

HICKORY CLUSTER ASSOCIATION

TYPE: General **ADOPTED:** _____ **RESOLUTION NUMBER: 18**

(Policy Regarding the Installation and Placement of Air Conditioning Equipment in the Common Area)

WHEREAS, Article VI, Section 1 of the Bylaws (“Bylaws”) and Section 4 of the Articles of Incorporation (“Articles”) for Hickory Cluster Association (“Association”) state that the affairs of the Association shall be managed by its Board of Directors (“Board”); and

WHEREAS, Section 13.1-826 of the Virginia Nonstock Corporation Act states that the Association may exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized; and

WHEREAS, all lots in the Association were designed and constructed to receive cooling through a centralized chilled-water plant system provided for and serviced by Reston Lake Anne Air-Conditioning Corporation (“RELAC”); and

WHEREAS, on December 11, 2023, RELAC informed lot owners within the Association that it would no longer provide cooling service and it is unknown whether chilled-water service will be made available to one or more lot owners; and

WHEREAS, because of this unexpected development, the Board wishes to facilitate lot owners’ installation of individualized cooling systems within their dwellings, which may necessitate the placement of air handlers and other equipment and lines in adjacent Common Area; and

WHEREAS, the Board wishes to establish a process whereby lot owners may apply for, and obtain, approval to place individual air conditioning handlers and other equipment and lines in adjacent Common Area.

NOW, THEREFORE, the Board hereby establishes such a program.

A. Application for Approval. Owners installing individualized cooling systems which require placement of equipment and/or lines in the Common Area immediately adjacent to such owner’s lot must first submit the following:

1. A completed Application, attached hereto as Exhibit A.
2. A completed DRB application.
3. A drawing, plat, or survey accurate in scale that clearly identifies the location and dimension of the placement of the cooling equipment and lines on the lot and adjacent Common Area as well as location of screening and landscaping and the relocation of any utility meters or electric line consistent with the Cluster Standards;
4. Specifications of the make and model of the equipment consistent with the Cluster Standards; and
5. County permit (if required).

B. Approval. The Board of Directors will consider a complete Application within sixty (60) days of receipt of a completed Application. If an Application is not accepted for review or is denied after review, the Board shall provide the Applicant the reasons thereof in writing. The Board shall determine the terms and conditions of any approval and communicate such terms to the lot owner. Once the Application is approved by the Cluster Board, the owner is required to execute the form Easement Agreement, attached hereto as Exhibit B and the Cluster Board will execute the owner's application to the DRB. The purpose of the Easement Agreement is to memorialize the placement of the equipment and/or lines, screening, and plantings, and other items in the Common Area. The lot owner is bound to this Resolution, the governing documents, all of the terms and conditions of approval of the Application, DRB approval, and the Easement Agreement. *Owners are separately required to obtain approval from the Reston Association Design Review Board. Hickory Cluster Association approval does not constitute Reston Association approval and vice versa.* The Cluster Board will not sign the owner's application to the DRB until and unless the owner receives approval from the Cluster Board. Additionally, upon approval by the DRB, the Association will countersign the Easement Agreement. Upon approval and/or request, the lot owner shall provide the Association with a copy of the contractor's license and certificate of insurance naming the Association as an additional insured.

C. Rules.

1. No work shall commence until written approval from the Association and DRB has been provided to the Cluster Board and the Easement Agreement is completed by the owner and counter-signed by the Association. Any installation commenced prior to receiving such approvals is not permitted. Installations must be completed within 90 days of approval unless a special exception is granted in writing.
2. All installations must be within the boundaries of the approved area. Applicants are not permitted to place anything elsewhere. If Common Area grass and/or landscaping is damaged, the owner must have the landscaping restored to its original condition.
3. As applicable, owner's contractor assumes responsibility for contacting "Miss Utility" and having utility lines located prior to any work that would disturb the soil.
4. Owners must remove and properly dispose of all trash and materials generated from the installation in proper receptacles or offsite.
5. All work must be completed in a workmanlike manner. The owner shall maintain the air conditioning equipment and lines and have regular service performed.
6. Variations from the terms of approval are prohibited.
7. If the Association deems it necessary to engage consultants, technicians, or other professionals to be able to adequately review the request, the costs thereof shall be the obligation of the requesting owner.

