

THIS DOCUMENT HAS BEEN
ELECTRONICALLY RECORDED

After Recording Return To:
ARR Law PLLC
5600 W. Lovers Lane, Suite 116-344
Dallas, Texas 75209
Email: amy@arrlawpllc.com

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

INDIGO COMMERCIAL COMMUNITY

Fort Bend County, Texas

August 2024

Stewart Title
GF# 2004713

TABLE OF CONTENTS

| | | |
|---------------|--|----|
| ARTICLE I | DEFINITIONS | 1 |
| Section 1.1. | Defined Terms | 1 |
| ARTICLE II | SUBMISSION..... | 15 |
| Section 2.1. | Submission of the Commercial Property to this Commercial Declaration..... | 15 |
| Section 2.2. | Commercial Owner Acknowledgment | 15 |
| Section 2.3. | No Reliance on Conceptual Commercial Plans..... | 16 |
| Section 2.4. | Commercial Governing Documents | 16 |
| Section 2.5. | Supplemental Declarations | 17 |
| ARTICLE III | USES, RESERVATIONS AND RESTRICTIONS | 17 |
| Section 3.1. | Permitted Uses on Commercial Property; Continuous Business Operations | 17 |
| Section 3.2. | Commercial Common Areas; Commercial License Reserves..... | 18 |
| Section 3.3. | Signage Rights..... | 19 |
| Section 3.4. | MUD..... | 19 |
| Section 3.5. | Landscaping Requirements..... | 20 |
| Section 3.6. | Environmental | 20 |
| Section 3.7. | Rights of Commercial Board Regarding Rules and Policies | 20 |
| Section 3.8. | Construction Use | 20 |
| Section 3.9. | No Commercial Owner Tract Subdivision | 21 |
| Section 3.10. | Commercial Neighborhoods..... | 21 |
| Section 3.11. | Commercial Property Provisions in Commercial Certificate, Foundation Covenant and Residential Declaration..... | 21 |
| ARTICLE IV | THE COMMERCIAL ASSOCIATION | 22 |
| Section 4.1. | General Purposes and Powers of the Commercial Association..... | 22 |
| Section 4.2. | Deemed Assent Ratification and Approval | 22 |
| Section 4.3. | Commercial Manager | 22 |
| Section 4.4. | Election of the Commercial Board of the Commercial Association | 22 |
| Section 4.5. | Commercial Declarant's Right to Appoint Commercial Board Members during Commercial Declarant Control Period..... | 22 |
| Section 4.6. | Duty to Accept Commercial Common Areas and Improvements Transferred by Commercial Declarant | 22 |
| Section 4.7. | Rights of the Commercial Board..... | 23 |
| ARTICLE V | MEMBERSHIP, VOTING AND ASSESSMENT ALLOCATIONS..... | 23 |
| Section 5.1. | Allocation of Votes in the Commercial Association | 23 |
| Section 5.2. | Proxies of Commercial Owners..... | 24 |
| ARTICLE VI | COMMERCIAL ASSESSMENTS | 25 |
| Section 6.1. | Fees; Contributions; Regular, Special and Commercial Neighborhood Assessments of the Commercial Association | 25 |
| Section 6.2. | Commercial Neighborhood Budget and Commercial Neighborhood Assessments | 27 |
| Section 6.3. | Individual Assessments | 27 |
| Section 6.4. | Obligation to Pay Commercial Assessments..... | 28 |
| Section 6.5. | Lien to Secure Payment of Commercial Assessments..... | 28 |
| Section 6.6. | Exempt Commercial Property | 28 |
| Section 6.7. | Notice of Default | 29 |
| Section 6.8. | Alternative Actions..... | 29 |

| | | |
|----------------|---|----|
| Section 6.9. | Statement of Expenses and Access to Records..... | 29 |
| Section 6.10. | Subordination of Lien for Commercial Assessments | 29 |
| ARTICLE VII | EASEMENTS AND LICENSES | 30 |
| Section 7.1. | Commercial Plat Easements, Dedications and Restrictive Covenants | 30 |
| Section 7.2. | Easements | 30 |
| Section 7.3. | Power to Grant Easements..... | 33 |
| Section 7.4. | Mineral Interests; Water Rights..... | 33 |
| Section 7.5. | Reservation of Right for Residential Licenses | 33 |
| Section 7.6. | Reservation of Right for Limited Commercial Common Areas Licenses | 35 |
| ARTICLE VIII | MAINTENANCE RESPONSIBILITIES..... | 37 |
| Section 8.1. | Maintenance..... | 37 |
| Section 8.2. | Commercial Owner Failure to Maintian..... | 38 |
| Section 8.3. | Disputes | 38 |
| Section 8.4. | Mechanic's Liens | 38 |
| ARTICLE IX | INSURANCE | 39 |
| Section 9.1. | Requirements | 39 |
| Section 9.2. | Insurance by the Commercial Association | 39 |
| Section 9.3. | Insurance by Commercial Owners..... | 39 |
| Section 9.4. | Insurance for Licensed Portions of Commercial Common Areas | 40 |
| Section 9.5. | Commercial Association as Insurance Trustee for the Commercial Owners | 40 |
| Section 9.6. | Other | 41 |
| ARTICLE X | CASUALTY AND CONDEMNATION | 41 |
| Section 10.1. | Casualty | 41 |
| Section 10.2. | General Condemnation Provisions | 41 |
| ARTICLE XI | DEVELOPMENT RIGHTS | 42 |
| Section 11.1. | Development Rights | 42 |
| Section 11.2. | Annexation of Additional Commercial Property | 43 |
| Section 11.3. | Withdrawal of Real Commercial Property | 44 |
| Section 11.4. | No Approval Required for Exercise [for the Exercising?] of Development Rights | 44 |
| Section 11.5. | Zoning..... | 44 |
| Section 11.6. | Rights Transferable [or 'Transferable Rights?']..... | 44 |
| Section 11.7. | Reciprocal Easements..... | 45 |
| ARTICLE XII | DEVELOPMENT CONTROL..... | 45 |
| Section 12.1. | Required Approval | 45 |
| Section 12.2. | Establishment of the Architectural Control Committee | 45 |
| Section 12.3. | Delegation of Control | 46 |
| Section 12.4. | Future Architectural Guidelines | 46 |
| Section 12.5. | Reply and Communication | 46 |
| Section 12.6. | Variances | 47 |
| Section 12.7. | Appeal Rights of Commercial Owners..... | 47 |
| Section 12.8. | No Deemed Waivers..... | 47 |
| Section 12.9. | Limitation on Liability..... | 47 |
| Section 12.10. | Records | 47 |
| Section 12.11. | Enforcement of Article XII of this Commercial Declaration | 47 |
| Section 12.12. | Obtaining Governmental Approvals..... | 48 |

| | | |
|----------------|--|----|
| ARTICLE XIII | PROPERTY ROADS | 48 |
| ARTICLE XIV | MATTERS FOR MEDIATION AND ARBITRATION | 49 |
| Section 14.1. | Mediation..... | 49 |
| Section 14.2. | Final Offer Arbitration..... | 49 |
| Section 14.3. | General | 50 |
| ARTICLE XV | GENERAL PROVISIONS..... | 50 |
| Section 15.1. | Remedies Cumulative [or 'Cumulative Remedies?'] | 50 |
| Section 15.2. | Severability..... | 50 |
| Section 15.3. | Term of Commercial Declaration..... | 50 |
| Section 15.4. | Amendment of Commercial Declaration by Commercial Declarant..... | 50 |
| Section 15.5. | Amendment of Commercial Declaration by Commercial Owners..... | 51 |
| Section 15.6. | Required Approval of Commercial Declarant to Amendment | 51 |
| Section 15.7. | No Public Dedication..... | 51 |
| Section 15.8. | Notices..... | 51 |
| Section 15.9. | Interpretation | 52 |
| Section 15.10. | No Representations or Warranties | 52 |
| Section 15.11. | Singular Includes the Plural..... | 53 |
| Section 15.12. | Captions..... | 53 |
| Section 15.13. | Governing Law; Venue | 53 |
| Section 15.14. | INDEMNIFICATION | 53 |
| Section 15.15. | Limitation of Liability | 54 |
| Section 15.16. | Liability of Commercial Owners for Damage | 56 |
| Section 15.17. | Reimbursement of Expenses | 56 |

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
INDIGO COMMERCIAL COMMUNITY**

This Declaration of Covenants, Conditions and Restrictions for Indigo Commercial Community is made as of the ____ day of _____ 2024, by the Commercial Declarant.

RECITALS

- A. Commercial Declarant is the fee simple owner of the real property described in Exhibit A attached to this Commercial Declaration which is hereinafter called the "Commercial Property."
- B. The Commercial Property is part of that certain master-planned community known as "Indigo" located in the County and described in the Foundation Covenant, and the Commercial Declarant is the Founder.
- C. Commercial Declarant desires to submit and subject the Commercial Property to this Commercial Declaration, the Foundation Covenant and the other Commercial Governing Documents.
- D. By this Commercial Declaration, the Commercial Declarant desires to (i) establish a general plan for the development of the Commercial Property; (ii) provide for the creation, maintenance, repair, improvement and replacement of the Commercial Common Areas on the Commercial Property as set forth in the Commercial Governing Documents; (iii) provide for the implementation of the powers and duties of the Commercial Declarant and the Commercial Association as set forth in the Commercial Governing Documents; (iv) preserve and enhance the Commercial Property; (v) create and grant the Easements; and (vi) implement the purposes of the Commercial Association as provided for in the Commercial Governing Documents.
- E. Commercial Declarant has caused the Commercial Association to be incorporated under the laws of the State, in accordance with TNCL, hereinafter defined as a property owners' association for the purpose of exercising the functions set forth in this Commercial Declaration.

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

**ARTICLE I
DEFINITIONS**

Section 1.1. **Defined Terms.** Each capitalized term used in this Commercial Declaration shall have the meaning outlined in this Section 1.1; and, *unless expressly stated otherwise in Section 1.1 or otherwise in this Commercial Declaration*, each of the below terms are deemed to exclusively apply to the Commercial Property, regardless of whether such terms contain the word "Commercial" in them.

"Access Easement." An Easement as more particularly described in Subsection 7.2(a) of this Commercial Declaration.

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

"Annexed Commercial Property." Any real property added to the Commercial Property by a Supplemental Declaration, as further described in Section 11.2 of this Commercial Declaration.

"Architectural Control Committee" or "ACC." The committee that may be established in accordance with Article XII of this Commercial Declaration.

"Architectural Guidelines." The procedural or substantive Commercial Rules, guidelines, criteria, requirements, standards and procedures adopted by the Commercial Declarant or the Commercial Board for the Commercial Property, as the case may be, following this Commercial Declaration and included in the Commercial Rules for design, development, construction and planning for Commercial Owner Tracts, Commercial Buildings and other Improvements on the Commercial Owner Tracts or other portions of Commercial Property, as applicable; Signage; and the use and occupancy of the Commercial Owner Tracts, as may be amended from time to time.

"Assessment Percentage." The percentage amount for each Commercial Owner Tract determined using the formula set forth in Subsection 6.1(d) of this Commercial Declaration for purposes of allocating and levying Regular Assessments, Special Assessments and Commercial Neighborhood Assessments among the Commercial Owner Tracts.

"Association Maintained Commercial Parking Areas." Commercial Parking Areas located outside of Commercial Common Areas in certain Maintenance Areas on the Commercial Property which the Commercial Association is responsible to maintain according to written agreement(s) with the MUD or other Governmental Authority, as applicable, as may be amended, which agreement(s) will identify the location of such parking areas on the Commercial Property, and such parking areas shall be subject to the Commercial Parking Area Easement. Maintenance obligations for Association Maintained Commercial Parking Areas described in the respective written agreement(s) with the MUD, or such other Governmental Authority, as applicable, shall control over any conflicting maintenance obligations stated in this Commercial Declaration for Association Maintained Commercial Parking Areas.

"Association Maintained Commercial Sidewalks." Sidewalks located in certain Maintenance Areas on the Commercial Property which the Commercial Association is responsible to maintain according to written agreement(s) with the MUD or other Governmental Authority, as applicable, as may be amended, which agreement(s) will identify the location on the Commercial Property of such sidewalks, and such sidewalks shall be subject to the Commercial Sidewalk Easement. Maintenance obligations for Association Maintained Commercial Sidewalks described in the respective written agreement(s) between the Commercial Association and the MUD or such other Governmental Authority, as applicable, shall control over any conflicting maintenance obligations stated in this Commercial Declaration for Association Maintained Commercial Sidewalks.

"Business Operations Charges." Charges and fees as may be established by the Commercial Association and levied against individual Commercial Owners who fail to continuously conduct business operations from their Commercial Owner Tracts according to this Commercial Declaration or the Commercial Rules, and any costs, expenses, interest, late fees, fines, collection costs and attorneys' fees arising therefrom or incurred by the Commercial Association to enforce rules and regulations established to support continued business operations on the Commercial Owner Tracts.

"City." Richmond, Texas.

"Claim" or "Claims." Any and all demands, actions, causes of action, proceedings, losses, costs, expenses (including reasonable attorneys' fees applicable thereto), damages and/or liability of any kind or nature, including, without limitation, for death, personal injury and loss of use and damage to real or personal property, as applicable.

"Class A Member." The Commercial Owner of any Commercial Owner Tract, excluding Commercial Declarant, who is a Member of the Commercial Association.

"Class B Member." The Commercial Declarant, at all times, on or before the termination of the Commercial Declarant Control Period.

"Commercial Assessments." Regular Assessments, Special Assessments, Commercial Neighborhood Assessments and Individual Assessments owing to the Commercial Association by a Commercial Owner or levied against any Commercial Owner Tract by the Commercial Association.

"Commercial Association." Indigo Commercial Community Association, Inc., a Texas nonprofit corporation, and its successors and assigns, organized under the TNCL and created for the purposes and possessing the rights, powers, authority and obligations set forth in the Commercial Governing Documents, whose address for notice purposes is c/o Cohere, 7600 E. Doubletree Ranch Road, Suite 250, Scottsdale, Arizona 85258, as may be changed by the Commercial Association from time to time.

"Commercial Board." The board of directors of the Commercial Association. Any references to "Board" or "Board of Directors" shall mean the Commercial Board.

"Commercial Budget." The annual budget prepared by the Commercial Association applicable to all Commercial Owners and all Commercial Owner Tracts, which sets forth the anticipated Common Expenses for the ensuing fiscal year, as further described in Subsection 6.1(e) of this Commercial Declaration.

"Commercial Building." A building, dwelling or other structure located on a Commercial Owner Tract constructed for the purposes of or used primarily for, or intended to be used primarily for or a majority of which is used primarily for, whether in whole or in part, an office, retail, a restaurant, multifamily apartments or residential dwellings which are restricted to leasing or any other commercial purposes.

"Commercial Building Structure." All exterior and interior portions, surfaces and components of each Commercial Building, including, without limitation, any siding, stone, brick, wood, mortar, glass, metal, fascia, soffits, roofing, architectural accents, paint and stain, gutters, windows, doors, window and door trims, foundations, and the entirety of the Commercial Building's structural frame and components.

"Commercial Bylaws." The bylaws adopted by the Commercial Association and which may be recorded in the Real Property Records, as may be amended from time to time.

"Commercial Certificate." The Certificate of Formation for the Commercial Association filed with the Secretary of State of Texas and recorded as a dedicatory instrument in the Real Property Records, as may be amended from time to time.

"Commercial Charges." Any damage charges or other types of charges, costs, expenses, interest, fees, late fees, fines, collection costs, attorneys' fees, insurance deductible payments, services, Business Operations Charges and other sums, excluding Common Expenses and Commercial Neighborhood Expenses, arising under the Commercial Governing Documents and owing to the Commercial Association.

"Commercial Common Areas." Portions of the Commercial Property, Commercial Neighborhood Common Areas, if any, and the Improvements thereon, which are (a) identified on the Commercial Plat as Restricted Reserve "O," "R," or "S," or Unrestricted Reserve "P"; (b) owned by the Commercial Association (other than any Commercial Owner Tract acquired by the Commercial Association through the foreclosure of an Assessment lien according to this Commercial Declaration); (c) leased by or assigned to the Commercial Association through a lease, contract or other written agreement; (d) an Easement Area naming the Commercial Association as grantee, including without limitation the Easements shown on the Commercial Plat located on the Commercial Property, but excluding any Easement Area located on a portion of the Commercial Property not owned by the Commercial Association such as Easement Areas established for Maintenance Areas; (e) areas designated as Commercial Common Areas or Commercial License Reserves by the Commercial Declarant under this Commercial Declaration, which may include certain Private Roads, and any other portions of the Commercial Property which are owned and maintained by the Commercial Association, as may be amended; (f) Private Roads; (g) the Private Cottage Driveway; (h) Limited Commercial Common Areas; and (i) any other restricted reserves or unrestricted reserves shown on the Commercial Plat or otherwise designated or intended by the Commercial Declarant or Commercial Association as reserves or areas under the exclusive control of the Commercial Association, or intended for the use and enjoyment of all Commercial Owners, or for the use and enjoyment of all Commercial Owners in a particular Commercial Neighborhood, but excluding Maintenance Areas, Property Roads, Public Parks and Trails, MUD Recreational Facilities, and any other portions of the Commercial Property owned or controlled by a Governmental Authority or included in the MUD or dedicated or conveyed to the City or County, or open to members of the general public.

"Commercial Common Area Damage." Shall have the meaning assigned to such term in Section 15.15 of this Commercial Declaration.

"Commercial Common Area Easement." An Easement as more particularly described in Subsection 7.2(b) of this Commercial Declaration.

"Commercial Community Enhancement Fee." The Commercial Community Enhancement Fee defined and described in the Foundation Covenant to be paid in connection with the sale of Commercial Owner Tracts and Commercial Leases, as may be amended, as further explained in Section 6.1 of this Commercial Declaration.

"Commercial Declarant." 300 Acres, LLC, a Texas limited liability company whose mailing address is c/o Clayton Garrett, 7632 Hammerly Boulevard, Houston, Texas 77055, and any successor or assignee designated by written notice of assignment executed by Commercial Declarant; and, to the extent any rights or powers reserved to Commercial Declarant are transferred or assigned to any successor or assignee, such rights and powers shall be described in the written notice of assignment, which notice shall also be executed by the successor or assignee party and recorded in the Real Property Records.

"Commercial Declarant Control Period." The period during which Commercial Declarant shall have the right to appoint and remove Directors, Officers and members on the Commercial Board and exercise Class B Member voting rights, as further described in Article V of this Commercial Declaration, commencing on the date this Commercial Declaration is recorded in the Real Property Records and running concurrently with the

Development Period, unless earlier terminated by Commercial Declarant as further described in Section 4.5 of this Commercial Declaration.

"Commercial Declaration." This Declaration of Covenants, Conditions and Restrictions for Indigo Commercial Community, as amended and supplemented from time to time.

"Commercial Governing Documents." Those documents listed in Section 2.4 of this Commercial Declaration, as they may be amended from time to time.

"Commercial Lease." A lease entered into by a Commercial Owner and a Commercial Lessee for all or any portion of a Commercial Owner Tract, Commercial Building or other Improvements on a Commercial Owner Tract subject to the terms of the Commercial Governing Documents.

"Commercial Lessee." Any Person having the right to occupy all or a portion of a Commercial Owner Tract and any Improvements thereon per a Commercial Lease.

"Commercial License." A license granted by the Residential Declarant or Residential Association to a Commercial Owner or the Commercial Association, as the case may be, for limited purposes described in such license pursuant to Article VII of the Residential Declaration.

"Commercial License Reserves." Portions of the Commercial Common Areas identified by Commercial Declarant in its absolute and sole discretion which may be temporarily used and/or occupied by temporary equipment according to a license agreement entered into by and between the Commercial Association and a Person to provide entertainment, food or beverages or other goods or services to Commercial Owners, Commercial Occupants, guests, visitors and other Persons on the Commercial Property (e.g., food trucks, pop-up shops).

"Commercial Manager." Any professional manager or management company that is engaged by the Commercial Association to perform any of the duties, powers or functions of the Commercial Association.

"Commercial Neighborhood." A designation made by the Commercial Association for a geographic area of the Commercial Property containing Commercial Buildings of one or more specific building types (e.g., office buildings) or a group of Commercial Buildings or Commercial Owner Tracts, regardless of their geographic location on the Commercial Property, which share a common use, have the same or similar needs or operations in connection with their use (e.g., restaurants and bars; patio areas) or possess other similar criteria or shared common interests of the Commercial Owners in connection with the Commercial Buildings and Commercial Owner Tracts which are unique and in addition to the common interests shared by all Commercial Owners and Commercial Owner Tracts, as further described and defined in Section 3.10 of this Commercial Declaration.

"Commercial Neighborhood Assessments." Assessments established, imposed and levied from time to time by the Commercial Association against Commercial Owner Tracts located in a particular Commercial Neighborhood as further described in Section 6.1 of this Commercial Declaration.

"Commercial Neighborhood Budget." The annual budget prepared by the Commercial Association for the anticipated Commercial Neighborhood Expenses for a particular Commercial Neighborhood for the ensuing fiscal year, as further described in Section 6.1 of this Commercial Declaration.

"Commercial Neighborhood Common Areas." Those Commercial Common Areas and Improvements thereon located in a particular Commercial Neighborhood intended for the exclusive use and enjoyment of Commercial Owners owning Commercial Owner Tracts in such Commercial Neighborhood, as more particularly described in Section 3.10 of this Commercial Declaration.

"Commercial Neighborhood Expenses." The actual and estimated expenses incurred by or on behalf of the Commercial Association for the benefit of Commercial Owners or Commercial Owner Tracts in a particular Commercial Neighborhood, including expenses for administration, management, maintenance, care and/or operation of any Commercial Neighborhood Common Areas, if any, expenses and costs arising out of Commercial Neighborhood Services provided to the Commercial Neighborhood and/or expenses incurred for the repair, maintenance, upkeep, care and replacement of certain Improvements located on Commercial Owner Tracts in a Commercial Neighborhood, and the Easements associated therewith, which Improvements the Commercial Association has the duty to maintain.

"Commercial Neighborhood Services." Services provided by the Commercial Association to Commercial Owners or their Commercial Buildings and/or Commercial Owner Tracts located in a particular Commercial Neighborhood which services are not offered, desired or provided to all Commercial Owners in the Commercial Property.

"Commercial Occupant." Any Person, including a Commercial Lessee, entitled to the use and occupancy of any Commercial Owner Tract and Commercial Building or other Improvements thereon pursuant to an ownership right or a Commercial Lease or other similar agreement granted by a Commercial Owner. A Commercial Occupant may, but is not required to be, a Commercial Lessee; however, a Commercial Lessee will always be a Commercial Occupant.

"Commercial Owner." Any Person, including Commercial Declarant, owning fee title to a Commercial Owner Tract, but excluding any Person having an interest in a Commercial Owner Tract solely as security for an obligation.

"Commercial Owner Tract." Any tract of land located in the Commercial Property identified on the Commercial Plat as Unrestricted Reserve "A", "AA", "B", "BB", "C", "CC", "D", "OO", "E", "EE", "F", "FF", "G", "GG", "H", "HH", "I", "II", "J", "JJ", "K", "KK", "L", "M", "N", "Q", "T", "V", "W", "X", "Y", or "Z" and upon which a Commercial Building is or will be constructed or which is intended for the construction of Commercial Building(s) which excludes any restricted or unrestricted reserve which constitutes a Commercial Common Area or is otherwise labeled on the Commercial Plat as Restricted Reserve "O", "R", "U" or "S", or as Unrestricted Reserve "P".

"Commercial Parking Areas." The parking lots, parking structures, parking spaces, parking areas and any drives and driveways immediately adjacent thereto required for purposes of accessing and parking in the parking spaces located on the Commercial Property in Commercial Common Areas and Maintenance Areas, but not located on any Commercial Owner Tract, per the terms of this Commercial Declaration and existing for purposes of parking motor vehicles and motorized bikes of visitors, guests, patrons, customers, employees and invitees of Commercial Owners, Commercial Occupants and other Persons on the Commercial Property.

"Commercial Parking Area Easement." An Easement reserved for the Association Maintained Commercial Parking Areas, as more particularly described in Subsection 7.2(g) of this Commercial Declaration.

