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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**INDIGO RESIDENTIAL COMMUNITY**

**Fort Bend County, Texas**

**June 2022**

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

This Declaration of Covenants, Conditions and Restrictions for Indigo Residential Community is made on June 27, 2022 by the Residential Declarant.

**RECITALS**

- A. Residential Declarant is the fee simple owner of the Residential Property described in Exhibit A attached to this Residential Declaration.
- B. The Residential Property is part of that certain master planned community known as "Indigo" located in the County and described in the Foundation Covenant, and Residential Declarant is the Founder.
- C. Residential Declarant desires to submit and subject the Residential Property to this Residential Declaration, the Foundation Covenant and the other Residential Governing Documents.
- D. By this Residential Declaration, Residential Declarant desires to: (i) establish a general plan for the development of the Residential Property; (ii) provide for the creation, maintenance, repair, improvement and replacement of the Common Areas as set forth in the Residential Governing Documents; (iii) provide for the implementation of the powers and duties of the Residential Declarant and the Residential Association as set forth in the Residential Governing Documents; (iv) preserve and enhance the Residential Property; (v) create and grant the Easements; and (vi) implement the purposes of the Residential Association as provided for in the Residential Governing Documents.
- E. Residential Declarant has caused the Residential 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 Residential Declaration.

NOW, THEREFORE, Residential 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 Residential Property and shall be a burden and benefit to Residential Declarant, the Residential Association, the Residential Owners and their respective heirs, legal representatives, successors and assigns:

**ARTICLE I  
DEFINITIONS**

Section 1.1. **Defined Terms.** Each capitalized term used in this Residential Declaration shall have the meaning set forth in this Section 1.1:

"Access Easement." An easement as more particularly described in Section 7.2 of this Residential Declaration.

"Act." Chapter 209 of the Texas Property Code applicable to property owners' associations, as amended from time to time.

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

**"Alleys."** Those narrow streets or paved passageways which afford access to certain Residential Lots as shown on the Plat, paved portions of which will be located on Common Areas and landscaped portions of which may be located on certain Residential Lots, as shown on Exhibit D to this Residential Declaration, which Alleys will be maintained in accordance with the Maintenance Responsibility Chart attached as Exhibit B to this Residential Declaration.

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

**"Architectural Control Committee" or "ACC."** The committee established in accordance with Article XII of this Residential Declaration.

**"Architectural Guidelines."** The procedural or substantive rules, guidelines, criteria, requirements, standards and procedures adopted by the Residential Declarant or by the Residential Board, as the case may be, in accordance with this Residential Declaration and which may be included in the Rules and establish and include, without limitation, the standards and requirements for design, development, construction and planning for Residences and other Improvements on the Residential Property and Residential Lots, Signage, and the use and occupancy of the Residential Lots, as may be amended from time to time.

**"Association Maintained Fencing."** The fencing or perimeter wall located on portions of Residential Lots, the locations of which are further described on Exhibit C to this Residential Declaration, which are subject to the Fencing Easement.

**"Association Maintained Sidewalks."** The sidewalks located on Residential Lots, including but not limited to the Shared Sidewalks, which the Association maintains and which are subject to the Sidewalk Easement.

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

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

**"City."** The City of Richmond, Texas.

**"Claim" or "Claims."** Any and all demands, actions, causes of action, proceedings, losses, costs, expenses (including reasonable attorneys' fees applicable thereto), damages 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 Residential Owner of any Residential Lot, excluding Residential Declarant, who is a Member of the Residential Association.

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

**"Cluster Home."** Certain type(s) of Residences located on their own Residential Lots but situated in groupings or clustered around a particular area of the Residential Property, and which Residential Lots may have Shared Driveways and Shared Sidewalks.

**"Commercial Association."** Indigo Commercial Community Association, Inc., a Texas nonprofit corporation, formed or to be formed, and as further described in the Commercial Declaration.

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

**"Commercial License."** A license granted by the Residential Declarant to a Commercial Owner or the Commercial Association, as more particularly described in Section 7.5 of this Residential Declaration.

**"Commercial Lot."** Any lot, parcel or tract of land which is part of the Commercial Property and subject to the Commercial Declaration, and which is not part of the Residential Property or Annexed Property.

**"Commercial Lot Occupant."** Any individual entitled to the use and occupancy of a Commercial Lot or commercial improvements thereon pursuant to any lease, sublease, or other rental agreement with a Commercial Lot Owner.

**"Commercial Owner."** Any Person, including Commercial Declarant, owning fee title to a Commercial Lot in the Community, as further described in the Commercial Declaration.

**"Commercial Property."** The real property defined and described in Exhibit A to the Commercial Declaration which is not part of the Residential Property or Annexed Property.

**"Common Areas."** Portions of the Residential Property, including Recreational Facilities, Neighborhood Common Areas, if any, and the Improvements thereon which are: (a) identified as common areas, green space, open space, Reserves, or a Residential Lot identified with an "X", on the Plat; (b) owned by the Residential Association (other than any Residential Lot acquired by the Residential Association through the foreclosure of an Assessment Lien according to this Residential Declaration); (c) leased by or assigned to the Residential Association through a lease, contract or other agreement; (d) an Easement Area naming the Residential Association as grantee, including without limitation the Easements shown on the Plat located on the Residential Property, but excluding Residential Lots owned by Residential Owners, the Shared Driveway Easement, the Sidewalk Easement and the Fencing Easement; (e) areas designated as Common Areas by Residential Declarant under this Residential Declaration including portions of Alleys (but excluding landscaped portions thereof located on Residential Lots), Private Roads, or other portions of the Residential Property owned and maintained by the Residential Association, as may be amended; and (f) any other area shown on the Plat or otherwise designated or intended by the Residential Declarant or Residential Association as an area under the exclusive control of the Residential Association, an area intended for the use and enjoyment of all Residential Owners, or for the use and enjoyment of all Residential Owners in a particular Neighborhood, but excluding Property Roads, Public Parks and Trails, MUD Recreational Facilities and any other portions of the Residential Property owned by or included in the MUD or dedicated or conveyed to the City, or open to members of the general public.

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

"Common Area Easement." An easement as more particularly described in Section 7.2 of this Residential Declaration.

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

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

"Community Farm." That certain real property which may be, but is not obligated to be, annexed into the Residential Property by Residential Declarant during the Development Period that is used for the small-scale commercial (30 acres or less) or noncommercial cultivation of fruits, herbs, flowers, vegetables, ornamental plants, or the raising of animals, typically in conjunction with a farm stand or farmer's market, community garden or other community events and programming.

"Community Property." That certain real property located in the County and more particularly described in Exhibit A attached to the Foundation Covenant of which includes the Residential Property and the Commercial Property.

"Community Wide Maintenance Standard." Good repair and attractive and clean condition for the Residential Property necessary to maintain the Common Areas and Residential Lots 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 marketing and advertising materials in any format, including electronic, hard copy or soft copy format or on any website, for or relating to the Community, Residential Property, Residential Lots, Common Areas, Improvements, Recreational Facilities, MUD Recreational Facilities, or Community Farm existing prior to construction or final and full completion which are conceptual in nature and are intended to be used for illustrative purposes only.

"Cottage." A certain type of single family detached Residence located on a Residential Lot which does not include a garage or driveway but rather will be served by a Cottage Parking Area for vehicle parking.

"Cottage Parking Area." The parking areas located in a Neighborhood Common Areas intended for the exclusive use of and vehicle parking for those Residence Owners owning Cottages.

"County." Fort Bend County, Texas.

**"Delinquent Assessment Policy."** That certain policy set forth in Article II of the Rules which establishes guidelines in accordance with the Act for the payment of delinquent assessments and other amounts owed to the Residential Association, as may be amended and supplemented from time to time.

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

**"Development Agreement."** The Development Cooperation Agreement entered into by and between Residential Declarant and the City of Richmond, Texas recorded under that certain Memorandum of Development Agreement on November 15, 2022, in the Official Public Records of Fort Bend County, Texas as Document No. 2022021655, as may be amended and supplemented.

**"Development Period."** Unless earlier terminated by Residential Declarant by a written instrument executed by Residential Declarant and recorded in the Real Property Records, the time period commencing upon the date this Residential Declaration is recorded in the Real Property Records and ending on the later to occur of (a) the date that is ten (10) consecutive years after such recordation date; and eighteen (18) months after the date upon which Residential Declarant no longer owns any portion of the Residential Property.

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

**"Development Rights."** Those rights set forth in Article XI of this Residential Declaration.

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

**"Dispute."** Any Claim, grievance or other dispute arising out of or relating to: (a) the failure of any Residential Owner to obtain prior approval from the ACC for any construction of or changes, modifications, or alterations to Improvements on such Residential Owner's Residential Lot as required by this Residential Declaration, Architectural Guidelines, Rules or any other Residential Governing Document; (b) any prohibited use within the Residential Property; (c) the failure of any Residential Owner to comply with requirements set forth in the Residential Governing Documents; (d) the failure of any Residential Owner to maintain its Residential Lot and all Improvements thereon for which such Residential Owner is responsible for maintaining, in accordance with the Residential Governing Documents and in compliance with all Legal Requirements; (e) the interpretation, application or enforcement of the Residential Governing Documents; (f) any conflict or dispute arising between or among Residential Owners, the Residential Association, the Architectural Control Committee, the Residential Board or Residential Declarant; (g) the proper party to bear a maintenance cost or expense; (h) any other rights, obligations and duties of any Residential Owner under the Residential Governing Documents; (i) the authority of the Residential Association, Residential Declarant, or the Architectural Control Committee under any Legal Requirement or under the Residential Governing Documents to: (i) require any Residential Owner to take any action or not to take any action involving such Residential Owner's Residential Lot or Improvements thereon; or (ii) alter, subtract from or add to the Common Areas or the Residential Property; or (j) the failure of the Residential Association, in accordance with all Legal Requirements and the Residential Governing Documents to: (i) properly conduct elections; (ii) give adequate notice of meetings or actions; (iii) properly conduct meetings; or (iv) allow inspection of the Minute Book or such other books and

records of the Residential Association according to the Records Policy. 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 Residential Declaration: (1) any suit by Residential Declarant, the Residential 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 Residential Declarant's, the Residential Association's or the Architectural Control Committee's ability to enforce the provisions of the Residential Governing Documents; (2) any action permitted under Section 12.11 of this Residential Declaration; (3) any action permitted under Article VI of this Residential Declaration in connection with the enforcement of any Residential Owner's obligation to pay Assessments or collection of any past due or unpaid Assessments; (4) any suit between Residential Owners which does not include Residential Declarant or the Architectural Control Committee, if such suit asserts a dispute that would constitute a cause of action independent of this Residential Declaration; (5) any disagreement that primarily involves title to any Residential Lot; 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 Residential 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 Residential Declaration.

"Drainage Easement." An easement as more particularly described in Section 7.2 of this Residential 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 Common Areas, Residential Lots, or any portion of the Residential Property, whether public or private, necessary for the proper drainage of water and liquid substances, including surface stormwater runoff.

"Duet." A certain type of single family attached Residence located on its own Residential Lot but which shares a Party Wall with another Residence.

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

"Easements." Collectively, those easements described in Section 7.1 and Section 7.2 of this Residential 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 Residential Property or the Improvements.

"Fencing Easement." An easement as more particularly described in Section 7.2 of this Residential Declaration.

"Fine Policy." That certain policy set forth in Article II, Section 2.2 of the Rules which establishes guidelines and procedures in accordance with the Act for violations of the Residential Governing Documents and the levy of fines in connection with same, as may be amended and supplemented from time to time.

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

"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.

"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, district, municipal 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 Residential Declaration, may be assessed, levied or imposed upon the Residential Property or any Residential Lot therein by any Governmental Authority.

"Hazardous Substances." Any substance, product, waste, or other material which is or becomes listed, regulated, or addressed 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 Residential Property, Common Areas, and Residential Lots including, without limitation, any man-made improvements, buildings, Townhome Buildings, Residences, Cottage Parking Areas, parking lots, parking structures, parking spaces, Shared Driveways, Alleys, alleyways, driveways, roads, roadways, ramps, loading areas, equipment, utilities, fencing, antennae, walls (including retaining walls), screens, landscaping, hardscape, streetscapes, electrical poles, grading and grading changes, park areas and equipment, walkways, bridges, Recreational Facilities, MUD Recreational Facilities, exterior lighting facilities, mailboxes, including cluster mailboxes, Drainage Facilities, sidewalks (including all Association Maintained Sidewalks), curbs, and grates existing or in the future placed on any portion of the Residential Property, including all Systems.

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

"Individual Assessments." Assessments established, imposed and levied from time to time by the Residential Association pursuant to Section 6.2 of this Residential Declaration.

"Insurance Trustee." The Residential Association acting in the capacity of a trustee in accordance with the provisions of Section 9.4 of this Residential Declaration to negotiate losses under any Residential Property insurance policies required to be obtained by the Residential Association, as applicable, in this Residential Declaration.

"Landscape and Signage Easement." An easement as more particularly described in Section 7.2 of this Residential Declaration.

"Legal Requirements." Any Restrictive Covenants and any other matters of record and any and all then-current judicial decisions, statutes (including without limitation the Act and Chapters 202 and 207 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 Residential Property, Residential Lots, or any Residential Owner's use and enjoyment of any portion of the Residential Property or any Residential Lot, including, without limitation MUD requirements, requirements for Mineral Interests and Water Rights, Environmental Laws, zoning ordinances, subdivision and building codes, flood disaster laws 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 lien or encumbrance upon a Residential Lot or other portion of the Residential Property.

**"Maintenance Area."** Those portions of the Residential Property and Improvements thereon, excluding Neighborhoods and Residential Lots, not owned by the Residential Association but for which the Residential Association has maintenance responsibilities, if any, pursuant to a written agreement with a Governmental Authority, which may include the MUD, and as may be described in the Maintenance Responsibility Chart.

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

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

**"Minute Book."** The record-keeping mechanism of the Residential Association that contains certain information and documentation required to be kept by the Residential Association and available for inspection by Residential Owners per the Records Policy and any other records and information that may be required to be kept according to the Residential Governing Documents.

**"Member(s)."** A Residential Owner of a Residential Lot in the Residential Property, including Class A Members and the Class B Member.

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

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

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

**"MUD Recreational Facilities."** Those recreational facilities, excluding the Recreational Facilities, located on the Residential 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 park(s) and recreational facilities will become the property of the City, as further explained in the Development Agreement.

"Neighborhood." A geographic area of the Residential Property containing Residences of one or more housing types, or a group of Residences, such as Townhomes, regardless of their geographic location on the Residential Property, consisting of the same housing type, as may be designated by the Residential Association, the Residential Owners of which share common interests for their Residential Lots which are unique and in addition to the common interests shared by all Residential Owners in the Residential Property, as further described in defined in Section 3.10 of this Residential Declaration.

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

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

"Neighborhood Common Areas." Those Common Areas and Improvements located in a particular Neighborhood, including Cottage Parking Areas, intended for the exclusive use and enjoyment of Residential Owners owning Residences in such Neighborhood, as more particularly described in Section 3.10 of this Residential Declaration.

"Neighborhood Expenses." The actual and estimated expenses incurred by or on behalf of the Residential Association for the benefit of Residential Owners in a particular Neighborhood, including expenses of administration, management, maintenance, care and/or operation of any Neighborhood Common Areas, expenses arising out of the provision and maintenance of Neighborhood Services, and/or expenses incurred for the repair, maintenance, upkeep, care and replacement of certain Improvements located on Residential Lots in a Neighborhood, and the easements associated with them, which the Residential Association has the duty to maintain such as Shared Driveways, fencing and Association Maintained Sidewalks.

"Neighborhood Services." Service provided by the Residential Association to Residences and/or Residential Lots located in a particular Neighborhood which services are not offered or provided to all Residences or all Residential Lots in the Residential Property.

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

"Party Wall." A wall located on or near the dividing line between two Residences constructed upon two Residential Lots for the benefit of both of such Residences and Residential Lots.

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

"Payment Plan." Shall have the meaning as defined in Article II of the Rules.

**"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.

**"Plans."** The plans and specifications for the development and construction of a Residence and any other Improvements on a Residential Lot prepared by or on behalf of a Residential Owner and approved by all applicable Governmental Authorities, and which include all applicable items set forth in the Architectural Guidelines and any other information requested or required by the ACC.

**"Plat."** A final subdivision plat for any portion of the Residential Property recorded in the Real Property Records, as may be amended.

**"Private Roads."** Roads, roadways, Alleys, drives, driveways, and other rights-of-way which are located on the Residential Property, are not owned by the MUD, County or City, are intended for private use and are maintained and controlled by the Residential Association.

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

**"Public Parks and Trails."** Any parks and trails located on the Residential 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.

**"Records Policy."** That certain policy adopted by the Residential Board and set forth in Article III of the Rules that establishes guidelines in accordance with the Act for the retention, inspection, production, copying of Residential Association records, and costs associated therewith, for the Minute Book and certain other books and records of the Residential Association, as amended from time to time.

**"Recreational Facilities."** Those certain facilities and amenities, excluding any MUD Recreational Facilities, located in the Common Areas or other portions of the Residential Property, if any, intended for the use and enjoyment of Residential Owners and Residential Occupants and not open to the public, as further provided in this Residential Declaration, which may include, without limitation, certain trails, paths, swimming pools, clubhouses, playgrounds, play areas, mews, outdoor kitchen and cooking areas, parks, fitness facilities, sports facilities, ponds and other areas designated for recreational activity.

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

**"Rental Cap."** The limitation set forth in the Development Agreement prohibiting the Residential Declarant from allowing the rental of more than 20% of the total number of Residences at any given time.

**"Rental Community Restriction."** The restriction set forth and further described in the Development Agreement prohibiting the creation or allowance of "rental communities", also known as "build-to-rent" communities, in the Residential Property, as further defined and described in the Development Agreement.

**"Reserves."** The areas shown and identified as "Reserves" on the Plat which are Common Areas.

**"Residence."** A building, dwelling or other structure located on a Residential Lot used for, or intended to be used for, single family residential purposes including, without limitation, Clusters, Cottages, Duets, Townhomes and any other architectural type of attached or detached housing.

**"Residence Skin."** The exterior surfaces of a Residence including siding, stone, brick, wood, mortar, fascia, soffits, chimney (if any), architectural accents, paint and stain, but excluding all exterior gutters, chimney venting system, windows, doors (including garage doors), window and door trims, foundations, and the Residence's structural frame.

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

**"Residential Association."** Indigo Residential 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 Residential 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 Residential Association from time to time.

**"Residential Board."** The board of directors of the Residential Association.

**"Residential Budget."** The annual budget prepared by the Residential Association that sets forth the anticipated Common Expenses for the ensuing fiscal year, as further described in Section 6.1 of this Residential Declaration.

**"Residential Builder."** A Residential Owner, excluding Residential Declarant, who is in the business of constructing residences and residential improvements for resale to third parties and acquires a portion of the Residential Property or Residential Lots from Residential Declarant for the purpose of constructing Residences and other Improvements on Residential Lots for resale to third party Persons.