- D. Access.** In circumstances where equipment and/or installation is made in Common Area only accessible via an owner’s lot, the Applicant grants the Association an access easement through the lot for inspection, maintenance, and other purposes. Such access shall be performed upon reasonable notice to the lot owner.
- E. Enforcement.** Applicants who violate this Resolution, the Cluster’s governing documents, the terms of approval of the Application, and/or the Easement Agreement will be provided written notice of the violation and a specified time to come into compliance (if the violation is of a nature where corrective action is available). If the Applicant does not into compliance within the specified time, or the violation is one that cannot be corrected, the Association reserves the right to deny the use of the Common Area and remove the installed equipment and/or lines at the expense of the owner. The Association reserves the right to charge any costs of restoration to the Applicant.
- F. Indemnification.** Each owner shall defend, indemnify and hold the Association, its directors, officers, committee members, employees, managers and agents harmless from any and all claims, loss and damage, including reasonable attorneys’ fees and costs, arising out of or related to the approved installation. If the Association incurs any expense arising out of or related to the approved installation, the Applicant shall reimburse the Association such costs.
- G. Successor Ownership.** A copy of any approval granted hereunder shall be placed in the file of the owner. If the owner sells the lot, a copy of this approval shall be included in the disclosure packet if the terms of the approval remain applicable. The new owner shall inherit all responsibilities.

Adopted on _____, 2024. The effective date of this Resolution shall be _____, 2024.

Yes	No	Abstain	Absent	Name/Role	Signature
				Silvia Merrill President	
				Daniel Cassidy Vice President	
				Jennifer Kampf Treasurer	
				Jennifer Rekas Secretary	
				Kathryn Fay Member-At- Large	

FOR ASSOCIATION RECORDS

I hereby attest that this Resolution was published and/or distributed to the addresses of record of the members on this _____ day of _____, 2024.

By: _____

Print Name: Amanda Smith

Title: Community Manager

**HICKORY CLUSTER ASSOCIATION
APPLICATION FOR INSTALLATION OF AIR CONDITIONING EQUIPMENT ON
COMMON AREA**

Please complete this form in its entirety and submit to the Association's management agent.

The undersigned owner(s) of the lot located at (insert address) _____
_____ within Hickory

Cluster Association request(s) permission to install air conditioning equipment and lines in accordance with standards set forth in Policy Resolution 24-01, *Policy Regarding the Placement of Air Conditioning Equipment in the Common Area*. I/We plan on undergoing the installation identified herein.

Documentation (include all):

Description. Include complete information necessary for the Board to thoroughly understand anticipated modifications or additions such as the height, width, size, shape, color, etc. Use additional pages if necessary. _____

A completed Reston Association DRB application, copy, most current version as provided by RA DRB and published at www.reston.org, including all adjacent neighbor Affected Party signatures as required below.

A drawing, plat, or survey accurate in scale that clearly identifies the location and dimension of the placement of the cooling equipment and lines on the lot and Common Area, as well as any required screening, landscaping or utility meter relocation.

Specifications of the make and model of the equipment consistent with the Cluster Standards (please include photographs, brochures, etc.): _____

Contractor's license.

Certificate of insurance naming the Association as an additional insured.

If County approval is required, provide proof that a permit has been applied for and received.

Signed and dated Easement Agreement, attached hereto as Exhibit B.

Copy of the complete DRB application.

All such HCA applications shall require Affected Party notice to and signatures from, including a copy of an otherwise complete application and attachments, both immediately adjacent neighboring lot owners prior to submittal to HCA and RA. If the subject lot is an end unit with only one immediately adjacent neighboring property, then notice and signature shall be to and from the nearest other non-adjacent lot owner in addition to the immediately adjacent lot owner.

By signing below, I/we certify that the information herein is accurate and that I/we agree to comply with the Governing Documents and Rules and Regulations applicable to the requested use, including, but not limited to, HCA General Resolution 18, Policy Regarding the Placement of Air Conditioning Equipment in the Common Area.

Owner Print Name

Owner Print Name

Signature

Signature

Date

Date

TO BE COMPLETED BY THE BOARD OF DIRECTORS:

Approved

Denied

Conditions on Approval/Decision: _____

By: _____

Title: _____

Name: _____

Date: _____

**EXHIBIT B
HICKORY CLUSTER ASSOCIATION EASEMENT AGREEMENT**

Prepared By and Return To:
Leslie S. Brown, Esq.

