunteer Member from the audience of Owners to pick any one piece of paper from the container and the person whose name is picked shall be declared the winner of such election).

### Section 4. Nomination of Trustees

The Board may establish a Nominating Committee consisting of a chairperson, who shall be a member of the Board, and three (3) or more Members. The Nominating Committee shall make as many nominations for election to the Board as it receives.

Regardless of whether a Nominating Committee is formed, Members may also nominate themselves by submitting a written nomination to the Board on or before a date to be determined by the Board. A nomination taken from the floor in a Board of Trustee election is not considered an amendment to the proposal for the election.

At least ten days before the Association notifies the Members that the period for voting in a Board of Trustee election has begun, the Association must provide notice to the Members soliciting candidates interested in running for a position on the Board. The notice must contain instructions for an eligible candidate to notify the Board of the candidate's request to be placed on the ballot and the deadline to submit the candidate's request. The deadline may not be earlier than the 10<sup>th</sup> day after the date the Board provides the notice. All forms of ballots must include the name of each eligible candidate from whom the Board received a request to be placed on the ballot.

The notice required by this provision must be:

1. mailed to each Member; *or*
2. provided by:
  - (a) posting the notice in a conspicuous manner reasonably designed to provide notice to the Members:
    - (i) in a place located on the Common Area or, with a Member's consent in a conspicuous manner on privately owned property within the Subdivision; or
    - (ii) on any Internet website maintained by the Association or other Internet media;  
*and*
  - (b) sending by e-mail to each Member who has registered an e-mail address with the Association.

#### Section 5. Removal of Trustees and Vacancies

A meeting to vote on the removal from office prior to the expiration of his or her term of any Trustee elected by the Members, with or without cause, may be called by the submission of a written, signed, and dated petition of fifteen percent (15%) of the total votes of the Association, as required for the calling of a Special Meeting in accordance with Article III, Section 3. Any such Trustee whose removal is sought shall be given notice prior to any meeting called for that purpose. All signatures on the petition must be dated within forty-five (45) days of the date of submission of the petition to the General Manager of the Association and must specify the Trustee to be removed. The meeting called for such purpose shall be held in accordance with the procedure for election of a Trustee. Quorum for a meeting for the removal of a Trustee shall be forty percent (40%) of the total votes of the Association. Any such Trustee whose removal is sought may be removed only by a vote of two-thirds of the required quorum for the meeting at which removal is sought. The provisions for adjourning and reconvening a meeting that fails for a lack of quorum do not apply to meetings called to vote on the removal of a Trustee.

A vacancy of a Trustee position created prior to the expiration of his/her term, may be filled by the affirmative vote of the majority of the remaining Trustees, regardless of whether that majority is less than a quorum. A Trustee so appointed to fill a vacancy shall serve for the remaining unexpired term of the Trustee's predecessor in office.

#### Section 6. Meeting of Trustees

The Trustees may hold their meetings and have officers and keep the books of the Association, except as otherwise provided by statute, in such place or places in the State of Texas, as the Board may from time to time determine.

#### Section 7. First Meeting

Each newly elected Board may hold its first meeting for the purposes of organization and the transaction of business, if a quorum is present, (the Organizational Meeting) immediately after the annual meeting of the Members or adjourned annual meeting of the Members.

Section 8. Election of Officers

At the Organization Meeting of the Board in each year, the Board shall proceed to the election of the officers of the Association.

Section 9. Regular Meetings

Regular meetings of the Board shall be held at such time and place as shall be designated from time to time by resolution of the Board. The Board shall meet no fewer than three (3) times each calendar year and such meetings shall be open to the Members, as further specified in this Article.

Section 10. Special Meetings

Special meetings of the Board shall be held whenever called by the President, Vice President, Secretary or a majority of the Trustees then in office. Notice of each special meeting shall be given to the Members as provided below.