**"Residential Certificate."** The Certificate of Formation for the Residential 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.

**"Residential Community Enhancement Fee."** The Residential Community Enhancement Fee defined and described in the Foundation Covenant to be paid in connection with the transfer of title to Residential Lots.

**"Residential 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 Residential Declarant; and, to the extent any rights or powers reserved to Residential 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.

"Residential Declarant Advisory Committee." Shall have the meaning assigned to such term in Section 5.3 of this Residential Declaration.

"Residential Declarant Control Period." The period during which Residential Declarant shall have the right to appoint and remove Directors, Officers and members on the Residential Board, subject only to Subsection 5.1(d)(i) of this Residential Declaration, and exercise Class B Member voting rights, as further described in Article V of this Residential Declaration, commencing on the date this Residential Declaration is recorded in the Real Property Records and running concurrently with the Development Period, unless earlier terminated by Residential Declarant as further described in Section 4.5 of this Residential Declaration.

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

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

"Residential Lot." Any lot or tract of land in the Residential Property, upon which a Residence is or will be constructed or which is intended for the construction of a Residence, excluding any Residential Lot or tract of land which is a Common Area.

"Residential Occupant." Any Person from time to time entitled to the use and occupancy of any Residential Lot and Residence thereon pursuant to an ownership right or any lease, or other similar agreement granted by a Residential Owner.

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

"Residential Property." That certain real property located in the County and more particularly described in Exhibit A attached to this Residential Declaration, together with all and singular the Easements, rights, and appurtenances pertaining thereto and any Annexed Property.

"Restrictive Covenants." Collectively, all instruments filed of record in the Real Property Records affecting title to the Residential Property other than this Residential Declaration and the Residential Governing Documents, including, without limitation, the Plat, the Development Agreement, the Rental Cap and Rental Community Restriction therein contained, agreements by and between Residential Declarant and/or the Residential Association with the MUD or the City, and instruments related to the Mineral Interests and Water Rights, as each may be amended and supplemented.

"Rules." The Rules and Regulations established for the Residential Association, Residential Property, Residential Owners and Residential Lots and recorded in the Real Property Records, as may be amended from time to time, which include, without limitation, the Delinquent Assessments Policy, the Fine Policy and the Records Policy.

**"Shared Driveway."** A private driveway located on one or more Residential Lots in a Neighborhood or belonging to a certain housing type which comprises a Neighborhood which is shared by Residential Owners and used for vehicular access, ingress and egress of the respective Residential Lots.

**"Shared Sidewalks."** Those sidewalks located on one or more Residential Lots on which Cluster Homes are or will be constructed which are maintained by the Residential Association and included in the Association Maintained Sidewalks.

**"Shared Driveway Easement."** An easement as more particularly described in Section 7.2 of this Residential Declaration.

**"Sidewalk Easement."** An easement reserved for the Association Maintained Sidewalks, as more particularly described in Section 7.2 of this Residential Declaration.

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

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

**"State."** The State of Texas.

**"Supplemental Declaration."** A written instrument, executed by Residential Declarant, and any other owner of the real property to be annexed, if applicable, and recorded in the Real Property Records that subjects Annexed Property to this Residential Declaration or otherwise supplements the covenants, conditions or restrictions contained in this Residential Declaration, including the Maintenance Responsibility Chart, as to such Annexed Property.

**"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 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, telephone, and the internet, and conduits, plumbing chases and mechanical shafts on the Residential Property that are designed to serve the Common Areas and Improvements thereon or one or more Residential Lots.

**"Systems and Services Easement."** An easement as more particularly described in Subsection 7.2 of this Residential Declaration.

**"Taking."** The taking or threat of taking of all or a portion of the Residential Property or 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 Residential Property or Common Area in lieu thereof.

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

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

**"Townhome."** A single-family townhome style of Residence located in a Townhome Building, including any garage included in or attached thereto, located on a Residential Lot.

**"Townhome Building."** A building or structure on the Residential Property in which two or more Townhomes are located.

**"Townhome Maintenance Obligations."** The maintenance, repair, upkeep, replacement and other obligations, including yard maintenance, the Residential Association possesses in connection with Townhomes, Townhome Buildings and other Improvements installed in, on or under Residential Lots upon which Townhomes are constructed which are located in a Neighborhood and which are set forth in the Maintenance Responsibility Chart or a Supplemental Declaration, as applicable, as further described in Section 8.2 of this Residential Declaration.

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

**"Withdrawal Notice."** Shall have the meaning as defined in Section 11.3 of this Residential Declaration.

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

## **ARTICLE II SUBMISSION**

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

Section 2.2. **Residential Owner Acknowledgment.** Each Residential Owner is subject to this Residential Declaration and the Residential Governing Documents and all covenants, conditions, and restrictions contained therein. By acceptance of a deed, or other instrument establishing title, ownership or the right of use and occupancy in any portion of the Residential Property, including any Residential Lot or any portion of a Residential Lot, each Residential Owner and Residential Occupant acknowledges that it has been given notice of this Residential Declaration and the other Residential Governing Documents; that use of any portion of the Residential Property and Residential Lot is limited and governed by the provisions of the Residential Governing Documents; that the Residential Declarant, during the Development Period, and the Residential Board thereafter may, from time to time, adopt and amend definitions of words, phrases and terms

used in this Residential Declaration and other Residential Governing Documents; that the Residential Declarant may grant one or more Commercial Licenses during the Development Period; that the use, enjoyment and marketability of the Residential Property and the Residential Lots can be affected by this Residential Declaration; and, that the Residential Governing Documents may be amended and can change from time to time.

Section 2.3. **No Reliance on Conceptual Plans.** By acceptance of a deed, or other instrument establishing title, ownership or the right of occupancy in any portion of the Residential Property, including any Residential Lot or any portion of a Residential Lot, each Residential Owner and Residential Occupant acknowledges and agrees the Residential Property, and its uses and Improvements, including Recreational Facilities and MUD Recreational Facilities, that may be shown in any Conceptual Plans, at any time, are subject to change, and that portions of the Residential Property, land, and uses thereof, surrounding the Residential Property, Improvements on the Residential Property, and uses within the Residential Property or the Common Areas may include uses not shown or described in any Conceptual Plans. Neither Residential Declarant nor any Residential Builder makes any representation or warranty of any kind concerning uses and Improvements shown in any Conceptual Plans or otherwise intended or contemplated for the Community Property, Residential Property, land, or uses thereof, surrounding the Residential Property or the Common Areas, and no Residential Owner or Residential Occupant is entitled to rely upon the Conceptual Plans or any statements made by the Residential Declarant, Residential Builders, Affiliates, or any of Residential Declarant's members, managers, employee's, agents or representatives regarding proposed land uses in or around the Community Property, Residential Property or in connection with Common Areas or planned Improvements, including Recreational Facilities and MUD Recreational Facilities, in making the decision to purchase or lease a Residential Lot. Each Residential Owner acquiring a Residential Lot acknowledges that development of the Residential Property will extend over several years and agrees that the Residential Association will not engage in, or use Residential Association funds to support, protest, challenge, or make any other form of objection to the development of all or any portion of the Residential Property, including Common Areas and Improvements thereon, or to changes in the Conceptual Plans.

Section 2.4. **Residential Governing Documents; Residential Builder Disclosure Obligation.** The Residential Property's Residential Governing Documents consist of the following documents, and in the event of any conflict arising between the provisions of the Residential Governing Documents, the Residential Governing Documents shall control in the following order: (a) the Development Plan; (b) the Development Agreement; (c) the Act; (d) Chapter 202 of the Texas Property Code, as amended; (e) TNCL; (f) Restrictive Covenants; (g) Foundation Covenant; (h) this Residential Declaration, as amended by any Supplemental Declaration or amendment; (i) the Bylaws; (j) the Residential Certificate; (k) Architectural Guidelines; (l) Rules (including the Delinquent Assessments Policy, Fine Policy and Records Policy therein contained); and (m) any other rules, guidelines, policies and dedicatory instruments adopted by the Residential Board of Directors and recorded in the Real Property Records of the County, as each of the documents listed in items Subsections 2.4 (a)-(m) may be amended from time to time. Any conflict between the provisions of multiple Supplemental Residuals applying to the same portion of Residential Property or Annexed 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 Residential Property. **It is the Residential Declarant's intention for the Residential Governing Documents to comply with the Act, Restrictive Covenants, and applicable Legal Requirements, and Residential Declarant may amend the Residential 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 Residential Owner, to bring such documents in compliance with the Act, Restrictive Covenants and such Legal Requirements.** After the purchase of any portion of the Residential Property by a Residential Builder from Residential Declarant, and in connection with all sales of Residential Lots, Residential Builders shall strictly

comply with all Legal Requirements required in the State for the sale of residential property including, without limitation, disclosures required for any Residential Lots in connection with the MUD.

Section 2.5. **Supplemental Declarations.** During the Development Period and pursuant to Article XI of this Residential Declaration, Residential Declarant shall file any Supplemental Declaration for the Residential Property in the Real Property Records which shall include, at a minimum, the following: (a) an adequate legal description covering the Residential Property or any Annexed Property, as applicable, subject to a Supplemental Declaration; (b) a signature page duly executed by the Residential Declarant and, if applicable, a Residential Owner, if Residential Declarant is not the owner or such other owner of any Annexed Property, as applicable; (c) a description of any conditions and/or restrictions that apply to the Annexed Property or portions of the Residential Property subject to the Supplemental Declaration other than those set forth in this Residential Declaration; (d) a reference to this Residential Declaration, stating the date of recordation and recording information of this Residential Declaration in the Real Property Records; and (e) a reference to the Foundation Covenant, stating the date of recordation and recording information of the Foundation Covenant in the Real Property Records.

### **ARTICLE III USES, RESERVATIONS AND RESTRICTIONS**

Section 3.1. **Permitted Uses.** Subject to the terms of this Residential Declaration, the Restrictive Covenants, Architectural Guidelines and Rules, Residential Lots and Improvements thereon shall be used only for single-family residential purposes in accordance with the Residential Governing Documents and Legal Requirements. Residences may be leased according to the leasing requirements in the Rules and Legal Requirements subject to the Rental Cap and the Rental Community Restriction to which all Residential Lots are subject. Except for Permitted Short-Term Rentals, as defined in the Rules and hereinafter described, no Residential Lot or Residence thereon may be used, leased, or occupied for hotel or transient purposes and leases shall be for terms of no less than six consecutive months. No professional, business, or commercial activity to which the general public is invited shall be conducted in, on, or from any Residential Lot or Improvement. Notwithstanding the foregoing, and subject to the limitations, processes, and procedures outlined in the Rules, certain Residences which are particularly described in the Rules together with their location in the Residential Property, may be used, leased, and occupied for Permitted Short-Term Rentals and such use shall not constitute a professional, business or commercial activity prohibited by this Declaration or other Residential Governing Documents. THE RENTAL CAP LIMITS THE RENTAL OF RESIDENCES TO TWENTY PERCENT (20%) OF ALL RESIDENCES IN THE RESIDENTIAL PROPERTY; THEREFORE, EACH RESIDENTIAL OWNER IS HEREBY ADVISED TO CONTACT THE RESIDENTIAL ASSOCIATION OR MANAGER BEFORE ENTERING INTO A LEASE OR PERMITTED SHORT-TERM RENTAL TO CONFIRM SUCH LEASE OR PERMITTED SHORT-TERM RENTAL WILL NOT VIOLATE THE RENTAL CAP.

Section 3.2. **Common Areas.** No Residential Owner shall obstruct or interfere with the use by other Residential Owners, Residential Declarant, the Residential Association or other permitted Persons, including Commercial Owners and Commercial Lot Occupants possessing use rights arising out of a Commercial License, if applicable, of the Common Areas, and no Residential Owner may keep or store anything on any part of the Common Areas or portion of the Residential Property apart from such Residential Owner's Residential Lot without the prior written approval of the Residential Association. No Residential Owner shall alter, construct in or on or remove anything from the Common Areas without the prior written approval of the Residential Association. Neither the Residential Association nor Residential Declarant is obligated to construct any particular type or kind of Recreational Facilities or other Improvements on or within the Common Areas, Recreational Facilities or any other portion of the Residential Property.



Section 3.3. **Signage Rights.** Residential Declarant shall have the right to erect Signage on Improvements or on any Residential Lot or other portions of Residential Property it owns during the Development Period and may grant approval to any other Person, including Residential Builders, in its sole and absolute discretion, to erect Signage on Improvements or on any other portion of a Residential Lot; provided, however, that such Signage complies with the Legal Requirements and any Signage guidelines set forth in the Architectural Guidelines. Notwithstanding the foregoing, Residential Lots designated for use as single-family residential use that have been conveyed to Residential Owners who will occupy or use such Residential Lots for residential purposes shall not be permitted to erect Signage except as expressly provided in and in strict accordance with the provisions related thereto set forth in the Rules.

Section 3.4. **MUD.** The Residential Property is located within the MUD and in the City's Extraterritorial Jurisdiction ("ETJ") according to the Development Agreement. The Residential Declarant has or will petition for inclusion of those portions of the Residential 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 Residential Property, and provides for water, sewer, drainage, and road facilities, including the Property Roads. 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. Residential Owners, including Residential Builders, selling Residential Lots are advised to determine, at the time they are selling their Residential Lots, 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 Residential Owners shall strictly comply with such notice requirements and any other Legal Requirement required for the sale. A sample of a MUD notice is attached to this Residential Declaration as Exhibit E.

Section 3.5. **Landscaping Requirements.** Unless otherwise expressly specified in the Maintenance Responsibility Chart or other portion of this Residential Declaration, a Supplemental Declaration or other Residential Governing Documents, all portions of a Residential Lot not improved by Improvements, including not improved by fencing, and which are visible from any Private Road or Property Road or Common Area on the Residential Property shall be landscaped and maintained by the Residential Owner thereof (other than Residential Declarant) in a manner that complies with the Community Wide Maintenance Standard and as otherwise provided in the Rules and/or Architectural Guidelines, as applicable, or as otherwise approved by the ACC pursuant to Article XII of this Residential Declaration. If any Residential Owner fails to install or maintain required landscaping on its Residential Lot in accordance with the Residential Governing Documents, the Residential Association may, but shall not be obligated to, perform such landscaping maintenance or other requirements in lieu of such Residential Owner pursuant to Section 8.2 of this Residential Declaration, or as otherwise set forth in the Architectural Guidelines, and Residential Owner shall be responsible to pay all costs and expenses incurred by the Residential Association in its exercise of such rights.

Section 3.6. **Environmental.**

(a) **No Hazardous Substances.** No Residential Owner, Residential Occupant 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 Residential Property, including any surface waters or groundwater located on the Residential Property or into Systems, including sanitary or storm sewer systems serving the Residential Property without first complying with all applicable Legal Requirements including performing

pre-treatment, obtaining applicable Government Approvals and giving notices as required by Environmental Laws.

(b) Costs and Expenses. Each Residential 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 Residential Property and as required by any Governmental Authority.

Section 3.7. Right of Residential Board Regarding Rules and Policies. In furtherance of the purposes of this Residential Declaration and to comply with the Act, Restrictive Covenants, and any other Legal Requirements, the Residential Board from time to time may adopt, amend, supplement or repeal the Rules governing the Residential Property, Common Areas, Residential Lots and any portion thereof and establish and enforce policies, procedures, and penalties for the enforcement of the Residential Governing Documents and collection of delinquent Assessments.

Section 3.8. Construction Use. Residential Declarant, its Designees and Residential Builders authorized by Residential Declarant shall have the right to perform construction and such other reasonable or related activities in the Residential Property, and to maintain upon portions of the Residential Property it owns such facilities and equipment as required or deemed reasonably necessary or incidental to the construction and sale of Residences and other permitted Improvements on Residential Lots in the construction and development of the Residential 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 Residential Lot Subdivision. No Residential Lot shall be further divided or subdivided. No Residential Owner is entitled to grant easements or other interests in and to a Residential Lot without the prior written consent of the Residential Association or the ACC, whichever is applicable. This Section 3.9 shall not apply in any respect to the Residential Declarant and any Residential Lot owned by Residential Declarant.

Section 3.10. Neighborhoods. The Residential Property will have Neighborhoods. Neighborhoods may have more than one type of Residence, such as Townhomes, Cottages, Duets, or Clusters, and may include noncontiguous Residential Lots and other portions of the Residential Property. The Residential Association may levy Neighborhood Assessments against Neighborhood Lots to pay for Neighborhood Expenses according to Section 6.1 of this Residential Declaration. Neighborhoods may be subjected to additional unique restrictions applicable only to such Neighborhood through an amendment of or a Supplemental Declaration to this Residential Declaration recorded in the Real Property Records; however, no Neighborhood is required to have any such separate restrictions and no Neighborhood restrictions will be valid or enforceable without the joinder or acknowledged consent of the Residential Declarant to the amendment or Supplemental Declaration establishing the Neighborhood restrictions. Neighborhoods may also have Neighborhood Common Areas, such as Cottage Parking Areas, which areas, and Improvements thereon, are maintained, repaired, and operated by the Residential Association but which are intended for use only by the Residential Owners owning Residential Lots in such Neighborhood. The costs and expenses incurred by the Residential Association in the performance of maintenance, upkeep, repair and operations, and for any services provided in connection with such Neighborhood Common Areas are Neighborhood Expenses and will be paid for by Neighborhood Assessments. The Residential Association may also provide Neighborhood Services to a Neighborhood which services are not provided to all Residential Lots in the Residential Property. The costs and expenses incurred by the Residential Association for providing and maintaining Neighborhood Services are also Neighborhood Expenses and will be paid for by Neighborhood Assessments. No Neighborhood is required to have

Neighborhood Common Areas or Neighborhood Services and nothing in this Section 3.10 shall be deemed to create any obligation or duty of the Residential Declarant or Residential Association for same.

#### **ARTICLE IV THE RESIDENTIAL ASSOCIATION**

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

Section 4.2. **Deemed Assent Ratification and Approval.** All Residential Owners and Residential Occupants of the Residential Property shall be deemed to have assented to, ratified, and approved this Residential Declaration and its purposes, the other Residential Governing Documents and the power, authority, and management rights of the Residential Association, acting through the Residential Board as permitted in and authorized by this Residential Declaration and other Residential Governing Documents.

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

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

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

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

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

## **ARTICLE V MEMBERSHIP, VOTING AND ASSESSMENT ALLOCATIONS**

### **Section 5.1. Allocation of Votes in the Residential Association.**

(a) **Membership.** Each Residential Owner shall automatically be a Member of the Residential Association and must remain a Member for as long as that Person is a Residential Owner. Membership is appurtenant to, and cannot be separated from, ownership of a Residential Lot. Any transfer of title to a Residential Lot shall operate automatically to transfer Membership appurtenant to such Residential Lot to the new Residential Owner. All Residential Owners shall notify the Residential Association in writing of any transfer of ownership of such Residential Owner's Residential Lot including the name of the new Residential Owner.