Tax Map No.: _____
Consideration:

Rees Broome, PC
1900 Gallows Road, Suite 700
Tysons Corner VA 22182

HICKORY CLUSTER ASSOCIATION

EASEMENT AGREEMENT

This Easement Agreement (“Agreement”) is made between HICKORY CLUSTER ASSOCIATION (“Cluster Association” and/or “Grantor”) and

(collectively, “Owner” or “Grantee”).

RECITALS:

WHEREAS, the Cluster Association is a homeowners’ association located in Reston, Virginia, whose membership is comprised of individuals who own lots within the Cluster Association, and which is organized and governed pursuant to the Virginia Property Owners’ Association Act, VA. CODE ANN. § 55.1-1800 et seq., as amended, (the “Act”), the First Amendment to the Deed of Amendment to the Deeds of Dedication of Reston recorded among the land records of Fairfax County, Virginia (the “Land Records”) in Book 18419 at Page 1225, as may be amended from time to time (the “Reston Deed”), and the Deed recorded among the Land Records in Book 2617 at Page 150 (the “Cluster Deed”); and

WHEREAS, Owner is the record owner of the lot located at _____, Reston, Virginia 20190 within the Cluster Association (the “Lot”); and

WHEREAS, Article VII, Section VII.1(a) of the Reston Deed provides that any portion of the Property subject to the Reston Deed may also be subjected to a separate Cluster declaration, articles of incorporation, and bylaws (together with the “Cluster Deed”, the “Cluster Documents”) and any obligation under the Cluster Documents is in addition to obligations created by the Reston Deed; and

WHEREAS, Article VII, Section VII.1(d)(2) of the Reston Deed provides that the Cluster Board shall have all powers needed to carry out the purposes of the Cluster Association which are enabled by law or Article VII of the Reston Deed and which are not specifically reserved to the members; and

WHEREAS, Article VII, Section VII.2(b)(4) of the Reston Deed provides the Cluster Board with the power to grant easements or right of access over the Cluster Common Area; and

WHEREAS, the Cluster Deed grants certain non-exclusive rights and privileges to the owners for themselves and their invitees upon the parking areas, streets, open spaces, paths and other facilities on the Cluster Common Area, subject to the reasonable regulations and bylaws of the Cluster Association; and

WHEREAS, Owners have applied for and received approval from the Cluster Association to install an individualized cooling system within the Lot, which may necessitate the placement of an air handler and other cooling equipment and lines in adjacent Cluster Common Area; and

WHEREAS, the Cluster Board finds that Owner's desire to install cooling system equipment and lines on the Cluster Common Area does not unreasonably interfere with the rights of other owners within the Cluster Association to use and enjoy the Cluster Common Area.

NOW, THEREFORE, BE IT RESOLVED, that the Cluster Association hereby agrees, for mutual consideration received, to grant an easement to Owner for the purpose of installing and maintaining cooling system equipment and lines upon Cluster Common Area adjacent to the Lot, subject to the Owners' compliance with all of the following terms and conditions:

TERMS AND CONDITIONS

1. Cluster Association grants Owner a non-exclusive easement to install and maintain cooling system equipment and lines on the Cluster Common Area in the location depicted in Attachment A hereto (the "Easement Area") for the term of this Agreement.

2. The Cluster Association shall have the right to terminate this Agreement upon any of the following occurrences: (a) the Lot is no longer used for residential purposes; (b) the Cluster Association or Owner receives notice that the use is not permitted by Reston Association, is not compliant with the Design Guidelines or constitutes a violation of the Use and Maintenance Standards; (c) Fairfax County or any benefited easement holder prohibits the use or requires the removal of the cooling system equipment and/or lines from the Cluster Common Area; (d) the Owner fails to perform regular service of the cooling system and/or lines or they fall into a state of disrepair; (e) Owner's breach of the terms of this Agreement; or (f) for any other reason the Cluster Board may determine, in its sole discretion. Prior to such termination, the Cluster Board shall provide written notice to the Owner.

