

**RESTATED ARTICLES OF ORGANIZATION  
OF  
WATERVIEW PARK APARTMENTS, L.L.C.**

THESE RESTATED ARTICLES OF ORGANIZATION are filed pursuant to Section 3.09 of the Texas Limited Liability Company Act (the "Act") in connection with the existence of a limited liability company (the "Company") pursuant to the Act.

**ARTICLE 1**

**Name of Company**

The name of the Company is Waterview Park Apartments, L.L.C.

**ARTICLE 2**

**Period of Duration**

The Company shall exist in perpetuity from the date of filing hereof, unless sooner terminated in accordance with its Regulations.

**ARTICLE 3**

**Purpose**

The exclusive purpose for which this Company is formed is to promote the charitable interest of The Utley Foundation, a Texas not for profit corporation qualifying as an organization exempt from Federal income taxes and a public charity under Internal Revenue Code, as amended, Sections 501(c)(3) and 509(a)(2), through the ownership and/or operation of "Housing Facilities," as defined in Section 53.02 of Chapter 53 of the Texas Education Code, on behalf of and for the benefit of the University of Texas at Dallas and to act as a higher education development foundation as provided under the TEX. TAX CODE § 11.11(f). This Company may engage in any lawful act or activity for which limited liability companies may be organized, including but not limited to the purchase, sale, service, lease, and management of all or any personal and real properties in its own name in connection such construction, ownership and operation..

**ARTICLE 4**

**Principal Place of Business**

The principal place of business of the Company in the State of Texas shall be 3890 W. Northwest Hwy, Suite 601, Dallas, TX 75220.

## **ARTICLE 5**

### **Registered Agent and Office**

The registered agent of the Company is Michael Nguyen. The address of the Company's registered office is 3890 W. Northwest Hwy, Suite 601, Dallas, TX 75220, which is the business office of the registered agent.

## **ARTICLE 6**

### **Management by Managers**

The Company shall be managed by managers. There shall be one (1) manager, but a different number of managers may be fixed by, or in the manner provided in, the Regulations of the Company. The name and address of the person who shall serve as manager until the first annual meeting of members or until his successors are duly elected are as follows:

Michael Nguyen

3890 W. Northwest Hwy, Suite 601,  
Dallas, TX 75220

## **ARTICLE 7**

### **Limitation of Managers' Liability**

To the fullest extent permitted by Tex. Rev. Civ. Stat. Art. 1302-7.06, as it may be amended from time to time, neither a manager nor an officer of the Company shall be liable to the Company or its members for monetary damages for an act or omission in the manager's capacity as a manager or the officer's capacity as an officer. No amendment to or repeal of this Article 7 will apply to or have any effect on the liability or alleged liability of any manager of the Company for or with respect to any acts or omissions of the manager occurring prior to such amendment or repeal.

## **ARTICLE 8**

### **Powers**

The Limited Liability Company is operating as a non-profit organization and will conform to Texas Non-Profit Corporation Act. The powers, authority, and activities of the Limited Liability Company shall not be inconsistent with the Texas Non-Profit Corporation Act.

**ARTICLE 9**

**Date of Adoption and Statement of Approval**

These Restated Articles of Organization were approved by the sole member of the Limited Liability Company on the \_\_\_\_ day of March, 2004, pursuant to Article 2.23H of the Act.

IN WITNESS WHEREOF, the undersigned sole Manager of the Company has executed these Restated Articles of Organization on this \_\_\_\_ day of March, 2004

\_\_\_\_\_  
Michael Nguyen

# RESTATED REGULATIONS OF LIMITED LIABILITY COMPANY

OF

## WATERVIEW PARK APARTMENTS, L.L.C.

A Texas Limited Liability Company

Whereas, The Utley Foundation, a Texas nonprofit corporation (the "Member") is the sole member of this Texas limited liability company pursuant to and in accordance with the Texas Limited Liability Company Act. (the "Act"), and hereby declares the following to be the Limited Liability Company Restated Regulations of such limited liability company:

1. **Name.** The name of the limited liability company (the "LLC") is Waterview Park Apartments, L.L.C.