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

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

(ii) The Class B Member shall be entitled to exercise one (1) vote for each Residential Lot owned by the Class B Member and an additional two hundred (200) 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 Residential Declarant Control Period. Residential Declarant shall be entitled to cast the votes allocated to the Class B Member in this Subsection 5.1(b)(ii) during the Residential Declarant Control Period and need not own any Residential Lot as a condition precedent to the exercise of such voting rights. THE CLASS A MEMBERS ACKNOWLEDGE AND AGREE, BY THEIR ACCEPTANCE OF A DEED TO A RESIDENTIAL LOT, THAT DURING THE RESIDENTIAL DECLARANT CONTROL PERIOD, WHICH RUNS CONCURRENT WITH THE DEVELOPMENT PERIOD UNLESS EARLIER TERMINATED BY THE RESIDENTIAL

DECLARANT IN ACCORDANCE WITH SECTION 4.5 OF THIS RESIDENTIAL DECLARATION, THE CLASS B MEMBER POSSESSES THE MAJORITY OF THE VOTING INTERESTS IN THE RESIDENTIAL ASSOCIATION AND SHALL BE ABLE TO CONTROL, THROUGH THE VOTING PROCESS, ANY MATTERS COMING BEFORE THE RESIDENTIAL ASSOCIATION FOR A VOTE, SUBJECT TO LEGAL REQUIREMENTS AND THE REQUIREMENTS OF THE RESIDENTIAL GOVERNING DOCUMENTS.

(c) Class Membership; Protection of Residential Declarant's Rights. Upon termination of the Residential 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 Residential Board, and the procedures for the election of the members of the Residential Board shall be in accordance with the Act and as set forth in the Bylaws. Unless a different allocation of votes is required by any Legal Requirement or in this Residential Declaration, all Members shall, after the termination of the Residential Declarant Control Period, be entitled to exercise one (1) vote per Residential Lot owned by each such Member with respect to any matter of the Residential Association on which Members shall be entitled to vote. Despite any assumption of control of the Residential Board by Residential Owners other than Residential Declarant as the result of a termination of the Residential Declarant Control Period by Residential Declarant, until the expiration or termination of the Development Period has occurred, the Residential Board is prohibited from taking any action which would discriminate against Residential Declarant or its development of the Residential Property, or which would be detrimental to Residential Declarant, the sale of Residential Lots or Residential Declarant's development of the Residential Property. Residential Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such Residential Board action discriminates against Residential Declarant or its development of the Residential Property or is detrimental to Residential Declarant, its development of the Residential Property or the sale of Residential Lots; and in the event Residential Declarant makes any such determination, the action of the Residential Board shall be deemed void and unenforceable upon the Residential Board's receipt of written notice from Residential Declarant setting forth such determination. Until the expiration or termination of the Development Period, the Residential Association will be required to continue and maintain the same level and quality of maintenance, operations, and services on the Residential Property as were provided prior to the assumption of control of the Residential Board by Residential Owners other than Residential Declarant.

(d) Changes to the Residential Board during the Residential Declarant Control Period. Notwithstanding the provisions of Subsection 5.1(b) above:

(i) Not later than one hundred twenty (120) days after seventy-five percent (75%) of the Residential Lots which may be created in the Residential Property and made subject to this Residential Declaration pursuant to Subsection 11.2(a) of this Residential Declaration have been conveyed to Residential Owners other than Residential Declarant and Residential Builders, an election of the Class A Members shall be held to elect one Director from the Class A Membership to the Residential Board, which position constitutes one-third of the Residential Board of Directors during the Residential Declarant Control Period per the Bylaws. The Class B Member shall not be entitled to vote in this election for a Director from the Class A Membership.

(ii) On a date, as determined by Residential Declarant in its absolute and sole discretion, which date shall not be less than sixty (60) days prior to the termination of the Residential Declarant Control Period, the Residential Association shall hold an election for purposes of electing all Directors from the Class A Membership to serve as the Residential Board of Directors, at which time shall be five (5) Directors according to the Bylaws. The

terms of the elected Class A Member Directors elected according to this Subsection 5.1(d) will commence on the day the Residential Declarant Control Period terminates.

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

Section 5.3 **Residential Declarant Advisory Committee.** Residential Declarant, in its absolute and sole discretion, may decide to appoint, but has no obligation to make any such decision or to appoint, at any time prior to the election of a Class A Member Director to the Residential Board set forth in Subsection 5.1(d)(i) above and termination of the Residential Declarant Control Period, any number of Residential Owners, for any length of time, to one or more advisory committees, each of which Residential Owners is chosen by Residential Declarant in its absolute and sole discretion (each a "Residential Declarant Advisory Committee"). A Residential Declarant Advisory Committee, and any member thereof, shall have no authority of the Residential Board or the Residential Association, and no member of the Residential Declarant Advisory Committee shall be entitled to vote on any matter before the Residential Board. The Residential Declarant Advisory Committee is not the same as the Residential Board Advisory Committee described in the Bylaws, and a Residential Board Advisory Committee may only be established after the Residential Declarant Control Period has expired or terminated, whichever applies, and the Directors elected in accordance with Subsection 5.1(d)(ii) of this Residential Declaration have taken office.

## **ARTICLE VI ASSESSMENTS**

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

(a) **Residential Builder Fees and Assessments Obligations.** Per the Foundation Covenant, the Development Agreement, and this Residential Declaration, as applicable, every Residential Builder shall be required to pay:

(i) To Residential Declarant at the closing of sale of Residential Builder's purchase of a Residential Lot from Residential Declarant a fee for perimeter fencing in the amount of Thirty and No/100 Dollars (\$30.00) per linear foot per Residential Lot;

(ii) To Residential Declarant at the closing of the sale of a Residential Lot by Residential Builder to a purchaser (which purchaser is not another Residential Builder and who intends to occupy or have occupants reside in the Residence constructed thereon) a fee for marketing the Residential Property and Community and their amenities in the amount of one percent (1.00%) of the total gross sales price of the Residential Lot;

(iii) To the Foundation at the closing of sale of a Residential Lot by Residential Builder to a purchaser (which purchaser is not another Residential Builder and who intends to

occupy or have occupants reside in the Residence constructed thereon) the Residential Builder Fee described in the Foundation Covenant which fee is equal to the amount of one percent (1.00%) of the total gross sales price of the Residential Lot;

(iv) To the Residential Association at the closing of the sale of Residential Builder's purchase of a Residential Lot from Residential Declarant one-half (1/2) of the then current annual Regular Assessment applicable to such Residential Lot;

(v) To the Residential Association at the closing of sale of Residential Builder's purchase of a Residential Lot from Residential Declarant one-half (1/2) of any then current annual Special Assessment applicable to such Residential Lot;

(vi) To the Residential Association at the closing of sale of Residential Builder's purchase of a Residential Lot from Residential Declarant one-half (1/2) of any then current annual Neighborhood Assessment applicable to such Residential Lot; and

(vii) Commencing on January 1 of the calendar year immediately following the year in which Residential Builder closed on the purchase of Residential Lots, Residential Builder will be obligated to pay (1/2) of the then current annual amount for each Assessment levied against each Residential Lot owned by such Residential Builder until a Residence is constructed upon each such Residential Lot and is sold to a third-party Person.

(b) Residential Community Enhancement Fees: Reserve Contribution.

(i) The Residential Community Enhancement Fee is collected upon each non-exempt transfer of title to a Residential Lot, excluding the initial transfer of title to a Residential Lot from a Residential Builder to a Residential Owner, as further described in the Foundation Covenant. The initial amount of the Residential Community Enhancement Fee is equal to one percent (1.00%) of the Total Sales Price, as defined in the Foundation Covenant, of a Residential Lot, provided however such amount may be amended by the Founder pursuant to the terms of the Foundation Covenant. Payment of the Residential Community Enhancement Fee is secured by a lien in favor of the Foundation, as further explained in the Foundation Covenant, which lien is prior and superior to the Assessment Lien established in Section 6.4 of this Commercial Declaration.

(ii) Each Residential Owner, excluding Residential Declarant and Residential Builders, pay a one-time reserve contribution (the "Reserve Contribution") to the Residential Association upon the closing of the sale of a Residential Lot in the amount equal to three months of the then-current annual Regular Assessment, regardless of whether the Regular Assessment is being charged on a monthly basis at the time, applicable to such Residential Lot. The Reserve Contribution will be deposited into the Residential Association's operating account, or a separate reserve fund account which may be established by the Residential Association, and such contribution shall not be considered an advance payment of any Assessments and is not refundable. Reserve Contributions may be used by the Residential Association for purposes which include, but are not limited to, payment of operating expenses, residential community programs or events, or other recurring or non-recurring costs and expenses of the Residential Association. Residential Declarant shall not be entitled to use any portion of the Reserve Contributions during the Development Period.

(c) Working Capital Contribution. Each Residential Owner, excluding Residential Declarant and Residential Builders, will pay a one-time working capital contribution (the "WCC") to the Residential Association upon the closing of the sale of a Residential Lot in an amount equal to three months of the then-current annual Regular Assessment, regardless of whether the Regular Assessment is being charged on a monthly basis at the time. The WCC will be deposited into the Working Capital Fund separate from the Residential Association's operating account and any reserve fund account and shall not be considered an advance payment of any Assessments and is not refundable. WCC will be maintained by the Residential Association for purposes which include, without limitation, the purchase of equipment, materials, goods and services deemed necessary by the Residential Association for the operation of the Residential Property or to discharge operating expenses of the Residential Association. Residential Declarant shall not be entitled to use any portion of the Working Capital Fund during the Development Period.

(d) Common Expenses. The Residential Association shall establish the amount sufficient in the judgment of the Residential Association to pay all Common Expenses when due and possesses the right to establish and maintain a reserve fund for the Residential Association. The amount established to pay Common Expenses shall be assessed to Residential Owners and levied against each Residential Owner's Residential Lot as Regular Assessments. Regular Assessments shall be allocated and assessed equally among the total number of Residential Lots, shall be due and payable quarterly, or on such dates as otherwise determined by Residential Declarant or established by the Residential Association, and shall be applied to the payment of Common Expenses for which the Residential Association is responsible. Common Expenses will likely increase over time as Recreational Facilities and Improvements to the Common Areas are constructed and while the Residential Property is being developed.

(e) Residential Budget for Common Expenses. Prior to the commencement of each fiscal year of the Residential Association, the Residential Association shall establish and adopt a Residential Budget for the next following fiscal year, notify Residential Owners of such Residential Budget and make the Residential Budget available for review by all Residential Owners. No further communication shall be necessary to establish the amount of each Residential Owner's obligation regarding the Regular Assessments payable according to this Residential Declaration, and the failure of the Residential Association to timely notify and make available for review by Residential Owners any Residential Budget shall not excuse or relieve a Residential Owner from the payment of the Regular Assessments contemplated thereby. The Residential Board shall have the right to amend any Residential Budget at any time in which event the portion of the Regular Assessments assessed against each Residential Lot and the corresponding payment obligation of each Residential Owner shall be adjusted accordingly, if applicable. Notwithstanding the foregoing, and after the expiration or termination of the Development Period, if any Residential Budget for a fiscal year, or amendment thereof, may increase Regular Assessments allocated to a Residential Lot and payable by a Residential Owner by more than forty percent (40%) from the immediately preceding fiscal year (the "Increased Residential Budget"), such Increased Residential Budget must be approved by the affirmative vote of at least fifty percent (50%) of the Members entitled to vote at such time. Until the Increased Residential Budget is duly approved by the requisite vote or the Increased Residential Budget is replaced with another Residential Budget duly established and adopted by the Residential Board for the same fiscal year, the Residential Budget and the Regular Assessments established for the year immediately preceding the fiscal year for which the Increased Residential Budget applies will continue in full force and effect.

(f) Special Assessments by Residential Association. In addition to the Regular Assessments, the Residential Association shall establish Special Assessments from time to time as may be necessary or appropriate in the judgment of the Residential Board to pay (i) non-recurring Common Expenses relating to the maintenance, care, alteration, improvement, repair, replacement, operation, and management of the Residential Property and the administration of the Residential Association; (ii) capital expenditures necessary



to replace Improvements on or within the 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 Residential Association. Special Assessments so established shall be allocated equally among the total number of Residential Lots and shall be due and payable to the Residential Association in the amounts and per the terms established by the Residential Association for such Special Assessment which shall be included in a notice to each Residential Owner for the Special Assessment. 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 percent (50%) of the Members entitled to vote at such time.

(g) **Neighborhood Budget and Neighborhood Assessments.** In addition to Regular Assessments and Special Assessments, the Residential Association shall possess the right, power and authority to establish and levy Neighborhood Assessments to pay Neighborhood Expenses for a particular Neighborhood as further described in Section 3.10. Prior to the commencement of each fiscal year of the Residential Association, the Residential Association shall establish and adopt a Neighborhood Budget for each Neighborhood for the next following fiscal year, notify Residential Owners of Residential Lots located in the respective Neighborhood of each such Neighborhood Budget, and make each such Neighborhood Budget available for review by the respective Residential Owners. No further communication shall be necessary to establish the amount of each Residential Owner's obligation regarding the Neighborhood Assessments payable according to this Residential Declaration, and the failure of the Residential Association to timely notify and make available for review any Neighborhood Budget shall not excuse or relieve any Residential Owner in a Neighborhood from the payment of the applicable Neighborhood Assessments. The Residential Board shall have the right to amend any Neighborhood Budget at any time in which event the portion of the Neighborhood Assessments assessed against each Residential Lot in the respective Neighborhood and the corresponding payment obligation of each Residential Owner of a Residential Lot in such Neighborhood shall be adjusted accordingly, if applicable. Neighborhood Assessments shall be allocated and assessed equally among the Residences or Residential Lots in the respective Neighborhood and shall be due and payable quarterly, or on such dates as otherwise determined by Residential Declarant or established by the Residential Association, and shall be applied to the payment of Neighborhood Expenses. The Neighborhood Assessments shall be the personal obligation of the Residential Owners against whom the Neighborhood Assessments are assessed, and shall constitute a lien against such Residential Owners' Residential Lots in the same manner and with the same consequences as the Regular Assessments and Special Assessments. By way of example and not limitation, Neighborhood Expenses may include the costs and expenses incurred by the Residential Association for maintenance, repair and upkeep of Neighborhood Common Areas, Shared Driveways and other Improvements located in a particular Neighborhood.

Section 6.2. **Individual Assessments.** In addition to the Regular Assessments and the Special Assessments contemplated in this Article VI, the Residential Association shall possess the right, power and authority to establish and levy Individual Assessments following the provisions of this Residential Declaration against an individual Residential Owner and its Residential Lot for Charges properly borne solely by one or more but less than all Residential Owners, including 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 Residential Association by a Residential Owner. The Individual Assessments shall be the personal obligation of the Residential Owner against whom the Individual Assessment is assessed, and shall constitute a lien against the Residential Lot in the same manner and with the same consequences as the Regular Assessment, Special Assessment and Neighborhood Assessment; provided however, per Section 209.009 of the Act, no lien comprised solely of fines, attorney's fees associated with fines, or costs arising under Section 209.005(i) or Section 209.0057(b-4) of the Act shall be foreclosed.

**Section 6.3. Obligation to Pay Assessments.** Each Residential Owner shall be personally obligated to pay all Assessments to the Residential Association in the amounts and on the due dates established pursuant to this Residential Declaration. Unpaid Assessments due as of the date of the conveyance or transfer of a Residential Lot, shall not constitute a personal or entity obligation, as applicable, of the new Residential Owner (other than the new Residential Owner's pro rata share of any portion thereof as set forth in Section 6.5); however, the former Residential Owner shall continue to have personal or entity liability for such unpaid Assessments. No Residential Owner, other than Residential Declarant as set forth in Section 6.5, shall be entitled to exemption from liability for the Residential Owner's obligation to pay Assessments for any reason, including, without limitation, claims of (a) waiver of the use and enjoyment of the Common Areas or Recreational Facilities as to which any Assessments relate; (b) an abandonment of the Residential Lot or Improvements thereon; (c) offsets or reductions; or (d) failure by the Residential Association, the Residential Board or any other Person to properly exercise its duties, rights, powers and obligations under any of the Residential Governing Documents. The Rules include the Delinquent Assessment Policy adopted by the Residential Association which sets forth the guidelines for an alternative payment schedule, referred to as the Payment Plan, by which a Residential Owner may be eligible to make partial payments to the Residential Association for delinquent Assessments per the terms of the Delinquent Assessments Policy. Any Assessment not paid on the date which such Assessment is due shall bear interest at the Past Due Rate as further described in the Delinquent Assessments Policy and shall be recoverable by the Residential Association, together with interest as aforesaid and all costs and expenses of administering a Payment Plan, and other 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 Residential Declaration. It shall be the responsibility of the Residential Association to collect delinquent Assessments, the existence of which shall be made known by written notice to Residential Owner and, if requested, the Residential Owner's Mortgagee pursuant to and in accordance with the Delinquent Assessments Policy; provided, however, if the Residential Association is not taking the actions permitted or required in this Section 6.3, the Residential Declarant may exercise any and all of such rights for its own benefit and the benefit of the Residential Association.

**Section 6.4. Lien to Secure Payment of Assessments.** Residential Declarant hereby reserves and assigns to the Residential Association a lien against each Residential Lot to secure payment of the Assessments, which lien is established by this Residential Declaration and shall be, continue and constitute a lien and encumbrance in favor of the Residential Association upon each Residential Lot owned by the Residential Owner of such Residential Lot. Except for the liens described in Subsection 6.1(b) and Section 6.9 of this Residential Declaration, the Assessment lien established in and by this Residential Declaration shall be prior and superior to all other liens and encumbrances subsequently created upon Residential Lots regardless of how created, evidenced or perfected, other than liens for Governmental Impositions. So long as the Residential Association satisfies the requirements set forth in the Act, and any other applicable Legal Requirement with regard to delinquent assessments and foreclosure of assessment liens, the assessment liens created in this Residential Declaration may be foreclosed on or enforced by any means available at law or in equity. The Assessment lien established for each Residential Lot by this Residential Declaration to secure payment of Assessments shall not be enforceable against a purchaser at a foreclosure sale of a lien encumbering a Residential Lot in order to satisfy the indebtedness for a Mortgagee (or against the grantee by deed in lieu of any such foreclosure) for any 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 Residential Owner be relieved from liability incurred for unpaid Assessments owed by such Residential Owner to the Residential Association.

**Section 6.5. Exempt Residential Property.** Each Residential Owner other than Residential Declarant shall be obligated to pay Assessments and such obligation shall commence for Residential Owners on the date the Residential Lot is conveyed to such Residential Owner. If the date on which a Residential Lot

is conveyed to a Residential Owner is on a day other than the first day of a month, the new Residential Owner shall be obligated to pay only a pro rata share of the Assessments against the Residential Lot based upon the remaining days in such month.

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

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

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

Section 6.6. **Notice of Default.** If a Residential Owner defaults on the Residential Owner's monetary payment obligations to the Residential Association, the Residential Association shall notify the Residential Owner in accordance with the Delinquent Assessment Policy, Fine Policy, or as otherwise provided in the other Residential Governing Documents, as applicable.

