

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR STORM WATER RETENTION AND DETENTION  
FACILITIES AT MANSFIELD BUSINESS PARK 7**

**IN JOHNSON COUNTY, TEXAS**

**THIS DECLARATION WAS PREPARED BY  
AND AFTER RECORDING RETURN TO:**

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DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTION AND EASEMENTS  
FOR MEDC PARK ASSOCIATION

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR STORM WATER RETENTION AND DETENTION  
FACILITIES AT MANSFIELD BUSINESS PARK 7**

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR STORM WATER RETENTION AND DETENTION FACILITIES AT MANSFIELD BUSINESS PARK 7** (this “**Declaration**”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **MANSFIELD ECONOMIC DEVELOPMENT CORPORATION**, a Texas nonprofit corporation (hereinafter referred to as “**MEDC**”), and **CLPF EASY DRIVE LP**, a Delaware limited partnership, its successors and/or assigns (“**Lot 1 Owner**”). MEDC and Lot 1 Owner may be referred to herein individually as a “**Party**” or collectively as the “**Parties**”.

W I T N E S S E T H:

**WHEREAS**, MEDC is the fee simple owner of certain real property located in the city of Mansfield, Johnson County, Texas, being more particularly described in **Exhibit A** attached hereto and by this reference made a part hereof (hereinafter referred to as the “**MEDC Property**”); and

**WHEREAS**, Lot 1 Owner is the fee simple owner of certain real property located in the city of Mansfield, Johnson County, Texas, being more particularly described in **Exhibit B** attached hereto and by this reference made a part hereof (hereinafter referred to as the “**Lot 1 Property**”); and

**WHEREAS**, MEDC is the fee simple owner of certain real property located in the city of Mansfield, Johnson County, Texas, being more particularly described in **Exhibit C** attached hereto and by this reference made a part hereof (hereinafter referred to as the “**Drainage Property**”); and

**WHEREAS**, MEDC and Lot 1 Owner may sell, lease, license or permit others to possess, use and/or occupy certain portions of the Property (as hereinafter defined), from time to time, and MEDC and Lot 1 Owner intend that the Parties and all future owners, tenants, licensees, users and occupants of the various portions of the Property and each of their respective successors and assigns shall own, develop, possess, use and enjoy their respective portions of the Property (or cause the same to be owned, developed, possessed, used and enjoyed), generally in conjunction with each other; and

**WHEREAS**, the Parties have deemed it is desirable to provide for the creation of a nonprofit organization to which shall be delegated and assigned, subject to the terms and conditions hereof, the power of and responsibility for owning, maintaining, preserving and administering Common Areas (as hereinafter defined) and for maintaining, preserving and administering certain other portions of the Drainage Property for the benefit of other portions of the Property; for collecting and disbursing any

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assessments and charges; and for enforcing the terms and provisions of this Declaration, all as hereinafter provided for; and

**WHEREAS**, the Parties desire to subject the Property and the Drainage Property to certain conditions, covenants, obligations, burdens, uses, privileges, charges, liens, easements, licenses and restrictions with respect to the use, operation, construction, improvement, conduct, repair and maintenance thereof, in order to ensure and facilitate the integrated use, enjoyment and development thereof, as more particularly hereinafter set forth.

**NOW, THEREFORE**, the Parties hereby subject the Property and the Drainage Property to certain restrictions, easements, conditions, burdens, uses, privileges, charges, liens and protective covenants, all of which being more particularly set forth as follows:

**1. Definitions.** The following words of art and terms when used or referred to in this Declaration or any amendment or supplement hereto or modification hereof (unless the context clearly indicates otherwise) shall have the following meanings:

a. **“Association”** shall mean and refer to Mansfield Business Park 7 Property Owners Association, Inc. (or such other name as may be selected by the Parties), a Texas nonprofit corporation, or such other Texas not-for-profit corporation, which shall hereafter be created by the Parties for the purpose of owning, maintaining, preserving, and administering Common Areas and for other purposes hereinafter set forth and/or in the Certificate of Formation and/or the Bylaws. Until such time as the Association has been formed, all references herein to “Association” shall mean and include MEDC and Lot 1 Owner.

b. **“Business Day(s)”** shall mean any day other than Saturday, Sunday or other day on which commercial banks in Dallas, Texas are authorized or required to close under the laws of the State of Texas.