"Commercial Plans." The plans and specifications for the development and construction of Commercial Buildings and any other Improvements on a Commercial Owner Tract prepared by or on behalf of such Commercial Owner Tract's Commercial Owner and approved by all applicable Governmental Authorities, and which include all applicable and required items set forth in this Commercial Declaration, Architectural Guidelines, other applicable Commercial Governing Documents, and any other information requested or required by the ACC in connection with any ACC approval of such plans and specifications.

"Commercial Plat." That certain Indigo Commons Partial Replat No. 1 recorded in the Real Property Records on March 26, 2024, as Document No. 20240065, being a replat of Indigo Village Core, a Subdivision of Record per Plat No. 20230179, as may be amended, and any other subsequent final subdivision plat for any portion of the Commercial Property recorded in the Real Property Records, as amended.

"Commercial Rules." The Rules and Regulations established for the Commercial Association, Commercial Property, Commercial Common Areas and Improvements thereon, Commercial Owner Tracts, Commercial Owners, Commercial Lessees and other Commercial Occupants, which may include the Architectural Guidelines and policies adopted for the Commercial Association in connection with enforcing the Commercial Governing Documents recorded in the Real Property Records, as may be amended from time to time.

"Commercial Sidewalk Easement." An Easement reserved for the Association Maintained Commercial Sidewalks, as more particularly described in Subsection 7.2(f) of this Commercial Declaration.

"Common Expenses." Expenditures made or liabilities incurred by or on behalf of the Commercial Association, together with any and all applicable reserves, including (a) expenses of administration, management, maintenance, care and operation of any Commercial Common Areas and Improvements thereon, excluding Commercial Neighborhood Expenses; (b) expenses of administration, management and operation of the Commercial Association; (c) expenses due and payable by all Commercial Owners in accordance with this Commercial Declaration; (d) expenses designated as Common Expenses by the Commercial Governing Documents or by the Commercial Board; and (e) such reasonable reserves, as may be established by the Commercial Association.

"Community." The master-planned community known as "Indigo" consisting of the Community Property.

"Community Property." The real property described in Exhibit A to the Foundation Covenant which includes the Commercial Property and the Residential Property.

"Community-Wide Maintenance Standard." Good repair and attractive and clean condition for the Commercial Property necessary to maintain the Commercial Common Areas and Commercial Owner Tracts and Improvements thereon in a condition reasonably suitable for their intended purpose.

"Conceptual Plans." All plans, site plans, depictions, renderings, brochures, presentations, illustrations, information, and/or marketing or advertising materials of any kind in any format, including electronic, hard copy or soft copy format or on any website, for or relating to the Community, Commercial Property, Commercial Owner Tracts, Commercial Common Areas, Commercial Buildings and other Improvements on Commercial Owner Tracts, MUD Recreational Facilities, or other Improvements on Commercial Property existing at any time before the final and full completion of construction has occurred or which are conceptual in nature and intended to be used for illustrative purposes only.

"County." Fort Bend County, Texas.

"Designee." A duly authorized Person acting at the request of a Commercial Owner, the Commercial Association, the Commercial Declarant, a Commercial Manager or the ACC, including contractors, subcontractors, employees, agents, representatives and licensees.

"Development Agreement." The Development Cooperation Agreement entered into by and between the Commercial Declarant and the City of Richmond, Texas, recorded under that certain Memorandum of Development Agreement on November 15, 2021, in the Real Property Records of the County, as Document No. 2022021655, as may be amended and supplemented.

"Development Period." Unless earlier terminated by Commercial Declarant by a written instrument executed by the Commercial Declarant and recorded in the Real Property Records, the time period applicable to the Commercial Property commencing upon the date this Commercial Declaration is recorded in the Real Property Records and ending on the later to occur of (a) the date that is twenty-five (25) consecutive years after such recordation date, and (b) eighteen (18) months after the date upon which the Commercial Declarant no longer owns any portion of the Commercial Property.

"Development Plan." Collectively, the Commercial Plat(s), Commercial Plan(s) and any other plats, plans, zonings, specific use permits and any other type of submittals made by or on behalf of Commercial Declarant or its Affiliates for the Commercial Property pursuant to the Development Agreement and as otherwise approved by the City, County or any other required Governmental Authority for the Commercial Property during the Development Period and all amendments and modifications thereto.

"Development Rights." Those rights reserved by the Commercial Declarant in Article XI of this Commercial Declaration.

"Director." A member of the Commercial Board as appointed or elected from time to time in accordance with the Commercial Bylaws.

"Dispute." Any Claim, grievance or other dispute arising out of or relating to (a) the failure of any Commercial Owner to obtain prior approval from the Commercial Board or ACC for any construction of or changes, modifications or alterations to Improvements on such Commercial Owner's Commercial Owner Tract in accordance with or as required by this Commercial Declaration, Architectural Guidelines, Commercial Rules or any other Commercial Governing Document; (b) any Prohibited Use on any portion of the Commercial Property, Commercial Owner Tract or in or on any Improvement thereon; (c) the failure of any Commercial Owner to comply with requirements set forth in the Commercial Governing Documents; (d) the failure of any Commercial Owner to maintain its Commercial Owner Tract and all Improvements thereon for which such Commercial Owner is responsible for maintaining, in accordance with the Commercial Governing Documents and in compliance with all Legal Requirements; (e) the interpretation, application or enforcement of the Commercial Governing Documents; (f) any conflict or dispute arising between or among Commercial Owners, the Commercial Association, the Architectural Control Committee, the Commercial Board or the Commercial Declarant; (g) the proper party to bear a maintenance cost or expense; (h) any Commercial License; (i) any temporary use, by license or otherwise, of a Commercial License Reserve; (j) any temporary use, by license or otherwise, of a Limited Commercial Common Area; (k) the authority of the Commercial Association, the Commercial Declarant or the Architectural Control Committee under any Legal Requirement or under the Commercial Governing Documents to (i) require any Commercial Owner to take any action or not to take any action involving such Commercial Owner's Commercial Owner Tract or Improvements thereon,

or (ii) alter, subtract from or add to the Commercial Common Areas or the Commercial Property; (l) any other rights, obligations and duties of any Commercial Owner under the Commercial Governing Documents; or (m) the failure of the Commercial Association, in accordance with all Legal Requirements and the Commercial Governing Documents to (A) properly conduct elections, (B) give adequate notice of meetings or actions, (C) properly conduct meetings, or (D) allow inspection of the Minute Book or such other books and records of the Commercial Association according to the Commercial Bylaws or Chapter 22 of the TBOC. The following shall not be considered Disputes unless all parties shall otherwise agree to submit the matter to arbitration pursuant to Section 14.2 of this Commercial Declaration: (1) any suit by Commercial Declarant, the Commercial Association or the Architectural Control Committee to obtain a temporary restraining order and such ancillary relief as the court may deem necessary to maintain the status quo and preserve Commercial Declarant's, the Commercial Association's or the Architectural Control Committee's ability to enforce the provisions of the Commercial Governing Documents; (2) any action permitted under Section 12.11 of this Commercial Declaration; (3) any action permitted under Article VI of this Commercial Declaration in connection with the enforcement of any Commercial Owner's obligation to pay Commercial Assessments or collection of any delinquent Commercial Assessments; (4) any suit between Commercial Owners which does not include the Commercial Declarant or the Architectural Control Committee, if such suit asserts a dispute that would constitute a cause of action independent of this Commercial Declaration; (5) any disagreement that primarily involves title to any Commercial Owner Tract; or (6) any suit in which the applicable statute of limitations would expire within one hundred eighty (180) days of the giving of notice as provided in this Commercial Declaration unless the Persons who are involved in a Dispute agree to toll the statute of limitations for a period of time necessary to comply with the arbitration provisions of this Commercial Declaration.

"Drainage Easement." An Easement as more particularly described in Section 7.2 of this Commercial Declaration.

"Drainage Facilities." The drainage ways, channels, paths, patterns and Systems and detention ponds, discharge structures and grading, connector and outfall pipes, and all other items and structures, whether located in Commercial Common Areas, Commercial Owner Tracts or any portion of the Commercial Property, whether public or private, necessary for the proper drainage of water and liquid substances, including surface stormwater runoff.

"Easement Area." Any portion of the Commercial Property burdened by an Easement.

"Easements." Collectively, those Easements described in Section 7.1 and Section 7.2 of this Commercial Declaration.

"Environmental Laws." Any federal, state or local law, statute, ordinance or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene or the environmental conditions on, under or about the Commercial Property or the Improvements.

"Foundation." Indigo Community Foundation, a Texas nonprofit corporation, as further described in the Foundation Covenant.

"Foundation Covenant." The Community Covenant for Indigo recorded in the Real Property Records, as may be amended and supplemented from time to time.

"Founder." 300 Acres, LLC, a Texas limited liability company, as further described in the Foundation Covenant.

"Governmental Approvals." All permits, licenses, certificates, consents and any other approvals necessary or required pursuant to any law, ordinance, resolution, order, rule or regulation of any Governmental Authority.

"Governmental Authority." Any and all applicable courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental entity (federal, State, County, City, district or otherwise), including the MUD, whether now or hereafter in existence.

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

"Gross Square Footage." The gross square footage of a Commercial Owner Tract as shown on the Commercial Plat.

"Hazardous Substances." Any substance, product, waste or other material, which is or becomes listed, regulated or addressed, including landscape chemicals, as being a toxic, hazardous, polluting or similarly harmful substance under any Environmental Law.

"Improvements." Any and all physical structures, facilities, alterations or changes of any type, nature or kind made to or on or constructed or installed on any portion of the Commercial Property, Commercial Common Areas, Commercial Owner Tracts or Commercial Neighborhoods (excluding temporary objects or facilities used in connection with a Commercial License Reserve), including, without limitation, any man-made improvements, Commercial Buildings, other buildings, Commercial Parking Areas, other parking lots, parking structures, parking spaces, alleyways, driveways, roads, roadways, ramps, loading areas, equipment, utilities, fencing, antennae, walls (including retaining walls), screens, landscaping, hardscape (including benches and affixed outdoor furniture), streetscapes, electrical poles, grading and grading changes, park areas and equipment, walkways, bridges, MUD Recreational Facilities, exterior lighting facilities, mail receptacles, Drainage Facilities, sidewalks (including all Association Maintained Commercial Sidewalks), curbs and grates existing or in the future placed on any portion of the Commercial Property, including all Systems.

"Increased Commercial Budget." Shall have the meaning assigned to such term in Subsection 6.1(e) of this Commercial Declaration.

"Indemnified Party." Shall have the meaning assigned to such term in Subsection 15.14(a) of this Commercial Declaration.

"Individual Assessments." Assessments established, imposed and levied from time to time by the Commercial Association pursuant to Section 6.3 of this Commercial Declaration.

"Insurance Trustee." The Commercial Association acting in the capacity of a trustee in accordance with the provisions of Section 9.5 of this Commercial Declaration to negotiate losses under any Commercial Property insurance policies required to be obtained by the Commercial Association, as applicable, in this Commercial Declaration.

"Landscape and Signage Easement." An Easement as more particularly described in Subsection 7.2(e) of this Commercial Declaration.

"Legal Requirements." Any Restrictive Covenants and any other matters of record and any and all then-current judicial decisions, applicable statutes (including without limitation Chapter 202 of the Texas Property Code, as may be amended), rulings, orders, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to the Commercial Property, Commercial Owner Tracts or any Commercial Owner's use and enjoyment of any portion of the Commercial Property or any Commercial Owner Tract, including, without limitation, MUD requirements, requirements for Mineral Interests and Water Rights, Environmental Laws, zoning ordinances, subdivision and building codes, flood disaster laws, laws applicable to disabled persons, and applicable architectural barrier and health laws and regulations.

"Lien Indebtedness." Any bona fide indebtedness which is the result of an arm's length transaction that is secured by a first lien or encumbrance upon a Commercial Owner Tract or other portion of the Commercial Property.

"Limited Commercial Common Area." A limited portion of the Commercial Common Areas as may be designated and defined by the Commercial Declarant during the Development Period and the Commercial Association thereafter, in each of their absolute and sole discretion, located immediately adjacent to a Commercial Owner Tract and subject to a Limited Commercial Common Area License, as further described in Section 7.6 of this Commercial Declaration.

"Limited Commercial Common Area License." A temporary, exclusive, non-assignable revocable license granted by the Commercial Declarant during the Development Period or the Commercial Association thereafter to a Commercial Owner for the exclusive right to use a Limited Commercial Common Area in connection with the primary use of or operations conducted on the Commercial Owner Tract (e.g., patio area for a restaurant seating), as further described in Section 7.6 of this Commercial Declaration.

"Maintenance Area." Those portions of the Commercial Property and Improvements thereon, excluding Commercial Neighborhoods, Commercial Owner Tracts and Commercial Common Areas, and any other portion of Commercial Property not owned or controlled by the Commercial Association but for which the Commercial Association has maintenance responsibilities pursuant to a written agreement with a Governmental Authority, including, but not limited to, Association Maintained Commercial Sidewalks and Association Maintained Commercial Parking Areas.

"Maintenance Responsibility Chart." The chart attached to this Commercial Declaration as Exhibit B, as may be amended and supplemented, including by a Supplemental Declaration.

"Member(s)." A Commercial Owner of a Commercial Owner Tract in the Commercial Property, including Class A Members and the Class B Member.

"Membership." The rights and obligations associated with being a Member of the Commercial Association.

"Mineral Interests." Real property interests reserved through deeds, leases and other documentation included in the Restrictive Covenants in and to all oil, gas and/or minerals lying in, on or under the Commercial Property, together with easements for access, exploration, drilling, producing and transporting such oil, gas

and/or minerals, certain surface rights of ingress and egress, and Water Rights related to operations, as further described in Section 7.4 of this Commercial Declaration.

"Minute Book." The record-keeping mechanism of the Commercial Association that contains certain information and documentation required to be kept by the Commercial Association and available for inspection by Commercial Owners per the Commercial Bylaws and Chapter 22 of the TBOC, and any other records and information that may be required to be kept according to the Commercial Governing Documents.

"Mortgagee." Any Person that is the holder, insurer or guarantor of Lien Indebtedness which has provided to the Commercial Association written notice of its name, address and description of the Commercial Property or Commercial Owner Tract encumbered by such Lien Indebtedness.

"MUD." Fort Bend County Municipal Utility District No. 251 in which the Commercial Property is located, as further described in Section 3.4 of this Commercial Declaration.

"MUD Recreational Facilities." Those recreational facilities located on the Commercial Property, including Public Parks and Trails and recreational facilities financed, developed and maintained by the MUD per Legal Requirements and conveyed to the MUD for ownership and operation; provided, however, if the City dissolves the MUD, such Public Parks and Trails and recreational facilities will become the property of the City, as further explained in the Development Agreement.

"Officer." An officer of the Commercial Association elected or appointed by the Commercial Board in accordance with the Commercial Bylaws.

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

"Person." Any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, joint venture, estate, trust, unincorporated association and any other legal entity, including any Governmental Authority.

"Private Cottage Driveway." The private driveway established by the Commercial Plat, as further described in Subsection 7.1(b) of this Commercial Declaration.

"Private Roads." Roads, roadways, alleys, drives, driveways and other rights-of-way which are located on the Commercial Property that are not owned by the MUD, County, City or other Governmental Authority, as applicable, are intended for private use and are maintained and controlled by the Commercial Association.

"Prohibited Use." Any prohibited use set forth on Exhibit C to this Commercial Declaration or any other use which is prohibited per this Commercial Declaration, Commercial Governing Documents or Legal Requirements.

"Property Roads." Roads, roadways, streets and streetlights, alleyways, drives, driveways, rights-of-way and other road facilities on the Commercial Property designed and constructed by the MUD and owned by the MUD, County or City, as the case may be per Section 3.4 of this Commercial Declaration, or which are dedicated to the MUD, County or City at any time.

"Public Parks and Trails." Any parks and trails located on the Commercial Property which are owned or maintained by the MUD or the City or have been conveyed or dedicated to the City or other Governmental Authority.

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

"Regular Assessment." Assessments established, imposed and levied by the Commercial Association pursuant to Section 6.1 of this Commercial Declaration.

"Reserve Contribution." Shall have the meaning assigned to such term in Subsection 6.1(b) of this Commercial Declaration.

"Residential Association." Indigo Residential Community Association, Inc., a Texas nonprofit corporation, as further defined and described in the Residential Declaration.

"Residential Declarant." 300 Acres, LLC, a Texas limited liability company, as further described in the Residential Declaration.

"Residential Declaration." The Declaration of Covenants, Conditions and Restrictions for Indigo Residential Community recorded in the Real Property Records, as may be amended and supplemented from time to time.

"Residential License." A license granted by the Commercial Declarant or Commercial Association to the Residential Association for the benefit of Residential Owners in the Residential Property or directly to Residential Owners for the use of certain portions of the Commercial Property, as the case may be, for limited purposes described in each such license pursuant to Section 7.5 of this Commercial Declaration.

"Residential Property." That certain real property developed primarily for single-family residential use, as further defined and described in Exhibit A of the Residential Declaration, which is not part of the Commercial Property or any Annexed Commercial Property added to the Commercial Property.

"Restrictive Covenants." Collectively, all instruments filed of record in the Real Property Records affecting title to the Commercial Property (or of which memorandums are filed of record in the Real Property Records or which are intended to run with the land comprising the Commercial Property according to their terms) other than this Commercial Declaration and other Commercial Governing Documents described in Section 2.4 of this Declaration, including, without limitation, the Commercial Plat, Development Agreement, Shared Parking Agreement(s), written agreements by and between Commercial Declarant and/or the Commercial Association with the MUD, City or other Governmental Authority for maintenance or operations of portions of the Commercial Property, and instruments related to Mineral Interests or Water Rights, as each may be amended and supplemented.

"Shared Parking Agreement(s)." Any agreement(s) entered into by and between Commercial Declarant or the Commercial Association with the City, County or any other Governmental Authority, as may be applicable, which govern parking requirements for the Commercial Owners, Commercial Owner Tracts or Commercial Property, as may be amended.

"Signage." Any signage, including monument signage, lettering, decorations, banners, advertising or marketing media, awnings, canopies, window coverings or other similar types of expression on portions of the Commercial Property, Improvements thereon or in the interior of any Improvement if the same is visible from the exterior.

"Signage Rights." The rights of each Commercial Owner Tract Owner to erect Signage on interior portions of the Commercial Buildings, on portions of its Commercial Owner Tract and on exterior portions of the Commercial Buildings as further described in Section 3.3 of this Commercial Declaration.

"Special Assessments." Assessments established, imposed and levied from time to time by the Commercial Association pursuant to Section 6.1 of this Commercial Declaration.

"State." The State of Texas.

"Supplemental Declaration." A written instrument, executed by the Commercial Declarant and any other owner of the real property to be annexed into the Commercial Property or which is already a part of the Commercial Property, if applicable, and recorded in the Real Property Records that subjects Annexed Commercial Property to this Commercial Declaration and/or otherwise supplements or modifies the covenants, conditions or restrictions contained in this Commercial Declaration, including the Maintenance Responsibility Chart, as they relate to the Annexed Commercial Property or applicable portion of the Commercial Property as further described in Section 2.5 of this Commercial Declaration.

"Systems." All fixtures, utilities, equipment, pipes, lines, wires, cables, conduits, circuits, junction boxes, hangers, pull boxes, terminal points, electronic devices, air compressors, air handlers, chillers, cisterns, sprinkler devices, irrigation equipment, electric vehicle charging stations and other systems used in the production of or for heating, cooling and/or transmission of air, water, gas, electricity (including the underground electric distribution system), irrigation, communications, wastewater, sewage, audio and video signals and other utility services, including, without limitation, television, wireless, telephone and the internet, and conduits, plumbing chases and mechanical shafts on the Commercial Property or designed to serve the Commercial Common Areas and Improvements thereon or one or more Commercial Owner Tracts.

"Systems and Services Easement." An Easement as more particularly described in Subsection 7.2(d) of this Commercial Declaration.

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

"TBOC." Chapter 22 of the Texas Business Organizations Code, as amended from time to time.

"Temporary Licenses." Collectively, the Residential License, Limited Commercial Common Area Licenses, temporary licenses for the Common License Reserves and any other temporary licenses described or contemplated by this Commercial Declaration which may be granted by Commercial Declarant or the Commercial Association.

"TNCL." The Texas Nonprofit Corporation Law, including the TBOC, as amended from time to time.

"Water Rights." Those rights reserved in the Restrictive Covenants applicable to the Commercial Property for, in connection with or arising out of (a) the use of water produced on the Commercial Property (excluding potable water and water suitable for livestock and irrigation) in connection with the Mineral Interests or as otherwise described in the Restrictive Covenants, and/or (b) groundwater and groundwater leasing as further described in Section 7.4 of this Commercial Declaration.

"WCC." Shall have the meaning assigned to such term in Subsection 6.1(c) of this Commercial Declaration.

"Withdrawal Notice." Shall have the meaning assigned to such term in Section 11.3 of this Commercial Declaration.

"Working Capital Fund." A fund consisting comprised of Working Capital Contributions collected in accordance with Section 6.1 of this Commercial Declaration.

ARTICLE II SUBMISSION

Section 2.1. **Submission of the Commercial Property to this Commercial Declaration.** The real property described in Exhibit A is submitted to and covered by this Commercial Declaration and shall constitute the Commercial Property, subject to the annexation or withdrawal of portions of such Commercial Property as further described in Article XI of this Commercial Declaration. Unless otherwise specifically set forth herein, all of the Commercial Property and any right, title or interest therein shall be owned, held, leased, sold, occupied, used and conveyed to a Commercial Owner, subject to the covenants, conditions, restrictions, Restrictive Covenants, Easements, Temporary Licenses, Commercial Charges, Development Rights, liens and all provisions of this Commercial Declaration and other Commercial Governing Documents, and any other existing dedication, restriction, reservation or Easement over, on and across the Commercial Property and the Commercial Common Areas set forth in a document recorded in the Real Property Records of the County.

Section 2.2. **Commercial Owner Acknowledgment.** Each Commercial Owner, Commercial Occupant and any Person subject to a Temporary License is subject to this Commercial Declaration and the Commercial Governing Documents and all covenants, conditions and restrictions contained therein. By acceptance of a deed, Commercial Lease, Temporary License or other instrument establishing title, ownership or the right of use and occupancy in any portion of the Commercial Property, including any portion of a Commercial Owner Tract or Improvements thereon, each Commercial Owner, Commercial Occupant and licensee subject to Temporary Licenses acknowledges that it has been given notice of this Commercial Declaration and the other Commercial Governing Documents; that use of any portion of the Commercial Property and Commercial Owner Tract and Improvements thereon is limited and governed by the provisions of the Commercial Governing Documents; that the Commercial Declarant, during the Development Period, and the Commercial Board thereafter may, from time to time, adopt and amend definitions of words, phrases and terms used in this Commercial Declaration and other Commercial Governing Documents; that the Commercial Declarant during the Development Period or the Commercial Association thereafter may grant one or more Temporary Licenses; that the use, enjoyment and marketability of the Commercial Property and the Commercial Owner Tracts can be affected by this Commercial Declaration; and that the Commercial Governing Documents may be amended and can change from time to time.

Section 2.3. **No Reliance on Conceptual Commercial Plans.** By acceptance of a deed, Commercial Lease or other instrument establishing title, ownership or the right of occupancy in any portion of the Commercial Property, including any portion of a Commercial Owner Tract or Improvements thereon, each

Commercial Owner, Commercial Occupant and licensee subject to a Temporary License acknowledges and agrees that the Commercial Property and its uses and Improvements and MUD Recreational Facilities that may be shown in any Conceptual Plans, at any time, are subject to change, and may not be built, and that portions of the Commercial Property, land surrounding the Commercial Property, Improvements on the Commercial Property and uses within the Commercial Property or the Commercial Common Areas may include uses not shown or described in any Conceptual Plans. Commercial Declarant makes no representation or warranty of any kind concerning uses or Improvements shown, referenced or described in Conceptual Plans or otherwise intended or contemplated for the Commercial Property, Community Property, land and uses thereof surrounding the Community Property, Commercial Property or Commercial Common Areas, and no Commercial Owner, Commercial Occupant or licensee under a Temporary License is entitled to rely upon the Conceptual Plans or any statements made by the Commercial Declarant, Commercial Declarant Affiliates or any of Commercial Declarant's members, Commercial Managers, employees, agents or representatives regarding proposed land uses or Improvements in or around the Community Property, Commercial Property or in connection with Commercial Common Areas or planned Improvements, including MUD Recreational Facilities, in making the decision to purchase or lease a Commercial Owner Tract. Each Commercial Owner acquiring a Commercial Owner Tract acknowledges that development of the Commercial Property will extend over several years and agrees that the Commercial Association will not engage in or use Commercial Association funds to support, protest, challenge or make any other form of objection to the development of all or any portion of the Commercial Property, including Commercial Common Areas and Improvements thereon, or to changes in the Conceptual Plans.