2. **Purpose and Powers.**

a. The exclusive purpose for which this Company is formed is to promote the charitable interest of The Utley Foundation, a Texas not for profit corporation qualifying as an organization exempt from Federal income taxes and a public charity under Internal Revenue Code, as amended, Sections 501(c)(3) and 509(a)(2), through the ownership and/or operation of "Housing Facilities," as defined in Section 53.02 of Chapter 53 of the Texas Education Code, on behalf of and for the benefit of the University of Texas at Dallas and to act as a higher education development foundation as provided under the TEX. TAX CODE § 11.11(f). This Company may engage in any lawful act or activity for which limited liability companies may be organized, including but not limited to the purchase, sale, service, lease, and management of all or any personal and real properties in its own name in connection such construction, ownership and operation.

b. The LLC is operating as a non-profit organization and will conform to Texas Non-Profit Corporation Act. The powers, authority, and activities of the Limited Liability Company shall not be inconsistent with the Texas Non-Profit Corporation Act.

3. **Registered Office.** The address of the Company's registered office is 3890 W. Northwest Hwy, Suite 601, Dallas, TX 75220.

4. **Registered Agent.** The name and address of the registered agent of the LLC for service of process on the LLC in the State of Texas are Michael Nguyen, 3890 W. Northwest Hwy, Suite 601, Dallas, TX 75220.

5. **Sole Member.** The Utley Foundation is the sole Member of the LLC in respect of the Interest (as hereinafter defined).

6. **Interest.** The LLC shall be authorized to issue a single class of Limited Liability Company Interest (as defined in the Act) (the "Interest") including any and all benefits to which the holder of such Interest may be entitled in this Agreement, together with all obligations of such person to comply with the terms and provisions of this Agreement.

7. **Capital Subscriptions.** The Member may contribute cash or other property to the LLC as it shall decide, from time to time, but shall does not assume any obligation to make a contribution to the LLC.

**8. Tax Characterization and Returns.**

a. The Member acknowledges that at all times that two or more persons or entities hold equity interests in the LLC for federal income tax purposes (i) it is the intention of the LLC to be treated as a "partnership" for federal and all relevant state tax purposes and (ii) the LLC will be treated as a "partnership" for federal and all relevant state tax purposes and shall make all available elections to be so treated. Until such time, however, it is the intention of the Member that the LLC be disregarded for federal and all relevant state tax purposes and that the activities of the LLC be deemed to be activities of the Member for such purposes. All provisions of the LLC's Articles of Organization and these Regulations are to be construed so as to preserve that tax status under those circumstances.

b. In the event that the LLC is treated as a partnership for tax purposes in accordance with Section 7(a) hereof, then within ninety (90) days after the end of each fiscal year, the LLC will cause to be delivered to each person who was a Member at any time during such fiscal year a Form K-1 and such other information, if any, with respect to the LLC as may be necessary for the preparation of each Member's federal, state or local income tax (or information) returns, including a statement showing each Member's share of income, gain or loss, and credits for the fiscal year.

**9. Management.**

a. **Board of Managers.** The management of the LLC shall be vested in a Board of Managers (the "Board of Managers") elected by the Member. The total number of members on the Board of Managers (the "Managers") shall be one unless otherwise fixed at a different number by an amendment hereto or a resolution signed by the Member. The Member hereby elects as the initial Manager of the LLC Michael Nguyen to serve until his successor(s) is elected and qualified. A Manager shall remain in office until removed by a written instrument signed by the Member or until such Manager resigns in a written instrument delivered to the Member or such Manager dies or is unable to serve. In the event of any such vacancy, the Member may fill the vacancy. Each Manager shall have one (1) vote. Except as otherwise provided in these Regulations, the Board of Managers shall act by the affirmative vote of a majority of the total number of Managers. Each Manager shall perform his or her duties as such in good faith, in a manner he reasonably believes to be in the best interests of the LLC, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A person who so performs his duties shall not have any liability by reason of serving or having served as a Manager. A Manager shall not be liable under a judgment, decree or order of court, or in any other manner, for a debt, obligation or liability of the LLC.

b. **Meetings and Powers of Board of Managers.** The Board of Managers shall establish meeting times, dates and places and requisite notice requirements and adopt rules or procedures consistent with the terms of these Regulations. Any action required to be taken at a meeting of the Board of Managers, or any action that may be taken at a meeting of the Board of Managers, may be taken at a meeting held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute presence in person at such meeting. Notwithstanding anything to the contrary in this Section 9, the Board of Managers may take without a meeting any action that may be taken by the Board of Managers under these Regulations if such action is approved by the unanimous written consent of the Managers.