Section 11. Notice of Board Meetings

Notice to the Members and Trustees of the date, hour, place and general subject of regular or special open Board meetings, including instructions for Members to access any communication method utilized for the Board meeting, as well as a general description of any matter to be brought up for deliberation in executive session, shall be:

1. mailed to each Member and Trustee not later than 10<sup>th</sup> day or earlier than 60<sup>th</sup> day before the date of the meeting; or
2. provided at least 72 hours before start of the meeting by:
  - a. posting in conspicuous manner reasonably designed to provide notice to the Members and Trustees;
    - i. in a place located on the Association's common property, or on Member's property with their consent, or other property within the subdivision; or
    - ii. on any internet website maintained by the Association or other internet media; and
  - b. sending notice by e-mail to each Member and Trustee who has registered an email address with the Association.

If the Board recesses a meeting to continue the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent the provisions of Article III, Section 11. If the meeting is continued to the next business day, and the Board again continues the meeting to another day, the Board shall give notice of continuation in at least one of the manners described in Article III, Section 11, within two (2) hours after adjourning the meeting being continued.

Section 12. Board Meetings; Action Taken Without a Meeting

A Board meeting means a deliberation between a quorum of the voting Trustees or between a quorum of the voting Trustees and another person, during which Association business is considered and the Board takes formal action. A Board meeting does not include the gathering of a quorum of the Board at a social function unrelated to the business of the Association or the attendance by a quorum of

the Board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is not taken and any discussion of Association business is incidental to the social function, convention, ceremonial event, or press conference.

Regular and special Board meetings must be open to the Members, subject to the right of the Board to adjourn a Board meeting and reconvene in closed executive session.

Regarding all Board meetings that are open to the Members, Members other than Trustees may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a Trustee. In such case, the President, or if applicable the Trustee who has the floor for the Board for the specific discussion or deliberation, may limit the time any Member may speak.

An open meeting may be held by electronic or telephonic means provided that (i) each Trustee may hear and be heard by every other Trustee, (ii) all Members in attendance at the meeting may hear all Trustees (except if adjourned to executive session), and (iii) all Members are allowed to listen using any electronic or telephonic communication method used or expected to be used by a Trustee to participate.

Action Outside of a Meeting. Generally:

1. Subject to subsection 2, below, the Board may take action outside of a meeting, including voting by electronic and telephonic means, without prior notice to Members if each Trustee is given a reasonable opportunity to express the Trustee's opinion to all other Trustees and to vote. Any action taken without notice to the Members must be summarized orally, including estimation of expenditures approved at the meeting, and documented in the minutes of the next regular/special Board meeting.

Action Outside of a Meeting Prohibited:

2. Notwithstanding subsection 1, above, the Board may not consider or vote on any of the following issues except in an open meeting for which prior notice was given to Members:
  - a. Fines;
  - b. Damage assessments;
  - c. Initiation of foreclosure actions;
  - d. Initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety;
  - e. Increases in the Maintenance Charge;
  - f. Levying of special assessments;
  - g. Appeals from a denial of architectural control approval;
  - h. A suspension of a right of a particular Member before the Member has an opportunity to attend a Board meeting to present the Member's position, including any defense, on the issue;
  - i. Lending or borrowing money;
  - j. The adoption or amendment of a Dedicatory Instrument;
  - k. The approval of an annual budget or the approval of an amendment of an annual budget that increases the budget by more than ten percent (10%);
  - l. The sale or purchase of real property;

- m. The filling of a vacancy on the Board;
- n. The construction of capital improvements other than the repair, replacement, or enhancement of existing capital improvements; or
- o. The election of an officer.

#### Section 13. Waiver of Notice of Meeting by Trustee

The transaction of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting, each of the Trustees not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent by a Trustee need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Trustee who attends the meeting without protesting in writing before or at its commencement about the lack of adequate notice.