Section 2.4. **Commercial Governing Documents.** The Commercial Property's Commercial Governing Documents consist of the following documents, and in the event of any conflict arising between the provisions of the Commercial Governing Documents, the Commercial Governing Documents shall control in the following order: (a) the Development Plan; (b) the Development Agreement; (c) the Commercial Plat and other Restrictive Covenants; (d) the TNCL; (e) Chapter 202 of the Texas Property Code, as amended; (f) the Foundation Covenant; (g) this Commercial Declaration, as amended by any Supplemental Declaration or amendment; (h) the Commercial Bylaws; (i) the Commercial Certificate; (j) the Architectural Guidelines; (k) the Commercial Rules; and (l) any other rules, regulations, guidelines, policies and dedicatory instruments adopted by the Commercial Declarant, the Commercial Board or the ACC, as applicable, and recorded in the Real Property Records of the County, as each of the documents listed in the forgoing Subsections 2.4 (a)-(l) may be amended from time to time. The exhibits attached to this Commercial Declaration are incorporated by reference for all intents and purposes. Any conflict between the provisions of multiple Supplemental Declarations applying to the same portion of the Commercial Property or Annexed Commercial Property shall be resolved by granting control to the Supplemental Declaration with the latest date of filing in the Real Property Records, which shall control over any prior Supplemental Declarations filed for the same portion of the Commercial Property. **It is Commercial Declarant's intention for the Commercial Governing Documents to comply with Restrictive Covenants and applicable Legal Requirements, and Commercial Declarant may amend the Commercial Governing Documents during the Development Period in its absolute and sole discretion without the prior approval of or joinder of any other Person, including any Commercial Owner, to bring such documents in compliance with any such Restrictive Covenants or Legal Requirements.**

Section 2.5. **Supplemental Declarations.** During the Development Period and pursuant to Article XI of this Commercial Declaration, Commercial Declarant shall file any Supplemental Declarations for the Commercial Property in the Real Property Records, which shall include, at a minimum, the following: (a) an adequate legal description covering the Commercial Property or any Annexed Commercial Property, as applicable, subject to a Supplemental Declaration; (b) a signature page duly executed by the Commercial Declarant and, if applicable, a Commercial Owner, if Commercial Declarant is not the owner of the subject

Commercial Property or Annexed Commercial Property, as applicable; (c) a description of any conditions and/or restrictions that apply to the Annexed Commercial Property or portions of the Commercial Property subject to the Supplemental Declaration other than those set forth in this Commercial Declaration; (d) a reference to this Commercial Declaration, stating the date of recordation and recording information of this Commercial Declaration in the Real Property Records; (e) a reference to the Foundation Covenant, stating the date of recordation and recording information of the Foundation Covenant in the Real Property Records; and (f) any other information as may be required by the Commercial Declarant or applicable Restrictive Covenants or Legal Requirements.

ARTICLE III USES, RESERVATIONS AND RESTRICTIONS

Section 3.1. **Permitted Uses on Commercial Property; Continuous Business Operations.** No Commercial Owner Tract, Commercial Building or any other Improvement on a Commercial Owner Tract shall be leased, used or occupied at any time for or in connection with one or more Prohibited Use(s) included in Exhibit C to this Commercial Declaration, which exhibit is incorporated herein by this reference. Each Commercial Owner, Commercial Occupant, Commercial Lease, and Commercial Owner Tract and Improvements thereon, and any licensee subject to a Temporary License, shall be subject to limitations on use, occupancy, architectural standards and such other matters as are set forth in the Commercial Governing Documents or arise under applicable Legal Requirements. The uses allowed on the Commercial Owner Tracts may be further restricted, limited or conditioned by Commercial Leases applicable to such Commercial Owner Tracts; provided, however, no Commercial Lease shall include terms which conflict with or violate any portion of the Commercial Governing Documents or Legal Requirements, and in the event such conflicting or violative terms arise in a Commercial Lease, such terms shall be automatically void and of no force or effect. The Commercial Association reserves the right to review any Commercial Lease in connection with compliance with the Commercial Governing Documents as may be further described in the Commercial Rules. No Temporary License shall include terms which conflict with or violate any portion of the Commercial Governing Documents or Legal Requirements, and in the event such conflicting or violative terms arise in a Temporary License, such terms shall be automatically void and of no force or effect.

The Commercial Declarant reserves for itself and the Commercial Association the right to establish, levy and collect Business Operations Charges from each Commercial Owner for failure by such Commercial Owner or its Commercial Occupant to commence or continuously conduct business operations on and from its Commercial Owner Tract according to the Commercial Rules. A Commercial Owner may occupy a portion of his or her Commercial Building for residential purposes; provided, however, no Commercial Building may be occupied exclusively, primarily or solely as a residence by the Commercial Owner or any other Person, and no Commercial Building will be subject to the Residential Declaration based on such residential use of a Commercial Building. Commercial Owners may exercise the Signage Rights granted to them in Section 3.3 of this Commercial Declaration, which rights are subject to related Signage requirements and restrictions according to this Commercial Declaration, the Commercial Rules, the Architectural Guidelines, and other applicable Commercial Governing Documents and Legal Requirements. Commercial Owners shall not assign their Signage Rights to any Commercial Occupant without the prior written consent of the Commercial Board.

Section 3.2. **Commercial Common Areas; Commercial License Reserves.** No Commercial Owner or Commercial Occupant shall obstruct or interfere with the use by other Commercial Owners, Commercial Declarant, the Commercial Association, or other permitted Persons, including licensees possessing use rights arising out of Temporary Licenses of the Commercial Common Areas, and no Commercial Owner or Commercial Occupant may keep or store anything on any part of the Commercial Common Areas or portion of the Commercial Property apart from the Commercial Owner Tract owned by

such Commercial Owner or occupied or leased by such Commercial Occupant without the prior written approval of the Commercial Association. No Commercial Owner, Commercial Occupant or licensee under a Temporary License shall alter, construct in or on, or remove anything from the Commercial Common Areas without the prior written approval of the Commercial Association. Neither the Commercial Association nor Commercial Declarant is obligated to construct any particular type or kind of Improvements on or within the Commercial Common Areas or any other portion of the Commercial Property.

Certain portions of the Commercial Common Areas, which are classified as Commercial License Reserves, may be temporarily used or occupied by Persons to provide goods or services (e.g., food trucks, pop-up shops) to Commercial Owners, Commercial Occupants, and guests, visitors and other Persons on the Commercial Property as may be determined by Commercial Declarant in the Commercial Declarant's absolute and sole discretion during the Development Period and by the Commercial Association in the Commercial Association's absolute and sole discretion after the Development Period has expired. The terms and requirements which apply to the temporary uses allowed in the Commercial License Reserves shall be evidenced by temporary, nonexclusive, revocable license agreements entered into by and between the Commercial Declarant or Commercial Association, as applicable, and Commercial License Reserve licensees, the form and substance of which shall be established and approved by the Commercial Association and will include all of the same content as required for the Limited Commercial Common Area Licenses described in Subsection 7.6(a) of this Commercial Declaration; provided, however, licensees of the Commercial License Reserves are not Commercial Owners and the terms of Commercial License Reserve licenses will be adjusted and customized accordingly. Commercial License Reserve licensees shall be required, at their sole cost, to carry and maintain insurance covering liability, property damage and the licensee's business operations conducted on the Commercial License Reserve areas per the applicable license. All of such insurance policies shall name the Commercial Declarant, the Commercial Association and the Commercial Board and their respective members, managers, Officers, Directors, employees and agents as additional insureds through additional insured endorsements per Section 9.4 of this Commercial Declaration.

Section 3.3. **Signage Rights.** Commercial Declarant shall have the right to install Signage in the interior of Commercial Buildings or other Improvements on a Commercial Owner Tract of which no portion of such Signage is visible from the exterior of such Commercial Buildings and Improvements without the prior consent of the Commercial Association so long as such Signage complies with all Legal Requirements and the Commercial Governing Documents. Any other Signage to be erected or installed on the exterior of any Commercial Building or other Improvement on a Commercial Owner Tract, or which is visible from the exterior of such Commercial Buildings and Improvements, is subject to the prior written approval of the Commercial Association, and all such Signage must comply with the Commercial Governing Documents, including any Signage guidelines and criteria which may be established and included in the Architectural Guidelines or Commercial Rules and with Legal Requirements.

Each Commercial Owner will, at its sole cost and expense, (i) obtain and maintain all necessary permits and approvals required by any Governmental Authority and arising under all applicable Legal Requirements for the erection, installation and maintenance of its Signage; (ii) keep and maintain, or cause to be kept and maintained, Signage on its Commercial Owner Tract in good condition and repair; and (iii) keep or cause to be kept all lighting and other equipment in connection with Signage on its Commercial Owner Tract in good working order and condition. The Commercial Owner utilizing the Signage Rights is responsible for all costs arising in connection with such Signage, including, without limitation, costs arising out of Signage requirements established by the Commercial Association or ACC for the design, use, installation, removal, maintenance, repair or any other activities concerning Signage and the exercise of the Signage Rights. Commercial Owners are exclusively responsible and liable to insure Signage and any related equipment they install, or Commercial Lessees install, on any portion of a Commercial Owner Tract or Improvement thereon.

The Commercial Declarant and Commercial Association are not liable to any Commercial Owner, Commercial Lessee or any other Person for any loss or damage from any cause to the Signage, related equipment or other related improvements installed pursuant to the Signage Rights. Commercial Owners shall, and shall cause their Commercial Lessees to, (a) obtain and maintain, for so long Signage is erected on any portion of the Commercial Owner Tract or Improvements thereon, insurance covering loss and damage to Persons and property for all Signage, fixtures and Improvements installed on the respective Commercial Owner Tract and Improvements thereon; (b) strictly comply with the Commercial Governing Documents and any requirements established by the Commercial Declarant, the ACC and the Commercial Association applicable to Signage Rights and Signage. THE COMMERCIAL OWNERS AND EACH OF THEIR COMMERCIAL LESSEES AGREE TO INDEMNIFY THE COMMERCIAL DECLARANT, THE COMMERCIAL ASSOCIATION AND EACH OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, MANAGERS, AGENTS AND MEMBERS, INDIVIDUALLY AND COLLECTIVELY, AGAINST LOSSES DUE TO ANY AND ALL CLAIMS FOR DAMAGES OR LAWSUITS, BY ANYONE, ARISING FROM COMMERCIAL OWNER'S OR COMMERCIAL LESSEE'S SIGNAGE OR THE USE OR MISUSE OF THE RESPECTIVE SIGNAGE RIGHTS. The Commercial Owners are hereby permitted to assign their respective Signage Rights to their Commercial Lessees only which assignment shall be expressly stated in the respective Commercial Lease and shall include a reference to the Signage Rights and obligations contained in this Commercial Declaration. No Signage Rights are permitted to be granted by Commercial Owners to any Commercial Occupants other than Commercial Lessees without the prior written approval of the Commercial Board of Directors, which approval shall be in the Commercial Association's absolute and sole discretion. Any Signage Rights granted to licensees by the Commercial Declarant or the Commercial Association shall be expressly included in the applicable Temporary Licenses and subject to all Signage requirements set forth in this Commercial Declaration.

Section 3.4. **MUD.** The Commercial Property is located within the MUD and in the City's Extraterritorial Jurisdiction ("ETJ"), according to the Development Agreement. The Commercial Declarant has or will petition for inclusion of those portions of the Commercial Property not included in the City's ETJ according to the Development Agreement pursuant to a strategic partnership agreement between the City and the MUD, according to Section 43.0751 of the Texas Local Government Code. The MUD encompasses approximately 235 acres of land in the County, including the Commercial Property, and provides for water, sewer, drainage, road facilities, including the Property Roads, and parks. The MUD was created under the Texas Water Code provisions applicable to all water districts and municipal utility districts; it will have standard road powers and will comply with all applicable road standards. The Texas Water Code requires sellers of real property located in municipal utility districts to give purchasers notice in a format prescribed by State law. Commercial Owners selling Commercial Owner Tracts are required to determine, in their sole discretion, at the time they are selling their Commercial Owner Tracts, whether their transactions are subject to this notice requirement based upon the then-current Legal Requirements arising under the Texas Water Code, and if the transactions are subject, the Commercial Owners shall strictly comply with such notice requirements and any other Legal Requirements required for the sale.

Section 3.5. **Landscaping Requirements.** Unless otherwise expressly specified to the contrary in the Maintenance Responsibility Chart or other portion of this Commercial Declaration, a Supplemental Declaration or other Commercial Governing Documents, all portions of a Commercial Owner Tract not improved by Improvements and which are visible from any Private Road, Property Road, MUD Recreational Facility, Commercial Common Area or other portion of the Commercial Property shall be landscaped by the Commercial Owner of such Commercial Owner Tract, and such landscaping shall be maintained by the Commercial Association per the Community-Wide Maintenance Standard. The cost of such maintenance shall be a Common Expense.

Section 3.6. **Environmental.**

(a) No Hazardous Substances. No Commercial Owner, Commercial Occupant, licensee under a Temporary License or Designee shall handle, store, deposit, use, process, manufacture, dispose of or release any Hazardous Substances from, on, in, under or in the air above any part of the Commercial Property, including any surface waters or groundwater located on the Commercial Property or into Systems, including sanitary or storm sewer portions of the Systems serving the Commercial Property, without first complying with all applicable Legal Requirements, including performing pretreatment, obtaining applicable Government Approvals and giving notices as required by Environmental Laws.

(b) Costs and Expenses. Each Commercial Owner and its Designees shall be responsible for and shall pay all costs and expenses related to the disposal, release, cleanup and remediation of any Hazardous Substances caused by such parties in, on, under or above the Commercial Property and as required by any Governmental Authority.

Section 3.7. Rights of Commercial Board Regarding Rules and Policies. In furtherance of the purposes of this Commercial Declaration and to comply with the Restrictive Covenants and any other Legal Requirements, the Commercial Board from time to time may adopt, amend or repeal rules, including the Commercial Rules, governing all or any portion of the Commercial Property and Improvements thereon, each Commercial Owner Tract, Commercial Common Areas and leasing, use and occupancy of Commercial Owner Tracts and Improvements thereon and establish and enforce policies, procedures and penalties for the enforcement of the Commercial Governing Documents and collection of delinquent Commercial Assessments.

Section 3.8. Construction Use. Commercial Declarant and its Designees shall have the right to perform construction and such other reasonable or related activities on the Commercial Property and to maintain upon portions of the Commercial Property it owns such facilities and equipment as required or deemed reasonably necessary or incidental to the construction and sale of Commercial Buildings and other permitted Improvements on Commercial Owner Tracts in the construction and development of the Commercial Property, specifically including the maintenance of temporary business or construction offices, material and equipment storage areas, trash bins, construction yards and equipment, signs, models, temporary sales offices, parking areas and lighting facilities.

Section 3.9. No Commercial Owner Tract Subdivision. No Commercial Owner Tract shall be further divided or subdivided. No Commercial Owner is entitled to grant easements, licenses or other interests in and to a Commercial Owner Tract without the prior written consent of the Commercial Association or the ACC, whichever is applicable. This Section 3.9 shall not apply in any respect to the Commercial Declarant or any Commercial Owner Tract owned by the Commercial Declarant.

Section 3.10. Commercial Neighborhoods. The Commercial Property may have Commercial Neighborhoods. Commercial Neighborhoods will vary based on types of Commercial Buildings, uses thereof, other uses and operations conducted on Commercial Owner Tracts, provisions of Commercial Neighborhood Services, and other criteria which may be established in the absolute and sole discretion of the Commercial Association. The Commercial Association shall have the right and power to levy Commercial Neighborhood Assessments against Commercial Owner Tracts in Commercial Neighborhood to pay for Commercial Neighborhood Expenses according to Section 6.2 of this Commercial Declaration. Commercial Neighborhoods may be subjected to additional unique restrictions applicable only to such Commercial Neighborhoods through an amendment of, or a Supplemental Declaration to, this Commercial Declaration recorded in the Real Property Records; however, no Commercial Neighborhood is required to have any such separate restrictions and no Commercial Neighborhood restrictions will be valid or enforceable during the Development Period without the joinder or acknowledged consent of the Commercial Declarant to the amendment or Supplemental Declaration establishing the Commercial Neighborhood restrictions. Commercial

Neighborhoods may also have Commercial Neighborhood Common Areas. The costs and expenses incurred by the Commercial Association in the performance of maintenance, upkeep, repair and operations to Commercial Neighborhood Common Areas or Improvements and for any services provided in connection with such Commercial Neighborhood Common Areas will constitute Commercial Neighborhood Expenses and will be paid for by Commercial Neighborhood Assessments. The Commercial Association may also provide Commercial Neighborhood Services to a Commercial Neighborhood which services are not provided to all Commercial Owner Tracts on the Commercial Property. The costs and expenses incurred by the Commercial Association for providing and maintaining Commercial Neighborhood Services are also Commercial Neighborhood Expenses and will be paid for by Commercial Neighborhood Assessments. No Commercial Neighborhood is required to have Commercial Neighborhood Common Areas or Commercial Neighborhood Services and nothing in this Section 3.10 shall be deemed to create any obligation or duty of the Commercial Declarant or Commercial Association for same.

Section 3.11. **Commercial Property Provisions in Commercial Certificate, Foundation Covenant and Residential Declaration.** The Commercial Certificate, Foundation Covenant and Residential Declaration and certain other governing documents applicable to the Community may include defined terms for the Commercial Property which differ from defined terms used for the Commercial Property in this Commercial Declaration. By way of example and not limitation, the term “Commercial Lot” is used in the Commercial Certificate, Foundation Covenant and Residential Declaration in reference to a Commercial Owner Tract; however, the Commercial Property does not show platted lots on the Commercial Plat and instead consists of platted restricted and unrestricted reserves. In the event of a conflict between the defined terms used for the Commercial Property in this Commercial Declaration and defined terms used for the Commercial Property in the Commercial Certificate, Foundation Covenant, Residential Declaration or any other governing documents applicable to the Community outside of this Commercial Declaration, the defined terms used for the Commercial Property in this Commercial Declaration shall control.

ARTICLE IV THE COMMERCIAL ASSOCIATION

Section 4.1. **General Purposes and Powers of the Commercial Association.** The Commercial Association has been incorporated as a nonprofit corporation under the TNCL. In addition to the powers conferred on the Commercial Association under the TNCL, the Commercial Association may take all actions authorized by the Commercial Governing Documents. Any and all actions taken by the Commercial Association pursuant to the Commercial Governing Documents are binding on all Commercial Owners. The Commercial Association shall be governed by the TNCL, Commercial Governing Documents and applicable Legal Requirements.

Section 4.2. **Deemed Assent Ratification and Approval.** All Commercial Owners, Commercial Occupants and licensees under Temporary Licenses of the Commercial Property by acceptance of a deed for a Commercial Owner Tract, entering into a Commercial Lease or entering into a Temporary License, as applicable, shall be deemed to have assented to, ratified and approved this Commercial Declaration and its purposes, the other Commercial Governing Documents and the power, authority and management rights of the Commercial Association, acting through the Commercial Board as permitted in and authorized by this Commercial Declaration and other Commercial Governing Documents.

Section 4.3. **Commercial Manager.** The Commercial Association may contract with a Commercial Manager for the day-to-day management and administration of either or both of the Commercial Property and the Commercial Association as further described in the Commercial Bylaws.

Section 4.4. **Election of the Commercial Board of the Commercial Association.** The Commercial Board shall be elected by the Commercial Owners pursuant to the provisions of the Commercial Bylaws except as otherwise set forth in Article V of this Commercial Declaration.

Section 4.5. **Commercial Declarant's Right to Appoint Commercial Board Members during Commercial Declarant Control Period.** Notwithstanding anything to the contrary in this Commercial Declaration or any of the other Commercial Governing Documents, and except as otherwise set forth in Subsection 5.1(d) hereof, Commercial Declarant, in its sole and absolute discretion, reserves the right to appoint and remove any Officer, Director or member of the Commercial Board during the Commercial Declarant Control Period, which period shall run concurrently with the Development Period unless earlier terminated by Commercial Declarant by a written instrument signed by Commercial Declarant and recorded in the Real Property Records which evidences Commercial Declarant's voluntary surrender, prior to the expiration of the Development Period, of any or all of the foregoing rights to appoint and remove Officers, Directors and members of the Commercial Board. If Commercial Declarant determines to terminate the Commercial Declarant Control Period and surrender its rights thereunder before the expiration or termination of the Development Period, the Commercial Declarant may require, for the duration of the Development Period, that specified actions of the Commercial Board, as described in the Commercial Declarant's recorded instrument evidencing termination of the Commercial Declarant Control Period, be approved by the Commercial Declarant before such actions become effective.

Section 4.6. **Duty to Accept Commercial Common Areas and Improvements Transferred by Commercial Declarant.** The Commercial Association shall accept any Commercial Common Areas and portions of the Commercial Property, including any Improvements, equipment and personal property located thereon conveyed, assigned or transferred to the Commercial Association by Commercial Declarant, together with the assumption of the duties and responsibilities to maintain, care for, upkeep, repair and replace, as and when necessary or required, all of such Commercial Property and Improvements and to perform any and all other functions associated therewith, provided that such Commercial Property and Improvements and functions are not inconsistent with the terms of the Commercial Governing Documents. Any portion of the Commercial Common Areas and Commercial Property transferred to the Commercial Association by Commercial Declarant shall, except to the extent otherwise specifically approved by resolution of the Commercial Board, be transferred to the Commercial Association free and clear of all liens (other than the lien of real property taxes), but shall be subject to the terms of the Commercial Governing Documents applicable thereto. The Improvements located on the Commercial Common Areas may be changed or altered from time to time as determined by the Commercial Board in accordance with the Commercial Governing Documents.

Section 4.7 **Rights of the Commercial Board.** The Commercial Association acts solely through the Commercial Board as provided in the Commercial Governing Documents or through the ACC pursuant to Article XII hereof. Notwithstanding anything to the contrary in the Commercial Certificate or the Commercial Bylaws, whenever the Commercial Governing Documents contain a reference to an action by the Commercial Association, such reference means the Commercial Association acting through and based on decisions and direction of the Commercial Board.

ARTICLE V MEMBERSHIP, VOTING AND ASSESSMENT ALLOCATIONS

Section 5.1. **Allocation of Votes in the Commercial Association.**

(a) **Membership.** Each Commercial Owner shall automatically be a Member of the Commercial Association and must remain a Member for as long as that Person is a Commercial Owner. Membership is

appurtenant to, and cannot be separated from, ownership of a Commercial Owner Tract. Any transfer of title to a Commercial Owner Tract shall operate automatically to transfer Membership appurtenant to such Commercial Owner Tract to the new Commercial Owner. All Commercial Owners shall notify the Commercial Association in writing of any transfer of ownership of such Commercial Owner's Commercial Owner Tract, including the name of the new Commercial Owner. Commercial Lessees shall not be entitled to vote. Commercial Owners shall not be permitted to assign their vote to any Commercial Lessee. A Commercial Lease does not, in any manner whatsoever, serve as evidence of a transfer of ownership of all or any portion of a Commercial Owner Tract by a Commercial Owner.

(b) Voting During the Commercial Declarant Control Period. Until the Commercial Declarant Control Period has terminated, there shall be two classes of voting Members in the Commercial Association.

(i) The Class A Members shall be entitled to exercise one (1) vote per Commercial Owner Tract owned by each such Class A Member with respect to any matter of the Commercial Association on which Class A Members shall be entitled to vote during the Commercial Declarant Control Period.