Section 6.7. **Alternative Actions.** Nothing contained in this Residential Declaration prohibits the Residential Association from taking a deed in lieu of foreclosure from a Residential Owner or from filing suit to recover a money judgment for sums that may be secured by the Residential Association's Assessment lien described in Section 6.4.

Section 6.8. **Statement of Expenses and Access to Records.** Upon proper delivery of a written request from a Residential Owner to the Residential Board or the Manager containing the requisite information as set forth in the Act, the Residential Association shall provide current copies of or make reasonably available for examination, the requested books, records, financial statements and any other requested information maintained by the Residential Association in accordance with the Records Policy. The costs associated with compilation, production and reproduction of information contemplated in this Section 6.8 are set forth in the Records Policy.

Section 6.9. **Subordination of Lien for Assessments.** The Assessment lien established in Section 6.4 of this Residential Declaration shall be subordinate to any valid mortgage or deed of trust that secures Lien Indebtedness from a Residential Owner for a Residential Lot that was recorded prior to the date any Assessment becomes delinquent under the provisions of this Residential Declaration.

## **ARTICLE VII EASEMENTS**

Section 7.1. **Plat Easements, Dedications and Restrictive Covenants.** As of the date of this Residential Declaration and in addition to the easements and restrictions set forth or reserved in this Residential Declaration, the Residential Property is subject to the Restrictive Covenants, dedications, easements, restrictions, and reservations shown or cited on the Plat or in separate documents in the Real Property Records, all of which are incorporated herein by reference. Each Residential Owner accepts a deed conveying title to a Residential Lot subject to such Restrictive Covenants, existing dedications, easements, restrictions and reservations and any other easements for Systems and Improvements, or for other purposes over, on and across the Residential Property and the Common Areas that may be established in the future pursuant to the provisions of this Residential Declaration, or as granted by authority reserved in any recorded document, if approved by Residential Declarant during the Development Period or the Residential Association subsequent to termination of the Development Period.

Section 7.2. **Easements.** Each Residential Owner accepts a deed conveying title to a Residential Lot, 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 Residential Property.

(a) **Access Easement.** Residential Declarant hereby reserves and grants a perpetual, assignable, and non-exclusive Access Easement over, on, and across each Residential Lot, the Common Areas, Maintenance Areas, Association Maintained Sidewalks and other portions of the Residential Property as may be reasonably necessary for its own benefit and for the benefit of each Residential Lot, the Residential Property and the Residential 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 Sidewalks, Association Maintained Fencing, Common Areas, Maintenance Areas, Recreational Facilities, or any Improvements thereon or accessible therefrom, including the Alleys; (ii) the use of, and the ingress and egress to a Residential Lot, provided no other reasonable means of access exists; (iii) the performance of any obligations under the Residential Governing Documents; (iv) the making of emergency repairs therein necessary to prevent damage to the Association Maintained Sidewalks, Association Maintained Fencing, Common Areas, Maintenance Areas, Recreational Facilities and Improvements thereon, including the Alleys, and to Residences and Residential Lots in connection with those portions thereof the Residential Association is obligated to maintain according to the Maintenance Responsibility Chart; (v) the evacuation of all or any part of the Residential Property in the event of an emergency; and (vi) such other reasonable purposes over any portion of the Residential Property as are deemed by the Residential Declarant or the Residential Association to be necessary for the exercise of rights granted to and the performance of the duties and obligations of the Residential Association as described in this Residential Declaration and any other Residential Governing Document.

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

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

(d) Systems and Services Easement. Residential Declarant hereby reserves and grants a perpetual, assignable, and non-exclusive utility Service and Systems Easement over, on and across the Common Areas, Residential Lots, and Residential Property: (i) for its own benefit, and the benefit of utility companies supplying Systems and services, including Neighborhood Services, to the Common Areas and Residential Lots for supplying such Systems and services to such Residential Lots and Common Areas; and (ii) for its own benefit and the benefit of the Residential Association for the right to grant additional Systems and Services Easements. Residential 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 Residential Declaration, and each Residential Owner, by acceptance of a deed to a Residential Lot, hereby grants Residential 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; Portions of Alleys Maintained by Residential Owners. Residential Declarant reserves and grants a perpetual, assignable, and non-exclusive Landscape and Signage Easement over, on and across the Residential Property, Residential Lots and any Common Areas for itself and the Residential Association for the installation, removal, maintenance, repair and replacement of landscaping and Signage located in the Common Areas, portions of Residential Lots for which the Residential Association is obligated to maintain, and other portions of the Residential Property outside of the Residential Lots for which the Residential Association has the obligation to maintain. Notwithstanding the foregoing, landscaped portions of Alleys located on Residential Lots which are depicted on Exhibit D to this Residential Declaration shall not be the Residential Association's obligation to maintain but rather the Residential Owners of the respective Residential Lots.

(f) Shared Driveway Easement. Residential Declarant reserves and grants for itself, the Residential Association, and, in connection with initial Shared Driveway construction, the Residential Builders, a perpetual, assignable, and non-exclusive Shared Driveway Easement over, on and across Shared Driveways and Residential Lots containing portions of Shared Driveways, to the extent as may be reasonably necessary, for the purpose of constructing, installing, maintaining, inspecting, repairing, removing, and replacing and accessing Shared Driveways. The Residential Association shall maintain the Shared Driveway Easement and related Easement Areas. In constructing the initial Shared Driveways, Residential Builders shall be subject to the Architectural Guidelines and any other requirements established by the Residential Declarant for same. Residential Owners of Residential Lots containing Shared Driveways will use such driveways for vehicular ingress and egress to such owner's Residential Lot and such other permitted purposes as further described in the Rules. No Residential Owner shall damage, obstruct, remove change or alter any portion of a Shared Driveway without the prior written approval of the Residential Declarant or the ACC, which approval shall be in the sole and absolute discretion of the Residential Declarant or the ACC, as applicable.

(g) Sidewalk Easement. Residential Declarant reserves and grants for itself, the Residential Association, and, in connection with initial sidewalk construction, the Residential Builders, a perpetual, assignable and non-exclusive Sidewalk Easement over, on and across a two foot (2') strip of land in the perimeter of Residential Lots located adjacent to Property Roads or Private Roads for the purpose of

constructing, installing, maintaining, inspecting, repairing, removing, and replacing and accessing Association Maintained Sidewalks. The Residential Association shall maintain the Sidewalk Easement and related Easement Areas. In constructing the initial Association Maintained Sidewalks, Residential Builders shall be subject to the Architectural Guidelines and any other requirements established by the Residential Declarant for same. Residential Declarant further reserves and grants for the Residential Owners, Residential Occupants, Designees and the general public a non-exclusive right-of-way and easement on, over and across the Association Maintained Sidewalks for pedestrian and foot traffic purposes. Residential Owners of Residential Lots containing any portion of the Association Maintained Sidewalks from obstructing, damaging, removing, altering, and changing the Association Maintained Sidewalks.

(h) Fencing Easement. Residential Declarant reserves and grants for itself and the Residential Association a perpetual, assignable and non-exclusive Fencing Easement over, on, and across a five foot (5') strip of land in the perimeter of Residential Lots located adjacent to a Reserve or along Harlem Road, as such locations are depicted and further described in Exhibit C to this Residential Declaration, for the purpose of constructing, installing, maintaining, inspecting, repairing, removing, and replacing Association Maintained Fences and accessing the Residential Lots for such purposes. The Residential Association shall maintain the Fencing Easement and related Easement Areas. Residential Owners owning Residential Lots encumbered by the Fencing Easement will be prohibited from damaging, removing, altering, and changing the fencing or wall located in the Fencing Easement and shall not pile or install dirt, mulch, or plant material or allow trees, shrubs, vines or plants to grow within one (1) foot of the portion of perimeter fence located on their Residential Lots without the prior written approval of the Residential Declarant or the ACC, which approval shall be in the sole and absolute discretion of Residential Declarant or the ACC, as applicable.

(i) Neighborhood Easements. The Common Area Easement reserved in Subsection 7.2(b) shall apply to all Neighborhood Common Areas. Residential Declarant reserves and grants a perpetual, assignable and non-exclusive Neighborhood Easement for the benefit of each Neighborhood, the Residences and/or Residential Lots in such Neighborhood, as applicable, and the Residence Owners of Residential Lots in each such Neighborhood over, on and across the Residential Property, Residential Lots and any Neighborhood Common Areas for itself and the Residential Association for the installation, removal, maintenance, repair and replacement of Improvements located in Neighborhood Common Areas and for the installation, removal, maintenance, repair and replacement of certain Improvements (or portions thereof) on Residential Lots located in a Neighborhood which the Residential Association is obligated to perform, including maintenance, repair and replacement of portions of Townhomes and other Improvements on the Residential Lots on which they are located per the applicable Townhome Maintenance Obligations, and including matters concerning Neighborhood Services. All other Easements reserved in this Section 7.2 shall apply equally to each Neighborhood, and the Neighborhood Common Areas, Residential Lots, Residences and other portions of the Residential Property comprising each such Neighborhood, and for and in connection with Neighborhood Services, in addition to the foregoing Neighborhood Easements.

(j) Easements Strictly Limited. The Easements are for the benefit of Residential Declarant, the Residential Association, the ACC, Residential Owners, Commercial Owners, and Commercial Lot Occupants possessing rights under a Commercial License described above and certain Designees only. No Residential Owner is required to allow any Person other than a Designee or a Commercial Owner and Commercial Lot Occupant possessing rights under a Commercial License the benefit of such Easements and, further, all Residential Owners are obligated to undertake all reasonable efforts to prohibit Persons other than Designees or Commercial Owners and Commercial Lot Occupants possessing rights under a Commercial License from benefiting or using such Easements in relation to their respective Residential Lot. If a Residential Owner finds that Persons other than Designees are attempting to benefit from or use such Easements in relation to their respective Residential Lot, and such Residential Owner, despite diligent efforts, is unable to cause such Persons

to cease and desist from so doing, then the Residential Owner shall notify the Residential Association in writing of the problem, stating with specificity the problems that have occurred and such Residential Owner's efforts to combat the problems, and the Residential 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.

(k) 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. Use and availability of any Improvements, Residential Property or other facilities or areas covered by the Easements are subject to the Residential Governing Documents.

Section 7.3. Power to Grant Easements. Residential Declarant, during the Development Period, and the Residential Association thereafter (to the extent permitted by the Act) shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under the 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 Residential Owners. If a Residential Owner requires an easement across any portion of the Common Areas from the Residential Association and has obtained prior written approval from the Residential Association for such easement, the requesting Residential Owner shall be responsible for all costs and expenses incurred by the Residential Association regarding the creation and recordation of such easement and shall promptly reimburse the Residential Association all of such amounts upon receipt of any demand or request therefore made by the Residential Association.

Section 7.4. Mineral Interests; Water Rights. Some or all of the Residential Property is or may be subject to Mineral Interests and Water Rights reserved prior to the recordation of this Residential Declaration and included in the Restrictive Covenants. Mineral Interests are superior rights in the Residential Property and are not affected by any provision to the contrary in this Residential Declaration. **Each Residential Owner, by accepting title to or interest in a Residential Lot, 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 Commercial Licenses. During the Development Period, Residential Declarant reserves for itself only, the right, without duty or obligation, to grant one or more temporary, non-exclusive, assignable and revocable licenses, upon those terms determined by Residential Declarant, in its absolute and sole discretion, to any Commercial Owner, Commercial Lot Occupant or Commercial Lot or to the Commercial Association for the benefit of the Commercial Association or a Commercial Owner, a Commercial Lot Occupant or Commercial Lot to use certain Common Areas and Improvements on the Residential Property pursuant to the express terms, conditions and limitations set forth in a written license agreement executed by the Commercial Association or a Commercial Owner (for its Commercial Lot and Commercial Lot Occupants) and the Residential Declarant, as may be amended (each a "Commercial License"), a copy of which fully executed license agreement(s), and any amendments thereto, will be promptly furnished to the Residential Association. Any Commercial License granted by Residential Declarant shall expressly include that all rights granted in the Commercial License to use any portion of the Common Areas and Improvements thereon, which may include the Recreational Facilities, in the Residential Property shall, at all times, be subject to applicable Legal Requirements, the Rules, Posted Rules (as defined in the Rules), and any other terms, conditions and restrictions applicable to the use of Common Areas and Improvements thereon per the Residential Governing Documents. Residential Declarant, or the Residential Association acting on its behalf, shall have the right, power and authority to immediately revoke any



Commercial License for one or more violations of Legal Requirements, the Rules, Posted Rules, and any other terms, conditions, and restrictions applicable to the use of Common Areas and Improvements thereon in the Residential Governing Documents.

(a) Commercial Lots are Not Residential Lots. Any Commercial License does not create any ownership rights in favor of a Commercial Owner to any portion of the Residential Property or Improvements thereon. Commercial Lots are not Residential Lots and do not comprise any portion of the Residential Property; therefore, Commercial Owners are not Members of the Residential Association and Commercial Lots and Commercial Owners, and their Commercial Lot Occupants, are not subject to Assessments described in Article VI of this Residential Declaration or levied by the Residential Association. Notwithstanding the foregoing, Commercial Owners possessing Commercial Licenses for the benefit of certain Commercial Lots they own shall be obligated to pay, in accordance with the terms of the respective Commercial License, certain charges and fees established by the Residential Declarant or Residential Association for the purpose of contributing to the Common Expenses arising out of or which derive from the Common Areas subject to the Commercial License, which charges and fees shall be paid to the Residential Association, whether directly or indirectly, on a regular recurring basis per the terms of a Commercial License, or as may be established by the Residential Association in the absence of such terms, throughout the term of the Commercial License. Further, each Commercial License will include a provision granting a right to the Residential Association to directly charge any Commercial Owner for damages caused to the Common Areas and Improvements subject to the Commercial License and for violations of the Residential Governing Documents by the respective Commercial Owner, Commercial Lot Occupants or any guest of such owner or occupant entitled to use, or using, such areas and improvements according to or in connection with the respective Commercial 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 Residential Declaration shall be deemed, interpreted or construed by any Person, Residential Owner, Commercial Owner, Commercial Lot Occupant, the Commercial Association, or the Residential Association as Residential Declarant's actual granting of any Commercial License to the Commercial Association or any Commercial Owner, Commercial Lot or Commercial Lot Occupant. This Section 7.5 includes only the reservation of a right by the Residential Declarant to grant Commercial Licenses, in its absolute and sole discretion, which right and reservation does not create a duty, commitment or obligation of Residential Declarant in any respect.

(b) Recordation of Restrictions for Commercial Licenses. Residential Declarant, and only Residential Declarant, and no other Person, including, without limitation, the Residential Association, Commercial Association, any Commercial Owner, Commercial Lot Occupant and any Residential Owner, or their authorized representatives, shall have the right, but not the obligation, to record a Commercial License granted by the Residential Declarant in the Real Property Records; provided, however, Residential Declarant's recording of any Commercial License shall not affect, extend or void the finite term of the Commercial License or any other terms thereof. Each Commercial License shall expressly state that (i) the recording of a Commercial License by any Person or party other than Residential Declarant shall automatically void such Commercial License; (ii) Residential Declarant has the right during the term of the Commercial License to unilaterally revoke or terminate the Commercial License for failure to pay, when due, all or any portion of the charges due and owing or arising under the Commercial License or levied by the Residential Association for damage caused to Common Areas or Improvements thereon or on any portion of the Residential Property in connection with the Commercial License or for violations of the Residential Governing Documents or Legal Requirements; and (iii) the Commercial License is subject to automatic termination upon the expiration date of the term of the Commercial License set forth in such Commercial License, and that no further action of any party subject to or benefitting from the Commercial License, including Residential Declarant and the respective Commercial Owner or the Commercial Association, shall be required to effectuate the automatic and complete



termination of such Commercial License on the expiration or termination date of such license per the terms of the Commercial License. It is the intent of Residential Declarant, by requiring the foregoing terms in this Subsection 7.5(b) for each Commercial License, to eliminate any erroneous interpretation or misinterpretation that a Commercial License is intended to run with a Commercial Lot or any portion of the Residential Property to which the Commercial License applies.

## **ARTICLE VIII MAINTENANCE RESPONSIBILITIES**

### **Section 8.1. Maintenance.**

#### **(a) Maintenance of Residential Lots.**

(i) General. Unless otherwise expressly stated to the contrary in this Residential Declaration, the Maintenance Responsibility Chart, or a Supplemental Declaration, all maintenance, repairs, and replacements of, in or to any Residential Lot or Improvements thereon, including the Party Walls, described in Subsection 8.1(a)(ii) below and those portions of Alleys generally depicted on Exhibit D which are located on Residential Lots, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Residential Owner of such Residential Lot in accordance with the Community Wide Maintenance Standard, the Maintenance Responsibility Chart attached to this Residential Declaration as Exhibit B, the Rules, Architectural Guidelines, and any other applicable Residential Governing Documents.

(ii) Maintenance of Party Walls. Residential Owners of adjoining Residential Lots upon which Residences are constructed that share a Party Wall with another Residence shall share *equally* in the obligations to maintain, repair, upkeep, reconstruct, or replace such Party Wall, and all costs and expenses related thereto, subject to the right of one such Residential Owner to require a larger contribution from the other Residential Owner sharing a Party Wall according to any Legal Requirements related to liability for negligence or willful acts or omissions in connection with Party Walls. If a Residential Owner is responsible for damage to or destruction of all or any portion of a Party Wall, that same Residential Owner will bear the entire cost to repair, reconstruct, or replace such damaged or destroyed Party Wall, or portions thereof, as applicable. If a Residential Owner fails or refuses to pay his or her share of costs and expenses for the repair or replacement of a Party Wall on his or her Residential Lot, then the Residential Owner who advances payment for Party Wall costs and expenses shall have a right to file a claim of lien evidencing the amounts such Residential Owner paid and advanced for the Party Wall in the Real Property Records of the County, and such Residential Owner has the right, according to applicable Legal Requirements, to foreclose such lien as if it were a mechanic's lien. The right of a Residential Owner to require a contribution from another Residential Owner sharing a Party Wall therewith shall run with the Residential Lots and shall pass to each Residential Owner's successor in title. If a Party Wall is damaged or destroyed from any cause, the Residential Owner of either Residential Lot sharing such Party Wall may cause the repair or rebuild of the damaged Party Wall to its previous condition, however both Residential Owners of such Residential Lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall. No Party Wall may be altered, constructed, repaired, or rebuilt without the prior written approval of the ACC, and any such alteration, construction, repair or rebuild of a Party Wall shall comply with all Legal Requirements, Architectural Guidelines and any other requirements that may be established for Party Walls pursuant to Article XII of this Residential Declaration or the Architectural Guidelines. The Party Walls described in this

Subsection 8.1(a)(ii) do not apply to any other walls or portions of Improvements on Residential Lot. Non-structural foundation issues occurring on a foundation (such as minor cracks resulting from the natural movement of soil, shrinkage during the curing of the concrete, and settling of a Residence or Townhome Building, which foundation spans the dividing line between two Residential Lots or Residences, and which is intended to benefit such lots or residences, shall be maintained by the respective Residential Owners of such Residential Lots or Residences in the same manner as Party Walls described in this Subsection 8.1(a)(ii).