#### Section 14. Quorum of Board of Trustees

The majority of the Trustees then in office shall constitute a quorum for the transaction of business, but if at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum be present or in attendance thereat. The act of a majority of the Trustees present at a meeting at which a quorum is in attendance shall constitute the act of the Board, except as otherwise provided by law, the Articles of Incorporation of the Association, the Declaration, or by these Bylaws. Any deadlock in voting on any matter (which may be decided by a majority vote, including the vote of the President) before the Board shall be broken by the President.

#### Section 15. Order of Business

At meetings of the Board, business shall be transacted in such order as the Board from time to time may determine. At all meetings of the Board, the President shall preside, and in the absence of the President, a Vice-President shall preside, and in the absence of the Vice-President, a Chairman shall be chosen from the Trustees present. The Secretary of the Association shall act as Secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as Secretary of the meeting.

#### Section 16. Executive Session

The Board may close a portion of its meetings for the purpose of discussing actions involving personnel, pending or threatened litigation, contract negotiations, enforcement actions, confidential communications with the Association's attorney, matters involving the invasion of privacy of individual Members, or matters that are to remain confidential by request of the affected parties and agreement of the Board. Following an executive session, any decision made in the executive session must be summarized orally and placed in the minutes, in general terms, without breaching the privacy of individual Members, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

#### Section 17. Services

No Trustee or officer of the Association shall be required to devote his time or render services exclusively to the Association. Each Trustee and officer of the Association shall be free to engage in any and all other business and activities either similar or dissimilar to the business of the Association without liability to the Association. Likewise, each and every Trustee and officer of the Association shall be entirely free to act for and serve any other corporation or corporations, entity or entities, in any capacity or capacities and become a trustee or officer of any other corporation or corporations, entity or entities, whether or not similar to the purposes, business and activities of the Association, without breach of duty to the Association or its members and without liability of any character or description to the Association or its members. Contracts or transactions involving interested Trustees, officers or Members are subject to the requirements set forth in §22.230 of the Texas Business Organizations Code, or its successor statute.

#### Section 18. Compensation

No Trustee shall receive compensation from the Association for acting as such; provided, however, that a Trustee may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Trustees. Provided however, the Board can adopt a policy setting a value under which anything received is not considered compensation.

### **ARTICLE V. OFFICERS**

#### Section 1. Titles and Term of Office

The officers of the Association shall be a President, one or more Vice Presidents, a Secretary, and a Treasurer. The foregoing officers shall be Trustees. Additionally, the Association may have other such officers, including but not limited to, one or more Assistant Secretaries and one or more Assistant Treasurers, as the Board may from time to time elect or appoint who need not be Trustees. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

#### Section 2. Election of Officers

The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

#### Section 3. Term

The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless s/he shall sooner resign or shall be removed or otherwise disqualified to serve.

#### Section 4. Resignation and Removal

Any officer may be removed from office with or without cause by a vote of a majority of the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.



Section 5. Vacancies

A vacancy in the office of any officer may be filled by vote of a majority of the Trustees then in office. The officer appointed to such vacancy shall serve for the remainder of the term of the officer s/he replaces.

Section 6. President

The President, subject only to the control of the Board, shall be in general charge of the affairs of the Association in the ordinary course of its business; s/he shall preside at all meetings of the Members and of the Board; s/he may make, sign and execute all deeds, conveyances, assignments, bonds, checks, contracts and other obligations and any and all other instruments and papers of any kind or character in the name of the Association; and, s/he shall do and perform such other duties as may from time to time be assigned to him/her by the Board. The President shall be the sole direct contact with the staff of the Association except to the extent the President delegates that responsibility to other Trustees on specifically stated subject matters.

Section 7. Vice Presidents

Each Vice President shall have the usual powers and duties pertaining to his/her office together with such other powers and duties as may be assigned to him/her by the Board, and the Vice President shall have and exercise the powers of the President during that officer's absence or inability to act. Any action taken by a Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken.