(ii) The Class B Member shall be entitled to exercise one (1) vote for each Commercial Owner Tract owned by the Class B Member and an additional one hundred (100) votes for every one (1) vote entitled to be cast by the Class A Members with respect to any matter on which Class A Members shall be entitled to vote during the Commercial Declarant Control Period. Commercial Declarant shall be entitled to cast the votes allocated to the Class B Member in this Subsection 5.1(b)(ii) during the Commercial Declarant Control Period and need not own any Commercial Owner Tract as a condition precedent to exercising exercise such voting rights. THE CLASS A MEMBERS ACKNOWLEDGE AND AGREE, BY THEIR ACCEPTANCE OF A DEED TO A COMMERCIAL OWNER TRACT, THAT DURING THE COMMERCIAL DECLARANT CONTROL PERIOD, WHICH RUNS CONCURRENT WITH THE DEVELOPMENT PERIOD UNLESS EARLIER TERMINATED BY COMMERCIAL DECLARANT IN ACCORDANCE WITH SECTION 4.5 OF THIS COMMERCIAL DECLARATION, THE CLASS B MEMBER POSSESSES THE MAJORITY OF THE VOTING INTERESTS IN THE COMMERCIAL ASSOCIATION AND SHALL BE ABLE TO CONTROL, THROUGH THE VOTING PROCESS, ANY MATTERS COMING BEFORE THE COMMERCIAL ASSOCIATION FOR A VOTE, SUBJECT TO LEGAL REQUIREMENTS AND THE REQUIREMENTS OF THE COMMERCIAL GOVERNING DOCUMENTS.

(c) Class Membership; Protection of Commercial Declarant's Rights. Upon termination of the Commercial Declarant Control Period, there shall be no more classes of Members and the rights of all Members shall be identical, including the election of the Commercial Board, and the procedures for the election of members to the Commercial Board shall be in accordance with the Commercial Bylaws. Unless a different allocation of votes is required by any Legal Requirement or in this Commercial Declaration, all Members shall, after the termination of the Commercial Declarant Control Period, be entitled to exercise one (1) vote per Commercial Owner Tract owned by each such Member with respect to any matter of the Commercial Association on which Members shall be entitled to vote. Despite any assumption of control of the Commercial Board by Commercial Owners other than Commercial Declarant as the result of a termination of the Commercial Declarant Control Period by Commercial Declarant, until the expiration or termination of the Development Period has occurred, the Commercial Board is prohibited from taking any action which would discriminate against Commercial Declarant or its development of the Commercial Property, or which would be detrimental to Commercial Declarant, the sale of Commercial Owner Tracts or Commercial Declarant's

development of the Commercial Property. Commercial Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such Commercial Board action discriminates against Commercial Declarant or its development of the Commercial Property or is detrimental to Commercial Declarant, its development of the Commercial Property or the sale of Commercial Owner Tracts; and in the event Commercial Declarant makes any such determination, the action of the Commercial Board shall be deemed void and unenforceable upon the Commercial Board's receipt of written notice from Commercial Declarant setting forth such determination. Until the expiration or termination of the Development Period, the Commercial Association will be required to continue and maintain the same level and quality of maintenance, operations and services on the Commercial Property as were provided prior to assumption of control of the Commercial Board by Commercial Owners other than Commercial Declarant.

(d) Termination of Commercial Declarant Control Period prior to Expiration of Development Period. If Commercial Declarant desires to terminate the Commercial Declarant Control Period prior to the expiration or termination of the Development Period per Section 4.5 hereof, then, on the date that is not less than sixty (60) days prior to the date Commercial Declarant desires the Commercial Declarant Control Period to terminate, the Commercial Association shall hold an election for purposes of electing Directors from the Class A Membership to serve as the Commercial Board of Directors from and after the date upon which the Commercial Declarant Control Period terminates. The terms of these elected Class A Member Directors will commence on the same date as the Commercial Declarant Control Period terminates.

Section 5.2. Proxies of Commercial Owners. Votes allocated to Commercial Owner Tracts may be cast pursuant to proxies duly executed by the respective Commercial Owners in the proxy form required by the Commercial Association pursuant to the Commercial Bylaws. If a Commercial Owner Tract is owned by more than one Person, any one co-Commercial Owner of the Commercial Owner Tract may cast the vote of that Commercial Owner Tract or register a protest to the casting of the vote of that Commercial Owner Tract by the other co-Commercial Owner(s) of the Commercial Owner Tract through a duly executed proxy. A Commercial Owner may not revoke a proxy given pursuant to this Section 5.2 except in accordance with the Commercial Bylaws.

ARTICLE VI COMMERCIAL ASSESSMENTS

Section 6.1. Fees; Contributions; Regular, Special and Commercial Neighborhood Assessments of the Commercial Association. The Commercial Association shall possess the right, power, authority and obligation to establish a Regular Assessment for the payment of Common Expenses, Special Assessments and Commercial Neighborhood Assessments for the payment of Commercial Neighborhood Expenses as provided for in this Article VI.

(a) Commercial Community Enhancement Fee. The Commercial Community Enhancement Fee is charged by the Commercial Association (1) to the Commercial Owner Tract purchaser upon each non-exempt transfer of title to a Commercial Owner Tract in an amount equal to one percent (1.00%) of the Total Commercial Sales Price of the Commercial Owner Tract, as defined in the Foundation Covenant, including the initial non-exempt transfer of title to a Commercial Owner Tract by the Commercial Declarant; and (2) to the Commercial Owner upon execution of each non-exempt Commercial Lease in an amount equal to one-half percent (0.50%) of the total rental amount for the entire initial term of the Commercial Lease of the Commercial Owner Tract. Commercial Community Enhancement Fees charged by the Commercial Association are payable to the Foundation and are secured by liens in favor of the Foundation as provided in Section 2.2(e) of the Foundation Covenant, which liens are prior and superior to

the Assessment lien established in Section 6.5 of this Commercial Declaration. Commercial Community Enhancement Fees may be changed by the Founder pursuant to the terms of the Foundation Covenant.

(b) Reserve Contribution. Each Commercial Owner, excluding the Commercial Declarant, will pay a one-time Reserve Contribution to the Commercial Association upon the closing of the sale of a Commercial Owner Tract in the amount equal to three (3) months of the then-current annual Regular Assessment, regardless of whether the Regular Assessment is being charged monthly at the time, applicable to such Commercial Owner Tract. The Reserve Contribution will be deposited into the Commercial Association's operating account or a separate reserve fund account, which may be established by the Commercial Association, and such contribution shall not be considered an advance payment of any Commercial Assessments and is not refundable. Reserve Contributions may be used by the Commercial Association for payment of operating expenses, Commercial community programs or events or other recurring or nonrecurring costs and expenses of the Commercial Association as the Commercial Board deems necessary and appropriate. Commercial Declarant shall not be entitled to use any portion of the Reserve Contributions during the Development Period.

(c) Working Capital Contribution. Each Commercial Owner, excluding Commercial Declarant, will pay a one-time working capital contribution (the "WCC") to the Commercial Association upon the closing of the sale of a Commercial Owner Tract in an amount equal to three (3) months of the then-current annual Regular Assessment, regardless of whether the Regular Assessment is being charged monthly at the time. The WCC will be deposited into the Working Capital Fund separate from the Commercial Association's operating account and any reserve fund account and shall not be considered an advance payment of any Commercial Assessments and is not refundable. The Working Capital Fund will be maintained by the Commercial Association for the purchase of equipment, materials, goods and services deemed necessary by the Commercial Association for the operation of the Commercial Property or to discharge operating expenses of the Commercial Association. Commercial Declarant shall not be entitled to use any portion of the Working Capital Fund during the Development Period.

(d) Common Expenses. The Commercial Association shall establish the amount sufficient in the judgment of the Commercial Association to pay all Common Expenses when due and possesses the right to establish and maintain a reserve fund for the Commercial Association. The amount established to pay Common Expenses shall be assessed to Commercial Owners and levied against each Commercial Owner Tract as Regular Assessments, using each Commercial Owner Tract's Assessment Percentage. Each Commercial Owner Tract's Assessment Percentage shall be calculated using the following formula:

Gross Square Footage of Commercial Owner Tract ÷ Gross Square Footage of All Commercial Owner Tracts = Assessment Percentage

Regular Assessments shall be due and payable quarterly or on such dates as otherwise determined by the Commercial Declarant or established by the Commercial Association and shall be applied to the payment of Common Expenses for which the Commercial Association is responsible. Common Expenses will likely increase over time while the Commercial Property is being developed.

(e) Commercial Budget for Common Expenses. Prior to the commencement of each fiscal year of the Commercial Association, the Commercial Association shall establish and adopt a Commercial Budget for the following fiscal year, notify Commercial Owners of such Commercial Budget and make the Commercial Budget available for review by all Commercial Owners. No further communication shall be necessary to establish the amount of each Commercial Owner's obligation regarding the Regular Assessments payable according to this Commercial Declaration, and the failure of the Commercial Association to timely notify and make available for review by Commercial Owners any Commercial Budget shall not excuse or relieve a

Commercial Owner from the payment of the Regular Assessments contemplated thereby. The Commercial Board shall have the right to amend any Commercial Budget at any time in which event the portion of the Regular Assessments assessed against each Commercial Owner Tract and the corresponding payment obligation of each Commercial Owner shall be adjusted accordingly, if applicable. Notwithstanding the foregoing, and after the expiration or termination of the Development Period, if any Commercial Budget for a fiscal year, or amendment thereof, may increase Regular Assessments allocated to a Commercial Owner Tract and payable by a Commercial Owner by more than forty percent (40%) from the immediately preceding fiscal year (the "Increased Commercial Budget"), such Increased Commercial Budget must be approved by the affirmative vote of at least fifty-one percent (51%) of the Members entitled to vote at such time. Until the Increased Commercial Budget is duly approved by the requisite vote or the Increased Commercial Budget is replaced with another Commercial Budget duly established and adopted by the Commercial Board for the same fiscal year, the Commercial Budget and the Regular Assessments established for the year immediately preceding the fiscal year for which the Increased Commercial Budget applies will continue in full force and effect.

(f) Special Assessments by the Commercial Association. In addition to the Regular Assessments, the Commercial Association shall establish Special Assessments from time to time as may be necessary or appropriate in the judgment of the Commercial Board to pay (i) nonrecurring Common Expenses relating to the maintenance, care, alteration, improvement, repair, replacement, operation and management of the Commercial Property and the administration of the Commercial Association; (ii) capital expenditures necessary to replace Improvements on or within the Commercial Common Areas; (iii) additional recurring Common Expenses if the Regular Assessments collected are insufficient to cover all Common Expenses incurred; and/or (iv) contractual and other liabilities and expenses of the Commercial Association. Special Assessments so established shall be allocated in the same manner as Regular Assessments and shall be due and payable to the Commercial Association in the amounts and per the terms established by the Commercial Association for such Special Assessments, which shall be included in a notice to each Commercial Owner for the Special Assessments. Notwithstanding the foregoing, if the total amount of any Special Assessment exceeds Five Hundred Thousand and No/100 Dollars, such Special Assessment must be approved by the affirmative vote of at least fifty-one percent (51%) of the Members entitled to vote at such time.

Section 6.2. Commercial Neighborhood Budget and Commercial Neighborhood Assessments. In addition to Regular Assessments and Special Assessments, the Commercial Association shall possess the right, power and authority to establish and levy Commercial Neighborhood Assessments to pay Commercial Neighborhood Expenses for a particular Commercial Neighborhood as further described in Section 3.10. Before the commencement of each fiscal year of the Commercial Association, the Commercial Association shall establish and adopt a Commercial Neighborhood Budget for each Commercial Neighborhood for the following fiscal year, notify Commercial Owners of Commercial Owner Tracts located in the respective Commercial Neighborhood of each such Commercial Neighborhood Budget and make each such Commercial Neighborhood Budget available for review by the respective Commercial Owners. No further communication shall be necessary to establish the amount of each Commercial Owner's obligation regarding the Commercial Neighborhood Assessments payable according to this Commercial Declaration, and the failure of the Commercial Association to timely notify and make available for review any Commercial Neighborhood Budget shall not excuse or relieve any Commercial Owner in a Commercial Neighborhood from the payment of the applicable Commercial Neighborhood Assessments. The Commercial Board shall have the right to amend any Commercial Neighborhood Budget at any time, in which event the portion of the Commercial Neighborhood Assessments assessed against each Commercial Owner Tract in the respective Commercial Neighborhood and the corresponding payment obligation of each Commercial Owner of a Commercial Owner Tract in such Commercial Neighborhood shall be adjusted accordingly, if applicable. Commercial Neighborhood Assessments shall be allocated and assessed to the respective Commercial Owners and levied

against the respective Commercial Owner Tracts in the respective Commercial Neighborhood in the same manner as Regular Assessments and shall be due and payable quarterly or on such dates as otherwise determined by Commercial Declarant or established by the Commercial Association and shall be applied to the payment of respective Commercial Neighborhood Expenses. Commercial Neighborhood Assessments are the personal obligation of the Commercial Owners against whom the Commercial Neighborhood Assessments are assessed and shall constitute a lien against such Commercial Owners' Commercial Owner Tracts in the same manner and with the same consequences as Regular Assessments and Special Assessments. By way of example and not limitation, Commercial Neighborhood Expenses may include the costs and expenses incurred by the Commercial Association to provide Commercial Neighborhood Services and for the maintenance, repair and upkeep of Commercial Neighborhood Common Areas and Improvements thereon.

Section 6.3. **Individual Assessments.** In addition to the Regular Assessments and the Special Assessments contemplated in this Article VI, the Commercial Association shall possess the right, power and authority to establish and levy Individual Assessments following the provisions of this Commercial Declaration against an individual Commercial Owner and its Commercial Owner Tract for Commercial Charges properly borne solely by one or more but less than all Commercial Owners, including Commercial Charges for additional services, damages, fines or fees, interest, collection costs, attorneys' fees, insurance-deductible payments or any other amount due and owing to the Commercial Association by a Commercial Owner. The Individual Assessments shall be the personal obligation of the Commercial Owner against whom the Individual Assessment is assessed and shall constitute a lien against the Commercial Owner Tract in the same manner and with the same consequences as the Regular Assessments, Special Assessments and Commercial Neighborhood Assessments; provided, however, no lien comprised solely of fines or attorneys' fees associated with fines shall be foreclosed.

Section 6.4. **Obligation to Pay Commercial Assessments.** Each Commercial Owner shall be obligated to pay all Commercial Assessments to the Commercial Association in the amounts and on the due dates established by the Commercial Board according to this Commercial Declaration. Unpaid Commercial Assessments due as of the date of the conveyance or transfer of a Commercial Owner Tract shall not constitute a personal or entity obligation, as applicable, of the new Commercial Owner (other than the new Commercial Owner's pro rata share of any portion thereof as set forth in Section 6.5); however, the former Commercial Owner shall continue to be liable for such unpaid Commercial Assessments. No Commercial Owner, other than Commercial Declarant as set forth in Section 6.5, shall be entitled to exemption from liability for the Commercial Owner's obligation to pay Commercial Assessments for any reason, including, without limitation, claims of (a) waiver of the use and enjoyment of the Commercial Common Areas as to which any Commercial Assessments relate, (b) an abandonment of the Commercial Owner Tract or Improvements thereon, (c) offsets or reductions, or (d) failure by the Commercial Association, the Commercial Board or any other Person to properly exercise its duties, rights, powers and obligations under any of the Commercial Governing Documents. Any Assessment not paid on the date on which such Assessment is due shall bear interest at the Past Due Rate and shall be recoverable by the Commercial Association, together with interest, and other costs of collection methods, including reasonable attorneys' fees, by suit in a court of competent jurisdiction or in a mediation or arbitration in the County pursuant to the provisions of Article XIV of this Commercial Declaration. It shall be the responsibility of the Commercial Association to collect delinquent Commercial Assessments, the existence of which shall be made known by written notice to the Commercial Owner; provided, however, if the Commercial Association is not taking the actions permitted or required in this Section 6.3, the Commercial Declarant may exercise any and all of such rights for its own benefit and the benefit of the Commercial Association.

Section 6.5. **Lien to Secure Payment of Commercial Assessments.** **Commercial Declarant hereby reserves and assigns to the Commercial Association a lien against each Commercial Owner Tract**

to secure payment of the Commercial Assessments, which lien is established by this Commercial Declaration and shall be, continue as and constitute a lien and encumbrance in favor of the Commercial Association upon each Commercial Owner Tract owned by the Commercial Owner of such Commercial Owner Tract. Except for the liens described in Subsection 6.1(a) and Section 6.9 of this Commercial Declaration, the Assessment lien established in and by this Commercial Declaration shall be prior and superior to all other liens and encumbrances subsequently created upon Commercial Owner Tracts regardless of how created, evidenced or perfected, other than liens for Governmental Impositions. So long as the Commercial Association satisfies the requirements of any applicable Legal Requirement with regard to delinquent assessments and foreclosure of assessment liens, the Assessment liens created in this Commercial Declaration may be foreclosed on or enforced by any means available at law or in equity. The Commercial Assessment lien established for each Commercial Owner Tract by this Commercial Declaration to secure payment of Commercial Assessments shall not be enforceable against a purchaser at a foreclosure sale of a lien encumbering a Commercial Owner Tract in order to satisfy the indebtedness for a Mortgagee (or against the grantee by deed in lieu of any such foreclosure) for any Commercial Assessments which became payable prior to the date of such foreclosure sale (or conveyance in lieu thereof); provided, however, in no event shall a defaulting Commercial Owner be relieved from liability incurred for unpaid Commercial Assessments owed by such Commercial Owner to the Commercial Association.

Section 6.6. **Exempt Commercial Property.** Each Commercial Owner other than the Commercial Declarant shall be obligated to pay Commercial Assessments, and such obligation shall commence for each Commercial Owner on the date the Commercial Owner Tract is conveyed to such Commercial Owner. If the date on which a Commercial Owner Tract is conveyed to a Commercial Owner is on a day other than the first day of a month, the new Commercial Owner shall be obligated to pay only a pro rata share of the Commercial Assessments against the Commercial Owner Tract based upon the remaining days in such month.

During the Development Period, Commercial Declarant is exempt from the obligation to pay Reserve Contributions, the WCC and all Commercial Assessments on Commercial Owner Tracts or other portions of the Commercial Property Commercial Declarant owns; however, Commercial Declarant may provide funding for shortfalls between funds necessary to fund the Commercial Association's required payments under the Commercial Budget and Commercial Assessments collected for a given year. Any such payments made by Commercial Declarant to the Commercial Association for shortfalls contemplated herein may be treated as a contribution, subsidy or loan by Commercial Declarant in its absolute and sole discretion.

Notwithstanding the foregoing, the following Commercial Property subject to this Commercial Declaration shall be exempt from Commercial Assessments until such time as Commercial Declarant or the Commercial Association determines otherwise:

- i. Commercial Property owned by or dedicated to the MUD, City or County or dedicated to any other municipality or Governmental Authority;
- ii. Commercial Owner Tracts or other portions of the Commercial Property owned by Commercial Declarant and any other areas reserved by Commercial Declarant as set forth on the Commercial Plat or other recorded instrument for the Commercial Property; and
- iii. All Commercial Common Areas and Commercial Owner Tracts or any parcel of Commercial Property owned by the Commercial Association.

Section 6.7. **Notice of Default.** If a Commercial Owner defaults in the Commercial Owner's monetary payment obligations to the Commercial Association, the Commercial Association shall notify the Commercial Owner in accordance herewith and any other Commercial Governing Documents, as applicable.

Section 6.8. **Alternative Actions.** Nothing contained in this Commercial Declaration prohibits the Commercial Association from taking a deed in lieu of foreclosure from a Commercial Owner or from filing suit to recover a money judgment for sums that may be secured by the Commercial Association's Assessment lien described in Section 6.4.

Section 6.9. **Statement of Expenses and Access to Records.** Upon proper delivery of a written request from a Commercial Owner to the Commercial Board or the Commercial Manager containing a proper purpose and such other requisite information as set forth in Chapter 22 of TBOC and the Commercial Bylaws, the Commercial Association shall provide current copies of, or make reasonably available for examination, the books, records, financial statements and any other requested information permitted to be disclosed by the Commercial Association according to the Commercial Bylaws and Chapter 22 of TBOC. The Commercial Association is entitled to charge the requesting party for the costs associated with the compilation, production and reproduction of records and information contemplated in this Section 6.8.

Section 6.10. **Subordination of Lien for Commercial Assessments.** The Commercial Assessment lien established in Section 6.4 of this Commercial Declaration shall be subordinate to any valid mortgage or deed of trust that secures Lien Indebtedness from a Commercial Owner for a Commercial Owner Tract that was recorded prior to the date any Assessment becomes delinquent under the provisions of this Commercial Declaration.

ARTICLE VII EASEMENTS AND LICENSES

Section 7.1. Commercial Plat Easements, Dedications and Restrictive Covenants.

(a) As of the date of this Commercial Declaration and in addition to the Easements and restrictions set forth or reserved in this Commercial Declaration, the Commercial Property is subject to the Restrictive Covenants, dedications, easements, restrictions and reservations shown or cited on the Commercial Plat or in separate documents in the Real Property Records, all of which are incorporated herein by reference. Each Commercial Owner accepts a deed conveying title to a Commercial Owner Tract subject to such Restrictive Covenants, Commercial Plat, existing dedications, easements, restrictions and reservations, and any other easements for Systems and Improvements or Easements or Temporary Licenses for other purposes over, on and across the Commercial Property and the Commercial Common Areas that may be established in the future according to the provisions of this Commercial Declaration, or as granted by authority reserved in any recorded document, if approved by Commercial Declarant during the Development Period or the Commercial Association after the termination of the Development Period.

(b) **Private Cottage Driveway.** The Commercial Plat establishes an access easement over, on and across a certain private driveway located on the Commercial Property for the benefit of certain Residential Owners owning Cottages, as defined in the Residential Declaration, on residential lots in the Residential Property which are located immediately adjacent to such private driveway. This private driveway provides access to and ingress and egress from the Commercial Property to these residential lots, as further described in the Commercial Plat. Nothing in Section 7.2 will be interpreted or construed to affect, modify, impair or impact this private driveway Easement established by the Commercial Plat or the use, access or other rights arising therefrom granted to Residence Owners of the respective residential lots. The terms for this Private

Driveway Easement in the Commercial Plat shall control over any conflicting terms which may arise in this Commercial Declaration. The Commercial Association shall be obligated to maintain this Private Driveway Easement according to the Maintenance Responsibility Chart.

Section 7.2. **Easements.** Each Commercial Owner accepts a deed conveying title to a Commercial Owner Tract, subject to the Easements granted and reserved, as applicable, in this Section 7.2, which Easements (and all rights and obligations related to such Easements arising on or after the date of any transfer) shall run with the Commercial Property.

(a) **Access Easement.** Commercial Declarant hereby reserves and grants a perpetual, assignable and nonexclusive Access Easement over, on and across each Commercial Owner Tract, the Commercial Common Areas, Maintenance Areas, Association Maintained Commercial Sidewalks, Association Maintained Commercial Parking Areas and other portions of the Commercial Property as may be reasonably necessary for its own benefit and for the benefit of each Commercial Owner Tract, the Commercial Property and the Commercial Association, as applicable, for (i) the maintenance (including ingress and egress therefrom), repair or replacement of any portion or all portions of the Association Maintained Commercial Sidewalks, Association Maintained Commercial Parking Areas, Commercial Common Areas, Maintenance Areas, MUD Recreational Facilities or any Improvements thereon or accessible therefrom; (ii) the use of, and the ingress and egress to and from, a Commercial Owner Tract, provided no other reasonable means of access exists; (iii) the performance of any obligations under the Commercial Governing Documents; (iv) the making of emergency repairs therein necessary to prevent damage to the Association Maintained Commercial Sidewalks, Association Maintained Commercial Parking Areas, MUD Recreational Facilities, Commercial Common Areas and Maintenance Areas, and to Commercial Buildings and Commercial Owner Tracts (and any other Improvements thereon) in connection with those portions thereof the Commercial Association is obligated to maintain according to the Maintenance Responsibility Chart; (v) evacuation of Commercial Owners, Commercial Occupants, licensees under Temporary Licenses, and all other Persons of all or any part of the Commercial Property in the event of an emergency; and (vi) such other purposes over any portion of the Commercial Property as are deemed by the Commercial Declarant or the Commercial Association, in their sole discretion, to be necessary for the exercise of rights granted to and to perform the duties and obligations of the Commercial Association as described in this Commercial Declaration or other Commercial Governing Documents, or as otherwise may be required by Legal Requirements.