(b) Maintenance of Common Areas, Maintenance Areas and other Portions of Residential Property. Except as otherwise provided in the Restrictive Covenants, this Residential Declaration, the Maintenance Responsibility Chart or other Residential Governing Documents to the contrary, Maintenance Areas, Common Areas (which include all Neighborhood Common Areas) and Improvements thereon, Shared Driveways, Association Maintained Sidewalks, Association Maintained Fences, and all other portions of the Residential Property and Improvements thereon for which the Residential Association has the duty to maintain, repair, upkeep and replace per this Residential Declaration, including the Townhome Maintenance Obligations described in Section 8.2 below, the Maintenance Responsibility Chart or a Supplemental Declaration shall be maintained by the Residential Association in accordance with the Community Wide Maintenance Standard and the Residential Governing Documents, the cost and expense of which shall constitute and be payable as a Common Expense, or, for any Neighborhood Common Areas or other portions of Neighborhoods, a Neighborhood Expense, as further described in Article VI. Nothing in this Residential Declaration shall be deemed or construed as relieving any Residential Owner from liability or responsibility for damage to Maintenance Areas or Common Areas or Improvements thereon caused by the negligence or misconduct of a Residential Owner, Residential Occupant or Designee. Certain additional standards may apply to the performance of maintenance for portions of the Residential Lots and Improvements for which the Residential Association has the duty to maintain, repair, upkeep and replace, including, without limitation, Shared Driveways, which standards are set forth and further described in the Rules.

(c) Maintenance of Easements and Easement Areas. Except as expressly provided in Section 7.2 of this Residential Declaration or the Maintenance Responsibility Chart to the contrary, all maintenance, repairs, and replacements of, in or to any Easement Area located on a Residential Lot, ordinary or extraordinary, foreseen or unforeseen, shall be performed by the Residential Owner of each Residential Lot 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 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 Residential Association and shall be payable as a Common Expense, or, for any Neighborhood Common Areas, a Neighborhood Expense, as further described in Article VI.

(d) Maintenance Responsibility Chart. The Maintenance Responsibility Chart attached to this Residential Declaration as Exhibit B and incorporated herein by this reference generally summarizes the maintenance obligations and duties of Residential Owners and the Residential Association for various portions of the Residential Property, Residential Lots, and Improvements thereon. The Maintenance Responsibility Chart is intended to be a reference tool, and not the sole document to be relied upon, for Residential Owners, the Residential Association, the Manager and any other Person in determining 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 Residential 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 Residential Declaration conflicts with any Supplemental Declaration recorded after this Residential Declaration, then the terms of the Supplemental Declaration shall control. All other

conflicts arising among the Residential Governing Documents shall be determined according to Section 2.4 of this Residential Declaration.

Section 8.2. **Townhome Maintenance Obligations.** Residences which are Townhomes and Townhome Buildings in which they are located shall be included in one or more Neighborhoods at the sole and absolute discretion of the Residential Declarant during the Development Period, and the Board of Directors after the termination of the Development Period. The Residential Association will be responsible to perform the Townhome Maintenance Obligations for each Townhome Neighborhood in accordance with the Community Wide Maintenance Standard and this Residential Declaration, the Maintenance Responsibility Chart, and any other applicable Residential Governing Documents, including Supplemental Declarations. The costs and expenses arising out of Townhome Maintenance Obligations shall constitute Neighborhood Expenses and will be payable by the Residential Owners included in each Townhome Neighborhood through Neighborhood Assessments according to Article VI of this Residential Declaration. **The Residential Association's Townhome Maintenance Obligations for each Townhome Neighborhood in the Residential Property may vary and any such differences which may exist for each Townhome Neighborhood shall be expressly set forth in the Maintenance Responsibility Chart or Supplemental Declarations filed for each such Townhome Neighborhood, whichever applies.**

In connection with its Townhome Maintenance Obligations, the Residential Association will conduct inspections at least one (1) time per each calendar year of the Townhome roofing, Residence Skin and irrigation systems which the Residential Association is obligated to maintain. For all other portions of the Townhomes and Residential Lots upon which Townhomes are constructed that have Townhome Maintenance Obligations performed by the Residential Association, the Association will conduct inspections at least one (1) time every other calendar year. The Residential Association will obtain and maintain written inspection reports for these annual and bi-annual inspections, and these inspection reports will identify any items of maintenance or repair falling under the respective Townhome Maintenance Obligations that either require current action by the Residential Association or need further review and analysis. The Residential Association will timely cause the performance of any maintenance, repair, or other work and take such actions according to the these inspection reports.

Section 8.3. **Residential Owner Failure to Maintain.** If any Residential Owner fails or neglects to maintain, repair, upkeep or clean any portion of its Residential Lot or certain Improvements thereon, as required of such Residential Owner pursuant to this Article VIII or the Maintenance Responsibility Chart or any other applicable Residential 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 Residential Association on a case by case basis, after Residential Owner's receipt of written notice of such neglect or failure from the Residential Association in accordance Article II of the Rules, then the Residential Association may, but shall not be obligated to, enter the Residential Lot, and take appropriate steps to perform, or cause to be performed, the Residential Owner required cleaning, maintenance, repair and upkeep obligations. The defaulting Residential Owner shall, upon demand by the Residential Association, reimburse the Residential Association for costs and expenses it incurred in performing such required obligation and in the exercise of its rights pursuant to this Section 8.3.

Section 8.4. **Disputes.** Any Dispute arising among any or all of the Residential Owners or the Residential Association as to the proper Person to bear a maintenance cost or expense shall be resolved in accordance with the provisions of Article XIV of this Residential Declaration.

Section 8.5. **Mechanic's Liens.** No labor or services performed or materials furnished and incorporated in a Residential Lot, the Improvements thereon or any Common Area shall be the basis for the filing of a lien against any Residential Lot or Common Area not expressly approved in writing by Residential

Owner of such Residential Lot or by the Residential Association with respect to Common Areas or portions of the Residential Property outside of Residential Lots. All contracts for labor, services and/or materials with respect to any of the Residential Lots shall comply with all applicable provisions of the Residential Governing Documents.

## **ARTICLE IX INSURANCE**

Section 9.1. **Requirements.** Unless otherwise determined by Residential Declarant or the Residential Board of Directors pursuant to the Bylaws, all insurance coverage required of the Residential Association pursuant to this Article IX or purchased at the election of the Residential 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 Residential Declarant, the Residential Association, the Residential Board, and their respective members, managers, officers, directors, employees and agents as additional insureds through additional insured endorsements;
- (c) provide that insurance trust agreements shall be recognized.

Section 9.2. **Insurance by the Residential Association.** Commencing upon the filing of this Residential Declaration, or as otherwise determined by Residential Declarant, the Residential Association shall obtain and maintain general liability and/or property insurance, as the case may be, for the Common Areas and Improvements thereon, Maintenance Areas, portions of the Residential Lots, Residences, Neighborhoods and other portions of the Real Property for which the Residential Association has maintenance, repair, upkeep and replacement obligations according to this Residential Declaration, the Maintenance Responsibility Chart or any Supplemental Declaration. The Residential Association shall carry such other insurance in such amounts and insuring against such risks as the Residential Association shall reasonably deem necessary, including insurance for the operation and administration of the Residential Association. In addition, each insurance policy maintained by the Residential Association shall: (a) comply with the additional insureds requirements set forth in Subsection 9.1(b) and, *only for* insurance the Residential Association is required to carry in connection with its maintenance, repair, upkeep and replacement obligations for external portions of a Residence or for any portion of or Improvement on a Residential Lot according to this Residential Declaration, the Maintenance Responsibility Chart or any Supplemental Declaration, will also name the applicable Residential Owners as additional insureds with respect to their liability arising out of the ownership of a Residential Lot and Improvements thereon; (b) provide that no action or omission by any Residential Owner, unless validly exercised on behalf of the Residential Association, shall void an insurance policy carried by the Residential Association or be a condition to recovery under each such policy; and (c) be primary insurance if at the time of a loss under the policy any Residential Owner has other insurance covering the same property covered by the Residential Association's policy. Unless indicated otherwise, and excluding insurance carried for a specific Neighborhood, the premiums for all insurance coverages maintained by the Residential Association pursuant to this Section 9.2 for the benefit of all Residential Lots and Residential Owners shall constitute a Common Expense included in Regular Assessments. The premiums for all insurance coverages maintained by the Residential Association for the benefit of less than all Residential Lots and Residences in connection with a Neighborhood shall constitute a Neighborhood Expense which will be included in the applicable Neighborhood Assessments.

**Section 9.3. Insurance by Residential Owners.**

(a) General Residential Owner Insurance Requirements. Residential Owners shall be responsible for obtaining and maintaining at such Residential Owner's sole cost and expense insurance policies covering: (a) 100% of replacement cost of all Improvements upon such Residential Owner's Residential Lot (which requirement may be varied for Residential Owners owning Residential Lots on which Townhomes are constructed per Subsection 9.3(b) below); (b) any other insurance required by any Mortgagee or other lender in relation to such Residential Owner's Residential Lot and Improvements thereon; (c) any other insurance as may be required by the Residential Association for Residential Lots and Improvements thereon; and (d) Residential Owner's personal property kept, stored or located on a Residential Lot or in any Improvements thereon, or on any Common Area or other portion of the Residential Property. Each Residential Owner is solely responsible for insuring all personal property kept, stored or located on a Residential Lot or in any Improvements thereon. The Association shall not carry or be obligated to carry any insurance covering a Residential Owner's personal property. Nothing in this Residential Declaration, the Maintenance Responsibility Chart or any other Residential Governing Document shall be deemed or construed as prohibiting or limiting a Residential Owner, at its sole cost and expense, from obtaining and maintaining such further and supplementary insurance coverages as such Residential Owner may deem necessary or appropriate or which may be required by a Mortgagee. Nothing in this Section 9.3 shall be construed to require the Residential Association to monitor the existence or adequacy of insurance coverages on any Residential Lots.

(b) Residential Owner Insurance Requirements for Townhomes. Notwithstanding the foregoing, each Residential Owner owning a Residential Lot on which a Townhome is constructed for which the Residential Association possesses Townhome Maintenance Obligations that include maintenance, repair, upkeep and replacement of Residence roofing and certain portions of the Residence Skin, and other Improvements and Systems located in, on or under the Residential Lot is required to obtain and maintain throughout the entire term of its ownership of such Residence and Residential Lot insurance in an amount sufficient to cover 100% of the replacement value of all interior improvements, fixtures, and betterments in, on and to the Residence, and the coverage provided under such property insurance policy, shall be the same or the equivalent of the insurance coverage provided under an "HO-6" insurance policy. Each such Residential Owner owning a Townhome shall also be required to carry such other insurance required by the Residential Association for all Residence Owners in the Residential Property described in this Section 9.3 and any additional or different insurance which may be required for only for one or more Townhome Neighborhoods expressly included in the Maintenance Responsibility Chart or Supplemental Declaration, as applicable.

**Section 9.4. Residential Association as Insurance Trustee for the Residential Owners.** By acceptance of a deed to a Residential Lot, each Residential Owner shall be deemed to have irrevocably appointed the Residential Association as the Insurance Trustee on insurance policies obtained by the Residential Association (whether the Residential Association is identified as such in a policy) for the benefit of Residential Lots, Residential Owners or Residential Property. All Residential Property insurance policies required to be obtained by the Residential Association as described in Section 9.2 of this Residential Declaration may be issued in the name of the Residential Association as Insurance Trustee for the Residential Property covered under such policies. Loss payable provisions shall be in favor of the Insurance Trustee as a trustee for the Residential Association. The Insurance Trustee shall neither be liable for the payment of premiums nor the renewal or sufficiency of policies, except those policies required to be purchased and maintained by the Residential Association pursuant to Section 9.2 of this Residential Declaration and the 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 Residential Owners and Residential Declarant in accordance with the terms of the Residential Governing Documents.

Section 9.5. **Other.**

(a) Neither the Residential Association, Residential Board, Residential Declarant, any Residential Owner nor their respective Affiliates shall be liable for failure to obtain any insurance coverage required by the Residential 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 Residential Association shall not cover Claims of one Residential Owner against any other Residential Owner.

(c) The Residential Association may establish at any time additional insurance coverage requirements applicable only to certain Neighborhoods.

## **ARTICLE X CASUALTY AND CONDEMNATION**

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

Section 10.2. **General Condemnation Provisions.** If all or any part of the Common Areas are subject to a Taking, the Residential Association will be the exclusive representative of the Residential Owners. The expense of participation in such proceedings by the Residential Association shall be a Common Expense. The Residential Association is specifically authorized to obtain and pay for assistance from attorneys, appraisers, architects, engineers, expert witnesses and other Persons as the Residential 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 Common Areas and Improvements thereon following a partial Taking shall be Common Expense.

## **ARTICLE XI DEVELOPMENT RIGHTS**

Section 11.1. **Development Rights.** In accordance with and only if permitted by the Act, Residential Declarant, in addition to any other rights reserved in this Article XI or in any Residential Governing Documents, reserves for itself during the Development Period, the following Development Rights to: (a) add real property to the Residential Property as Annexed Property, including the Community Farm, increase the maximum number of Residential Lots set forth in Section 11.2 below, create and terminate Neighborhoods, designate or restrict uses on any portion thereof, establish any additional restrictions which may apply to Annexed Property, and subject the Community Farm, if annexed into the Residential Property, to the

ownership and control of the Residential Association; (b) designate, re-designate or create Residential Lots, Neighborhoods and Common Areas, and convert Residential Lots owned by Residential Declarant into Common Areas; (c) subject portions of the Residential Property owned by Residential Declarant to Supplemental Declarations, as Residential Declarant may determine; (d) whether by plat or otherwise, relocate boundaries between adjoining Residential Lots owned by Residential Declarant, enlarge or reduce Residential Lots owned by Residential Declarant, enlarge or reduce the Common Areas, reduce or diminish the size of portions of the Common Areas, split, combine, divide or subdivide Residential Lots owned by Residential Declarant and change set back requirements; (e) establish plans and specifications for construction of all Improvements, amend such specifications and complete or make Improvements on Residential Lots owned by Residential Declarant or construct Improvements on Common Areas or other portions of the Residential Property owned by Residential Declarant; (f) create and use and permit others to use the Easements described in Article VII and any other easements or licenses otherwise described in the Residential Governing Documents, including the Commercial Licenses; (g) create, change, terminate, combine or divide Neighborhoods and establish any additional Neighborhood restrictions, Neighborhood Assessments, and Neighborhood Expenses and exercise any other authority as may be necessary or required in connection with Neighborhoods according to this Residential Declaration; (h) merge or consolidate the Residential Association with any other association or residential association within the Community Property; (i) amend this Residential Declaration, the Plat, maps or other plans or plats in connection with the exercise of any Development Right; (j) change the permitted use of any portion of the Residential Property that is owned by Residential Declarant; (k) make amendments to the Residential Governing Documents; (l) market, promote, sponsor marketing events, erect and maintain Signage in the Common Areas and other portions of the Residential Property owned by Residential Declarant or on Residential Lots owned by Residential Declarant or Residential Builders as further described in this Residential Declaration; (m) maintain temporary construction, sales, and management offices on the Residential Property, have model homes and conduct general office tasks, business and sales from such offices and model homes; (n) establish in the Common Areas or other portions of the Residential 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, parking areas, and to create other reservations, exceptions and exclusions; (o) construct, in a way that does not materially adversely affect Residential Lots not owned by Residential Declarant, Systems and Drainage Facilities on, over and under the Residential Property, and such other related facilities as may be necessary for the purpose of furnishing services to the Residential 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 sub-committees and appoint and remove members thereof, during the Development Period in accordance with Article XII of this Residential Declaration; (r) record an instrument surrendering a Development Right, or withdraw or de-annex a portion of the Residential Property in accordance with this Residential Declaration from the Residential Property by recording in the Real Property Records a document evidencing such surrender, withdrawal or de-annexation of any portion of the Residential Property; (s) record an instrument terminating the Residential Declarant Control Period, but not the Development Period, prior to termination of the Residential Declarant Control Period in the Real Property Records in accordance with this Residential Declaration; (t) exercise any additional reserved rights created by this Residential Declaration or any other Governing Document and any other right granted to Residential Declarant by the Residential Governing Documents.

Nothing in the Residential Governing Documents shall be construed or applied so as to unreasonably interfere with, impede or prevent Residential Declarant's exercise of its Development Rights during the Development Period or Residential Declarant's or any Residential Builder's construction activities during the construction of Improvements upon or within the Residential Property. No Residential Declarant or Residential Builder construction activities will be deemed to constitute nuisances or be violations of the Residential 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 Residential Lot there is excessive accumulation of debris of any kind which would render the Residential Lot or any portion thereof unsanitary, unsightly, harmful to health and safety, or detrimental to it or any other portion of the Residential Property, then the Residential Association may contract for or cause such debris to be removed, and the Residential Owner of the Residential Lot 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 Residential Property at different times, Residential Declarant is under no obligation to exercise any of the Development Rights, and Residential Declarant provides no assurance any Development Right will be exercised.

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

(a) Manner of Annexation. At any time after the date this Residential Declaration is recorded in the Real Property Records, until the expiration of the Development Period, Residential Declarant may add Annexed Property to the Residential Property by way of a Supplemental Declaration and make such Annexed Property subject to the Residential Governing Documents. Residential Declarant may subject any Annexed Property to all or any portion of this Residential Declaration, to replat the Residential Property and such Annexed Property as Residential Declarant desires, and to create additional Residential Lots and Common Areas from or out of such Annexed Property. The Residential Property may consist of, and Residential Declarant may subject to this Residential Declaration to, up to 1,000 Residential Lots; provided, however, during the Development Period, and pursuant to the Development Rights, Residential Declarant may annex Annexed Property into the Residential Property and increase the maximum number of Residential Lots.

(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 Residential Declaration and the Residential Governing Documents shall automatically, and without further action by any Person, apply to Annexed Property in the same manner that such covenants and restrictions apply to all other portions of the Residential Property or in such other manner as expressly stated in the Supplemental Declaration; and (ii) any lien arising from ownership or construction upon Annexed Property shall affect only such Annexed Property and Improvements located thereon and no other portion of the Residential Property.

**Section 11.3. Withdrawal of Real Residential Property.** During the Development Period, Residential Declarant reserves the right to withdraw any portion of Residential Property or Residential Lot from the Residential Property and from this Residential Declaration and the Residential 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 Assessments have then commenced with respect to the Residential Property or Residential Lot to be withdrawn. The Withdrawal Notice shall: (a) be executed and acknowledged by the Residential Declarant and the Residential Owner of the Residential Lot to be withdrawn (if Residential Declarant is not the Residential Owner) without the necessity of the joinder or consent of any other Person; (b) contain an adequate legal description of the portion of Residential Property or Residential Lot to be withdrawn; and (c) contain a statement and Residential that the portion of Residential Property or Residential Lot is withdrawn from the Residential Property and from the effect of this Residential Declaration and the Residential 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 later annexation of any withdrawn Residential Property back into the Residential Property in accordance with Section 11.2 of this Residential Declaration.