Section 8. Treasurer

The Treasurer shall have custody of all the funds and securities of the Association. When necessary or proper, the Treasurer (i) may endorse, on behalf of the Association, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Association in such bank or banks or depositories as shall be designated in the manner described by the Board; (ii) may sign all receipts and vouchers for payments made to the Association, either alone or jointly with such officer as is designated by the Board; whenever required by the Board, s/he shall render a statement of the cash account; (iii) shall enter or cause to be entered regularly on the books of the Association to be kept by him/her for that purpose full and accurate accounts of all moneys received and paid out on account of the Association; (iv) shall at reasonable times during business hours make available for review the books and accounts of the Association to any Trustee of the Association; (v) shall perform all acts incident to the position of Treasurer subject to the control of the Board; (vi) shall, if required by the Board, give such bond for the faithful discharge of his duties in such form as the Board may require; and (vii) shall cause an annual audit of the Association books to be made by a public accountant at the completion of the fiscal year.

Section 9. Secretary

The Secretary, or his/her designee, shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Members in a minute book; shall attend to the giving and serving of all notices; shall keep appropriate current records showing the Members of the Association, together with their addresses; certify the voting rights of Members from time to time and collect the votes of the Members

at any meeting of the Members and may sign with the President or a Vice President in the name of the Association all contracts, conveyances, transfers, assignments, authorizations and other instruments of the Association. The Secretary shall have charge of and maintain and keep such books and papers as the Board may direct, all of which shall at all reasonable times be open to the inspection of any Trustee upon request at the office of the Association during business hours and shall in general perform all the duties incident to the office of Secretary subject to the control of the Board.

#### Section 10. Committees

The Board shall appoint such committees as it deems appropriate in carrying out its purposes and duties hereunder. However, the designation of such committees and the delegation thereto of authority shall not operate to relieve the Board, or any individual Trustee, of any responsibility imposed upon it or him by law. Any non-trustee who becomes a member of any such committee shall have the same responsibility with respect to such committee as a Trustee who is a member thereof. All committees of the Board shall be vested with advisory powers only and are not authorized to act on behalf of the Board, unless otherwise specifically authorized by the Board or the Dedicatory Instruments (as defined by the Texas Property Code).

### **ARTICLE VI. CONTRACTS, CHECKS, DRAFTS, BANK ACCOUNTS, ETC.**

#### Section 1. Contracts

With respect to the Common Areas and in accordance with the Articles of Incorporation and the Declaration, the Board shall have the right to contract with any person or entity for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Board to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other neighborhood owner or resident associations, both within and without the Property. Such agreements shall require the consent of a majority of the total number of non-interested directors of the Board. The Association shall not be bound, either directly or indirectly, by any contract, lease, or other agreement (including any management contract) unless such contract, lease or other agreement contains a right of termination exercisable by either party at any time, with or without cause. Such notice of termination must be submitted in writing, with receipted delivery confirmation, to all parties to the contract, lease or other agreement.

The Board, except as otherwise provided by these Bylaws and the Declaration, may authorize any officer or officers, agent or agents, in the name of and on behalf of the Association, to enter into any contract or execute and deliver any instrument, and such authority may be general or confined to specific instances; and, unless so authorized by the Board or expressly authorized by these Bylaws or the Declaration, no officer or agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable pecuniarily for any purpose or for any amount.

#### Section 2. Loans

No loan shall be contracted on behalf of the Association, and no negotiable papers shall be issued in its name unless authorized by a vote of the Board, pursuant to the provisions set forth in these Bylaws.

#### Section 3. Checks, Drafts, Etc.

All checks, drafts and other orders for the payment of money out of the funds of the Association, and all notes or other evidence of indebtedness of the Association shall be signed by the President on behalf of the Association or by such other Trustees, officers or other authorized persons in such manner as shall from time to time be determined by resolution of the Board.