c. **“Bylaws”** shall mean the Bylaws of the Association, as the same may be amended, modified, restated, replaced and/or supplemented from time to time pursuant to and in accordance with the terms of this Declaration.

d. **“Certificate of Formation”** shall mean the Certificate of Formation of the Association, as the same may be amended, restated, replaced and/or supplemented from time to time.

e. **“Commercial Site”** shall mean and refer to (a) each separate lot constituting the Property, or portions thereof, depicted on a plat of subdivision, plat of resubdivision and/or plat of consolidation, and (b) each part, if any, of the Property which has not been the subject of a plat of subdivision, plat of resubdivision and/or plat of consolidation, the size and dimension of which shall be established by the legal description contained in a deed to an Owner (as

defined below) conveying such Commercial Site, and (c) any portion of the Property which is not designated as Common Area, and (d) any combination of (a), (b) and (c) above. A Commercial Site may also be established by the Association by an instrument in writing executed, acknowledged and recorded by the Association which designates a part of the Property as a Commercial Site for the purposes of this Declaration. If two (2) or more Commercial Sites are acquired by the same Owner in fee, such commonly owned Commercial Sites may, subject to applicable Laws (as hereinafter defined) and any terms and provisions contained in this Declaration regarding such common ownership, at the option of such Owner, be treated as a single Commercial Site for the purposes of the covenants, conditions, restrictions and easements contained herein.

f. **“Common Area”** shall mean and refer to any land, improvement or easement designated by the Association for the non-exclusive use or benefit of the Association and all Owners, in common, pursuant to and in accordance with the terms of this Declaration, including, the following improvements constructed, installed and/or maintained by or on behalf of the Association which may be so designated by the Association: any or all of the Storm Water Retention and Detention Facilities (as hereinafter defined) installed on the Drainage Property and serving the Property, or portions thereof. Any designation of Common Areas shall be in favor of the Association and be recorded by easement, plat or special warranty deed in the Office of the Johnson County Register of Deeds. For purposes of this Declaration, Common Areas shall not include any portion of any Commercial Site that the Owner thereof may designate as a common area for any purpose or in any other document, unless such other document specifically declares such common area to be a Common Area within the scope of this Declaration, the Association accepts such area as a Common Area by instrument signed by the Association and recorded in the Office of the Johnson County Register of Deeds. Further, nothing stated in this subsection or in this Declaration shall be construed in any manner as creating any obligation, duty or responsibility on the Association to designate or create any specific Common Areas. **“Common Areas”** also shall include all of the following located on any land which is a part of the Common Area which serve or are used in connection with more than one Commercial Site and which are designated by the Association as Common Areas: landscaping, signage, utilities, storm water drains, pipes, detention areas and surface drainage ways, walls, fences, foundations, footings, pathways and other structural members and all other improvements, facilities and equipment which serve or are used by more than one Commercial Site and which are designated by the Association as Common Areas. As of the date of this Declaration, there are no Common Areas located on the Lot 1 Property.

g. **Intentionally Omitted.**

h. **“Default Interest Rate”** shall mean a floating rate of interest per annum which is adjusted from time to time so that it is at all times equal to the

lesser of (a) the rate per annum equal to five percent (5%) above the prime rate of interest published from time to time under “Money Rates” by *The Wall Street Journal* and automatically changing with each change in such rate; or in the event that *The Wall Street Journal* ceases to publish such rate, another published rate selected by the Board of Directors (as defined in **Section 11** below), or (b) the maximum per annum interest rate permitted by Law.

i. **“Hazardous Materials”** shall mean and refer to (i) any “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any **“hazardous substance”** as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) petroleum products and polychlorinated biphenyls; (v) any substance the presence of which on the Property is prohibited by any government requirement; and (vi) any other substance, material waste, contaminant or pollutant which by any government law, statute, ordinance, code, rule or regulation requires special handling in its collection, storage, removal, remediation, transportation, installation, treatment or disposal as a result of an identifiable environmental risk posed by such substance, waste contaminant or pollutant.

j. **“Laws”** shall mean all rules, regulations and requirements of all applicable governmental authorities and all applicable health, safety, environmental and other federal, state and local laws, statutes, acts, codes, ordinances, rules, regulations and guidelines.

k. **“Manager”** shall mean any Person (as hereinafter defined) employed or retained by the Association to perform certain functions of the Association pursuant to this Declaration.