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

Section 11.5. **Zoning.** No Residential Owner other than Residential Declarant may apply for any change in the zoning of any portion of the Residential Property without Residential Declarant's prior written approval. Each Residential Owner shall fully cooperate with Residential 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 Residential Declarant or the ACC relating to the obtainment of a zoning change on behalf of a Residential Owner shall be reimbursed by such Residential Owner to Residential Declarant or the ACC, as applicable, upon demand or request.

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

Section 11.7. **Reciprocal Easements.** If part of the Residential Property is withdrawn or de-annexed by Residential Declarant during the Development Period, the Residential Owners of the Residential Property and the withdrawn Residential 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 Residential Property and withdrawn Residential Property. Within a reasonable time after the necessity for any such easement appears, Residential Declarant shall prepare and record in the Real Property Records whatever documents are necessary to evidence such easements and shall amend this Residential Declaration to include reference to the recorded easements. Such recorded easements shall specify that the Residential Owners of the Residential Property and Residential Owners of the withdrawn Residential 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 Residential Property upon such reasonable basis as Residential 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 withdrawn Residential Property and the Residential Property as contemplated by this Section 11.7.

## **ARTICLE XII DEVELOPMENT CONTROL**

Section 12.1. **Required Approval.** Plans of a Residential Owner, excluding Residential Declarant, for initial construction of any Improvements must first be submitted to and approved in writing by the Architectural Control Committee, as the case may be, prior to the commencement of any work on such Improvements. Changes to the exterior of any Residence or other Improvement on a Residential Lot (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 alteration to the architectural style and character of an Improvement including the exterior appearance, finish material, color or texture; (c) any addition of an accessory or additional structure to the Residential Lot; (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 Residential Property including change of grade, change of ground level, or change of drainage pattern. The Architectural Control Committee may require other information be submitted with applications as further described in the Architectural Guidelines. Any Residential Owner of a Residential Lot, excluding Residential Declarant, shall not be permitted to divide or sub-divide such Residential Owner's Residential Lot, and shall not convey any easements or other interests in the Residential Lot without the prior written approval of the Architectural Control Committee. Residential Builders purchasing Residential Lots from Residential Declarant and constructing the first Residences on Residential Lots shall be subject to any additional requirements, guidelines, processes and procedures as Residential Declarant may establish and enforce and nothing in this Article XII is intended to limit or restrict any such additional requirements, guidelines, processes and procedures.

Section 12.2. **Establishment of the Architectural Control Committee.** The Architectural Control Committee shall be established by Residential Declarant and may initially consist of up to three (3) members during the Development Period appointed by Residential Declarant. Residential Declarant shall have the continuing right to appoint and remove all members of the Architectural Control Committee during the Development Period; and, upon expiration or earlier termination thereof, the Residential Board shall have the right to appoint and remove members of the Architectural Control Committee in accordance with the Act, and no appointed member of the Architectural Control Committee shall be a current member of the Residential Board, the spouse of a current member of the Residential Board, or an individual residing in a current Residential Board member's household. Members of the ACC appointed by the Residential Board shall serve for the term designated by the Residential Board or until resignation or removal by the Residential Board of the respective committee member. The Residential 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 or greater than seven. 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. Residential Declarant may, from time to time, during the Development Period, adopt, promulgate, amend or otherwise revise the Architectural Guidelines, or any other standards, rules, regulations and procedures governing development control of the Residential Property for the purposes of (a) further enhancing, defining, or interpreting which items or Improvements are covered by Article XII of this Residential Declaration; (b) providing for changes in technology, industry standards, style, materials, safety issues, consistency with updated building codes or Legal Requirements; or (c) for any other reason that Residential Declarant deems to be proper, necessary or in the best interests of the Residential Property; provided that neither Residential 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 Residential Declaration, any other Residential 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 Residential 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 the consent of the Residential Board to support the ACC. Any such delegation may be revoked by the Architectural Control Committee or the Residential Board, at any time for any reason.

Section 12.4. **Future Architectural Guidelines.** After the Development Period, the Residential 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 Residential Governing Documents. In the event conflicts or any inconsistencies exist between the Architectural Guidelines and provisions of other Residential Governing Documents, then the documents shall control in the order that is set forth for the Residential Governing Documents in Section 2.4 of this Residential Declaration.

Section 12.5. **Reply and Communication.** The Architectural Control Committee shall respond to applications made per this Article XII and Architectural Guidelines within the time periods and in the manner as set forth herein, the Architectural Guidelines and the Act. All written communications and submittals shall be addressed to the ACC at the address as the Architectural Control Committee may designate in the Architectural Guidelines. Any approvals granted by the ACC shall be granted solely for the benefit of the Residential Owner applicant with respect to the respective application and shall not be construed as an approval for any other Person, Residential Owner or Residential Occupant planning to perform the same or similar type construction, architectural change, modification or other Improvement to a Residential Lot for which an application would be required pursuant to this Residential Declaration or the Architectural Guidelines. In the event the Architectural Control Committee denies the application of a Residential Owner, a notice of denial must be delivered by certified mail, hand delivery, or electronic delivery to the respective Residential Owner and must include (a) a detailed description for the basis of the denial and changes, if any, to the application or improvements required as a condition to approval; and (b) inform the Residential Owner that he or she may request a hearing with the Residential Board on or before the 30<sup>th</sup> day after the date the denial notice was mailed to the Residential Owner.

Section 12.6. **Variances.** The Architectural Control Committee may grant variances or adjustments from the Architectural Guidelines or from 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 Residential Owners.** If any request by a Residential Owner under the provisions of this Article XII is denied by the Architectural Control Committee, then the applicant shall have the right of appeal to the Residential Board by requesting a hearing, as further described in Section 12.5 above. The Residential Board shall hold one hearing no later than 30 days following the respective Residential Owner applicant's request and will provide notification to each such Residential Owner of the date, time, and location of the hearing no later than the tenth day before the hearing date. The Residential Board or the Residential Association's authorized representative and the Residential Owner applicant, or his or her authorized representative, will each be provided the opportunity to discuss facts concerning and to resolve the denial of the Residential Owner's application and to address any changes requested by the Architectural Control Committee in the denial notice delivered to the Residential Owner per Section 12.5 of this Residential Declaration. One postponement of a hearing by the Residential Board or the Residential Owner applicant described in this Section 12.7 shall be granted for a period of not more than ten days, and any subsequent postponement requested by either party must be agreed to by both of the Residential Board and the applicant

Residential Owner. In considering the appeal, the Residential 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 Declaration, the Architectural Guidelines, and any other applicable Residential Governing Document. Notwithstanding the foregoing, and during the Development Period, the Residential Declarant, in its sole discretion, may overturn the Architectural Control Committee's decision of disapproval for any reason whatsoever.

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

Section 12.9. **Limitation on Liability.** Residential Declarant, the Residential 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 liable for damages to any Residential Owner or Person submitting requests for approval or for any approval granted, or failure to approve or disapprove regarding any matter within the jurisdiction of the Architectural Control Committee under the Residential Governing Documents. Residential Declarant, the Residential 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 Plans approved by the ACC or for violations of any building or zoning code or other land use regulations or Legal Requirements, and any Claim against an Indemnified Party in connection therewith shall be subject to indemnification under and pursuant to the provisions of Section 15.14 of this Residential Declaration.

Section 12.10. **Records.** The Architectural Control Committee shall or shall cause the Residential Association or its Manager to maintain records, electronic or written, of all applications submitted to it and of all actions taken, including approvals and disapprovals, by it with respect thereto in accordance with the Records Policy. Such records shall be open and available for inspection by any Residential Owner pursuant to the Records Policy.

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

(a) **Nonconforming Improvements.** Any Improvement to a Residential Lot made in violation of Article XII of this Residential Declaration, approved Plans, Legal Requirements, or the Architectural Guidelines shall be deemed to be nonconforming. Should the ACC determine that any Improvement was made without approval or was not made in substantial compliance with the approved Plans and description and materials described thereunder or any conditions imposed by the ACC therefore, or was not completed with due diligence, the Architectural Control Committee shall notify the Residential Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars of the noncompliance and shall require the Residential 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 non-conforming Improvement, the Residential Owner shall, at such Residential Owner's own cost and expense, remove such Improvement in accordance with the notice and restore the Residential Lot to substantially the same condition as existed prior to the installation or construction of the nonconforming Improvement. Should the Residential Owner fail to take the actions set forth in the notice of noncompliance within the time frame required in the notice, the Residential Association shall have the right to record a copy of such notice of noncompliance in the

Real Property Records. Further, the Residential Association shall have the right, but not the obligation, to enter the Residential Lot, correct or remove the Improvement that constitutes the violation, and restore the Residential Lot to substantially the same condition as the Residential Lot 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 Residential Association for removal of the nonconforming Improvement and remediation of the Residential Lot may be assessed against the benefited Residential Lot 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 Residential Association.

(b) Additional Remedies. In addition to the enforcement rights of the Residential Association otherwise set forth in of this Residential Declaration and Subsection 12.11(a), the Residential 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 Residential Declaration. In any action instituted or maintained under Article XII of this Residential Declaration, the Residential 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 Residential Association or the ACC to enforce any covenant, condition or restriction contained in the Residential Governing Documents shall not be deemed a waiver of the Residential 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 commencement of construction of any Improvements, a Residential Owner shall obtain all Governmental Approvals required of Residential Owner under its approved Plans and to 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 Residential Association shall have the right to temporarily close off portions of the Property Roads for Foundation or Residential Association approved or sponsored events, activities and functions. **Residential Declarant, the Residential Association and the Residential Board and each of their Affiliates, members, managers, employees, and agents shall not be liable to any extent whatsoever to any Person, including any Residential 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 with respect to 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 MUD Recreational Facilities shall be subject to the indemnification and limitation of liability provisions included in Article XVI of this Residential 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

Residential Governing Documents) shall be submitted for or determined by non-binding mediation as a condition precedent to arbitration. Mediation of any Dispute shall be initiated by any Residential Owner making a written demand therefore to the other Residential Owner or Residential Owners involved in such Dispute and the Residential Association. With respect to such mediation, the parties shall, within ten (10) days after delivery of such written notice to the Residential Association, agree upon a mediator who is: (a) a reputable Person actively engaged in and knowledgeable about disputes concerning residential real estate developments for a continuous period of not less than ten (10) years; and (b) is in no way affiliated, or has had material business dealings with any Residential Owner. If the parties are unable to agree upon a mediator, a mediator having the qualifications set forth 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 Residential Declaration shall govern the payment of attorneys' fees and costs and 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 Residential Declaration) by making a written demand therefor 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 the arbitrator with respect to the Dispute. The issues in dispute shall be submitted as "baseball" or final-offer arbitration, whereby each party shall submit what it deems to be its most reasonable position to the arbitrator and the arbitrator shall select one of those two positions. The arbitrator shall have no discretion to select or award a position other than to select one of those submitted by the parties. To the extent rules governing arbitration are deemed necessary by the arbitrator (or by agreement of the parties), the current rules 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 Residential 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 Residential Declaration shall be the sole remedy of the parties involved in such Dispute. Notwithstanding any other provisions of this Residential 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 Residential Declaration; provided that any arbitration proceeding initiated under the terms of Section 14.2 of this Residential 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 Residential Governing Documents is cumulative and nonexclusive.

Section 15.2. **Severability.** Each of the provisions of this Residential Declaration shall be deemed independent and severable. If any provision of this Residential Declaration or any other provision in the Residential 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 non-compliance shall not affect other provisions in or applications of this Residential Declaration and the Residential Governing Documents.

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

Section 15.4. **Amendment of Residential Declaration by Residential Declarant.** Pursuant to Residential 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 Residential Declaration or the other Residential Governing Documents, may be amended by Residential Declarant (without the necessity of joinder or prior consent of any other Person, including any Residential Builder) in accordance with the Act and the terms of the Residential Governing Documents by the recordation in the Real Property Records of a written instrument executed by Residential Declarant setting forth such amendment. Each deed, security interest, other evidence of obligation or other instrument affecting a Residential Lot and the acceptance by a Residential Owner thereof shall be deemed to be a grant and acknowledgment of, and an approval of the reservation by and the power of Residential Declarant to make, execute and record amendments pursuant to this Section 15.4. During the Development Period, Residential Declarant, without a vote of the Residential Owners or approval by the Mortgagees or the Residential Association, may amend the Residential Governing Documents in any manner necessary to meet the requirements of the Federal National Mortgage Residential Association, the Federal National Home Loan Mortgage Corporation, the Federal Housing Administration or the Veterans Administration or the Act (as each may be amended).

Section 15.5. **Amendment of Residential Declaration by Residential Owners.** After the Development Period has terminated or expired, any provision, covenant, condition, restriction or equitable servitude contained in this Residential Declaration may be amended, repealed, added to, or changed from time to time by an amendment upon the vote of sixty-seven percent (67%) 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 Residential Declarant to Amendment.** Notwithstanding any other provision in this Residential to the contrary, any proposed amendment or repeal of any provision of this Residential reserving Development Rights or for the benefit of Residential Declarant, or its assignees, shall

not be effective unless Residential Declarant, and its assignees, if any, have given prior written approval to such amendment, which approval may be evidenced by the execution by Residential 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 Residential Declaration shall be deemed to be a gift or dedication of any portion of the Residential Property, or of any Residential Lot to the general public or for any public use or purpose whatsoever, it being the intent that this Residential Declaration be strictly limited to and for the purposes expressed in this Residential Declaration for the development, maintenance and operation of a private real estate development on the Residential Property solely for the benefit of the Residential Owners, except for certain easements, Property Roads, Public Parks and Trails, MUD Recreational Facilities and Improvements of the Residential Property which may be owned by the MUD or owned or to be owned by or dedicated to the City, County or other Governmental Authority or for public use by plat or by separate documents.

Section 15.8. **Notices.** All notices or other communications required or permitted to be given according to this Residential 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 day or next day delivery which provides evidence of receipt of such delivery to the addressee, or (d) 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 Residential Declarant and the Residential Association shall be as set forth below and the address of each Residential Owner shall be the address of the Residential Lot unless an alternate address is provided by a Residential Owner to the Residential Association according to the Residential Owner Information Registration process described in the 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 Residential Association in the manner set forth herein:

Residential Declarant:        300 Acres, LLC  
   7632 Hammerly Boulevard  
   Houston, Texas 77055  
   Attention: President

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

Section 15.9. **Interpretation.** Residential Declarant shall have the right, power and authority to determine all questions arising under or in connection with the Residential 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 Residential Declarant shall be binding on the Residential Owners. In all cases, the provisions set forth or provided for in the Residential Governing Documents shall be construed together and given that



interpretation or construction which, in the reasonable opinion of Residential 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 Residential Declarant. The provisions of the Residential Governing Documents shall be liberally interpreted and, if necessary, they shall 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 Residential Declarant or its Affiliates, in connection with any portion of the Residential Property, its physical condition, the Legal Requirements, fitness for intended use, or in connection with the development, sale, operation, maintenance, cost of maintenance, taxes or regulation of any portion of the Residential Property. WITHOUT LIMITATION OF THE FOREGOING, RESIDENTIAL 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, ON-GOING OR PROPOSED DEVELOPMENT, ACTIVITY OR PLAN; (ii) MANAGEMENT OR SUPERVISION OF BUILDING, CONSTRUCTION AND ALL OTHER WORK AND ACTIVITIES BY ANY GOVERNMENTAL AUTHORITY, RESIDENTIAL BUILDER, OR DESIGNEE NOT DIRECTLY EMPLOYED BY RESIDENTIAL DECLARANT, INCLUDING ANY DUTY TO ENFORCE ANY PROVISIONS OF THE RESIDENTIAL 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 RESIDENTIAL PROPERTY OR THE COMMUNITY PROPERTY, OR WHICH ARE NOT SUBJECT TO THE RESIDENTIAL GOVERNING DOCUMENTS OR THE COMMUNITY DOCUMENTS; (iv) THE MANAGEMENT OR OPERATION OF THE RESIDENTIAL PROPERTY OR RESIDENTIAL ASSOCIATION; (v) THE ENFORCEMENT OF ANY PROVISIONS OF THE RESIDENTIAL GOVERNING DOCUMENTS AS TO ANY RESIDENTIAL OWNER, RESIDENTIAL OCCUPANT OR ANY OTHER PERSON; AND (vi) AS TO ANY ENVIRONMENTAL HAZARDS, USES OR CONDITIONS AFFECTING OR WHICH MAY AFFECT ALL OR ANY PORTION OF THE RESIDENTIAL PROPERTY, COMMUNITY PROPERTY, OR ANY REAL PROPERTY ADJACENT TO THE RESIDENTIAL 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 Residential 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 Residential Declaration.

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

Section 15.14. **INDEMNIFICATION.**

(a) **GENERAL.** EACH RESIDENTIAL OWNER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RESIDENTIAL DECLARANT, THE RESIDENTIAL ASSOCIATION, THE ACC, THE RESIDENTIAL BOARD 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 THE RESIDENTIAL DECLARATION, THAT ARISE OUT OF (DIRECTLY OR INDIRECTLY), ARE THE RESULT OF, OR ARE CAUSED BY (i) SUCH RESIDENTIAL OWNER'S (OR THE RESIDENTIAL OCCUPANT OF SUCH RESIDENTIAL OWNER'S RESIDENTIAL LOT OR IMPROVEMENTS THEREON) NON-COMPLIANCE WITH ANY OF THE PROVISIONS OF THE RESIDENTIAL GOVERNING DOCUMENTS OR LEGAL REQUIREMENTS, (ii) ANY ACT OR OMISSION OF SUCH RESIDENTIAL OWNER (OR THE RESIDENTIAL OCCUPANT OF SUCH RESIDENTIAL OWNER'S RESIDENTIAL LOT OR IMPROVEMENTS THEREON), (iii) PROPERTY ROADS, MUD RECREATIONAL FACILITIES, PUBLIC PARKS AND TRAILS, AND ANY OTHER PORTION OF THE RESIDENTIAL PROPERTY WHICH IS OWNED, MAINTAINED, REPAIRED, AND/OR OPERATED BY THE CITY, MUD OR ANY OTHER GOVERNMENTAL AUTHORITY, OR CONVEYED OR DEDICATED TO THE CITY OR ANY OTHER GOVERNMENTAL AUTHORITY, AND/OR OPEN TO MEMBERS OF THE GENERAL PUBLIC.