Except as otherwise provided in these Regulations, all powers to control and manage the

business and affairs of the LLC shall be exclusively vested in the Board of Managers, and the Board of Managers may exercise all powers of the LLC and do all such lawful acts as are not by statute, the Articles of Organization or these Regulations directed or required to be exercised or done by the Member and in so doing shall have the right and authority to take all actions which the Board of Managers deems necessary, useful or appropriate for the management and conduct of the business of the LLC; provided, however, that the Member may amend these Regulations at any time and thereby broaden or limit the Board of Manager's power and authority.

c. **Officers.** The LLC may have officers who are appointed by the Board of Managers. The officers of the LLC may consist of a President, one or more Vice Presidents, a Secretary and a Treasurer. The initial officers of the LLC shall be:

President	Michael Nguyen
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Treasurer	Michael Nguyen
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The powers and duties of each officer shall be as follows:

**The President.** The President shall have, subject to the supervision, direction and control of the Board of Managers, the general powers and duties of supervision, direction and management of the affairs and business of the LLC usually vested in the president of a corporation, including, without limitation, all powers necessary to direct and control the organizational and reporting relationships within the LLC.

**The Vice Presidents.** Each Vice President, if any, shall have such powers and perform such duties as may from time to time be assigned to him or her by the Board of Managers or the President.

**The Secretary.** The Secretary, if any, shall attend meetings of the Board of Managers and meetings of the Member and record all votes and minutes of all such proceedings in a book kept for such purpose. He or she shall have all such further powers and duties as generally are incident to the position of a secretary of a corporation or as may from time to time be assigned to him or her by the Board of Managers or the President.

**The Treasurer.** The Treasurer shall have custody of the LLC's funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the LLC and shall deposit or cause to be deposited moneys or other valuable effects in the name and to the credit of the LLC in such depositories as may be designated by the Board of Managers. The Treasurer shall also maintain adequate records of all assets, liabilities, and transactions of the LLC and shall see that adequate audits thereof are currently and regularly made. The Treasurer shall have such other powers and perform such other duties that generally are incident to the position of a treasurer of a corporation or as may from time to time be assigned to him or her by the Board of Managers or the President.

d. **Indemnification of the Managers and Officers.** Unless otherwise provided in this Section 9, the LLC shall indemnify, save harmless, and pay all judgments and claims against any Manager or Officer relating to any liability or damage incurred by reason of any act performed or omitted to be performed by any Manager or Officer in connection with the business of the LLC, including reasonable attorneys' fees incurred by the Manager or Officer in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred. Unless otherwise provided in this Section 9, in the event of any action by the Member against any Manager or Officer, including a derivative suit, the LLC shall indemnify, save harmless,

and pay all expenses of such Manager or Officer, including reasonable attorneys' fees incurred in the defense of such action. Notwithstanding the provisions of this Section 9, this Section shall be enforced only to the maximum extent permitted by law, and no Manager or Officer shall be indemnified from any liability for the fraud, intentional misconduct, gross negligence or a knowing violation of the law which was material to the cause of action.

e. **Rights and Powers of the Member.** The Member shall not have any right or power to take part in the management or control of the LLC or its business and affairs or to act for or bind the LLC in any way. Notwithstanding the foregoing, the Member has all the rights and powers specifically set forth in these Regulations and, to the extent not inconsistent with these Regulations, in the Act and the powers provided for a non-profit corporation under the Texas Non-Profit Corporation Act. The Member has no voting rights except with respect to those matters specifically set forth in these Regulations and, to the extent not inconsistent herewith, as required in the Act. Notwithstanding any other provision of these Regulations, no action may be taken by the LLC (whether by the Board of Managers, or otherwise) in connection with any of the following matters without the written consent of the Member:

(1) the dissolution or liquidation, in whole or in part, of the LLC, or the institution of proceedings to have the LLC adjudicated bankrupt or insolvent;

(2) the filing of a petition seeking or consenting to reorganization or relief under any applicable federal or state bankruptcy law;

(3) consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the LLC or a substantial part of its property;

(4) the merger of the LLC with any other entity;

(5) the conversion of the LLC into any other type of entity;

(6) the sale of all or substantially all of the LLC's assets; or

(7) the amendment of these Regulations.

10. **Distributions.** The Board of Managers may cause the LLC to distribute any cash held by it, which is neither reasonably necessary for the operation of the LLC nor in violation of the Act, to the University of Texas at Dallas at any time.

11. **Assignments.** A Member only may assign all or any part of its Interest to any entity or organization exempt from federal income after having complied with all of the terms and conditions set forth in that certain Loan Agreement between LLC and the Anson Education Facilities Corporation dated as of August 1, 2002, until such Loan Agreement has been discharged, and thereafter a Member may assign all or any part of its interest to the University of Texas at Dallas (an assignee of such Interest is hereinafter referred to as a "Permitted Transferee"). A Permitted Transferee shall become a substituted Member automatically upon an assignment.