3. Owner acknowledges and agrees that this Agreement and use of the Easement Area is subject to all of the terms and conditions set forth in the Cluster Documents, the Reston Deed, the Reston Association Bylaws, the Design Guidelines, the Use and Maintenance Standards and any and all rules and regulations adopted by the Cluster Association, including, without limitation, Policy Resolution 24-01, *Policy Regarding the Placement of Air Conditioning Equipment in the Common Area*, and/or Reston Association and that no ownership interest in the Easement Area in favor of Owner is hereby, or in the future, created, intended, conveyed or inferred by this Agreement.

4. Owner represents and warrants to the Cluster Association that any and all approvals required for the intended use of the Easement Area that may be required from Reston Association, the Design Review Board, Fairfax County, or other entity having jurisdiction over the Cluster Association have been received and submitted to the Cluster Board. Copies of the Owner's application-for-approval and related documents, if any, are attached hereto and incorporated herein

as Attachment B. Owner is also responsible for complying with the provisions of any recorded easements including, without limitation, utility easements that may be on the Cluster Common Area. The Cluster Association's execution of this Agreement shall not be deemed as making a determination that the Owner has complied with all of the requirements of the Reston Association, the Design Review Board, Fairfax County or any other entity having jurisdiction over the Lot, Owner, Cluster Association, or Cluster Common Area or that the location of the cooling system and lines do not interfere with the use and operation of any existing easements that burden the Cluster Common Area.

5. Owner acknowledges that Owner is responsible for all costs associated with the installation, replacement, repair, maintenance and removal of the cooling system and lines installed and/or maintained in the Easement Area and upon the Lot.

6. Owner agrees that Owner shall not alter and/or damage the Cluster Common Area outside of the Easement Area in any manner.

7. Owner shall, at the Owner's sole cost and expense, maintain the cooling equipment and lines in a good condition and shall promptly make any requested repairs or relocation of the cooling equipment and/or lines upon receipt of written notice issued by the Cluster Association.

8. Owner shall, at the Owner's sole cost and expense, maintain the Easement Area and improvements thereon so as to prevent damage, deterioration or diminution of the value, whether monetary or esthetic, to the Cluster Common Area located both inside and outside the Easement Area.

9. Cluster Association, nor its directors, officers, committee members, employees, managing agents, contractors, agents, nor any other owner, shall be considered a bailee of any personal property stored in the Easement Area. Neither the Cluster Association, nor its directors, officers, committee members, employees, managing agents, contractors, agents, nor any other owner is responsible for the security of such personal property or for any loss or damage thereto, whether or not due to the negligence, except to the extent covered by insurance in excess of any applicable deductible. Owner shall defend, indemnify and hold harmless the Cluster Association and its directors, officers, employees, volunteers, managing agent, contractors, and other agents from any and all claims, suits, damages or expenses (including reasonable attorneys' fees) arising out of or in any way related to the granting of this easement, use of the Easement Area, the installation of the cooling equipment and/or lines, and/or the maintenance of such equipment, whether in tort or otherwise. In the event the Cluster Association incurs incur costs to correct any condition related to the Easement Area, the Cluster Association may assess the expense of correction to the Owner.

10. Either party may terminate this Agreement with or without cause upon thirty (30) days prior written notice to the other party. Within ten (10) days of the termination of this Agreement, Owner shall remove all cooling equipment and lines from the Easement Area and install sod or other

plantings required by the Cluster Board to restore the Easement Area to its prior condition and over all other areas that had been disturbed by use of the Easement Area and removal of the cooling equipment and lines. Any items not removed within ten (10) days shall be deemed abandoned and disposed of by the Cluster Board at the Owner's expense. If the Owner fails to restore the Easement Area to the condition it was prior to the execution of this Agreement and as required by the Cluster Board, the Cluster Board shall have the right to restore the Cluster Common Area and assess the costs thereof against the Owner.

11. This Agreement is made and executed by the parties in the Commonwealth of Virginia and shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia. Venue shall be in the courts of Fairfax County, Virginia. The rule that documents are to be construed against the drafter thereof shall be inapplicable in the construction of any terms of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys fees and costs.

12. Any capitalized terms not defined herein shall have the meaning set forth in the Reston Deed or, if not defined by the Reston Deed, by the Cluster Documents.