#### Section 4. Deposits

All funds of the Association not otherwise employed shall be endorsed and deposited by the Controller to the credit of the Association in such banks or other depositories as the Board may select. The President, a Vice President, the Treasurer, the Secretary or any other officer or agent or employee of the Association to whom such power may be delegated by the Board, may also endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Association for the purpose of such deposits.

#### Section 5. Transactions with Trustees and Officers

All contracts, transactions and acts entered into by the Trustees and/or officers on behalf of the Association shall be at arm's length and not violative of the limitations provided in the Articles of Incorporation, Texas Property Code §209.0052 or its successor statute, or these Bylaws against the Association's use or application of its funds for private benefit; and provided further that no contract or transaction shall be entered into on behalf of the Association if such contract or transaction is a prohibited transaction or would result in the denial of the tax exemption of the Association under any section of the Code and its Regulations as they now exist or as they may hereafter be amended, or if such contract or transaction is at prices or rates which are not competitive with or more favorable to the Association than prices or rates otherwise prevailing on the market for similar or comparable goods, services or arrangements. In no event, however, shall any person or other entity dealing with the Trustees or officers be obligated to inquire into the authority of the Trustees and officers to enter into and consummate any contract, transaction, or other action.

#### Section 6. Indemnity

(a) Subject to the exceptions and limitations contained in subsection (b) below:

(1) Every person who is, or has been a Trustee, Advisory Board Trustee, officer of the Board, committee member of the Board or a member of the ACC shall be indemnified by the Association to the fullest extent permitted by law against liability and against all expenses reasonably incurred or paid by him/her in connection with any demand, claim, action, suit (or threat thereof) or proceeding in which s/he becomes involved as a party or otherwise by virtue of his/her being or having been a Trustee, Advisory Board Trustee, officer of the Board, committee member of the Board or a member of the ACC and against amounts paid or incurred by him/her in the settlement thereof:

(2) The words "claim", "action", "suit" or "proceeding" shall apply to all claims, actions, suits or proceedings (civil, criminal or other, including appeals), actual or threatened, made or commenced subsequent to the adoption of these Bylaws; and the words "liability" and "expenses" shall include, without limitation, attorneys' fees, costs, judgments, amounts paid in settlement, fines, penalties, and other liabilities.

- (b) No indemnification shall be provided hereunder to a Trustee, Advisory Board Trustee, officer of the Board, committee member of the Board, a member of the ACC or any other individual:
- (1) Against any liability to the Board by reason of willful misfeasance, bad faith, gross negligence, breach of ordinary standard of care, criminal misconduct or reckless disregard of the duties involved in the conduct of his office:
  - (2) With respect to any matter as to which s/he shall have been finally adjudicated not to have acted in good faith in the reasonable belief that his/her action was in the best interest of the Association:
  - (3) In the event of a settlement unless there has been a determination that such Trustee, Advisory Board Trustee, officer of the Board, committee member of the Board or a member of the ACC did not engage in willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office:
    - (i) By the court or other body approving the settlement; or
    - (ii) By vote of a majority of those Trustees who are not themselves involved in the claim, action, suit or proceeding; or
    - (iii) By written opinion of independent counsel.
- (c) The rights of indemnification herein provided may be insured against by policies maintained by the Association, shall be severable, shall not affect any other rights to which any Trustee, Advisory Board Trustee, officer of the Board, committee member of the Board or a member of the ACC may now or hereafter be entitled, shall continue as to a person who has ceased to be such Trustee, Advisory Board Trustee, officer of the Board, committee member of the Board or a member of the ACC and shall inure to the benefit of the heirs, executors and administrators of such a person.

#### Section 7. Financial Records and Annual Reports

The Association shall maintain true and accurate current financial records with full and correct entries made with respect to all financial transactions of the Association, including all income and expenditures. The books, records and papers, audit, Declaration, the Articles of Incorporation, and the Bylaws of the Association and the minutes of all meetings and proceedings of the Board and the Association shall be available for inspection by any Member at the principal office of the Association pursuant to the Association's access to records policy.