(b) PLAN REVIEW. NO RESIDENTIAL OWNER SUBMITTING PLANS TO AN INDEMNIFIED PARTY PURSUANT TO THE RESIDENTIAL GOVERNING DOCUMENTS, BY DISSEMINATION OF THE SAME, AND NO RESIDENTIAL OWNER, BY ACQUIRING TITLE TO A RESIDENTIAL LOT, 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. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO INDEMNIFIED PARTY REVIEWING 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 OR OTHER CODE REQUIREMENTS OR INDUSTRY STANDARDS, ARCHITECTURAL GUIDELINES, OR COMPLIANCE WITH ANY LEGAL REQUIREMENTS. FURTHER, EACH RESIDENTIAL OWNER AGREES TO INDEMNIFY, DEFEND, AND HOLD EACH INDEMNIFIED PARTY HARMLESS FROM ANY APPROVAL GRANTED FOR PLANS OF A RESIDENTIAL OWNER SUBMITTED UNDER THE RESIDENTIAL GOVERNING DOCUMENTS OR THE CONSTRUCTION OF IMPROVEMENTS ON SUCH RESIDENTIAL OWNER'S RESIDENTIAL LOT.

Section 15.15. Limitation of Liability. Neither Residential Declarant, the Residential Association, the ACC, the Residential Board, the 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 Residential Owner or any other Person submitting 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 to disapprove any Plans, proposed use or variance submitted for approval; (b) a Residential Owner, in connection with any design, engineering or construction defect associated with any Improvement constructed on such Residential Owner's Residential Lot or any Improvement constructed on the Residential Property, including, without limitation, Property Roads, Public Parks and Trails, and MUD Recreational Facilities; (c) a Residential Owner, in connection with the breach or violation of any provision of the Residential Governing Documents by a Residential Owner including the Restrictive Covenants and Legal Requirements covering the use of such Residential Owner's Residential Lot; (d) a Residential Owner, in connection with: (i) Property Roads, Public Parks and Trails, MUD Recreational Facilities and any portion of the Residential Property which may or will be open to or which may or will be used by members of the general public, and any injury, loss, theft or damage to any Person, Residential Owner, Residence, Residential Lot, Improvements or Residential

Property which may arise out of the presence upon the Residential Property of or use of any such facilities or Improvements on the Residential Property by one or members of the general public; (ii) injury or damage to any Person, Residence, Residential Lot or Residential Property caused by the elements or by such Residential Owner or any other Person, or resulting from any utility, rain, snow, flood, freeze, ice or water which may leak or flow from or over any portion of the Common Areas or from any pipe, drain, Drainage Facility, conduit, System, equipment or other Improvement which the Residential Association or Manager is responsible to maintain hereunder; (iii) loss by damage, theft or otherwise of any personal property of a Residence Owner, or other Person that may be stored in or upon any of the Common Areas or any other portion of the Residential Property; or (iv) damage or injury caused in whole or in part by the failure of the Residential Association or any Officer, Director, manager, employee or agent of the Residential Association to discharge its or their responsibilities under this Section 15.15 of this Residential Declaration (collectively, "Common Area Damage"); or (e) breach of representation or warranty, express or implied, by a Residential Owner or any other Person in connection with any portion of the Residential Property and any Improvement thereon, its 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 Residential Declarant, the Residential Association, the ACC or the Residential Board shall be liable to any Residential Owner or any of its Designees, for any Claims, except as otherwise expressly set forth in and permitted by the Residential Governing Documents, and such Designee shall be indemnified in accordance with the provisions of the Residential Governing Documents.

EACH RESIDENTIAL OWNER, BY ACCEPTANCE OF A DEED TO SUCH RESIDENTIAL OWNER'S RESIDENTIAL LOT(S), RELEASES AND FOREVER DISCHARGES RESIDENTIAL DECLARANT, THE RESIDENTIAL ASSOCIATION, THE RESIDENTIAL 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 THE RESIDENTIAL PROPERTY, INCLUDING PROPERTY ROADS, PUBLIC PARKS AND TRAILS, MUD RECREATIONAL FACILITIES, RECREATIONAL FACILITIES, AND IMPROVEMENTS IN COMMON AREAS; (B) THE BREACH OF ANY PROVISION OF THE RESIDENTIAL GOVERNING DOCUMENTS BY A RESIDENTIAL OWNER, INCLUDING BREACHES OF THE RESTRICTIVE COVENANTS AND THE USE RESTRICTIONS APPLICABLE TO SUCH RESIDENTIAL OWNER'S RESIDENTIAL LOT; (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 RESIDENTIAL PROPERTY AND IMPROVEMENTS THEREON OWNED, OPERATED, MAINTAINED OR CONSTRUCTED BY THE MUD, THE CITY OR OTHER GOVERNMENTAL AUTHORITY OR DEDICATED TO THE CITY OR OTHER GOVERNMENTAL AUTHORITY, FOR WHICH THE MUD, CITY 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 OR GOVERNMENTAL AUTHORITY EMPLOYEE, AGENT OR REPRESENTATIVE ON THE RESIDENTIAL PROPERTY IN CONNECTION WITH PROPERTY ROADS, MUD RECREATIONAL FACILITIES, PUBLIC PARKS AND TRAILS, OR ANY OTHER PORTION OF THE RESIDENTIAL PROPERTY OWNED, OPERATED, MAINTAINED OR CONSTRUCTED BY THE MUD OR CITY OR OTHER GOVERNMENTAL AUTHORITY OR DEDICATED TO THE CITY OR OTHER

GOVERNMENTAL AUTHORITY WHICH MAY BE OPEN TO OR USED BY MEMBERS OF THE GENERAL PUBLIC; (D) ANY BREACH OF REPRESENTATION OR WARRANTY; (E) FAILURE OF ANY IMPROVEMENTS ON THE RESIDENTIAL PROPERTY OWNED, OPERATED, MAINTAINED OR CONSTRUCTED BY THE MUD, THE CITY OR OTHER GOVERNMENTAL AUTHORITY OR DEDICATED TO THE CITY OR OTHER GOVERNMENTAL AUTHORITY TO COMPLY WITH LEGAL REQUIREMENTS, INCLUDING ACCESSIBILITY LAWS SUCH AS THE AMERICANS WITH DISABILITIES ACT, AND/OR (E) COMMON AREA DAMAGE.

Section 15.16. **Liability of Residential Owners for Damage.** Each Residential Owner shall be liable to the Residential Association, for any damage to the Common Areas or Improvements thereon or for any expense or liability incurred by the Residential Association that may be sustained by reason of any act or omission of such Residential Owner or its Residential Occupants or its Designees, and for any violation of the Residential Governing Documents by such Residential Owner or its Residential Occupants or its Designees. The Residential Association shall have the power to levy and collect Charges and Individual Assessments against a Residential Owner to cover the costs and expenses incurred by the Residential Association on account of any such damage or any such violation of the Residential 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 Residential Declaration or the other Residential Governing Documents, whenever a sum is due and payable by a Residential Owner to the Residential Association, ACC or Residential Declarant such sum shall be paid within thirty (30) days of a Residential Owner's receipt of notice such payment is due. If a Residential Owner fails to make such payment within such 30-day time period, the outstanding unpaid amount shall accrue interest at the Past Due Rate. Additionally, such outstanding payment is subject to the rights of the Residential Association contained in Section 6.4 of this Residential Declaration.

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

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

**RESIDENTIAL DECLARANT:**

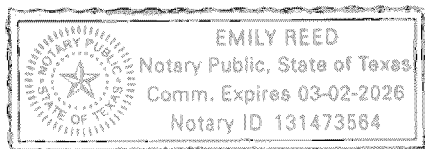
300 Acres, LLC  
a Texas limited liability company

By: Edible Group, LLC  
its sole Managing Member

By: [Signature]  
Clayton S. Garrett, President

STATE OF TEXAS           §  
                                     §  
COUNTY OF Harris   §

This instrument was acknowledged before me on the 21 day of June, 2022, by Clayton S. Garrett, the President of 300 Acres, LLC, a Texas limited liability company, on behalf of said limited liability company.



[Signature]  
Notary Public, State of Texas

List of Exhibits:

- Exhibit A - Legal Description of the Residential Property
- Exhibit B - Maintenance Responsibility Chart
- Exhibit C - Association Maintained Fences
- Exhibit D - Portions of Alleys Maintained by Residential Owners
- Exhibit E - Sample MUD Notice

## EXHIBIT A

### LEGAL DESCRIPTION OF THE RESIDENTIAL PROPERTY

STATE OF TEXAS                               §  
   §  
COUNTY OF FORT BEND                   §

A METES & BOUNDS description of a certain 44.46 acre (1,936,772 square feet) tract of land situated in the Jane Wilkins Survey, Abstract No. 96, in Fort Bend County, Texas, being a portion of a called 145.368 acre tract (Tract III) conveyed to 300 Acres LLC by deed recorded in Clerk's File No. 2017087205, Fort Bend County Official Public Records; said 44.46 acre (1,936,772 square feet) tract of land being more particularly described as follows with all bearings being based on the Texas Coordinate System, South Central Zone, NAD 83:

**COMMENCING** at a 5/8-inch iron rod (with cap) found, being the northwest corner of said called 145.368 acre tract, being on the south line of a called 70 foot drainage canal (Fourth Tract) recorded in the name of Fort Bend County Drainage District in Volume 331, Page 468, Fort Bend County Deed Records, and being on the east right-of-way line of Harlem Road (width varies) as recorded in Volume 63, Page 203, Fort Bend County Deed Records and in Clerk's File Nos. 2011015402 and 2015075797, Fort Bend County Official Public Records;

THENCE, along the east right-of-way line of Harlem Road, the following three (3) courses and distances:

1. South 07°27'01" West, 74.13 feet to a 5/8-inch iron rod (with cap) found;
2. South 03°26'09" East, 577.51 feet to a 5/8-inch iron rod (with cap) found, being the beginning of a curve to the right;
3. Along said curve to the right in a southerly direction, with a radius of 10,758.45 feet, a central angle of 00°32'10", an arc length of 100.67 feet, and a chord bearing South 03°10'04" East, 100.67 feet to a point;
4. South 02°53'59" East, 485.93 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the northwest corner and **POINT OF BEGINNING** of the herein described tract and being the beginning of a curve to the left;

THENCE, over and across said called 145.368 acre tract, the following thirty-seven (37) courses and distances:

1. Along said curve to the left in a southeasterly direction, with a radius of 30.00 feet, a central angle of 90°16'59", an arc length of 47.27 feet, and a chord bearing South 48°02'28" East, 42.53 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
2. North 86°49'03" East, 589.04 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the left;

3. Along said curve to the left in a northeasterly direction, with a radius of 15.00 feet, a central angle of  $90^{\circ}00'00''$ , an arc length of 23.56 feet, and a chord bearing North  $41^{\circ}49'03''$  East, 21.21 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
4. North  $86^{\circ}49'03''$  East, 50.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the left;
5. Along said curve to the left in a southeasterly direction, with a radius of 15.00 feet, a central angle of  $90^{\circ}00'00''$ , an arc length of 23.56 feet, and a chord bearing South  $48^{\circ}10'57''$  East, 21.21 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
6. North  $86^{\circ}49'03''$  East, 534.47 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the right;
7. Along said curve to the right in an easterly direction, with a radius of 387.00 feet, a central angle of  $21^{\circ}14'39''$ , an arc length of 143.49 feet, and a chord bearing South  $82^{\circ}33'38''$  East, 142.67 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
8. North  $13^{\circ}36'56''$  East, 4.56 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the right;
9. Along said curve to the right in a northeasterly direction, with a radius of 120.00 feet, a central angle of  $28^{\circ}12'06''$ , an arc length of 59.07 feet, and a chord bearing North  $27^{\circ}43'00''$  East, 58.47 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
10. North  $41^{\circ}49'03''$  East, 128.75 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
11. South  $57^{\circ}59'45''$  East, 112.93 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
12. South  $63^{\circ}30'34''$  East, 556.89 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
13. South  $56^{\circ}22'53''$  East, 230.69 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the northeast corner of the herein described tract;
14. South  $41^{\circ}49'03''$  West, 161.03 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the left;
15. Along said curve to the left in a southerly direction, with a radius of 25.00 feet, a central angle of  $90^{\circ}00'00''$ , an arc length of 39.27 feet, and a chord bearing South  $03^{\circ}10'57''$  East, 35.36 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
16. South  $48^{\circ}10'57''$  East, 57.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the right;
17. Along said curve to the right in a southerly direction, with a radius of 25.00 feet, a central angle of  $90^{\circ}00'00''$ , an arc length of 39.27 feet, and a chord bearing South  $03^{\circ}10'57''$  East, 35.36 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;

18. South  $41^{\circ}49'03''$  West, 219.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
19. North  $48^{\circ}10'57''$  West, 268.62 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the left;
20. Along said curve to the left in a westerly direction, with a radius of 15.00 feet, a central angle of  $90^{\circ}00'00''$ , an arc length of 23.56 feet, and a chord bearing South  $86^{\circ}49'03''$  West, 21.21 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
21. South  $41^{\circ}49'03''$  West, 440.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the left;
22. Along said curve to the left in a southerly direction, with a radius of 15.00 feet, a central angle of  $90^{\circ}00'00''$ , an arc length of 23.56 feet, and a chord bearing South  $03^{\circ}10'57''$  East, 21.21 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
23. South  $41^{\circ}49'03''$  West, 50.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the left;
24. Along said curve to the left in a westerly direction, with a radius of 15.00 feet, a central angle of  $90^{\circ}00'00''$ , an arc length of 23.56 feet, and a chord bearing South  $86^{\circ}49'03''$  West, 21.21 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
25. South  $41^{\circ}49'03''$  West, 127.28 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the right;
26. Along said curve to the right in a southwesterly direction, with a radius of 375.00 feet, a central angle of  $45^{\circ}00'00''$ , an arc length of 294.52 feet, and a chord bearing South  $64^{\circ}19'03''$  West, 287.01 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
27. South  $86^{\circ}49'03''$  West, 125.52 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the left;
28. Along said curve to the left in a southwesterly direction, with a radius of 15.00 feet, a central angle of  $90^{\circ}00'00''$ , an arc length of 23.56 feet, and a chord bearing South  $41^{\circ}49'03''$  West, 21.21 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
29. South  $86^{\circ}49'03''$  West, 50.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the left;
30. Along said curve to the left in a northwesterly direction, with a radius of 15.00 feet, a central angle of  $90^{\circ}00'00''$ , an arc length of 23.56 feet, and a chord bearing North  $48^{\circ}10'57''$  West, 21.21 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
31. South  $86^{\circ}49'03''$  West, 95.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
32. South  $03^{\circ}10'57''$  East, 460.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;



33. South 86°49'03" West, 95.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
34. South 03°10'57" East, 50.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
35. South 86°49'03" West, 80.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the right;
36. Along said curve to the right in a southeasterly direction, with a radius of 15.00 feet, a central angle of 90°00'00", an arc length of 23.56 feet, and a chord bearing South 48°10'57" East, 21.21 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
37. South 03°10'57" East, 104.89 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being on the north line of a called 317.812 tract (Tract One) conveyed to RES/VLS Real Estate Limited Partnership by deed recorded in Clerk's File No. 2018058651, Fort Bend County Official Public Records;

THENCE, South 86°49'03" West, 665.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being on the east right-of-way line of said Harlem Road and being the southwest corner of the herein described tract;

THENCE, North 02°06'41" West, along said east right-of-way line of Harlem Road, 715.57 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the left;

THENCE, over and across said called 145.638 acre tract, the following seven (7) courses and distances:

1. Along said curve to the left in a southeasterly direction, with a radius of 30.00 feet, a central angle of 91°04'17", an arc length of 47.68 feet, and a chord bearing South 47°38'49" East, 42.82 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
2. North 86°49'03" East, 587.63 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the left;
3. Along said curve to the left in a northeasterly direction, with a radius of 15.00 feet, a central angle of 90°00'00", an arc length of 23.56 feet, and a chord bearing North 41°49'03" East, 21.21 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
4. North 03°10'57" West, 958.00 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the left;
5. Along said curve to the left in a northwesterly direction, with a radius of 15.00 feet, a central angle of 90°00'00", an arc length of 23.56 feet, and a chord bearing North 48°10'57" West, 21.21 feet to a 5/8-inch iron rod (with cap stamped "ELS") set;
6. South 86°49'03" West, 571.36 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being the beginning of a curve to the left;

7. Along said curve to the left in a southwesterly direction, with a radius of 30.00 feet, a central angle of  $89^{\circ}10'05''$ , an arc length of 46.69 feet, and a chord bearing South  $42^{\circ}14'00''$  West, 42.12 feet to a 5/8-inch iron rod (with cap stamped "ELS") set, being on the east right-of-way line of said Harlem Road;

THENCE, North  $02^{\circ}21'03''$  West, along said east right-of-way line of Harlem Road, 18.85 feet to a 5/8-inch iron rod found, being the beginning of a curve to the left;

THENCE, along said east right-of-way line of Harlem Road and said curve to the left in a northerly direction, with a radius of 10,506.91 feet, a central angle of  $00^{\circ}32'56''$ , an arc length of 100.66 feet, and a chord bearing North  $02^{\circ}37'31''$  West, 100.65 feet to a 5/8-inch iron rod (with cap) found;

THENCE, North  $02^{\circ}53'59''$  West, along said east right-of-way line of Harlem Road, 14.21 feet to the **POINT OF BEGINNING, CONTAINING** 44.46 acres (1,936,772 square feet) of land in Fort Bend County, Texas, filed in the offices of Elevation Land Solutions in The Woodlands, Texas.

**EXHIBIT B**

**MAINTENANCE RESPONSIBILITY CHART**

<b>PORTION OF RESIDENTIAL PROPERTY*</b>	<b>RESIDENTIAL ASSOCIATION RESPONSIBILITY</b>	<b>RESIDENTIAL OWNER RESPONSIBILITY</b>
<i>(*Unless expressly stated otherwise, the below described portions of Residential Lots and Residences apply to all Residences, including Townhomes, and all Residential Lots, including those upon which Townhomes are constructed.)</i>		
Common Areas, including Neighborhood Common Areas, and Improvements thereon, but excluding landscaped portions of Alleys located on Residential Lots depicted on <u>Exhibit D</u> to the Residential Declaration	All aspects of the Common Areas and Improvements thereon.	None.
Landscaped portions of Alleys located on Residential Lots depicted on <u>Exhibit D</u> to the Residential Declaration	None.	All aspects.
<u>Private</u> drives, driveways, roads, roadways, and rights of way on the Residential Property, if any, <u>not included in the Property Roads</u>	All aspects.	None.
Maintenance Areas	All aspects of the Maintenance Areas and Improvements thereon unless expressly provided otherwise in the Residential Declaration.	None.
Association Maintained Fencing (shown on Exhibit C to the Residential Declaration)	All aspects.	None.

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

Easement Area of the Fencing Easement	All aspects.	None.
Fencing on Residential Lots, excluding Association Maintained Fencing	None.	All aspects.
Fencing on Common Areas	All aspects.	None.
Fencing on Maintenance Areas	All aspects.	None.
Landscaping (planting, replacement, maintenance, irrigation and all other aspects of landscaping) located on Residential Lots upon which Cottages are constructed	All aspects.	None.
Landscaping (planting, replacement, maintenance, irrigation and all other aspects of landscaping) on Residential Lots, <u>excluding</u> those upon which Cottages are located and Residential Lots with Townhomes subject to Townhome Maintenance Obligations described below	None.	All aspects.
Trees and Shrubs (trimming, removal, replacements) on Residential Lots	None.	All aspects.
Retaining Walls on Residential Lots	None.	All aspects.
Driveways and walkways on Residential Lots, excluding Shared Driveways and Association Maintained Sidewalks	None.	All aspects.