(b) **Commercial Common Area Easement.** Commercial Declarant hereby reserves and grants a perpetual, assignable and nonexclusive Commercial Common Area Easement over, on and across the Commercial Common Areas, including the Commercial Neighborhood Common Areas, and Improvements thereon for its own benefit, for the benefit of each Commercial Owner Tract that is an intended beneficiary of such Commercial Common Areas and the respective Commercial Owners thereof and for the benefit of the Residential Owners in the exercise of rights under a Residential License, for ingress and egress to and from each Commercial Owner Tract or residential lot (pursuant to the terms of a Residential License) and for the use of the Commercial Common Areas and Improvements thereon.

(c) **Drainage Easement.** Commercial Declarant hereby reserves and grants a perpetual, assignable and nonexclusive Drainage Easement over, on and across the Commercial Property and Drainage Facilities for its own benefit and for the benefit of the Commercial Association, each Commercial Owner Tract (that is an intended beneficiary of such Drainage Facilities) and Commercial Owners for (i) the use of the Drainage Facilities and the ingress and egress to a Commercial Owner Tract to access the Drainage Facilities, provided no other reasonable means of access exists; and (ii) the maintenance, repair, replacement and removal of obstructions or other matter adversely affecting the Drainage Facilities (including ingress and egress therefrom).

(d) Systems and Services Easement. Commercial Declarant hereby reserves and grants a perpetual, assignable and nonexclusive utility Systems and Services Easement over, on and across the Commercial Common Areas, Commercial Owner Tracts, and Commercial Property: (i) for its own benefit, and the benefit of utility companies supplying Systems and services, including Commercial Neighborhood Services, to the Commercial Common Areas and Commercial Owner Tracts for supplying such Systems and services to such Commercial Owner Tracts and Commercial Common Areas; and (ii) for its own benefit and the benefit of the Commercial Association for the right to grant additional Systems and Services Easements. Commercial Declarant may record an easement agreement or easement relocation agreement in the Real Property Records, specifically locating or relocating any Systems and Services Easement subsequent to the recordation of this Commercial Declaration, and each Commercial Owner, by acceptance of a deed to a Commercial Owner Tract, hereby grants Commercial Declarant an irrevocable power of attorney, coupled with an interest, with full power and authority to locate or relocate any Systems and Services Easement.

(e) Landscape and Signage Easement. Commercial Declarant reserves and grants a perpetual, assignable and nonexclusive Landscape and Signage Easement over, on and across the Commercial Property, the Commercial Owner Tracts and any Commercial Common Areas for itself and the Commercial Association for the installation, removal, maintenance, repair and replacement of landscaping and Signage on Commercial Common Areas and the maintenance of landscaping on Maintenance Areas, Commercial Owner Tracts or other portions of the Commercial Property outside of the Commercial Common Areas which the Commercial Association is obligated to maintain.

(f) Commercial Sidewalk Easement. Commercial Declarant reserves and grants for itself and the Commercial Association a perpetual, assignable and nonexclusive Commercial Sidewalk Easement over, on and across the Association Maintained Commercial Sidewalks and portions of the Commercial Property immediately adjacent thereto for purposes of accessing, maintaining, inspecting, repairing, removing and replacing the Association Maintained Commercial Sidewalks. The Commercial Association shall maintain the Commercial Sidewalk Easement and Easement Areas hereby established in connection with it. Commercial Declarant further reserves and grants for the Commercial Owners, Commercial Occupants, Designees and general public a nonexclusive right-of-way and Easement on, over and across the Association Maintained Commercial Sidewalks for pedestrian and foot traffic purposes. Commercial Owners of Commercial Owner Tracts shall refrain from obstructing, damaging, removing, altering or in any manner changing the Association Maintained Commercial Sidewalks or any other sidewalks located on the Commercial Property.

(g) Commercial Parking Area Easement. Commercial Declarant reserves and grants for itself and the Commercial Association a perpetual, assignable and nonexclusive Commercial Parking Area Easement over, on and across the Association Maintained Commercial Parking Areas and portions of the Commercial Property owned or controlled by the MUD immediately adjacent thereto for the purpose of maintaining, inspecting, repairing, removing and replacing and accessing Commercial Parking Areas. The Commercial Association shall maintain the Commercial Parking Area Easement and Easement Areas hereby established in connection with it. Commercial Declarant further reserves and grants for the Commercial Owners, Commercial Occupants, Designees and the general public a nonexclusive right-of-way and easement on, over and across the Association Maintained Commercial Parking Areas for vehicular parking and pedestrian and foot traffic purposes. Commercial Owners of Commercial Owner Tracts shall refrain from obstructing, damaging, removing, altering or in any manner changing the Association Maintained Commercial Parking Areas or any other Commercial Parking Areas on the Commercial Property.

(h) Commercial Neighborhood Easements. No Commercial Common Areas are exclusive to any Commercial Neighborhood; provided, however, Commercial Declarant reserves and grants a perpetual, assignable and nonexclusive Commercial Neighborhood Easement for the benefit of each Commercial

Neighborhood, the Commercial Buildings and/or the Commercial Owner Tracts in such Commercial Neighborhood, as applicable, and the Commercial Building Owners of Commercial Owner Tracts in each such Commercial Neighborhood over, on and across the Commercial Property and Commercial Owner Tracts and on residential lots according to a Commercial License, if applicable, for itself and the Commercial Association for the installation, removal, maintenance, repair and replacement of Improvements located in a Commercial Neighborhood on a Commercial Owner Tract or in a Maintenance Area for the installation, removal, maintenance, repair or replacement of certain Improvements (or portions thereof) which the Commercial Association is obligated to perform and including matters concerning Commercial Neighborhood Services. All other Easements reserved in this Section 7.2 that are *not* Commercial Neighborhood specific shall apply equally to portions of the Commercial Property and Improvements thereon located in a Commercial Neighborhood, including for and in connection with Commercial Neighborhood Services.

(i) Easements Strictly Limited. The Easements are for the benefit of Commercial Declarant, the Commercial Association, the ACC, Commercial Owners, the Residential Association or Residential Owners possessing rights under a Residential License described above and certain Designees only. No Commercial Owner is required to allow any Person other than a Designee or the Residential Association or a Residential Owner possessing rights under a Residential License the benefit of such Easements and, further, all Commercial Owners are obligated to undertake all reasonable efforts to prohibit Persons other than Designees or the Residential Association or Residential Owners possessing rights under a Residential License from benefiting or using such Easements in relation to their respective Commercial Owner Tract. If a Commercial Owner finds that Persons other than Designees are attempting to benefit from or use such Easements in relation to their respective Commercial Owner Tract, and such Commercial Owner, despite diligent efforts, is unable to cause such Persons to cease and desist from so doing, then the Commercial Owner shall notify the Commercial Association in writing of the problem, stating with specificity the problems that have occurred and such Commercial Owner's efforts to combat the problems, and the Commercial Association shall have the right (but not the obligation) to attempt to cause the offending Persons to cease and desist from benefiting (or attempting to benefit) or using (or attempting to use) such Easements.

(j) Certain Exceptions. None of the Easements reserved or granted in this Section 7.2 shall be used in a manner that materially adversely affects the structural integrity of any Improvements on the Commercial Property. Use and availability of any Improvements, Commercial Property or other facilities or areas covered by the Easements are subject to the Commercial Governing Documents.

Section 7.3. Power to Grant Easements. Commercial Declarant, during the Development Period, and the Commercial Association thereafter shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under the Commercial Common Areas for any lawful purpose, including without limitation, the provision of emergency services, utilities (including water, sanitary sewer, storm sewer, gas, electricity and other energy services), telephone, cable television, fiber-optic and other telecommunication services, and other uses or services, to one or more of the Commercial Owners. If a Commercial Owner requires an easement across any portion of the Commercial Common Areas from the Commercial Association and has obtained prior written approval from the Commercial Association for such easement, the requesting Commercial Owner shall be responsible for all costs and expenses incurred by the Commercial Association regarding the creation and recordation of such easement and shall promptly reimburse the Commercial Association all of such amounts upon receipt of any demand or request therefore made by the Commercial Association.

Section 7.4. Mineral Interests; Water Rights. Some or all of the Commercial Property is or may be subject to Mineral Interests and Water Rights reserved prior to the recordation of this Commercial Declaration and included in the Restrictive Covenants. Mineral Interests are superior rights in the Commercial

Property and are not affected by any provision to the contrary in this Commercial Declaration. **Each Commercial Owner, by accepting title to or interest in a Commercial Owner Tract, acknowledges the existence of the Mineral Interests, Water Rights, and the attendant rights in favor of the owners of such Mineral Interests and Water Rights.**

Section 7.5. **Reservation of Right for Residential Licenses.**

(a) **Temporary Nonexclusive License.** During the Development Period, Commercial Declarant reserves for itself, and for the Commercial Association thereafter, the right, without duty or obligation, to grant one or more temporary, nonexclusive, assignable and revocable licenses upon those terms determined by Commercial Declarant or the Commercial Association, as applicable, in their absolute and sole discretion, to the Residential Association for the benefit of Residential Owners or to Residential Owners directly to use certain Commercial Common Areas and Improvements thereon or other portions of the Commercial Property and Improvements pursuant to the express terms, conditions and limitations outlined in detail in the Residential License, which license shall be temporary, nonexclusive and revocable and executed by the Residential Association on behalf of the Residential Owners or by Residential Owners directly, as the case may be, and the Commercial Declarant or Commercial Association, as applicable. Executed copies of all executed Residential Licenses will be promptly furnished to the Commercial Association and Residential Association and kept in each such association's permanent records. Each Residential License shall expressly include that all rights granted in the Residential License to use any portion of the Commercial Common Areas and Improvements thereon in the Commercial Property shall, at all times, be subject to applicable Legal Requirements, the Commercial Rules, any posted rules and any other terms, conditions and restrictions applicable to the use of Commercial Common Areas and Improvements thereon per the Commercial Governing Documents. Commercial Declarant, or the Commercial Association acting on its behalf during the Declarant Control Period or acting on its own behalf after the Declarant Control Period has terminated, shall have the right, power and authority to immediately revoke any Residential License for one or more violations of Legal Requirements, the Commercial Rules, posted rules or any other terms, conditions or restrictions in the Commercial Governing Documents.

(b) **No Ownership Rights.** A Residential License does not create any ownership rights in favor of the Residential Association or any Residential Owner in relation to any portion of the Commercial Property or Improvements thereon. Residential lots are located in the Residential Property, not in the Commercial Property, are not Commercial Owner Tracts and do not comprise any portion of the Commercial Property; therefore, Residential Owners are not Members of the Commercial Association and residential lots and Residential Owners are not subject to the Commercial Assessments described in Article VI of this Commercial Declaration and levied by the Commercial Association. Notwithstanding the foregoing, the Residential Association or Residential Owners subject to Residential Licenses shall be obligated to pay, in accordance with the terms of the respective Residential License, certain costs, charges and fees established by the Commercial Declarant or Commercial Association for costs, fees and expenses incurred by the Commercial Association arising out of the maintenance, repair, replacement and upkeep of the Commercial Common Areas and Improvements thereon subject to Residential Licenses, which charges and fees shall be paid to the Commercial Association, whether directly or indirectly, on a regular recurring basis per the terms of the respective Residential License, or as otherwise may be established by the Commercial Association in the absence thereof, throughout the term of the Residential License. Further, each Residential License will include a provision granting a right to the Commercial Association to directly charge the Residential Association or any Residential Owner for damages caused to the Commercial Common Areas or Improvements subject to the Residential License and for violations of the Commercial Governing Documents by a Residential Owner or any guest of such Residential Owner entitled to use, or using, such areas and improvements according to or in connection with the respective Residential License, each of which charges for damages and violations shall be reasonable and consistent with

the actual damage(s), costs and expenses arising out of such damage or violation(s) that occurred. Nothing in this Section 7.5 or any other portion of this Commercial Declaration shall be deemed, interpreted or construed by any Person, any Commercial Owner, the Commercial Association, any Residential Owner or the Residential Association as Commercial Declarant's actual granting of any Residential License to the Residential Association or any Residential Owner. This Section 7.5 includes only the reservation of a right by the Commercial Declarant for itself and the Commercial Association to grant Residential Licenses, in their absolute and sole discretion, which right and reservation do not create a duty, commitment or obligation of Commercial Declarant or the Commercial Association in any respect to grant Residential Licenses.

(c) Recordation of Restrictions for Residential Licenses. Commercial Declarant during the Development Period and the Commercial Association, in their absolute and sole discretion, and no other Person, including, without limitation, the Residential Association, any Commercial Owner, any Commercial Occupant or any Residential Owner, or their authorized representatives, shall have the right, but not the obligation, to record Residential Licenses in the Real Property Records; provided, however, Commercial Declarant's or the Commercial Association's recording of any Residential License shall not serve to and shall not be interpreted as operating to effect, extend or void the finite term of the Residential License stated therein or any other terms thereof. Each Residential License shall expressly state, at a minimum, that (i) recording of a Residential License by any Person other than Commercial Declarant during the Development Period or the Commercial Association thereafter shall automatically void such Residential License; (ii) the Residential License may be unilaterally revoked or terminated by the Commercial Declarant or the Commercial Association for failure to pay, when due, all fees, costs and charges due and owing or arising under the Residential License or fees, costs and charges levied by the Commercial Association for damage caused to Commercial Common Areas or Improvements thereon or on any other portion of the Commercial Property in connection with the Residential License or for violations of the Commercial Governing Documents or Legal Requirements; and (iii) the Residential License is subject to automatic termination upon the expiration date of the license set forth in such Residential License, and that no further action of any Person, including any grantee or grantor party subject to or benefiting from the Residential License, including the Commercial Declarant, Commercial Association, Residential Association or respective Residential Owner(s), shall be required to effectuate the automatic and complete termination of such Residential License on the expiration or termination date of the license term per the Residential License. It is the intent of Commercial Declarant, by requiring the foregoing terms in this Subsection 7.5(c) for each Residential License, to eliminate any erroneous interpretation or misinterpretation that a Residential License is intended to run with any Commercial Common Area or any other portion of the Commercial Property to which the Residential License applies.

Section 7.6. **Reservation of Right for Limited Commercial Common Area Licenses.**

(a) Limited Commercial Common Area License. Commercial Declarant reserves for itself during the Development Period and for the Commercial Association after the expiration of the Development Period, in their sole and absolute discretion, the right, without duty or obligation, to grant one or more temporary, exclusive, non-assignable and revocable licenses on, over and across a Limited Commercial Common Area designated by the Commercial Declarant or Commercial Association, as applicable, in their absolute and sole discretion, which portion of the Commercial Common Areas shall be located immediately adjacent to a Commercial Owner Tract and particularly described and depicted in such licenses, as amended (each a Limited Commercial Common Area License). Each Limited Commercial Common Area License may grant to a Commercial Owner the exclusive right to use a Limited Commercial Common Area License in connection with the primary use of, or operations conducted on, the Commercial Owner Tract (e.g., a patio area for a restaurant) owned by the licensee Commercial Owner. Each Limited Commercial Common Area License shall (i) be in writing; (ii) contain a stated finite and terminable term of months or years specific and exclusive to the Commercial Owner and his or her Commercial Owner Tract and the primary use of, or operations

conducted on, such Commercial Owner Tract; (iii) be non-assignable and nontransferable; (iv) be unilaterally revocable by Commercial Declarant or Commercial Association, as grantor, whichever applies; (v) particularly describe and depict the Limited Commercial Common Area subject to the Limited Commercial Common Area License; (vi) describe the permitted use and activities on the Limited Commercial Common Area and all requirements and conditions therefore, including, without limitation, the insurance coverage types and amounts that the Commercial Owner must obtain and maintain through the license term and other insurance-related conditions prescribed in Article IV or applicable Legal Requirements, or otherwise established by the Commercial Association in consideration of the use and activities conducted in the Limited Commercial Common Area (i.e., insurance coverage which is customary for establishments serving alcoholic beverages); (vii) require the Commercial Owner to comply, in all respects, with applicable Legal Requirements for the use and conduct of activities in the Limited Commercial Common Area (i.e., possess a valid and current license to serve alcohol); (viii) pay, when due, all fees, costs and charges due and owing or arising under the Limited Commercial Common Area License or fees, costs and charges levied by the Commercial Association for damage caused to the Limited Commercial Common Area or any other Commercial Common Areas or Improvements thereon in connection with the use of the Limited Commercial Common Area or for violations of the Commercial Governing Documents or Legal Requirements; (ix) include the statement that recording the Limited Commercial Common Area License will automatically void it per Subsection 7.6(c) below; (x) include that the Commercial Declarant or Commercial Association as grantor has the right during the Limited Commercial Common Area License term to unilaterally revoke or terminate the Limited Commercial Common Area License with or without cause, and upon any revocation or termination of the Limited Commercial Common Area License by the Commercial Declarant or Commercial Association, the license shall fully and completely terminate, be void, without any further action required by any Person, including the grantee Commercial Owner; provided, however, terms which expressly survive termination in any Limited Commercial Common Area License shall survive such termination according to those terms; and (xi) include any other terms, conditions, provisions and restrictions applicable to the exclusive use of the Limited Commercial Common Area or Limited Commercial Common Area License which Commercial Declarant or the Commercial Association, as applicable, deems necessary and appropriate and in the best interest of the Commercial Association and surrounding Commercial Property, which shall be determined in the Commercial Declarant's or Commercial Association's absolute and sole discretion. Limited Commercial Common Areas shall be subject to the Commercial Governing Documents and the terms of the respective Limited Commercial Common Area License at all times.

(b) No Ownership Rights to Limited Commercial Common Areas. No ownership rights by any Commercial Owner of any nature or kind exist, may exist or arise out of a Limited Commercial Common Area License. The Commercial Association shall maintain the obligation to care for, upkeep, repair and replace all portions of the Limited Commercial Common Area subject to a Limited Commercial Common Area License; provided, however, the licensee Commercial Owner shall be liable for and shall pay all costs arising out of damage caused to the Limited Commercial Common Area and any Improvements thereon by it or its Commercial Occupants, Designees, patrons, visitors, invitees or guests and violations of the Commercial Governing Documents, and to maintain, repair, replace and upkeep and pay for the costs thereof for all personal property of the Commercial Owner kept in the Limited Commercial Common Area (i.e., furniture, equipment, Signage). Nothing in this Section 7.6 or any other portion of this Commercial Declaration shall be deemed, interpreted or construed by any Person, any Commercial Owner, the Commercial Association, any Commercial Occupant or any other Person as the grantee of any Limited Commercial Common Area License. This Section 7.6 includes only the reservation of a right by the Commercial Declarant for itself and for the Commercial Association to grant Limited Commercial Common Area Licenses, in their absolute and sole discretion, per the terms hereof which right and reservation do not create a duty, commitment or obligation of Commercial Declarant or the Commercial Association in any respect to grant Limited Commercial Common Area Licenses at any time to any Commercial Owner.

(c) No Recordation of Limited Commercial Common Area Licenses. No Person, including a Commercial Owner, a Commercial Occupant, the Commercial Declarant or the Commercial Association, shall record in the Real Property Records or in any county in Texas or the United States any Limited Commercial Common Area Licenses, and recordation thereof shall automatically void such respective Limited Commercial Common Area License without any requirement of any Person to effectuate such permanent termination; provided, however, any terms which expressly survive termination in the applicable Limited Commercial Common Area License shall survive such termination according to those express terms. The foregoing statement or a substantially similar statement prohibiting recordation must be included in each Limited Commercial Common Area License per Subsection 7.6(a) above.

ARTICLE VIII MAINTENANCE RESPONSIBILITIES

Section 8.1. Maintenance.

(a) Maintenance of Commercial Owner Tracts. Unless otherwise expressly stated to the contrary in this Commercial Declaration, the Maintenance Responsibility Chart or a Supplemental Declaration, all maintenance, repairs and replacements of, in or to any Commercial Buildings, Commercial Owner Tracts and other Improvements thereon, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Commercial Owner of such Commercial Owner Tract in accordance with the Community-Wide Maintenance Standard, the Maintenance Responsibility Chart attached to this Commercial Declaration as Exhibit B, the Commercial Rules, the Architectural Guidelines and any other applicable Commercial Governing Documents.

(b) Maintenance of Commercial Common Areas, Maintenance Areas and other Portions of Commercial Property. Except as otherwise provided in the Restrictive Covenants, this Commercial Declaration, the Maintenance Responsibility Chart or other Commercial Governing Documents to the contrary, Maintenance Areas, Commercial Common Areas (which include all Commercial Neighborhood Common Areas) and Improvements thereon, Association Maintained Commercial Sidewalks, Association Maintained Commercial Parking Area(s), and all other portions of the Commercial Property and Improvements thereon for which the Commercial Association has the duty to maintain, repair, upkeep and replace per this Commercial Declaration, the Maintenance Responsibility Chart or a Supplemental Declaration shall be maintained by the Commercial Association in accordance with the Community-Wide Maintenance Standard and the Commercial Governing Documents, the cost and expense of which shall constitute and be payable as a Common Expense, or, for any Commercial Neighborhood Common Areas or other portions of Commercial Neighborhoods, a Commercial Neighborhood Expense, as further described in Article VI. Notwithstanding the foregoing, costs and expenses arising directly out of a Temporary License may be levied against the licensee thereunder according to the terms of the respective Temporary License. Nothing in this Commercial Declaration shall be deemed or construed as relieving any Commercial Owner from liability or responsibility for damage to Maintenance Areas or Commercial Common Areas or Improvements thereon caused by the negligence or misconduct of a Commercial Owner, Commercial Occupant or Designee. Certain additional standards may apply to the performance of maintenance for portions of the Commercial Owner Tracts and Improvements for which the Commercial Association has the duty to maintain, repair, upkeep and replace, which standards may be set forth and further described in the Commercial Rules.

(c) Maintenance of Easements and Easement Areas. Except as expressly provided in Section 7.2 of this Commercial Declaration or the Maintenance Responsibility Chart to the contrary, all maintenance, repairs and replacements of, in or to any Easement Area located on a Commercial Owner Tract, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Commercial Owner of each Commercial Owner Tract on which the Easement Area is located in accordance with the Community-Wide Maintenance

Standard. If an Easement Area is located in or on a Commercial Common Area or Maintenance Area, then all maintenance, repairs and replacements of, in or to such Easement Area, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Commercial Association and shall be payable as a Common Expense, or, for any Commercial Neighborhood Common Areas, a Commercial Neighborhood Expense, as further described in Article VI.

(d) Maintenance of Licensed Areas. Except as expressly provided in Section 7.2 of this Commercial Declaration or the Maintenance Responsibility Chart to the contrary, all maintenance, repairs and replacements of, in or to any portion of the Commercial Common Areas subject to Residential License or a Temporary License for Limited Commercial Common Areas or Commercial License Reserves described in this Commercial Declaration, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Commercial Association; provided, however, the Commercial Association will not have the duty or obligation of any kind or nature whatsoever to maintain, repair, upkeep or replace any personal property or temporary nonpermanent fixtures or equipment which may be permitted on the licensed Limited Commercial Common Areas or Commercial License Reserves, and the maintenance, repair, replacement and upkeep of such personal property or temporary nonpermanent fixtures or equipment shall be the exclusive responsibility of the Commercial Owner licensee of the Limited Commercial Common Area or the licensee of a licensed Commercial License Reserve, as the case may be. Commercial Assessments shall not be levied on Commercial Common Areas; provided, however, licensees under the Residential License or under a Temporary License for Limited Commercial Common Areas or Commercial License Reserves shall be liable to the Commercial Association for costs it incurs to perform maintenance, repairs and replacements of, in or to subject licensed areas according to the express terms of the respective license agreements required by and described in this Commercial Declaration.

(e) Maintenance Responsibility Chart. The Maintenance Responsibility Chart attached to this Commercial Declaration as Exhibit B and incorporated herein by this reference generally summarizes the maintenance obligations and duties of Commercial Owners and the Commercial Association for various portions of the Commercial Property, Commercial Owner Tracts and Improvements thereon. The Maintenance Responsibility Chart is intended to be a reference tool, and not the sole document to be relied upon, for Commercial Owners, the Commercial Association, the Commercial Manager and any other Person in determining the maintenance, upkeep, repair and replacement obligations of such parties. In the event any duty or obligation delegated to a party in the Maintenance Responsibility Chart conflicts with this Commercial Declaration, then the Maintenance Responsibility Chart shall control. In the event any duty or obligation delegated to a party in the Maintenance Responsibility Chart or this Commercial Declaration conflicts with any Supplemental Declaration recorded after this Commercial Declaration, then the terms of the Supplemental Declaration shall control. All other conflicts arising among the Commercial Governing Documents shall be determined according to Section 2.4 of this Commercial Declaration.