The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

- a) Accrual or cash accounting shall be employed.
- b) Cash accounts of the Association shall not be commingled with any other accounts

- c) No remuneration without full disclosure and prior agreement of the Board, or as contained in a written management contract, shall be accepted by any manager from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise. Provided, however, a total amount of up to One Hundred Dollars and 00/100 (\$100.00) may be received in a given year and such amount shall not be considered remuneration. Such permitted amount is subject to change via Board resolution. Furthermore, the Board can adopt a policy setting a value under which anything received is not considered remuneration.
- d) Any financial or other interest that any Trustee or manager may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board.
- (e) Financial reports may be prepared for the Association monthly containing:
  - (i) an income statement reflecting all income and expense activity for the preceding period on an accrual or cash basis;
  - (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
  - (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
  - (iv) a balance sheet as of the last day of the preceding period; and
  - (v) any other subject matter the Board may request from time-to-time.
- (f) An annual report consisting of at least the following shall be made available at the annual meeting to all Members: (1) a balance sheet; and (2) an operating (income) statement.
- (g) An audit report, including a statement of changes in financial position for the fiscal year will be prepared annually by an independent public accountant and completed not later than six months after the close of the fiscal year.

## **ARTICLE VII. MISCELLANEOUS PROVISIONS**

### Section 1. Offices

The principal office of the Association shall be at the Bentwater Property Owners Association Office, in Montgomery County, Texas.

### Section 2. Fiscal Year

The fiscal year of the Association shall end at midnight on June 30th of each calendar year.

### Section 3. Notice and Waiver of Notice

Whenever any notice is required to be given under the provisions of these Bylaws, said notice shall be deemed to be sufficient if given by depositing the same in a post office mailbox in a sealed, postpaid

wrapper addressed to the person entitled thereto at his post office address, as it appears on the books of the Association, and such notice shall be deemed to have been given following on the date of such mailing. A waiver of notice whether before or after the time stated therein, shall be deemed equivalent to notice. Alternatively, notice may be given personally, or by electronic means as elsewhere provided in these Bylaws or permitted by Law.

#### Section 4. Conflicts

In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

#### Section 5. Covenant to Obey Law, Rules and Regulations

Each Member shall be subject to the Declaration and shall abide by the Bylaws and rules and regulations as the same are or may from time to time be established by the Board. Each Member shall observe, comply with and perform all rules, regulations, ordinances and laws made by any governmental authority or any municipal, state and federal government having jurisdiction over the Property or any part thereof.

#### Section 6. Severability

Each of the provisions of these Bylaws shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

#### Section 7. Terminology

The use of any gender herein shall be applicable to all genders, the singular shall include the plural and vice versa.

#### Section 8. Business Judgment Rule

A Trustee, Officer, or Committee Member shall discharge his/her duties in good faith, with ordinary care, and in a manner he/she reasonably believes to be in the best interest of the corporation.

Any act or thing done by any Trustee, Officer, or Committee Member taken in furtherance of the purposes of the corporation, and accomplished in conformity with the procedures set forth in the Declaration, Articles of Incorporation, the laws of the State of Texas, and/or these Bylaws, shall be reviewed under the standard of the Business Judgment Rule as established by the common law of Texas, and such act or thing done shall not be a breach of duty on the part of the Trustee, Officer, or Committee Member if they have been done within the exercise of their discretion and judgment.

The Business Judgment Rule means that a court shall not substitute its judgment for that of the Trustee, Officer or Committee Member. A court shall not re-examine the quality of the decisions made by the Trustee, Officer, or Committee Member by determining the reasonableness of the decision as long as the decision is made in good faith in what the Trustee, Officer, or Committee Member believes to be the best interest of the corporation.