12. **Dissolution.** The LLC shall dissolve, and its affairs shall be wound up, upon the earlier to occur of (a) the decision of the Member, or (b) an event of dissolution of the LLC under the Act other than the death of the Member; provided, however, that ninety (90) days following any event dissolving the LLC if the Member(s) agrees in writing to continue the LLC and comply with requirements set forth in Art.6.01 of the Act then the LLC shall not be dissolved and its affairs shall

not be wound up.

13. **Distributions Upon Dissolution.** Upon the occurrence of an event set forth in Section 12 hereof, the University of Texas at Dallas shall be entitled to receive, after paying or making reasonable provision for all of the LLC's creditors to the extent required by the Act, the remaining funds of the LLC.

14. **Limited Liability.** No Member or Manager shall have any liability for the obligations of the LLC except to the extent required by the Act.

15. **Amendment.** These Regulations may be amended only in a writing signed by the Member.

16. **Governing Law.** THESE REGULATIONS SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICTS OF LAWS, RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR CONSTRUCTION OF THESE REGULATIONS TO THE LAW OF ANOTHER JURISDICTION.

17. **Severability.** Except as otherwise provided in the succeeding sentence, every term and provision of these Regulations are intended to be severable, and if any term or provision of these Regulations are illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of these Regulations. The preceding sentence shall be of no force or effect if the consequence of enforcing the remainder of these Regulations without such illegal or invalid term or provision would be to cause any party to lose the benefit of its economic bargain.

18. **Consent to Jurisdiction Provision.** The Member hereby (i) irrevocably submits to the nonexclusive jurisdiction of any Texas State court or Federal court sitting in Austin, Texas, in any action arising out of these Regulations, and (ii) consents to the service of process by mail. Nothing herein shall affect the right of any party to serve legal process in any manner permitted by law or affect its right to bring any action in any other court.

IN WITNESS WHEREOF, the undersigned has caused these Restated Regulations of Limited Liability Company to be executed as of the \_\_\_\_ day of March 2004.

THE UTLEY FOUNDATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Consented and Agreed:

\_\_\_\_\_  
Manager



CONSENT OF THE DIRECTORS  
OF THE UTLEY FOUNDATION  
WITHOUT MEETING

Consent to Action

The undersigned, being no less than four, which is a sufficient number of the Directors as would be necessary to take the action at a meeting at which all, and not just a quorum, of the members of the board of directors were present and voted, of The Utley Foundation, Texas non profit corporation (the "Company"), individually and collectively consent, by this writing, to take the following action, to adopt the following resolutions, and to transact the following business of the Company.

RESOLVED, that the Company, in its capacity as sole member of the Waterview Park Apartments, L.L.C. (the "LLC") consent to restate the Articles of Organization of the LLC to provide such changes as may be necessary or helpful to minimize or eliminate state taxes, as well as any other necessary administrative changes and that such Restated Articles of Organization be in substantially the form attached hereto.

RESOLVED, that the Company, in its capacity as sole member of the Waterview Park Apartments, L.L.C. (the "LLC") consent to restate the Regulations of the LLC to provide such changes as may be necessary or helpful to minimize or eliminate state taxes, as well as any other necessary administrative changes and that such Restated Regulations be in substantially the form attached hereto.

RESOLVED, that the Company, by action of its officers, hereby direct the Manager of LLC to execute and file with the Secretary of State the Restated of the Articles of Organization.

RESOLVED, that the Company, by action of its officers, hereby authorize the adoption of the Restated Regulations and direct such Restated Regulations by executed by either the President or Secretary of the Company and approved by the Manager of LLC.

RESOLVED, that the officers and employees of the Company and the Manager of the LLC are hereby authorized and directed to take such actions as may be deemed by them to be necessary or helpful to accomplish the matters determined herein.

This Consent may executed in any number of counterparts with the same effect as if all of the Directors had signed the same document. All counterparts shall be construed together and shall constitute one Consent.

Dated: March\_\_\_\_, 2004

DIRECTORS

\_\_\_\_\_  
Ann K. Utley

\_\_\_\_\_  
Robert Lovitt

Michael N. Nguyen

Albert C. Black, Jr.

Rodney G. Ellis

Claude R. Wilson, Jr.