Section 8.2. Commercial Owner Failure to Maintain. If any Commercial Owner fails or neglects to maintain, repair, upkeep or clean any portion of its Commercial Owner Tract or certain Improvements thereon, as required to be maintained by such Commercial Owner pursuant to this Article VIII or the Maintenance Responsibility Chart or any other applicable Commercial Governing Documents, and such failure or neglect continues for an unreasonable time period in light of the surrounding circumstances as may be determined in the sole discretion of the Commercial Association on a case-by-case basis, after the Commercial Owner's receipt of written notice of such neglect or failure from the Commercial Association, then the Commercial Association may, but shall not be obligated to, enter the Commercial Owner Tract and take appropriate steps to perform, or cause to be performed, the Commercial Owner's cleaning, maintenance, repair and upkeep obligations. The defaulting Commercial Owner shall, upon demand by the Commercial

Association, reimburse the Commercial Association for the costs and expenses it incurred in performing such required obligations and in the exercise of its rights pursuant to this Section 8.2.

Section 8.3. **Disputes**. Any Dispute arising among any or all of the Commercial Owners or the Commercial Association as to the proper Person to bear a maintenance cost or expense shall be resolved following the provisions of Article XIV of this Commercial Declaration.

Section 8.4. **Mechanic's Liens**. No labor or services performed or materials furnished and incorporated in a Commercial Owner Tract, the Improvements thereon or any Commercial Common Area shall be the basis for the filing of a lien against any Commercial Owner Tract or Commercial Common Area not expressly approved in writing by the Commercial Owner of such Commercial Owner Tract or by the Commercial Association with respect to Commercial Common Areas or portions of the Commercial Property outside Commercial Owner Tracts. All contracts for labor, services and/or materials with respect to any of the Commercial Owner Tracts shall comply with all applicable provisions of the Commercial Governing Documents.

ARTICLE IX INSURANCE

Section 9.1. **Requirements**. Unless otherwise determined by the Commercial Declarant or Commercial Board of Directors pursuant to the Commercial Bylaws, all insurance coverage required of the Commercial Association pursuant to this Article IX or purchased at the election of the Commercial Association shall:

- (a) be in such form and issued by responsible insurance companies licensed to do business in the State and shall be rated by *Best's Insurance Guide* (or any successor publication of comparable standing) as "A-VI" or better;
- (b) be carried in a blanket form naming Commercial Declarant, the Commercial Association, the Commercial Board and their respective members, managers, Officers, Directors, employees and agents as additional insureds through additional insured endorsements; and
- (c) provide that insurance trust agreements shall be recognized.

Section 9.2. **Insurance by the Commercial Association**. Commencing upon the filing of this Commercial Declaration, or as otherwise determined by Commercial Declarant, the Commercial Association shall obtain and maintain general liability and/or property insurance, as the case may be, for the Commercial Common Areas and Improvements thereon, the Maintenance Areas and other portions of the Commercial Property for which the Commercial Association has maintenance, repair, upkeep and replacement obligations according to this Commercial Declaration, the Maintenance Responsibility Chart or any Supplemental Declaration. The Commercial Association shall carry such other insurance in such amounts and insuring against such risks as the Commercial Association shall reasonably deem necessary, including insurance for the operation and administration of the Commercial Association.

Section 9.3. **Insurance by Commercial Owners**. Commercial Owners and Commercial Lessees shall be responsible for obtaining and maintaining at such Commercial Owner's or Commercial Lessee's, as applicable, sole cost and expense:

(a) an ISO Building and Personal Property special form policy of insurance covering the Improvements on its Commercial Owner Tract for the full replacement cost of the insured Improvements, subject to any permitted self-insurance. The full replacement cost shall mean the cost to replace such Improvements, without deduction for depreciation or wear and tear, including costs attributable to improvements or upgrades required by changes in Legal Requirements and shall include to the extent reasonably attainable a reasonable sum for architectural, engineering, legal, administrative and supervisory fees connected with the restoration or replacement;

(b) a commercial general liability insurance insuring against claims for personal injury, death or property damage occurring in, upon or about its Commercial Owner Tract or Improvements thereon, insuring against all claims for personal injury, death or property damage with combined single limits of at least Two Million Dollars (\$2,000,000.00), or such greater amount as may be customary for the uses and operations conducted on the Commercial Owner Tract, which insurance shall include broad form blanket contractual coverage covering the insured's obligations, including indemnity obligations, hereunder. The limits of coverage for the foregoing insurance are subject to increase over time based upon the customary level of insurance then being maintained by commercial owners of projects similar to the Commercial Property;

(c) other additional insurance in such amounts and insuring against such risks as Commercial Owners deem necessary and appropriate with respect to Improvements, business operations and other operations conducted on each such Commercial Owner's Commercial Owner Tract and for contents kept, used and stored within the Improvements on such Commercial Owner Tract; and

(d) in no event shall the limits of any coverage maintained by any Commercial Owner or according to this Commercial Declaration be considered as limiting any Commercial Owner's liability under this Commercial Declaration.

Each Commercial Owner and Commercial Lessee, as the case may be, is solely responsible for insuring all personal property kept, stored or located on a Commercial Owner Tract or in any Improvements thereon. The Commercial Association shall not carry or be obligated to carry any insurance covering a Commercial Owner's or Commercial Lessee's personal property. Nothing in this Commercial Declaration, the Maintenance Responsibility Chart or any other Commercial Governing Document shall be deemed or construed as prohibiting or limiting a Commercial Owner or Commercial Lessee, at its sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverages as such Commercial Owner or Commercial Lessee may deem necessary or appropriate, or which may be required by a Mortgagee. Commercial Owners shall promptly provide the Commercial Declarant, during the Development Period, or the Commercial Association with a certificate of insurance which evidences such Commercial Owner's or Commercial Lessee's compliance with this Article IX; provided, however, nothing in this Section 9.3 shall be construed to require the Commercial Association to monitor the existence or adequacy of insurance coverages on any Commercial Owner Tracts.

Section 9.4. **Insurance for Licensed Portions of Commercial Common Areas.** Commercial Owners subject to Limited Commercial Common Area Licenses, licensees of Commercial License Reserves, licensees under Residential Licenses and licensees under any other Temporary Licenses shall be responsible for obtaining and maintaining, at each such licensee's sole cost and expenses, the insurance coverages and types which are expressly stated in the applicable license agreement required for each such license according to this Commercial Declaration. All insurance policies required of licensees according to their Temporary Licenses, at the sole costs and expense of such licensees, shall name the Commercial Declarant, Commercial

Association and Commercial Board and each of their respective members, managers, Officers, Directors, employees and agents as additional insureds through additional insured endorsements.

Section 9.5. **Commercial Association as Insurance Trustee for the Commercial Owners.** By acceptance of a deed to a Commercial Owner Tract, each Commercial Owner shall be deemed to have irrevocably appointed the Commercial Association as the Insurance Trustee on insurance policies obtained by the Commercial Association (whether or not the Commercial Association is identified as such in a policy) for the benefit of Commercial Owner Tracts, Commercial Owners or Commercial Property. All Commercial Property insurance policies required to be obtained by the Commercial Association, as described in Section 9.2 of this Commercial Declaration, may be issued in the name of the Commercial Association as Insurance Trustee for the Commercial Property covered under such policies. Loss payable provisions shall be in favor of the Insurance Trustee as a trustee for the Commercial Association. The Insurance Trustee shall neither be liable for the payment of premiums nor for the renewal or sufficiency of policies, except those policies required to be purchased and maintained by the Commercial Association pursuant to Section 9.2 of this Commercial Declaration and the Commercial Bylaws. The duty of the Insurance Trustee shall be to receive insurance proceeds as are paid and to hold or properly dispose of the same in trust for the benefit of the Commercial Owners and Commercial Declarant in accordance with the terms of the Commercial Governing Documents.

Section 9.6. **Other.**

(a) Neither the Commercial Association, the Commercial Board, the Commercial Declarant or any Commercial Owner, nor their respective Affiliates, shall be liable for failure to obtain any insurance coverage required by the Commercial Governing Documents or for any loss or damage resulting from such failure if such failure is a result of such insurance coverage not being reasonably available.

(b) The insurance purchased by the Commercial Association shall not cover Claims of one Commercial Owner against any other Commercial Owner or Claims of a Commercial Lessee against any Commercial Owner or other Person.

(c) **The Commercial Association may establish at any time additional insurance coverage requirements for the Commercial Owner Tracts, the Commercial Owners, licensed portions of the Commercial Common Areas and the Commercial Lessees.**

ARTICLE X CASUALTY AND CONDEMNATION

Section 10.1. **Casualty.** Subject to the Commercial Rules and any requirements of the ACC and Architectural Guidelines, if any Improvements located on any Commercial Owner Tract are damaged or destroyed by fire or another casualty, the Commercial Owner of such Commercial Owner Tract must, within a reasonable period of time, which shall be determined in the sole and absolute discretion of the Commercial Association, either (a) repair, restore and rebuild such Improvements (and any damage to Improvements not on the Commercial Owner Tract caused by such fire or another casualty) in accordance with Commercial Plans approved by the Architectural Control Committee pursuant to Article XII and as otherwise provided in the Commercial Governing Documents; or (b) raze all the damaged Improvements on the Commercial Owner Tract, clear the Commercial Owner Tract of all debris resulting from such razing, and seed or sod the Commercial Owner Tract with grass.

Section 10.2. **General Condemnation Provisions.** If all or any part of the Commercial Common Areas are subject to a Taking, regardless of whether or not a Limited Commercial Common Area License exists

thereon, the Commercial Association will be the exclusive representative of the Commercial Owners. The expense of participation in such proceedings by the Commercial Association shall be a Common Expense. The Commercial Association is specifically authorized to obtain and pay for assistance from attorneys, appraisers, architects, engineers, expert witnesses and other Persons as the Commercial Association in its discretion deems necessary or advisable to aid or advise it in matters relating to condemnation proceedings. The cost of any restoration or repair of the Commercial Common Areas and Improvements thereon following a partial Taking shall be a Common Expense. If any part of the Commercial Common Areas subject to a Residential License or Temporary License for a portion of the Commercial License Reserves is subject to a Taking, such license shall automatically terminate and be of no further force or effect upon delivery of written notice of the Taking by the Commercial Association to the respective licensee.

ARTICLE XI

DEVELOPMENT RIGHTS

Section 11.1. **Development Rights.** Commercial Declarant, in addition to any other rights reserved in this Article XI or in any Commercial Governing Documents, reserves for itself during the Development Period, the following Development Rights to (a) add real property to the Commercial Property as Annexed Commercial Property, increase the maximum number of Commercial Owner Tracts set forth in Section 11.2 below, create and terminate Commercial Neighborhoods, designate or restrict uses on any portion thereof, establish any additional restrictions which may apply to Annexed Commercial Property and subject Annexed Property to the ownership and control of the Commercial Association; (b) designate, redesignate or create Commercial Owner Tracts, Commercial Neighborhoods and Commercial Common Areas, and convert Commercial Owner Tracts owned by Commercial Declarant into Commercial Common Areas; (c) subject portions of the Commercial Property owned by Commercial Declarant to Supplemental Declarations, as Commercial Declarant may determine; (d) whether by Commercial Plat or otherwise, relocate boundaries between adjoining Commercial Owner Tracts owned by Commercial Declarant; enlarge or reduce Commercial Owner Tracts owned by Commercial Declarant; enlarge or reduce the Commercial Common Areas; reduce or diminish the size of portions of the Commercial Common Areas; and split, combine, divide or subdivide Commercial Owner Tracts owned by Commercial Declarant and change setback requirements; (e) establish Commercial Plans and specifications for the construction of Improvements, amend such specifications, and complete or make Improvements on Commercial Owner Tracts owned by Commercial Declarant or construct Improvements on Commercial Common Areas or other portions of the Commercial Property owned by Commercial Declarant; (f) create and use and permit others to use the Easements described in Article VII and any other easements or licenses, including the Commercial License and Temporary Licenses, otherwise described in this Commercial Declaration or other Commercial Governing Documents; (g) create, change, terminate, combine or divide Commercial Neighborhoods and establish any additional Commercial Neighborhood restrictions, Commercial Neighborhood Assessments and Commercial Neighborhood Expenses, and exercise any other authority as may be necessary or required in connection with Commercial Neighborhoods according to this Commercial Declaration; (h) merge or consolidate the Commercial Association with any other association, including a master association as may be established for all Community Property or any other association established by the Commercial Declarant; (i) amend this Commercial Declaration, the Commercial Plat and any plans or plats in connection with the exercise of any Development Right; (j) change the permitted use of any portion of the Commercial Property that is owned by Commercial Declarant; (k) make amendments to the Commercial Governing Documents; (l) market, promote and sponsor marketing events, and erect and maintain Signage in the Commercial Common Areas and other portions of the Commercial Property owned by Commercial Declarant or on Commercial Owner Tracts owned by Commercial Declarant, as further described in this Commercial Declaration; (m) maintain temporary construction, sales and management offices on the Commercial Property, and have models and conduct general

office tasks, business and sales from such offices and models; (n) establish in the Commercial Common Areas or other portions of the Commercial Property, from time to time, by dedication or otherwise, public and private streets and utilities and other easements for purposes including public access, private access, paths, walkways, drainage, recreation areas and parking areas, and to create other reservations, exceptions and exclusions; (o) construct, in a way that does not materially adversely affect Commercial Owner Tracts not owned by Commercial Declarant, Systems and Drainage Facilities on, over and under the Commercial Property and such other related facilities as may be necessary for the purpose of furnishing services to the Commercial Property; (p) approve or disapprove, during the Development Period, the recordation of any declaration or amendment; (q) appoint or remove any ACC member and create any subcommittees and appoint and remove members thereof during the Development Period in accordance with Article XII of this Commercial Declaration; (r) record an instrument surrendering a Development Right or withdraw or de-annex a portion of the Commercial Property in accordance with this Commercial Declaration from the Commercial Property by recording in the Real Property Records a document evidencing such surrender, withdrawal or de-annexation of any portion of the Commercial Property; (s) record an instrument terminating the Commercial Declarant Control Period, but not the Development Period, prior to termination of the Commercial Declarant Control Period in the Real Property Records in accordance with this Commercial Declaration; and (t) exercise any additional reserved rights created by this Commercial Declaration or any other Governing Document and any other right granted to Commercial Declarant by the Commercial Governing Documents.

Nothing in the Commercial Governing Documents shall be construed or applied so as to unreasonably interfere with, impede or prevent Commercial Declarant's exercise of its Development Rights during the Development Period or Commercial Declarant's construction activities during the construction of Improvements upon or within the Commercial Property. No Commercial Declarant construction activities will be deemed to constitute nuisances or be violations of the Commercial Governing Documents by reason of noise, traffic, dust, presence of workers, vehicles, commercial trucks and construction machinery, or related and ancillary activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the surrounding area. If during the course of construction upon any Commercial Owner Tract there is excessive accumulation of debris of any kind which would render the Commercial Owner Tract or any portion thereof unsanitary, unsightly, harmful to health and safety or detrimental to it or any other portion of the Commercial Property, then the Commercial Association may contract for or cause such debris to be removed and the Commercial Owner of the Commercial Owner Tract will be liable for all reasonable expenses incurred in connection therewith.

Pursuant to Section 11.4 below, Development Rights may be exercised as to different portions of the Commercial Property at different times, Commercial Declarant is under no obligation to exercise any of the Development Rights and Commercial Declarant provides no assurance any Development Right will be exercised.

Section 11.2. **Annexation of Additional Commercial Property.**

(a) **Manner of Annexation.** At any time after the date this Commercial Declaration is recorded in the Real Property Records until the expiration of the Development Period, Commercial Declarant may add Annexed Commercial Property to the Commercial Property by way of a Supplemental Declaration and make such Annexed Commercial Property subject to the Commercial Governing Documents. Commercial Declarant may subject any Annexed Commercial Property to all or any portion of this Commercial Declaration, to replat the Commercial Property and such Annexed Commercial Property as Commercial Declarant desires and to create additional Commercial Owner Tracts and Commercial Common Areas from or out of such Annexed Commercial Property. The Commercial Property may consist of, and Commercial Declarant may subject to this Commercial Declaration, up to one hundred (100) Commercial Owner Tracts; provided, however, during

the Development Period and pursuant to the Development Rights, Commercial Declarant may annex Annexed Commercial Property into the Commercial Property and increase the maximum number of Commercial Owner Tracts.

(b) Effectiveness and Applicability of Provisions of Supplemental Declaration. Effective upon the recording in the Real Property Records of a Supplemental Declaration, or as otherwise stated in such Supplemental Declaration, (i) the covenants and restrictions contained in this Commercial Declaration and the Commercial Governing Documents shall automatically and without further action by any Person apply to Annexed Commercial Property in the same manner that such covenants and restrictions apply to all other portions of the Commercial Property or in such other manner as expressly stated in the Supplemental Declaration; and (ii) any lien arising from ownership or construction upon Annexed Commercial Property shall affect only such Annexed Commercial Property and Improvements located thereon and no other portion of the Commercial Property.

Section 11.3. Withdrawal of Real Commercial Property. During the Development Period, Commercial Declarant reserves the right to withdraw any portion of Commercial Property or a Commercial Owner Tract from the Commercial Property and from this Commercial Declaration and the Commercial Governing Documents for any reason. Such withdrawal shall be accomplished by the execution, acknowledgment and recordation of a written notice of withdrawal (the "Withdrawal Notice"); provided no Commercial Assessments have then commenced with respect to the Commercial Property or Commercial Owner Tract to be withdrawn. The Withdrawal Notice shall (a) be executed and acknowledged by Commercial Declarant and the Commercial Owner of the Commercial Owner Tract to be withdrawn (if Commercial Declarant is not the Commercial Owner) without the necessity of the joinder or consent of any other Person; (b) contain an adequate legal description of the portion of the Commercial Property or Commercial Owner Tract to be withdrawn; and (c) contain a statement that the portion of the Commercial Property or Commercial Owner Tract is withdrawn from the Commercial Property and from the effect of this Commercial Declaration and the Commercial Governing Documents. The withdrawal shall be effective upon recordation of the Withdrawal Notice in the Real Property Records. Nothing in this Section 11.3 shall be interpreted to prohibit the later annexation of any withdrawn Commercial Property back into the Commercial Property per Section 11.2 of this Commercial Declaration.

Section 11.4. No Approval Required for the Exercise of Development Rights. No approval of any Commercial Owner or its Mortgagee shall be required for the Commercial Declarant's exercise of any Development Right. Commercial Declarant may exercise any Development Right on all or any portion of the Commercial Property and in whatever order determined by Commercial Declarant. Commercial Declarant shall not be obligated to exercise any Development Right or to expand the Commercial Property to include Annexed Commercial Property or beyond the number of Commercial Owner Tracts initially submitted. The exercise of any Development Right as to some portion of the Commercial Property shall not obligate the Commercial Declarant to exercise any Development Right as to other portions of the Commercial Property. No provision of this Commercial Declaration shall be construed to prevent or limit Commercial Declarant's right and Commercial Declarant expressly reserves the right to complete the development of the Commercial Property within the boundaries of the Commercial Property and to construct or alter Improvements on any Commercial Property owned by Commercial Declarant within the Commercial Property.

Section 11.5. Zoning. No Commercial Owner other than Commercial Declarant may apply for any change in the zoning of any portion of the Commercial Property without the Commercial Declarant's prior written approval. Each Commercial Owner shall fully cooperate with Commercial Declarant in executing all documents, providing all information, and taking or refraining from taking any action as may be necessary or appropriate to effectuate any zoning application. Any costs and expenses incurred by the Commercial

Declarant or the ACC relating to the obtainment of a zoning change on behalf of a Commercial Owner shall be reimbursed by such Commercial Owner to Commercial Declarant or the ACC, as applicable, upon demand or request.

Section 11.6. **Rights Transferable.** Rights created or reserved under Article XI of this Commercial Declaration for the benefit of the Commercial Declarant may be transferred to any Person by an instrument executed by Commercial Declarant and the transferee describing the rights transferred and recorded in the Real Property Records.

Section 11.7. **Reciprocal Easements.** If part of the Commercial Property is withdrawn or de-annexed by Commercial Declarant during the Development Period, the Commercial Owners of the Commercial Property and the withdrawn Commercial Property shall be deemed to have and enjoy whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Commercial Property and withdrawn Commercial Property. Within a reasonable time after the necessity for any such easement appears, Commercial Declarant shall prepare and record in the Real Property Records whatever documents are necessary to evidence such easements and shall amend this Commercial Declaration to include reference to such recorded easements. Such recorded easements will become part of the Easements and shall specify that the Commercial Owners of the Commercial Property and the Commercial Owners of the withdrawn Commercial Property shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any Easements utilized by either one of them on the other's real property upon such reasonable basis as Commercial Declarant shall establish in the Easements. Preparation and recordation of an easement pursuant to this Section 11.7 shall exclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable in relation to each portion of the withdrawn Commercial Property and the Commercial Property as contemplated by this Section 11.7.

ARTICLE XII DEVELOPMENT CONTROL

Section 12.1. **Required Approval.** Plans of a Commercial Owner, excluding the Commercial Declarant, for the initial construction of any Improvements on a Commercial Owner Tract must first be submitted to and approved in writing by the Commercial Declarant or any Architectural Control Committee established by Commercial Declarant, as the case may be, prior to the commencement of any work on such Improvements. For purposes of this Article XII, if no Architectural Control Committee is established by Commercial Declarant, then any and all references to "Architectural Control Committee" during the Development Period shall mean Commercial Declarant, and from and after the expiration or termination of the Development Control Period, the Commercial Board.

Changes to the exterior of any Commercial Building or other Improvement on a Commercial Owner Tract (after initial installation or construction) that meet any of the criteria set forth in this Section 12.1 must first be submitted in writing to and approved in writing by the Architectural Control Committee: (a) any addition to the exterior of an Improvement; (b) a change or an alteration to the architectural style and character of an Improvement, including the exterior appearance, façade, finish material, color or texture; (c) any addition of an accessory or additional structure to the Commercial Owner Tract; (d) any change that results in a substantial change to the roof plane or lines of an Improvement; (e) demolition or destruction by voluntary action of any Improvement; (f) installation or modification of any landscaping or fencing; or (g) any grading, excavation, filling or similar disturbance to the surface of any portion of the Commercial Property, including change of grade, change of ground level or change of drainage pattern. The Architectural Control Committee may require other information to be submitted with applications as further described in the Architectural Guidelines. Any Commercial Owner of a Commercial Owner Tract, excluding the Commercial Declarant,

shall not be permitted to divide or subdivide such Commercial Owner's Commercial Owner Tract and shall not convey any easements or other interests in the Commercial Owner Tract without the prior written approval of the Commercial Declarant during the Development Period, and from and after the expiration or termination of the Development Control Period, the Commercial Board.

Section 12.2. **Establishment of the Architectural Control Committee.** If an Architectural Control Committee is established by Commercial Declarant, it may initially consist of up to three (3) members during the Development Period appointed by Commercial Declarant. Commercial Declarant shall have the continuing right to appoint and remove all members of the Architectural Control Committee during the Development Period. Upon expiration or earlier termination of the Development Period, the Commercial Board shall have the right to appoint and remove members of the Architectural Control Committee and members of the Commercial Board may also be members of the Architectural Control Committee. Members of the ACC appointed by the Commercial Board shall serve for the term designated by the Commercial Board or until resignation or removal by the Commercial Board of the respective committee member. The Commercial Board may, at any time and from time to time, change the authorized number of members of the ACC, but at no time shall the number of members of the ACC be less than three (3) or greater than five (5). A majority of the committee members serving at any given time shall constitute a quorum of the Architectural Control Committee, and a vote by the majority of the ACC members present at any meeting in person where a quorum is present shall be required for ACC actions. Commercial Declarant may, from time to time, during the Development Period, adopt, promulgate, amend or otherwise revise the Architectural Guidelines or any other standards, Commercial Rules, regulations and procedures governing development control of the Commercial Property for the purposes of (a) further enhancing, defining or interpreting which items or Improvements are covered by Article XII of this Commercial Declaration; (b) providing for changes in technology, industry standards, style, materials, safety issues, and consistency with updated building codes or Legal Requirements; or (c) for any other reason that Commercial Declarant deems to be proper, necessary or in the best interests of the Commercial Property; provided that neither Commercial Declarant nor the ACC, in its review or approval of any matter, shall be deemed to be giving any opinion, warranty or representation as to compliance with any of the matters set forth in this Section 12.2, the Commercial Declaration, other Commercial Governing Document or Legal Requirements.