13. Failure to enforce any provision of this Agreement shall in no event be deemed a waiver of the right to do so thereafter, nor shall any liability attach to the Cluster Association or any other person or organization for failure to enforce any such provision. All rights, remedies and privileges granted to the Cluster Association pursuant to any term, provision, covenant or condition of the Reston Deed or Cluster Documents shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the Cluster Association from exercising such privileges available at law or in equity.

14. The parties to this Agreement acknowledge that they had the opportunity to review it with an attorney of their respective choice, have agreed to its terms, and the rule of construction that a contract be construed against the drafter shall not be applied in interpreting this Agreement or any section exhibits attached hereto and incorporated herein.

15. The determination by any court of competent jurisdiction that any provision of this Agreement is unenforceable, invalid, or void shall not affect the enforceability or validity of any of the other provisions.

16. This Agreement contains the final and entire agreement of the parties. Any terms and conditions not set forth herein are not a part of this Agreement. This Agreement may not be modified or changed except in a writing signed by the parties. The Agreement shall be binding on parties' successors and assigns.

17. Any notices required or permitted to be given herein shall be in writing and sent certified mail, postage prepaid, return receipt requested; by overnight carrier; or transmitted via email to the address or regularly monitored email to such party as follows:

Hickory Cluster Association/Grantor:

Email: _____

With a copy to:
Rees Broome, PC
c/o Kristen Buck, Esq. or Leslie Brown, Esq.
1900 Gallows Road, Suite 700
Tysons Corner, VA 22182

Owner/Grantee(s):

Email: _____

Any notice or communication shall be deemed to have been given (a) three (3) business days after such notice or communication is mailed prepaid certified registered mail; (b) one (1) business day after such notice or communication is sent by overnight courier; or (c) the day such notice or communication is sent electronically by email, provided that the sender has received a confirmation of such electronic transmission. A party may change their contact information by providing written notice to the other party by one of the prescribed methods.

18. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one single document. Any signature delivered by fax, email, or other electronic submission shall be deemed an original. If this Agreement is signed by only one owner of record of the Lot, they are deemed to have the consent of all owners of such Lot to execute this Agreement and bind all owners to the terms and conditions herein.

19. A copy of this Agreement shall be maintained in the Lot file and disclosed in any resale disclosure certificate prepared for the Lot and the Owner shall provide a copy of this Agreement to any successor in title, regardless of whether such transfer was voluntary or involuntary. This Agreement shall be recorded in Land Records.

20. The effective date of this Agreement shall be the date the last party hereto signs below (“Effective Date”).

21. The recitals above are incorporated herein by reference.

[Signature Pages Follows]

IN WITNESS WHEREOF and intending to be legally bound hereby, the parties execute this Agreement as of the Effective Date.

GRANTOR:

HICKORY CLUSTER ASSOCIATION

Name: _____

Title: _____

STATE OF _____ :
COUNTY OF _____ :

I, the undersigned Notary Public in and for the county and state aforesaid, do hereby certify that _____, _____ of **HICKORY CLUSTER ASSOCIATION**, whose name is signed to the foregoing _____ bearing the date of the _____ day of _____, 20____, has acknowledged the same before me in my county aforesaid.

Given under my hand this _____ day of _____, 20__.

Notary Public

Printed Name

Registration Number: _____

My Commission Expires: _____

[Signature Pages Follow]

GRANTEE/OWNER:

By: _____

Print Name: _____

STATE OF _____ :
COUNTY OF _____ :

I, the undersigned Notary Public in and for the county and state aforesaid, do hereby certify that _____, whose name is signed to the foregoing _____ bearing the date of the _____ day of _____, 20__, has acknowledged the same before me in my county aforesaid.

Given under my hand this _____ day of _____, 20__.

Notary Public

Printed Name

Registration Number: _____

My Commission Expires: _____

GRANTEE/OWNER:

By: _____

Print Name: _____

STATE OF _____ :
COUNTY OF _____ :

I, the undersigned Notary Public in and for the county and state aforesaid, do hereby certify that _____, whose name is signed to the foregoing

_____ bearing the date of the _____ day of _____, 20__, has acknowledged the same before me in my county aforesaid.

Given under my hand this _____ day of _____, 20__.

Notary Public

Printed Name

Registration Number: _____

My Commission Expires: _____

ATTACHMENT A

EASEMENT AREA

ATTACHMENT B

APPLICATION AND APPROVALS