l. **“Owner(s)”** shall mean and refer to both the beneficial and legal owners of fee simple title to any Commercial Site, as shown by the records in the Office of the Johnson County Register of Deeds (whether or not such Owner shall consist of one or more persons, firms, associations, corporations, partnerships, or any other legal entities), provided, however, that the term **“Owner(s)”** shall not mean or refer to (1) any land trust that owns title to any Commercial Site (but shall include the beneficiary(ies) under such land trust), (2) any lessee or tenant of any Owner, except that a Tenant (as hereinafter defined) shall be deemed to be an Owner provided that such Tenant has accepted and assumed in writing the rights and obligations of Owner hereunder, or (3) any mortgagee under a mortgage or any holder of a deed of trust or any other security instrument in the nature thereof (said mortgage, deed of trust, and other security instrument being hereinafter collectively referred to as **“Security Instrument”**) encumbering the title to any Commercial Site, unless and until such mortgagee or

holder shall have acquired title (other than a security title) to said Commercial Site or to any interest therein (other than a Security Interest) pursuant to the foreclosure of such Security Instrument, the exercise of any power of sale contained therein, or any deed or proceeding taken in lieu of the foreclosure of any such Security Instrument or the exercise of any power of sale contained therein; provided, further, however, that “**Owner(s)**” shall mean and refer to (i) any Person other than a mortgagee or other holder of a Security Instrument, who shall acquire title (other than a security title) to a Commercial Site or any interest therein (other than a Security Interest) pursuant to the foreclosure of any such Security Instrument, the exercise of any power of sale contained therein, or the taking of any proceeding or deed in lieu of the foreclosure of any such Security Instrument or the exercise of any power of sale contained therein, as of the date such title is acquired, and (ii) any Person who shall acquire title (other than a security title) to a Commercial Site or any interest therein (other than a security interest) from any mortgagee or holder of a Security Instrument where such mortgagee or holder shall have previously acquired such title by means of a foreclosure of such Security Instrument, the exercise of any power of sale contained therein, or the taking of any proceeding or deed in lieu of the foreclosure of such Security Instrument or the exercise of any power of sale contained therein, as of the date such person or entity acquires such title from any such mortgagee or holder of such Security Instrument. Upon sale or other transfer of fee title to any Commercial Site, or upon the execution of a ground lease of an entire Commercial Site pursuant to which the lessee is to be an “Owner” hereunder, the transferee or lessee shall, within thirty (30) days after the effective date of the transfer or lease, deliver to the Association, in accordance with the notice provisions set forth in this Declaration, a true, correct and complete copy of the recorded deed, memorandum of lease or other transfer instrument effecting the transfer or lease, together with the following information: (i) the name of all Owner(s) of the applicable Commercial Site, and the address of each for notice purposes, and (ii) the name, address and telephone number of the individual(s), if any, who are authorized to represent and bind the Owner(s) for purposes of this Declaration. If there are more than one (1) Owner of any particular Commercial Site, then each of the Owners shall be jointly and severally liable for the performance of the duties and obligations of the Owner(s) hereunder with respect to such Commercial Site, and, for purposes of this Declaration, the voting rights as to such Owners shall be determined in accordance with the terms of **Section 11** below, and the Association shall be entitled to rely upon the undertakings, representations, consents, agreements and other writings and actions of such Owner of any such Commercial Site, without inquiry into the actual authority of such Person and notwithstanding any conflicting writing or action by any other Owner of the subject Commercial Site.

m. “**Ordinances**” shall mean any and all building and zoning ordinances, statutes, laws, rules and/or regulations of either or all of City of Mansfield, Texas (the “**City**”), Johnson County, Texas (the “**County**”), or the

State of Texas, as the same may be applicable to a Commercial Site from time to time.

n. **“Person”** shall mean an individual, firm, corporation, association, limited liability company, partnership (general or limited), trust, joint venture, or any other form of business organization, or one or more of them, as the context may require.

o. **“Property”** shall mean, collectively, the MEDC Property and the Lot 1 Property, together with any other land made subject to this Declaration from time to time, pursuant to the terms and provisions set forth herein.