Section 12.3. **Delegation of Control.** The Architectural Control Committee shall have the right, subject to the prior written approval by Commercial Declarant during the Development Period, to delegate certain rights and obligations, but not any of its authority or powers granted in Section 12.2 hereof, to any subcommittee established with consent of the Commercial Board to support the ACC. Any such delegation may be revoked by the Architectural Control Committee or the Commercial Board at any time for any reason.

Section 12.4. **Future Architectural Guidelines.** After the Development Period, the Commercial Board may adopt new or amend existing Architectural Guidelines, and any such new guidelines or changes to the existing Architectural Guidelines shall not be inconsistent with the provisions of the Commercial Governing Documents. In the event conflicts or any inconsistencies exist between the Architectural Guidelines and the provisions of other Commercial Governing Documents, then the documents shall control in the order that is set forth for the Commercial Governing Documents in Section 2.4 of this Commercial Declaration.

Section 12.5. **Reply and Communication.** The Architectural Control Committee shall respond to applications for approval arising out of this Article XII per the Architectural Guidelines or as otherwise established by the Commercial Board. All written communications and submittals shall be addressed to the ACC, if applicable, at the address of the ACC or otherwise to the Commercial Board. Any approvals granted pursuant to this Article XII or any Architectural Guidelines shall be granted solely for the benefit of the Commercial Owner applicant with respect to the respective application and shall not be construed as an

approval for any other Person, Commercial Owner, Commercial Lessee or Commercial Occupant planning to perform the same or similar type of construction, architectural change, modification or other Improvement to a Commercial Owner Tract for which an application would be required per this Commercial Declaration or the Architectural Guidelines. In the event an application is denied or any submitted plans are disapproved, a notice will be sent to the respective Commercial Owner which will include an explanation for the basis of the denial or disapproval and the changes, if any, which are required to resubmit the application and obtain approval for the proposed changes, modifications or other improvements which are the subject of such application.

Section 12.6. **Variances.** The Architectural Control Committee may grant variances or adjustments from the Architectural Guidelines or any conditions and restrictions imposed by this Article XII pursuant to variance criteria established by the ACC and as may be set forth in the Architectural Guidelines.

Section 12.7. **Appeal Rights of Commercial Owners.** After the expiration of the Development Period, if any request by a Commercial Owner under the provisions of this Article XII is denied by the Architectural Control Committee, which has been established and which ACC rendered the denial decision, then the applicant shall have a one-time right to appeal the decision and request a hearing before the Commercial Board. In considering the appeal, the Commercial Board can affirm, modify or overturn the Architectural Control Committee's denial, in whole or in part, as is consistent with the terms of this Commercial Declaration, the Architectural Guidelines and any other applicable Commercial Governing Document or Legal Requirements.

Section 12.8. **No Deemed Waivers.** No action or failure to act by Commercial Declarant, the Architectural Control Committee or the Commercial Board shall constitute a waiver or estoppel with respect to any future action by the Architectural Control Committee or the Commercial Board, with respect to any Improvement to a Commercial Owner Tract. Specifically, the approval by the Architectural Control Committee of any Improvement to a Commercial Owner Tract shall not be deemed a waiver of any right or an estoppel to withholding approval for any similar Improvement to another Commercial Owner Tract or any similar proposals, Commercial Plans, specifications or other materials submitted with respect to any other Improvement to another Commercial Owner Tract.

Section 12.9. **Limitation on Liability.** Commercial Declarant, the Commercial Board (and its Directors, Officers and members) and the ACC, if established, and its members, as well as any member of any ACC subcommittee, shall not be liable for damages to any Commercial Owner, Commercial Lessee or other Person submitting requests for approval or for any approval granted or failure to approve or disapprove regarding any matter described in this Article XII and within the jurisdiction of the Commercial Declarant, Commercial Board or Architectural Control Committee according to the Commercial Governing Documents. Commercial Declarant, the Commercial Board (and its Directors, Officers and members) and the ACC and its members, as well as any member of any ACC subcommittee, shall not be responsible or liable for structural, engineering or any other defects of, or to, Improvements resulting from applications and plans approved by any such parties or Persons or for violations of any building or zoning code or other land use regulations or other Legal Requirements, and any Claim against an Indemnified Party in connection therewith shall be entitled and subject to indemnification under and pursuant to the provisions of Section 15.14 of this Commercial Declaration.

Section 12.10. **Records.** The ACC, if established, and the Commercial Association will maintain records, electronic or written, of all applications and approval requests submitted pursuant to this Article XII and of all actions taken, including approvals and disapprovals, by it with respect thereto. Such records shall constitute Commercial Association Records, as defined in the Commercial Bylaws, and will be open and

available for inspection by any Commercial Owner for a proper purpose per Chapter 22 of the TBOC and pursuant to the Commercial Bylaws.

Section 12.11. **Enforcement of Article XII of this Commercial Declaration.**

(a) **Nonconforming Improvements.** Any Improvement to a Commercial Owner Tract made in violation of Article XII of this Commercial Declaration, approved Commercial Plans, Legal Requirements or the Architectural Guidelines shall be deemed to be nonconforming. Should the Commercial Declarant, Commercial Association or ACC determine that any Improvement was made without approval or was not made in substantial compliance with the approved Commercial Plans and description and materials described thereunder or any conditions imposed therefore by the Commercial Declarant, Commercial Board or ACC, as the case may be, or was not completed with due diligence, the Commercial Declarant, Commercial Board or Architectural Control Committee, as applicable, shall notify the Commercial Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars of the noncompliance and shall require the Commercial Owner to take such actions as may be necessary in the time period specified in the notice to remedy the noncompliance. Upon receipt of any notice which requires removal of a nonconforming Improvement, the Commercial Owner shall, at such Commercial Owner's own cost and expense, remove such Improvement in accordance with the notice and restore the Commercial Owner Tract to substantially the same condition as existed prior to the installation or construction of the nonconforming Improvement. Should the Commercial Owner fail to take the actions set forth in the notice of noncompliance within the time frame required in the notice, the Commercial Declarant or Commercial Association shall have the right to record a copy of such notice of noncompliance in the Real Property Records. Further, the Commercial Declarant or Commercial Association shall have the right, but not the obligation, to enter the Commercial Owner Tract, correct or remove the Improvement that constitutes the violation, and restore the Commercial Owner Tract to substantially the same condition as the Commercial Owner Tract previously existed prior to the installation or construction of the nonconforming Improvement. All costs, together with interest at the Past Due Rate, incurred by the Commercial Declarant or Commercial Association for removal of the nonconforming Improvement and remediation of the Commercial Owner Tract may be assessed against the benefited Commercial Owner Tract and collected as an Individual Assessment. The provisions of this Subsection 12.11(a) are in addition to all other legal and equitable remedies available to the Commercial Declarant and Commercial Association.

(b) **Additional Remedies.** In addition to the enforcement rights of the Commercial Association otherwise set forth in this Commercial Declaration and Subsection 12.11(a), the Commercial Association shall have the right, but not the obligation, to institute, maintain and prosecute proceedings at law or in equity against any Person violating or attempting to violate any of the terms and provisions of this Article XII of the Commercial Declaration. In any action instituted or maintained under Article XII of this Commercial Declaration, the Commercial Association shall be entitled to recover the costs and reasonable attorneys' fees it incurs as well as any and all other sums awarded by a court. Failure of the Commercial Association or the ACC to enforce any covenant, condition or restriction contained in the Commercial Governing Documents shall not be deemed a waiver of the Commercial Association's or the Architectural Control Committee's right to enforcement of such covenant, condition or restriction at any later time.

Section 12.12. **Obtaining Governmental Approvals.** Prior to the commencement of construction of any Improvements, a Commercial Owner shall obtain all Governmental Approvals required by the Commercial Owner under its approved Commercial Plans and construct, operate and maintain such Improvements.

ARTICLE XIII PROPERTY ROADS

Unless otherwise set forth in the Development Agreement, or a separate agreement with the applicable Governmental Authority, the County shall be solely responsible for the management, maintenance and operation of the Property Roads. The MUD shall be solely responsible for the management, maintenance and operation of the MUD Recreational Facilities and the Public Parks and Trails until such time as the MUD is dissolved and the City takes ownership thereof. The Commercial Association shall have the right to temporarily close off portions of the Property Roads for Foundation or Commercial Association approved or sponsored events, activities and functions. **Commercial Declarant, the Commercial Association and the Commercial Board, and each of their Affiliates, members, Commercial Managers, employees and agents, shall not be liable to any extent whatsoever to any Person, including any Commercial Owner, for any defect in, or structural or safety issue with, the Property Roads or Improvements thereon or any defect or structural or safety issue concerning MUD Recreational Facilities or Public Parks and Trails, or for any failure concerning the performance of management, operations and other duties of the County or the MUD concerning the Property Roads, MUD Recreational Facilities and Public Parks and Trails.** Any and all Claims against Indemnified Parties which may arise out of or in connection with Property Roads, Public Parks and Trails and/or MUD Recreational Facilities shall be subject to the indemnification and limitation of liability provisions included in Article XV of this Commercial Declaration for all intents and purposes.

ARTICLE XIV MATTERS FOR MEDIATION AND ARBITRATION

Section 14.1. **Mediation.** All Disputes, except those relating to equitable remedies, which are not resolved within fifteen (15) days after same have arisen (unless such greater time is provided elsewhere in the Commercial Governing Documents) shall be submitted for or determined by nonbinding mediation as a condition precedent to arbitration. Mediation of any Dispute shall be initiated by any Commercial Owner making a written demand therefore to the other Commercial Owner or Commercial Owners involved in such Dispute and the Commercial Association. With respect to such mediation, the parties shall, within ten (10) days after delivery of such written notice to the Commercial Association, agree upon a mediator who is (a) a reputable Person actively engaged in and knowledgeable about disputes concerning commercial real estate developments for a continuous period of not less than ten (10) years, and (b) is in no way affiliated with, and has had no material business dealings with, any Commercial Owner. If the parties are unable to agree upon a mediator, a mediator having the qualifications outlined in this Section 14.1 shall be appointed by the American Arbitration Association ("AAA") office in the County, or if there is no AAA office in the County, then by the AAA office in Harris County, Texas, which is closest to the County. Such mediation shall occur within thirty (30) days after the mediator has been agreed upon or appointed and shall occur at a mutually acceptable location as determined by the parties. The costs of such mediation services shall be shared equally (but each party shall bear the cost of their own travel and attorneys' fees); provided, however, that if the Dispute is not resolved pursuant to such mediation, the provisions of Section 14.2 of this Commercial Declaration shall govern the payment of attorneys' fees and costs and the expenses of mediation and arbitration.

Section 14.2. **Final Offer Arbitration.** If the parties reach an impasse at mediation, as determined by the mediator in the mediator's sole and absolute discretion, and are unable to resolve any Dispute, any party to the Dispute may initiate binding arbitration (as the exclusive remedy with respect to a Dispute under this Commercial Declaration) by making a written demand therefore to the other parties involved in such Dispute no later than thirty (30) days after the mediator declares that the parties have reached an impasse at mediation. The parties agree to select a single impartial arbitrator from a list taken from the AAA within fifteen (15) days

of submitting the Dispute to arbitration, and if they cannot agree on an arbitrator, each party shall select an individual and those two so selected shall then select the single impartial arbitrator who shall thereafter serve as arbitrator with respect to the Dispute. The issues in dispute shall be submitted as "baseball" or final offer arbitration, whereby each party shall submit what it deems to be its most reasonable position to the arbitrator and the arbitrator shall select one of those two positions. The arbitrator shall have no discretion to select or award a position other than to select one of those submitted by the parties. To the extent the Commercial Rules governing arbitration are deemed necessary by the arbitrator (or by agreement of the parties), the current Commercial Rules applicable to such arbitration promulgated by the AAA shall apply. The decision of the arbitrator shall be rendered no later than ten (10) days from the initiation of the arbitration procedure. The parties may resort to any court of competent jurisdiction for enforcement of, or any other action relating to, the arbitrator's award. The party or parties whose position is not selected or awarded shall be responsible for all attorneys' fees, costs and expenses (incurred in connection with the mediation and arbitration of a Dispute under Article XIV of this Commercial Declaration) of the party whose position is selected or awarded for the arbitration of the Dispute under Article XIV.

Section 14.3. **General.** With respect to any Dispute, it is agreed that the dispute resolution provisions of Article XIV of this Commercial Declaration shall be the sole remedy of the parties involved in such Dispute. Notwithstanding any other provisions of this Commercial Declaration, the foregoing agreement to arbitrate and other agreements to arbitrate with an additional Person duly consented to by the parties shall be specifically enforceable under prevailing arbitration law in any court having jurisdiction thereof. The foregoing agreement to arbitrate shall not constitute any agreement or consent to arbitration of any dispute, Claim, controversy or matter that does not constitute a Dispute, as applicable. The foregoing agreement to arbitrate any Dispute shall not constitute any agreement or consent to arbitration with any Person not named or described in this Commercial Declaration, provided that any arbitration proceeding initiated under the terms of Section 14.2 of this Commercial Declaration may, at the request of any party, be joined or consolidated with other arbitration proceedings involving additional parties if the Dispute and the subject of such other proceedings arise out of common or interrelated factual occurrences. Any award of the arbitrator shall be final and binding upon the parties involved in the Dispute and such Mortgagees and non-appealable judgment thereon may be entered by any court having jurisdiction.

ARTICLE XV GENERAL PROVISIONS

Section 15.1. **Remedies Cumulative.** Each remedy provided under the Commercial Governing Documents is cumulative and nonexclusive.

Section 15.2. **Severability.** Each of the provisions of this Commercial Declaration shall be deemed independent and severable. If any provision of this Commercial Declaration or any other provision in the Commercial Governing Documents or the application thereof to any Person or circumstances is held invalid, unenforceable and not in compliance with the Legal Requirements, such invalidity, unenforceability or noncompliance shall not affect other provisions in, or applications of, this Commercial Declaration and the Commercial Governing Documents.

Section 15.3. **Term of Commercial Declaration.** The covenants and restrictions of this Commercial Declaration shall run with the land and bind the Commercial Property in perpetuity subject to the rights of Commercial Owners to terminate this Commercial Declaration arising hereunder.

Section 15.4. **Amendment of Commercial Declaration by Commercial Declarant.** Pursuant to Commercial Declarant exercising any Development Right or for any other reason whatsoever and until the

termination or expiration of the Development Period, any of the provisions, definitions, covenants, conditions, restrictions, equitable servitudes, obligations, rights or other content contained in this Commercial Declaration or the other Commercial Governing Documents may be amended by Commercial Declarant (without the necessity of joinder or prior consent of any other Person) in accordance with the terms of the Commercial Governing Documents by the recordation in the Real Property Records of a written instrument executed by Commercial Declarant setting forth such amendment. Each deed, security interest, other evidence of obligation or other instrument affecting a Commercial Owner Tract and the acceptance by a Commercial Owner thereof shall be deemed to be a grant and acknowledgment of, and an approval of the reservation by and the power of Commercial Declarant to make, execute and record amendments pursuant to this Section 15.4.

Section 15.5. **Amendment of Commercial Declaration by Commercial Owners.** After the Development Period has terminated or expired, any provision, covenant, condition, restriction or equitable servitude contained in this Commercial Declaration may be amended, repealed, added to or changed from time to time by an amendment upon the vote of fifty-one percent (51%) of the votes entitled to be cast at a duly called meeting of the Members at which a quorum is present. Any such amendment shall be effective upon the recording thereof in the Real Property Records, which shall contain a certification that the amendment has been approved as set forth in this Section 15.5.

Section 15.6. **Required Approval of Commercial Declarant to Amendment.** Notwithstanding any other provision in this Commercial Declaration to the contrary, any proposed amendment or repeal of any provision of this Commercial Declaration reserving Development Rights or for the benefit of Commercial Declarant, or its assignees, shall not be effective unless Commercial Declarant, and its assignees, if any, have given prior written approval to such amendment, which approval may be evidenced by the execution by Commercial Declarant or its assignees of any certificate of amendment. The foregoing requirement for approval of any amendment shall terminate upon the termination or expiration of the Development Period.

Section 15.7. **No Public Dedication.** Nothing in this Commercial Declaration shall be deemed to be a gift or dedication of any portion of the Commercial Property, or of any Commercial Owner Tract to the general public or for any public use or purpose whatsoever, it being the intent that this Commercial Declaration be strictly limited to and for the purposes expressed in this Commercial Declaration for the development, maintenance and operation of a private real estate development on the Commercial Property solely for the benefit of the Commercial Owners, except for certain Easements, Property Roads, Public Parks and Trails, MUD Recreational Facilities and Improvements of the Commercial Property which may be owned by the MUD, owned or to be owned by or dedicated to the City or County or other Governmental Authority, or for public use by plat or separate documents.

Section 15.8. **Notices.** All notices or other communications required or permitted to be given according to this Commercial Declaration shall be in writing and shall be considered properly given if (a) mailed by first-class United States mail, postage prepaid, registered or certified with return receipt requested to the addressee, (b) delivered in person to the addressee, (c) delivered by an independent third-party commercial delivery service for same- or next-day delivery which provides evidence of receipt of such delivery to the addressee, or (d) sent by facsimile to the addressee. Notice mailed shall be effective upon its deposit with the United States Postal Service; notice sent by a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by facsimile shall be effective upon receipt of confirmation that the facsimile was successfully sent to the addressee. For purposes of notice, the addresses of the Commercial Declarant and the Commercial Association shall be as set forth below, and the address of each Commercial Owner shall be the address of the Commercial Owner Tract unless an alternate address is provided by a Commercial Owner to the Commercial Association according to the Commercial Owner information

registration process described in the Commercial Rules. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days prior written notice to the Commercial Association in the manner set forth herein:

Commercial Declarant: 300 Acres, LLC
7632 Hammerly Boulevard
Houston, Texas 77055
Attn: President

Commercial Association: Indigo Commercial Community Association, Inc.
c/o Cohere
7600 E. Doubletree Ranch Road, Suite 250
Scottsdale, Arizona 85258
Attn: Indigo Commercial Community Manager

Section 15.9. **Interpretation.** Commercial Declarant shall have the right, power and authority to determine all questions arising under or in connection with the Commercial Governing Documents and to reasonably construe and interpret its provisions in accordance with the laws of the State and the laws of the United States applicable to transactions in the State. Any such determination, construction or interpretation made by Commercial Declarant shall be binding on the Commercial Owners. In all cases, the provisions set forth or provided for in the Commercial Governing Documents shall be construed together and given that interpretation or construction which, in the reasonable opinion of Commercial Declarant, shall best effect its general plan of development as reflected herein in accordance with the laws of the State and the laws of the United States applicable to Commercial Declarant. The provisions of the Commercial Governing Documents shall be liberally interpreted and, if necessary, be so extended or enlarged by implication as to make them fully effective. All uses of the word "including" shall be deemed to be followed by the words "without limitation."

Section 15.10. **No Representations or Warranties.** No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Commercial Declarant or its Affiliates in connection with any portion of the Commercial Property, its physical condition, Improvements thereon, the Legal Requirements or its, or any of its, Improvements' fitness for intended use or in connection with the development, sale, operation, maintenance, cost of maintenance, taxes or regulation of any portion of the Commercial Property or Improvements thereon. WITHOUT LIMITATION OF THE FOREGOING, COMMERCIAL DECLARANT EXPRESSLY DISCLAIMS ALL COVENANTS, REPRESENTATIONS, GUARANTIES AND WARRANTIES, EXPRESS AND IMPLIED, AND BY OPERATION OF LAW FOR (i) THE EXERCISE OF DEVELOPMENT RIGHTS AND ANY FUTURE, ONGOING OR PROPOSED DEVELOPMENT, ACTIVITY OR PLAN, (ii) THE MANAGEMENT OR SUPERVISION OF BUILDING, CONSTRUCTION AND ALL OTHER WORK AND ACTIVITIES BY ANY GOVERNMENTAL AUTHORITY OR DESIGNEE NOT DIRECTLY EMPLOYED BY COMMERCIAL DECLARANT, INCLUDING ANY DUTY TO ENFORCE ANY PROVISIONS OF THE COMMERCIAL GOVERNING DOCUMENTS OR COMMUNITY DOCUMENTS AS TO ANY SUCH PERSON, (iii) THE NATURE, CONDITION, APPEARANCE, USE AND ALL OTHER MATTERS PERTAINING TO ANY REAL PROPERTY AND IMPROVEMENTS THEREON WHICH IS ADJACENT TO, SURROUNDING OR IN THE VICINITY OF THE COMMERCIAL PROPERTY OR THE COMMUNITY PROPERTY, OR WHICH ARE NOT SUBJECT TO THE COMMERCIAL GOVERNING DOCUMENTS OR THE COMMUNITY DOCUMENTS, (iv) THE MANAGEMENT OR OPERATION OF THE COMMERCIAL PROPERTY OR COMMERCIAL ASSOCIATION, (v) THE ENFORCEMENT OF ANY PROVISIONS OF THE COMMERCIAL GOVERNING DOCUMENTS AS TO ANY COMMERCIAL OWNER,

COMMERCIAL OCCUPANT OR ANY OTHER PERSON, INCLUDING LICENSEES UNDER TEMPORARY LICENSES, AND (vi) ANY ENVIRONMENTAL HAZARDS, USES OR CONDITIONS AFFECTING OR WHICH MAY AFFECT ALL OR ANY PORTION OF THE COMMERCIAL PROPERTY, COMMUNITY PROPERTY OR ANY REAL PROPERTY ADJACENT TO THE COMMERCIAL PROPERTY OR COMMUNITY PROPERTY.

Section 15.11. **Singular Includes the Plural.** Unless the context otherwise requires, the singular shall include the plural and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 15.12. **Captions.** All captions and titles used in this Commercial Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article of this Commercial Declaration.

Section 15.13. **Governing Law; Venue.** This Commercial Declaration shall be construed and governed under the laws of the State. The venue for any lawsuit arising out of the Commercial Governing Documents, whether directly or indirectly, shall be in the County.

Section 15.14. **INDEMNIFICATION.**

(a) **GENERAL.** EACH COMMERCIAL OWNER, COMMERCIAL OCCUPANT AND LICENSEE UNDER A TEMPORARY LICENSE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS COMMERCIAL DECLARANT, THE COMMERCIAL ASSOCIATION, THE ACC, THE COMMERCIAL BOARD, THE COMMERCIAL MANAGER AND EACH OF THEIR RESPECTIVE AFFILIATES, MEMBERS, MANAGERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS (EACH AN "INDEMNIFIED PARTY") FROM AND AGAINST ANY AND ALL CLAIMS, AS DEFINED IN SECTION 1.1 OF THIS COMMERCIAL DECLARATION, THAT ARISE OUT OF (DIRECTLY OR INDIRECTLY), ARE THE RESULT OF OR ARE CAUSED, IN WHOLE OR IN PART, BY (i) SUCH COMMERCIAL OWNER'S (OR COMMERCIAL OCCUPANT'S OF SUCH COMMERCIAL OWNER'S COMMERCIAL OWNER TRACT OR IMPROVEMENTS THEREON) OR LICENSEE'S NONCOMPLIANCE WITH ANY OF THE PROVISIONS OF THE COMMERCIAL GOVERNING DOCUMENTS OR LEGAL REQUIREMENTS, (ii) ANY ACT OR OMISSION OF SUCH COMMERCIAL OWNER (OR THE COMMERCIAL OCCUPANT OF SUCH COMMERCIAL OWNER'S COMMERCIAL OWNER TRACT OR IMPROVEMENTS THEREON) OR LICENSEE, AND (iii) PROPERTY ROADS, MUD RECREATIONAL FACILITIES, PUBLIC PARKS AND TRAILS AND ANY OTHER PORTION OF THE COMMERCIAL PROPERTY WHICH IS OWNED, MAINTAINED, REPAIRED AND/OR OPERATED BY THE CITY, COUNTY, MUD OR ANY OTHER GOVERNMENTAL AUTHORITY, OR CONVEYED OR DEDICATED TO THE CITY, COUNTY OR ANY OTHER GOVERNMENTAL AUTHORITY, AND/OR OPEN TO OR FOR USE BY MEMBERS OF THE GENERAL PUBLIC.