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

Shared Driveways	All aspects.	None.
Easement Areas for the Sidewalk Easement	All aspects.	None.
Sidewalks located on Residential Lots which <u>are not</u> Association Maintained Sidewalks	None.	All aspects.
Association Maintained Sidewalks and any sidewalks located on Common Areas, Maintenance Areas or other portions of the Residential Property owned or maintained by the Residential Association	All aspects.	None.
Easement Areas located on Residential Lots (excluding the Easement Areas for the Fencing Easement, Sidewalk Easement, Shared Driveway Easement, and any other Easement for which the Residential Association is responsible to maintain) according to Section 7.2 and Subsection 8.1(c) of the Residential Declaration.	None.	All aspects.
Easement Areas located on or in Common Areas, Neighborhood Common Areas, Maintenance Areas, Fencing Easement, Sidewalk Easement and any other Easement for which the Residential Association is responsible to maintain per Section 7.2 and Subsection 8.1(c) of the Residential Declaration	All aspects.	None.
Residence Skin (as defined in Section 1.1 of the Residential Declaration), excluding portions of	None.	All aspects.

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

Residence Skin on Townhomes subject to Townhome Maintenance Obligations described below		
Residence Structure (including the framing, studs, insulation and structural components of the entire Residence) excluding structural framing elements for roofs on Townhomes subject to Townhome Maintenance Obligations described below	None.	All aspects.
Interior portions of Residences (including, without limitation, attic and storage areas, walls, floors, flooring, ceilings, doors, trim, fixtures, betterments, improvements, sheetrock, drywall, Systems (i.e., HVAC systems and equipment, electrical systems, electrical fixtures and electrical equipment, plumbing systems, plumbing fixtures and plumbing equipment, and fire sprinkler systems and equipment), and all personal property of any kind and nature located, stored or kept in the Residence or on any other portion of the Residential Lot)	None.	All aspects.
Improvements on Residential Lots, excluding Improvements subject to Townhome Maintenance Obligations described below	None.	All aspects.
Systems exclusively serving a Residential Lot, excluding certain irrigation Systems subject to Townhome Maintenance Obligations described below	None.	All aspects.

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

<b>TOWNHOME MAINTENANCE OBLIGATIONS**</b>		
<i>**Applicable to Residential Lots upon which Townhomes are or will be constructed, all which Townhomes and Residential Lots shall constitute one Neighborhood until such time as this Maintenance Responsibility Chart is amended (or a Supplemental Declaration is recorded) establishing any additional Townhome Neighborhood possessing different or additional Townhome Maintenance Obligations</i>		
Townhome Roofs	All aspects, including, without limitation, roof shingles, laminate decking, flashing, vent pipes and penetrations, structural framing elements for roof, and guttering attached to roof eaves.	None.
Townhome Roof-mounted attachments installed by Residential Owners	None.	All aspects, including, without limitation, repair of leaks resulting from roof mounted attachments. Each Residential Owner is responsible for removal of any roof- mounted attachments as may be necessary or required to facilitate the Residential Association's roof maintenance obligations set forth in this Maintenance Responsibility Chart.
Residence Skin of Townhomes	All aspects.	None.
Townhome Foundation	None.	All aspects.

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

Exterior windows (including trim, casing, sills, sealing and caulking) of Townhomes	Periodic painting and staining of trim, as applicable, the frequency of which shall be determined in the sole discretion of the Board of Directors or ACC, as applicable	All other aspects.
Exterior doors (including trim and garage doors) of Townhomes	Periodic painting and staining, as applicable, the frequency of which shall be determined in the sole discretion of the Board of Directors or ACC, as applicable	All other aspects.
Maintenance of all yard areas (front and rear) on Residential Lots with Townhomes	All aspects.	None.
Irrigation systems***, including controls, lines, equipment and all other components on Residential Lots with Townhomes  ***Irrigation controls shall be located on the exterior of Townhomes to prevent any requirement that the Residential Association access any interior portion of a Townhome, including a Townhome garage, to control any portions of the irrigations systems on Residential Lots with Townhomes.	All aspects.	None.

*(Insurance obligations of Residential Owners and the Residential Association in connection with Townhome Maintenance Obligations described above are set forth in Article IX of the Residential Declaration. Any other insurance requirements which are exclusive to Residence Owners owning Townhomes, if any, shall be forth below in this Maintenance Responsibility Chart.)*

By and through this Maintenance Responsibility Chart and the Residential Declaration, Residential Declarant designates Townhome Maintenance Obligations, Maintenance Areas, Neighborhoods, certain portions of Residential Lots and Improvements thereon to be maintained, repaired and replaced by the Residential Association, instead of the respective Residential Owners, in the manner stated herein which designations and related Residential Association duties, including the Townhome Maintenance Obligations, may deviate from general or customary homeowner association obligations, and the costs and expenses associated with such

EXHIBIT B – Maintenance Responsibility Chart

Declaration of Covenants, Conditions and Restrictions for Indigo Residential Community



duties and obligations shall either constitute a Common Expense or Neighborhood Expense, as the case may be, as further described in the Residential Declaration, and will be paid for by and through Regular Assessments or Neighborhood Assessments, whichever applies, according to Article VI of the Residential Declaration. As further provided in Article VI of the Residential Declaration, all Residential Owners are required to pay Regular, Special and Individual Assessments. All Residential Owners of Residences and/or Residential Lots in a particular Neighborhood will be subject to and are obligated to pay Neighborhood Assessments *in addition to* Regular, Special and Individual Assessments.

Notwithstanding the foregoing, each Residential Owner is liable for damage he or she, or any of his or her Residential Occupants, contractors, guests, visitors, or invitees cause, through negligence, willful misconduct or otherwise, to each such Residential Owner's Residence, other Residences, Improvements located on such Residential Owner's Residential Lot, Improvements located on other Residential Lots, Common Areas and any Improvements thereon, and any other portion of the Residential Property and Improvements thereon according to the Residential Declaration, Rules and any other provisions in the Residential Governing Documents requiring Residential Owners to be responsible and liable for any and all of such damage and costs.

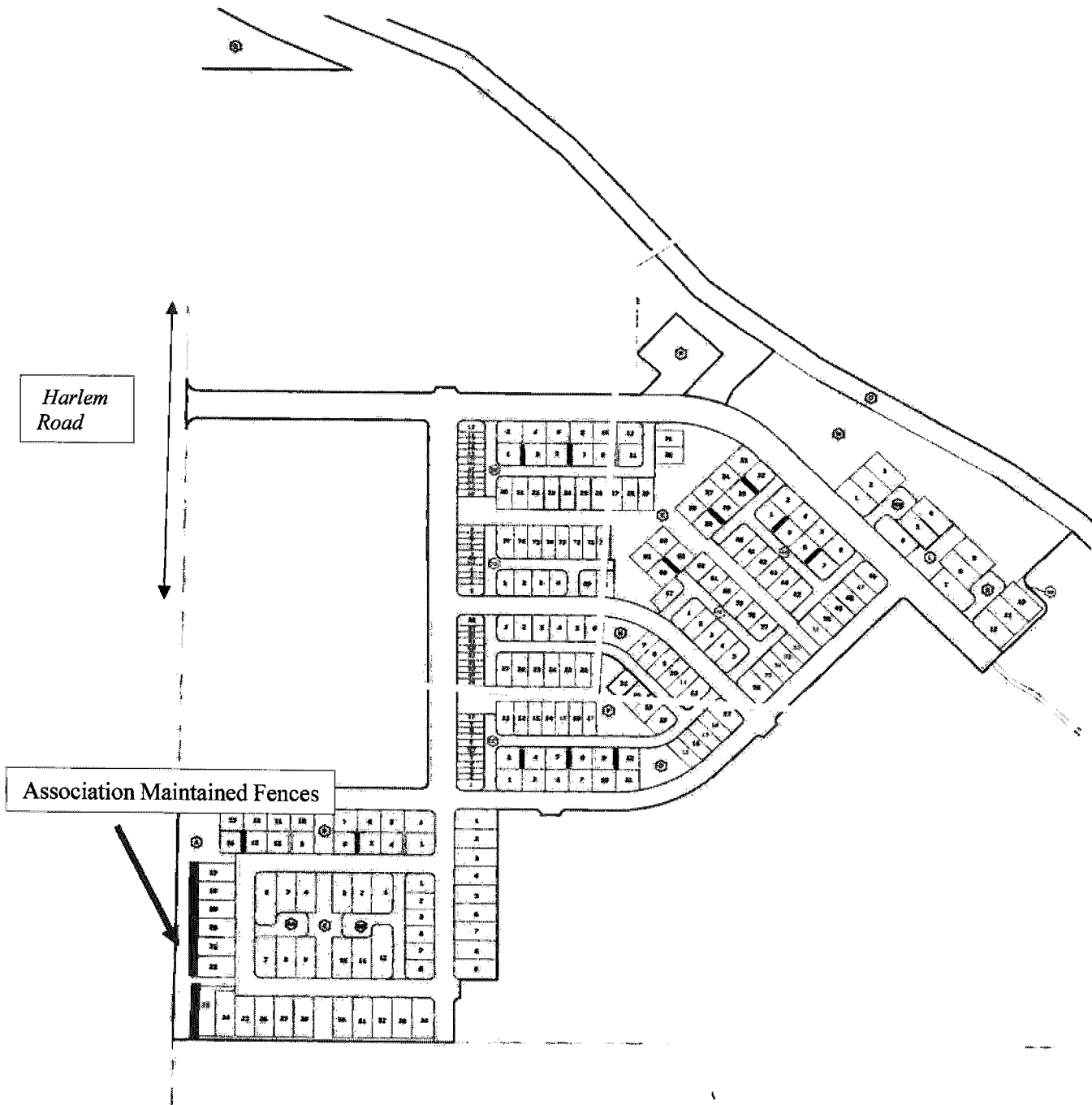
**Any portion of Residential Lots and Improvements thereon which are not expressly designated in this Maintenance Responsibility Chart or in the Residential Declaration (or a Supplemental Declaration) to be maintained, repaired and replaced by the Residential Association shall be maintained, repaired and replaced by the respective Residential Owner of the Residential Lot, at his or her sole cost and expense, in accordance with the Residential Governing Documents.**

**Additional Townhome Insurance Requirements:**

None.

**EXHIBIT C**

**ASSOCIATION MAINTAINED FENCES**



## EXHIBIT D

### PORTIONS OF ALLEYS MAINTAINED BY RESIDENTIAL OWNERS

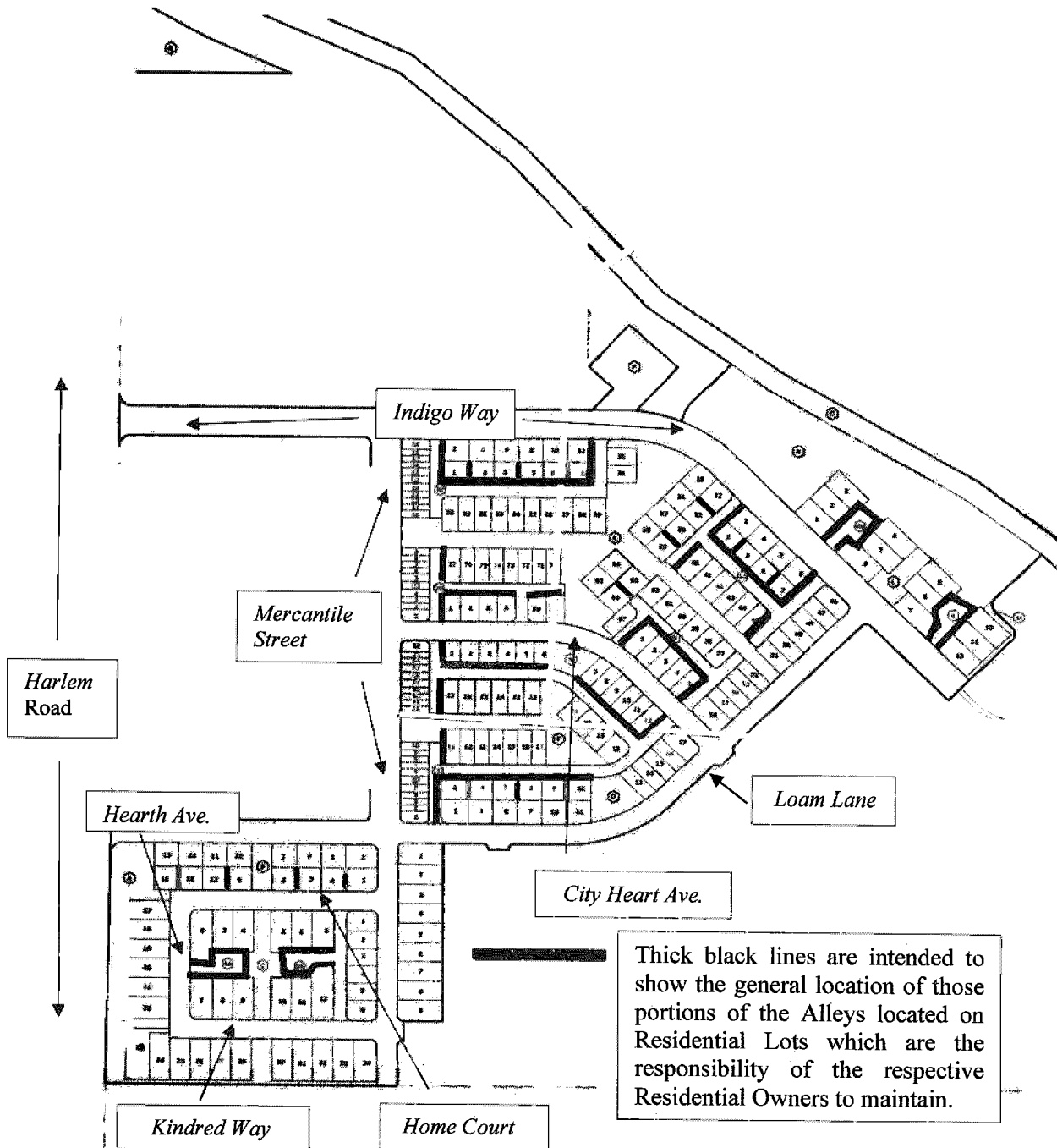


EXHIBIT D – Portions of Alleys Maintained by Residential Owners  
Declaration of Covenants, Conditions Restrictions for Indigo Residential Community

**EXHIBIT E**

**SAMPLE MUD NOTICE**

(Required by Section 49.452(b) of the Texas Water Code)

The real property, described below, that you are about to purchase is located in the Fort Bend County Municipal Utility District No. 251. The district has taxing authority separate from any other taxing authority and may, subject to voter approval, issue an unlimited amount of bonds and levy an unlimited rate of tax in payment of such bonds. As of this date, the rate of taxes levied by the district on real property located in the district is \$\_\_\_\_\_ on each \$100 of assessed valuation. If the district has not yet levied taxes, the most recent projected rate of tax, as of this date, is \$\_\_\_\_\_ on each \$100 of assessed valuation. The total amount of bonds, excluding refunding bonds and any bonds or any portion of bonds issued that are payable solely from revenues received or expected to be received under a contract with a governmental entity, approved by the voters and which have been or may, at this date, be issued is \$\_\_\_\_\_, and the aggregate initial principal amounts of all bonds issued for one or more of the specified facilities of the district and payable in whole or in part from property taxes is \$\_\_\_\_\_.

The district has the authority to adopt and impose a standby fee on property in the district that has water, sanitary sewer, or drainage facilities and services available but not connected and which does not have a house, building, or other improvement located thereon and does not substantially utilize the utility capacity available to the property. The district may exercise the authority without holding an election on the matter. As of this date, the most recent amount of the standby fee is \$\_\_\_\_\_. An unpaid standby fee is a personal obligation of the person that owned the property at the time of imposition and is secured by a lien on the property. Any person may request a certificate from the district stating the amount, if any, of unpaid standby fees on a tract of property in the district.

The district is located in whole or in part in the extraterritorial jurisdiction of the City of Richmond, Texas. By law, a district located in the extraterritorial jurisdiction of a municipality may be annexed without the consent of the district or the voters of the district. When a district is annexed, the district is dissolved.

The purpose of this district is to provide water, sewer, drainage, or flood control facilities and services within the district through the issuance of bonds payable in whole or in part from property taxes. The cost of these utility facilities is not included in the purchase price of your property, and these utility facilities are owned or to be owned by the district. The legal description of the property you are acquiring is as follows:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Seller

\_\_\_\_\_  
Date

PURCHASER IS ADVISED THAT THE INFORMATION SHOWN ON THIS FORM IS SUBJECT TO CHANGE BY THE DISTRICT AT ANY TIME. THE DISTRICT ROUTINELY ESTABLISHES TAX RATES DURING THE MONTHS OF SEPTEMBER THROUGH DECEMBER OF EACH YEAR, EFFECTIVE FOR THE YEAR IN WHICH THE TAX RATES ARE APPROVED BY THE DISTRICT. PURCHASER IS ADVISED TO CONTACT THE DISTRICT TO DETERMINE THE STATUS OF ANY CURRENT OR PROPOSED CHANGES TO THE INFORMATION SHOWN ON THIS FORM.

The undersigned purchaser hereby acknowledges receipt of the foregoing notice at or prior to execution of a binding contract for the purchase of the real property described in such notice or at closing of purchase of the real property.

\_\_\_\_\_  
Signature of Purchaser

\_\_\_\_\_  
Date

EXHIBIT E – Sample Notice of MUD

Declaration of Covenants, Conditions and Restrictions for Indigo Residential Community

## 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 Residential Declarant and Lender, hereby consents to the filing of the Declaration of Covenants, Conditions and Restrictions for Indigo Residential Community, as may be modified or amended from time to time (the "Residential 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 Residential Declaration; provided, however, (a) notwithstanding anything in this Consent and Subordination, the Residential Declaration or the Texas Residential Property Owners Protection Act, Texas Property Code, Chapter 209, Section 209.001 et seq., 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 Residential 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 Residential Property; (ii) shall not release, subordinate, impair or otherwise affect any and all rights the Lender has under the Deed of Trust, including, without limitation, to succeed to the rights, powers and authority of Residential Declarant under the Residential Declaration 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: Jeff Greenwald

Title: Manager

STATE OF Connecticut §  
COUNTY OF Fairfield § Danvers

This instrument was acknowledged before me on this 21 day of June, 2022,  
by Jeff Greenwald, the manager of Silver Heights  
Development LLC, a Connecticut limited liability company, on behalf of said company.

\_\_\_\_\_  
Notary Public - State of Connecticut

My Commission Expires:

**JULIE MAGNANO**  
**NOTARY PUBLIC OF CONNECTICUT**  
My Commission Expires 6/30/2023

Consent and Subordination – Silver Heights Development LLC  
Declaration of Covenants, Conditions and Restrictions for Indigo Residential Community