p. **“Storm Water Retention and Detention Facilities”** shall mean and refer to the storm water system serving the Property, in whole or in part, located within the Drainage Property and/or outside the Drainage Property (if by easement or agreement such system serves Commercial Sites), including, without limitation, conduits, inlet and outlet storm sewers and structures, wells (including electrical service and discharge pipes) designed to replenish retention ponds, catch basins, inlets, inlet leads, catch basin leads, detention basins, retention ponds, immediate adjacent table land to such basins and ponds, and irrigation systems serving Common Areas, if any. There shall be excluded from Storm Water Retention and Detention Facilities, storm water collecting facilities dedicated to and accepted by or owned by governmental bodies, over which governmental bodies have agreed to maintain, and the storm water collecting sewers and facilities within a Commercial Site, the principal purpose of which is to serve such Commercial Site, if any. **Exhibit D** attached hereto and made a part hereof (the **“Site Plan”**) generally depicts the location of the storm water detention pond(s) which have been constructed by the City to serve the Property; provided that the location, dimension and specifications of such Storm Water Retention and Detention Facilities may be changed by the Association in its sole discretion.

q. **“Tenant”** shall mean a tenant or occupant under a Long-Term Lease (as hereinafter defined). The Association will promptly provide to Tenant at the address provided below a copy of any default notice or any notice relating to potential defaults delivered to Owner. The Association will not exercise any rights relating to such notices unless Tenant has failed to cure or remedy any act or omission of Owner within sixty (60) days after receiving written notice thereof (or within such additional period as is reasonably required to correct such default, provided that Tenant uses reasonable diligence to cure same). Notices to Tenant should be sent the addresses shown on **Exhibit E** attached hereto (or other such address as provided by Tenant).

2. **Applicability.** (a) The Parties hereby declare that the Property and the Drainage Property is and shall be held, transferred, sold, conveyed, given, donated, encumbered, leased, occupied, altered, improved, accepted and used subject to the covenants,

restrictions, burdens, conditions, easements, licenses, charges, assessments, privileges, affirmative obligations, and liens (hereinafter sometimes referred to in the singular as "Covenant" and collectively as the "Covenants") hereinafter set forth, and that the said Covenants shall be construed to be (a) covenants running with the land, and (b) binding upon each and every Owner.

(b) The Parties hereby reserves unto the Association, for the benefit of the Property, the right, however, from time to time hereafter to delineate, plat, grant or reserve within portions of the Drainage Property such easements for drainage and public utilities, as the Association may deem necessary or desirable for the development of the Commercial Sites (and from time to time to change the location of the same), if the Association so elects, and to dedicate the same to a governmental entity for public use or to grant the same to appropriate public utility corporations, free and clear of this Declaration and the Covenants contained herein.

**3. Term. THIS DECLARATION AND EVERY COVENANT CONTAINED HEREIN SHALL BE IN EFFECT FOR A PERIOD OF NINETY-NINE (99) YEARS FROM AND AFTER THE DATE HEREOF (the "INITIAL TERM"), AND SHALL AUTOMATICALLY BE CONTINUED THEREAFTER, TO THE EXTENT NOT PROHIBITED BY TEXAS LAW, FOR SUCCESSIVE PERIODS OF FIVE (5) YEARS EACH, IN PERPETUITY, EXCEPT THAT THIS DECLARATION MAY BE TERMINATED AT ANY TIME DURING THE INITIAL TERM UPON THE ELECTION OF THE THEN OWNERS OF NOT LESS THAN NINETY PERCENT (90%) OF THE PROPERTY (EXCLUDING ANY PORTION THEREOF WHICH IS COMMON AREA), BASED UPON THE AMOUNT OF GROSS SQUARE FEET OF LAND AREA OWNED BY SUCH OWNERS AS COMPARED TO THE TOTAL SQUARE FOOTAGE OF LAND AREA OF THE PROPERTY (EXCLUDING ANY PORTION THEREOF WHICH IS COMMON AREA), AS OF THE DATE OF SUCH ELECTION.** After the commencement of such five (5) year periods, this Declaration may be terminated (effective as of the expiration of the then current term of this Declaration) at the election of the then Owners of not less than seventy-five percent (75%) of the Property (excluding any portion thereof which is Common Area), based upon the amount of gross square feet of land area owned by such Owners as compared to the total square footage of land area of the Property (excluding any portion thereof which is Common Area), as of the date of such election. Any termination permitted hereunder shall be evidenced by an agreement terminating this Declaration and the Covenants contained herein, executed with the same formality as is required for the execution of deeds, signed by the then Owners of at least ninety percent (90%) of the Property or seventy-five percent (75%) of the Property, as appropriate (excluding any portion thereof which is Common Area) as provided above, setting forth therein the total gross square footage of land area of the Property (excluding any portion thereof which is Common Area), and of the portion thereof owned by each signatory to said termination agreement and recorded in the Office of the Johnson County Register of Deeds. Notwithstanding the termination of this Declaration, neither the easements, licenses and rights relating to such easements and licenses granted pursuant to



this Declaration which run in perpetuity or which otherwise expressly survive the termination of this Declaration, nor the obligation of Owners to pay charges pursuant thereto, shall terminate upon the termination of this Declaration.