(b) **PLAN REVIEW.** NO COMMERCIAL OWNER SUBMITTING COMMERCIAL PLANS OR ANY OTHER PLANS TO AN INDEMNIFIED PARTY PURSUANT TO THE COMMERCIAL GOVERNING DOCUMENTS, BY DISSEMINATION OF THE SAME, AND NO COMMERCIAL OWNER, BY ACQUIRING TITLE TO A COMMERCIAL OWNER TRACT OR COMMERCIAL OCCUPANT ENTERING INTO A COMMERCIAL LEASE OR OTHER AGREEMENT FOR OCCUPANCY, SHALL MAKE ANY CLAIMS AGAINST ANY INDEMNIFIED PARTY RELATING TO OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, ANY INDEMNIFIED PARTY'S REVIEW OF SUCH SUBMITTED PLANS OR ANY OTHER RELATED MATERIALS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO INDEMNIFIED PARTY REVIEWING COMMERCIAL

PLANS OR ANY OTHER SUBMITTED PLANS SHALL BE RESPONSIBLE FOR OR SHALL HAVE OBLIGATIONS TO COMMENT ON OR ASSURE COMPLIANCE OF SUCH PLANS FOR OR WITH, AS THE CASE MAY BE, STRUCTURAL INTEGRITY, SAFETY, SOUNDNESS, WORKMANSHIP, MATERIALS, USEFULNESS, CONFORMITY WITH BUILDING CODES, LEGAL REQUIREMENTS OR INDUSTRY STANDARDS, ARCHITECTURAL GUIDELINES OR COMPLIANCE WITH COMMERCIAL GOVERNING DOCUMENTS. FURTHER, EACH COMMERCIAL OWNER AND COMMERCIAL LESSEE AGREES TO INDEMNIFY, DEFEND AND HOLD EACH INDEMNIFIED PARTY HARMLESS FROM ANY APPROVAL GRANTED FOR COMMERCIAL PLANS OR ANY OTHER PLANS OF A COMMERCIAL OWNER OR COMMERCIAL OCCUPANT SUBMITTED UNDER OR ACCORDING TO THE COMMERCIAL GOVERNING DOCUMENTS OR FOR THE CONSTRUCTION OF IMPROVEMENTS ON SUCH COMMERCIAL OWNER'S COMMERCIAL OWNER TRACT OR THE COMMERCIAL OWNER TRACT SUBJECT TO THE COMMERCIAL LEASE OR OTHER OCCUPANCY AGREEMENT OF THE COMMERCIAL OCCUPANT.

Section 15.15. **Limitation of Liability.** Neither Commercial Declarant, the Commercial Association, the ACC, the Commercial Board, the Commercial Manager, nor any of their respective Affiliates, members, managers, partners, officers, directors, employees, agents or representatives, shall be, individually or in combination, liable for Claims of (a) any Commercial Owner or any other Person submitting Commercial Plans, any other plans, proposed uses or variance(s) for approval, by reason of mistake in judgment, negligence, gross negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any Commercial Plans, any other plans, proposed uses or variances submitted for approval, (b) a Commercial Owner or Commercial Lessee, in connection with any design, engineering or construction defect associated with any Improvement constructed on such Commercial Owner's Commercial Owner Tract or any Improvement constructed on the Commercial Property, including, without limitation, Property Roads, Public Parks and Trails and MUD Recreational Facilities, (c) a Commercial Owner or Commercial Occupant, in connection with the breach or violation of any provision of the Commercial Governing Documents by a Commercial Owner or Commercial Occupant, including the Restrictive Covenants and Legal Requirements covering the use of a Commercial Owner Tract or Limited Commercial Common Area subject to a Limited Commercial Common Area License, (d) a Commercial Owner or Commercial Occupant, in connection with (i) Property Roads, Public Parks and Trails, MUD Recreational Facilities and any portion of the Commercial Property which may or will be open to or which may or will be used by members of the general public, and any injury, including death, loss, theft or damage to any Person, Commercial Owner, Commercial Occupant, licensee under a Temporary License, Commercial Building, Commercial Owner Tract, Improvements or Commercial Property, or any personal property which may arise out of the presence upon the Commercial Property of, or use of any Improvements or facilities on the Commercial Property by, one or more members of the general public, (ii) injury or damage to any Person, Commercial Building, Commercial Owner Tract or Commercial Property or Improvement thereon caused by the elements or by a Commercial Owner, a Commercial Occupant or any other Person, or resulting from any utility, rain, snow, ice, flood, freeze or water event which may leak or flow from or over any portion of the Commercial Common Areas or Improvements thereon or from any pipe, drain, Drainage Facility, conduit, System, equipment or other Improvement which the Commercial Association is responsible to maintain hereunder, (iii) loss by damage, theft or otherwise of any personal property of a Commercial Owner, a Commercial Occupant, a licensee under a Temporary License or any other Person that may be stored in or upon any of the Commercial Common Areas or any other portion of the Commercial Property, or (iv) damage or injury caused in whole or in part by the failure of the Commercial Association or any Officer, Director, employee or agent of the Commercial Association, including a Commercial Manager, to discharge its or their responsibilities under this **Section 15.15** of this Commercial Declaration (collectively, "**Commercial Common Area Damage**"), or

(e) breach of representation or warranty, express or implied, by a Commercial Owner, a Commercial Occupant, a licensee under a Temporary License or any other Person in connection with any portion of the Commercial Property or Improvements thereon, their physical condition, the Legal Requirements, fitness for intended use or in connection with the development, sale, operation, maintenance, taxes or regulation thereof ("Breach of Representation or Warranty"), unless and except specifically set forth in writing and executed by the Person against whom the Claim is asserted. No Designee of Commercial Declarant, the Commercial Association, the ACC or the Commercial Board shall be liable to any Commercial Owner, any Commercial Occupant, any licensee under a Temporary License or any of their Designees for any Claims, except as otherwise expressly set forth in and permitted by the Commercial Governing Documents, and such Designees shall be indemnified in accordance with the provisions of the Commercial Governing Documents.

EACH COMMERCIAL OWNER, BY ACCEPTANCE OF A DEED TO SUCH COMMERCIAL OWNER'S COMMERCIAL OWNER TRACT(S), RELEASES AND FOREVER DISCHARGES COMMERCIAL DECLARANT, THE COMMERCIAL ASSOCIATION, THE COMMERCIAL BOARD AND THE ACC, AND EACH OF THEIR RESPECTIVE AFFILIATES, MEMBERS, MANAGERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND AGENTS FROM ALL CLAIMS IN CONNECTION WITH OR ARISING OUT OF (WHETHER DIRECTLY OR INDIRECTLY) (A) ANY DESIGN, ENGINEERING OR CONSTRUCTION DEFECT ASSOCIATED WITH ANY IMPROVEMENT CONSTRUCTED ON ANY PORTION OF THE COMMERCIAL PROPERTY, INCLUDING ON COMMERCIAL OWNER TRACTS, INCLUDING PROPERTY ROADS, PUBLIC PARKS AND TRAILS, MUD RECREATIONAL FACILITIES AND IMPROVEMENTS IN COMMERCIAL COMMON AREAS, (B) THE BREACH OF ANY PROVISION OF THE COMMERCIAL GOVERNING DOCUMENTS BY A COMMERCIAL OWNER, COMMERCIAL OCCUPANT, LICENSEE UNDER A TEMPORARY LICENSE, INCLUDING BREACHES OF THE RESTRICTIVE COVENANTS AND THE USE RESTRICTIONS APPLICABLE TO SUCH COMMERCIAL OWNER'S COMMERCIAL OWNER TRACTS ARISING UNDER THE COMMERCIAL GOVERNING DOCUMENTS, (C) PERFORMANCE OF CONSTRUCTION, REPAIRS, MAINTENANCE, OPERATIONS OR ANY OTHER TYPE OF WORK OR ACTIVITY ON OR TO ANY PROPERTY ROADS, MUD RECREATIONAL FACILITIES, PUBLIC PARKS AND TRAILS OR ANY OTHER PORTION OF THE COMMERCIAL PROPERTY AND IMPROVEMENTS THEREON OWNED, OPERATED, MAINTAINED OR CONSTRUCTED BY THE MUD, THE CITY, THE COUNTY OR OTHER GOVERNMENTAL AUTHORITY OR DEDICATED TO THE CITY, THE COUNTY OR OTHER GOVERNMENTAL AUTHORITY, FOR WHICH THE MUD, THE CITY, THE COUNTY OR OTHER GOVERNMENTAL AUTHORITY HAS MAINTENANCE, REPAIR OR OPERATION OBLIGATIONS OR WHICH ARE OPEN TO MEMBERS OF THE GENERAL PUBLIC, (D) THE PRESENCE OF ANY MEMBER OF THE GENERAL PUBLIC OR ANY CITY, COUNTY OR GOVERNMENTAL AUTHORITY PERSON, EMPLOYEE, AGENT OR REPRESENTATIVE ON THE COMMERCIAL PROPERTY IN CONNECTION WITH PROPERTY ROADS, MUD RECREATIONAL FACILITIES, PUBLIC PARKS AND TRAILS OR ANY OTHER FACILITIES ON ANY PORTION OF THE COMMERCIAL PROPERTY OWNED, OPERATED, MAINTAINED OR CONSTRUCTED BY THE MUD, THE COUNTY, THE CITY OR OTHER GOVERNMENTAL AUTHORITY OR DEDICATED TO THE CITY, THE COUNTY OR OTHER GOVERNMENTAL AUTHORITY OPEN TO OR USED BY MEMBERS OF THE GENERAL PUBLIC, (E) ANY BREACH OF REPRESENTATION OR WARRANTY, (F) FAILURE OF ANY IMPROVEMENTS ON THE COMMERCIAL PROPERTY OWNED, OPERATED, MAINTAINED OR CONSTRUCTED BY THE MUD, THE COUNTY, THE CITY OR OTHER GOVERNMENTAL AUTHORITY OR DEDICATED TO THE CITY, THE COUNTY OR OTHER GOVERNMENTAL AUTHORITY TO COMPLY WITH LEGAL REQUIREMENTS, INCLUDING ACCESSIBILITY LAWS SUCH AS THE AMERICANS WITH DISABILITIES ACT, AND/OR (G) COMMERCIAL COMMON AREA DAMAGE.

Section 15.16. **Liability of Commercial Owners for Damage.** Each Commercial Owner shall be liable to the Commercial Association for any damage to the Commercial Common Areas or Improvements thereon, and for any expense or liability incurred by the Commercial Association that may be sustained by reason of any act or omission by such Commercial Owner or its Commercial Occupants or its Designees, and for any violation of the Commercial Governing Documents by such Commercial Owner or its Commercial Occupants or its Designees. The Commercial Association shall have the power to levy and collect Commercial Charges and Individual Assessments against a Commercial Owner to cover the costs and expenses incurred by the Commercial Association on account of any such damage or any such violation of the Commercial Governing Documents, including interest and reasonable attorneys' fees and for any increase in insurance premiums directly attributable to any such damage or violation.

Section 15.17. **Reimbursement of Expenses.** Except as otherwise expressly stated in this Commercial Declaration or the other Commercial Governing Documents, whenever a sum is due and payable by a Commercial Owner to the Commercial Association, ACC or Commercial Declarant, such sum shall be paid within thirty (30) days of a Commercial Owner's receipt of written demand for such payment unless a later due date shall be set forth in the written demand. If a Commercial Owner fails to make such payment within such thirty (30)-day time period or at the later date required by the respective written demand, the outstanding unpaid amount shall accrue interest at the Past Due Rate. Additionally, such outstanding unpaid amount is subject to the rights of the Commercial Association contained in Section 6.4 of this Commercial Declaration.

[Remainder of Page is Intentionally Left Blank – Signature Page to Follow.]

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

COMMERCIAL DECLARANT:

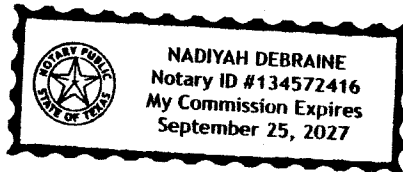
300 Acres, LLC,
a Texas limited liability company

By: Edible Group, LLP,
its sole Managing Member

By: 
Clayton S. Garrett, President

STATE OF TEXAS §
 §
COUNTY OF Fort Bend §

This instrument was acknowledged before me on the 7th day of September, 2024, by Clayton S. Garrett, the President of 300 Acres, LLC, a Texas limited liability company, on behalf of said limited liability company.





Notary Public, State of Texas

List of Exhibits:

- Exhibit A – Legal Description of the Commercial Property
- Exhibit B – Maintenance Responsibility Chart for the Commercial Property
- Exhibit C – Prohibited Uses on Commercial Owner Tracts

EXHIBIT A

LEGAL DESCRIPTION OF THE COMMERCIAL PROPERTY

Reserves B – Z and Reserves AA – ZZ, Block 1, according to the INDIGO COMMONS, PARTIAL REPLAT NO.1, recorded in the Official Public Records of Fort Bend County, Texas on March 26, 2024, in as Document No. 20240065.

EXHIBIT B

MAINTENANCE RESPONSIBILITY CHART FOR THE COMMERCIAL PROPERTY

Capitalized terms used in this Exhibit B which are not defined herein have the meanings given to such terms in Article I of the Commercial Declaration. This Maintenance Responsibility Chart may be modified by Supplemental Declarations pursuant to Section 2.5 of the Declaration.

| PORTION OF COMMERCIAL PROPERTY | COMMERCIAL ASSOCIATION RESPONSIBILITY | COMMERCIAL OWNER RESPONSIBILITY |
|---|--|--|
| Commercial Common Areas and Improvements thereon, including landscaping and trees and shrubs (also including licensed portions of the Commercial License Reserves and Limited Commercial Common Areas per <u>Subsection 8.1(d)</u> of the Commercial Declaration) | All aspects. | None. |
| Commercial Owner Tracts and Improvements thereon including fencing and all portions of fenced outdoor areas (including landscaping, trees and shrubs) located thereon and Systems exclusively serving such tracts <u>but excluding</u> unfenced landscaped portions of Commercial Owner Tracts the Commercial Association is obligated to maintain <u>after</u> landscaping, trees and shrubs are installed by the Commercial Owner | None. | All aspects. |
| Unfenced landscaped portions of Commercial Owner Tracts, including trees and shrubs (trimming, removal, replacements) <u>after</u> landscaping, trees and shrubs are installed by Commercial Owners | All aspects. | None. |
| Fencing on Commercial Common Areas | All aspects. | None. |
| Fencing on Maintenance Areas | All aspects. | None. |
| Private Roads | All aspects. | None. |
| Private Cottage Driveway (unless otherwise provided in the Commercial Plat) | All aspects. | None. |

EXHIBIT B – Maintenance Responsibility Chart

Declaration of Covenants, Conditions and Restrictions for Indigo Commercial Community

| | | |
|---|---|--------------|
| Property Roads (maintained according to <u>Article XIII</u> of the Commercial Declaration) | None. | None. |
| Association Maintained Commercial Parking Areas and Commercial Parking Areas located in the Commercial Common Areas | All aspects. | None. |
| Association Maintained Commercial Sidewalks and sidewalks located in the Commercial Common Areas | All aspects. | None. |
| Maintenance Areas in the Commercial Property | All aspects of the Maintenance Areas and Improvements thereon according to the written agreement(s) applicable thereto between a Governmental Authority and the Commercial Declarant or Commercial Association. | None. |
| Easements/Easement Areas located on Commercial Owner Tracts | None. | All aspects. |
| Easements/Easement Areas located on Commercial Common Areas, Maintenance Areas (Association Maintained Commercial Parking Areas and Association Maintained Commercial Sidewalks) or other portions of the Commercial Property, <u>excluding</u> Easement Areas on Commercial Owner Tracts | All aspects. | None. |
| Portions of the Commercial Common Areas subject to a Residential License or Temporary Licenses in connection with Limited Commercial Common Areas or Commercial License Reserves | All aspects. | None. |
| Commercial Parking Areas located in Commercial Common Areas and Maintenance Areas (in addition to Association Maintained Commercial Parking Areas, if any) | All aspects. | None. |

(Insurance obligations of Commercial Owners and the Commercial Association in connection with the maintenance obligations described above and in Article VIII of the Commercial Declaration are set forth in Article IX of the Commercial Declaration.)

EXHIBIT B – Maintenance Responsibility Chart
Declaration of Covenants, Conditions and Restrictions for Indigo Commercial Community

By and through this Maintenance Responsibility Chart and Article VIII of the Commercial Declaration, Commercial Declarant designates maintenance obligations for the Commercial Association, Commercial Owners and licensees of Commercial License Reserves and Limited Commercial Common Areas, which may deviate from what is standard or customary for mixed-use commercial properties, and the costs and expenses associated with these duties and obligations shall either constitute a Common Expense or Commercial Neighborhood Expense, as the case may be, or for the Residential License and Temporary Licenses for Limited Commercial Common Areas and Commercial License Reserves, the costs and expenses will be due and owing to the Commercial Association per the express terms of the respective license agreement, as further described in the Commercial Declaration. As further provided in Article VI of the Commercial Declaration, all Commercial Owners are required to pay Commercial Assessments. Commercial Owners of Commercial Buildings and/or Commercial Owner Tracts in Commercial Neighborhoods will be subject to and are obligated to pay Commercial Neighborhood Assessments *in addition to* Regular, Special and Individual Assessments. **This Maintenance Responsibility Chart may be modified by Supplemental Declarations pursuant to Section 2.5 of the Declaration and Commercial Owners are encouraged to review Supplemental Declarations which affect their respective Commercial Owner Tracts.**

Pursuant to Section 15.16 of the Commercial Declaration, and notwithstanding the foregoing, each Commercial Owner, including as a licensee of a Limited Commercial Common Area, and any licensee who is not a Commercial Owner under the Residential License or a Temporary License for a Commercial License Reserve shall be liable for any and all damage it, he or she, or any of its, his or her Commercial Occupants, Designees, employees, contractors, guests, visitors or invitees, as the case may be, causes, through negligence, willful misconduct or otherwise, to such Commercial Owner's Commercial Owner Tract and/or Improvements thereon, other Commercial Owner Tracts and/or Improvements thereon, Commercial Common Areas and/or any Improvements thereon, Maintenance Areas and any other portion of the Commercial Property and/or Improvements thereon according to the Commercial Declaration, Commercial Rules, license agreements for Temporary Licenses and any other Commercial Governing Documents.

Any portion of Commercial Owner Tracts and Improvements thereon which are not expressly designated in this Maintenance Responsibility Chart or the Commercial Declaration (or a Supplemental Declaration) to be maintained, repaired and replaced by the Commercial Association shall be maintained, repaired and replaced by the respective Commercial Owner of the Commercial Owner Tract at its, his or her sole cost and expense following Article VIII of this Commercial Declaration and any other applicable provisions in the Commercial Governing Documents.

EXHIBIT C

PROHIBITED USES ON COMMERCIAL OWNER TRACTS

No portion of the Commercial Property or any Commercial Owner Tract, Commercial Building or other Improvement thereon shall be used for any purpose which violates the Legal Requirements applicable to the Commercial Property and uses thereof, including the following purposes:

- (a) exclusively or primarily for residential use, excluding multifamily apartments and limited residential use of a Commercial Building by the respective Commercial Owner, as described in Section 3.1 of the Commercial Declaration;
- (b) any store, club or business devoted to the conduct of activities or the sale of media, substances, articles or merchandise which are currently illegal in the County or City or according to applicable Legal Requirements;
- (c) a gun or shooting range;
- (d) a cemetery, mortuary or funeral parlor;
- (e) a mobile home or trailer court, labor camp, junkyard or stockyard; provided, however, this prohibition shall not apply to the temporary use of construction trailers during periods of construction or reconstruction;
- (f) a landfill, garbage dump or facility for the dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not apply to trash and garbage facilities serving the Commercial Property;
- (g) any central or commercial laundry or dry-cleaning plant;
- (h) any use which emits an offensive or obnoxious odor (excluding normal cooking odors associated with a restaurant), fume, dust, vapor, noise or sound which can be heard or smelled outside of any Building or creates a fire, explosion or other hazards (including, without limitation, the display or sale of explosives or fireworks) or constitutes a public or private nuisance, or any use which creates noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (i) any warehouse;
- (j) any use which emits an excessive quantity of dust, dirt or ash; provided, however, this prohibition shall not preclude the sale of soils and fertilizers in containers or other garden materials or building materials if incident to the operation of a home improvement or general merchandise store;
- (k) any assembly, manufacturing, refining, smelting or mining operations, excluding any permitted rights arising under the Water Rights or Mineral Interests;
- (l) any drilling for and/or removal of subsurface substances, excluding any permitted rights arising under the Water Rights or Mineral Interests;

- (m) animal-breeding and -raising facilities (except that this prohibition shall not restrict retail pet stores);
- (n) any automobile, truck, trailer or recreational vehicle sales, leasing or display; provided, however, automobile manufacturers such as Polestar or Tesla may be permitted to operate a small-scale retail showroom where cars will be parked inside of the Commercial Building in which such store is located and not on any exterior portions of the Commercial Owner Tracts or Commercial Common Areas subject to any additional restrictions as may be established by the Commercial Declarant during the Development Period, or the Commercial Association thereafter, in permitting such use;
- (o) any body shop repair operation, gas/service station and/or other facilities that dispense gasoline, diesel or other petroleum products as fuel;
- (p) any car wash; and
- (q) any tire or battery store.

CONSENT AND SUBORDINATION

The undersigned, Silver Heights Development LLC, a Connecticut limited liability company (the "Lender") signatory to that certain Construction Loan Agreement dated effective July 15, 2021, by and between the Commercial Declarant and Lender, hereby consents to the filing of the Declaration of Covenants, Conditions and Restrictions for Indigo Commercial Community, as may be modified or amended from time to time (the "Commercial Declaration") and, subject to the terms and provisions of this Consent and Subordination, subordinates the lien and security interests of that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated July 15, 2021, and recorded as Document No. 2021118720 in the Official Public Records of Fort Bend County, Texas, as modified or amended from time to time (the "Deed of Trust") to the Commercial Declaration; provided, however, (a) notwithstanding anything in this Consent and Subordination, the Commercial Declaration or applicable laws, as amended, to the contrary, the lien and the security interests of the Deed of Trust are, and shall remain, superior in all respects to all liens and security interests created by the Commercial Declaration, and (b) this Consent and Subordination (i) shall not be construed or operate as a release of the lien and security interests of the Deed of Trust but shall instead confirm that the lien and security interests of the Deed of Trust shall hereafter be upon the Commercial Property, (ii) shall not release, subordinate, impair or otherwise affect any and all rights the Lender has under the Deed of Trust in the event of a foreclosure of the lien and security interests of the Deed of Trust, and (iii) shall not modify or amend the terms and provisions of the Deed of Trust.

Silver Heights Development LLC,
a Connecticut limited liability company

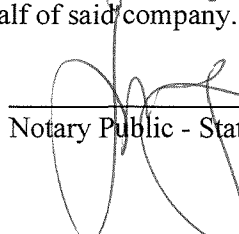
By: 

Printed Name: Seth Greenwald

Title: Authorized Signatory

STATE OF Connecticut §
COUNTY OF Fairfield § Southwalk

This instrument was acknowledged before me on this 20th day of August, 2024, by Seth Greenwald, the Authorized Signatory of Silver Heights Development LLC, a Connecticut limited liability company, on behalf of said company.


Notary Public - State of Connecticut

My Commission Expires:

| |
|--|
| <p style="text-align: center;">JULIE MAGNANO Notary Public, State of Connecticut My Commission Expires 06/30/2028</p> |
|--|

2024092584
ELECTRONICALLY RECORDED
Official Public Records
9/23/2024 1:33 PM



Laura Richard
Laura Richard, County Clerk
Fort Bend County Texas
Pages: 67 Fee: \$ 279.00

After Recording Return To:
ARR Law PLLC
5600 W. Lovers Lane, Suite 116-344
Dallas, Texas 75209
Email: amy@arlawpllc.com

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
INDIGO COMMERCIAL COMMUNITY
Fort Bend County, Texas

August 2024

Stewart Title
GF# 2004713