Section 9. Security

THE ASSOCIATION SHALL NOT IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE PROPERTY. NEITHER SHALL THE ASSOCIATION BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION AND ITS BOARD ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF ANY OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF LOTS, AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION AND ITS BOARD HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

Section 10. Owner Conflict

If an Owner is involved in litigation with the Association as to a conflict of interpretation of the Declaration, the Articles of Incorporation for the Association, rules and regulations promulgated by the Board, duly adopted Board policies, or these Bylaws, and/or the amount of delinquent assessments, that Owner may not participate in any Association meeting or activity subject to any applicable parameters set forth in Section 209.0059 of the Texas Property Code, or its successor statute. Additionally, after notice and an opportunity to be heard if required by law, an Owner's right to use Common Area may be withheld to the extent allowed by law.

Section 11. Dissolution/Winding Up Termination

The Association may be wound-up/dissolved pursuant to the Texas Business Organizations Code, or its successor statute. If the Association is wound-up or dissolved, the assets shall be distributed pursuant to a Plan of Distribution approved by the Members.

Section 12. Jurisdiction and Venue

The provisions in these Bylaws shall be governed by and enforced in accordance with the laws of the State of Texas. Venue shall be mandatory in Montgomery County, Texas.

Section 13. Mergers

Upon a merger or consolidation of the Association with another association, the Association's properties, assets, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, assets, rights and obligations of another association may be transferred to the Association as a surviving corporation or to a like organization or governmental agency. The surviving or consolidated association shall administer any restrictions together with any declarations governing these and any other properties, under one administration. No such merger or consolidation shall cause any revocation, change or addition to the Declaration.

#### **ARTICLE VIII. AMENDMENTS**

The Board shall have the exclusive authority to make, alter, amend and repeal the Bylaws by the affirmative vote of a majority of the Board.

#### **ARTICLE IX. ACCESS BY NONMEMBERS**

The Board has granted an easement for access to nonmembers by that certain Amended and Restated Easement Agreement, recorded under Montgomery County Clerk's File No: 2013090459 in the Official Public Records of Montgomery County Texas, as same may be amended from time to time (the "Easement"). The purpose of the Easement is to grant access to nonmembers who may be attending an event open to the general public or use facilities in the community during the time that they are open to the general public; such as by way of illustration and not limitation, golf tournaments, tennis tournaments, and access to polling location for public elections.



**CERTIFICATE OF SECRETARY**

The undersigned, as Secretary of Bentwater Property Owners Association, Inc., hereby certifies that the foregoing Eighth Amended and Restated Bylaws were approved by at least a majority of the Trustees of the Association at a meeting held on the 9th day of August, 2021 at which a quorum was present.



Warren Dean, Secretary

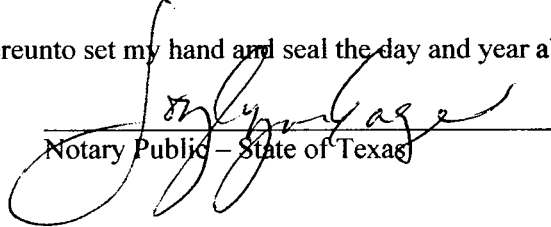
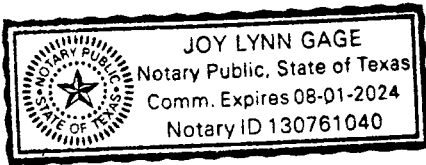
THE STATE OF TEXAS

COUNTY OF Montgomery

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The foregoing Bylaws were acknowledged by Warren Dean, the Secretary of Bentwater Property Owners Association, Inc. on this the 9th day of August, 2021 in his/her representative capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year above written.

  
Notary Public - State of Texas

**E-FILED FOR RECORD**

08/10/2021 04:30PM



COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS,  
COUNTY OF MONTGOMERY

I hereby certify that this instrument was e-filed in the file number sequence on the date and time stamped herein by me and was duly e-RECORDED in the Official Public Records of Montgomery County, Texas.

**08/10/2021**



County Clerk  
Montgomery County, Texas