Any Owner may assign to any other Owner or to any lessee under a Long-Term Lease (as hereinafter defined) from any such Owner the right hereinabove granted to terminate, in conjunction with other Owners, this Declaration and the Covenants contained herein; provided, however, that (i) each and every such assignment shall be evidenced by an appropriate written instrument recorded in the office of the Johnson County Register of Deeds; and (ii) a copy of each such assignment shall be filed with the Association, and any such assignment filed with the Association shall be deemed conclusive as to the person or entity entitled to exercise the aforesaid right to terminate this Declaration and the Covenants contained herein, as to all persons or entities whomsoever. For the purposes of this paragraph, a “**Long-Term Lease**” shall mean and refer to a lease that provides for an original term (without any termination rights except for defaults under such lease) of more than twenty (20) years.

**4. Purpose.** The purpose of this Declaration is to provide for ownership, maintenance, preservation and administration of the Common Area. Accordingly, in order to achieve the foregoing, MEDC has declared that the Drainage Property shall be transferred, held, sold, conveyed, encumbered, leased, occupied, improved and accepted subject to the covenants, conditions, restrictions, easements, encumbrances, rights and other matters set forth in this Declaration.

**5. Intentionally Omitted.**

**6. Permitted Uses.** The Commercial Sites may be utilized for commercial purposes, subject, however, to any restrictions established by the Ordinances.

**7. Intentionally Omitted.**

**8. Compliance with Laws.** In addition to any other requirements herein provided, all improvements constructed, installed, erected and/or placed upon the Property shall be constructed, installed, erected and/or placed and maintained in accordance with all Laws. Neither the Board of Directors nor the Association, or their respective successors, assigns, agents or employees, shall have any responsibility whatsoever to ensure compliance by any Owner or any lessee or any other occupant or user of any portion of the Property, their respective heirs, successors and assigns, with any Laws. Compliance with all Laws is solely the responsibility of each Owner or lessee or any other occupant or user of any portion of the Property, their respective heirs, successors and assigns.

**9. Drainage.** Each Owner shall provide, or cause to be provided, adequate drainage facilities for stormwater management and runoff resulting from its Commercial Site such that the same does not adversely affect any other Commercial Site or property. Prior to construction of any new or additional improvements on any Commercial Site which

could affect storm water drainage on such Commercial Site or from or onto adjacent or surrounding Commercial Sites, the Owner of such Commercial Site shall submit to the City, County, the State of Texas and/or other governmental authorities having jurisdiction, as applicable, for approval an engineer's report comparing before and after conditions and recommending adequate methods of detention and drainage, with a copy of such engineer's report concurrently submitted to the Association. The change in storm water runoff between then current conditions and estimated conditions after such proposed construction shall be determined by methodology required by the City, County, the State of Texas and/or other governmental authorities having jurisdiction, as applicable. Fully developed conditions on any Commercial Site shall be consistent with the assumptions used in the design specifications of the Storm Water Retention and Detention Facilities, as determined by the City, County, the State of Texas and/or other governmental authorities having jurisdiction, as applicable.

**10. Wetlands.** All wetlands, if any, on any Commercial Site or the Common Area must be maintained and/or mitigated, in accordance with all Laws.

**11. Association Membership and Voting Rights.** (a) The Association has been or will be formed by MEDC and Lot 1 Owner as a Texas not-for-profit corporation. The Association has been or will be formed to further the common interests of the Owners. The Association, acting through the Board of Directors or through persons to whom the Board of Directors has delegated such duties and powers, shall have the duties and powers set forth in the Certificate of Formation, Bylaws and this Declaration, and, in general, shall have the power (subject to the terms and provisions of this Declaration) to do anything that may be necessary or desirable to further the common interests of the Owners, to maintain, improve and enhance the Common Areas with respect to which the Association is required to maintain, improve and enhance pursuant to the terms of this Declaration, and to improve and enhance the attractiveness, desirability and safety of the Property.

(b) Every Owner shall be a member of the Association as and when the Association is created by MEDC and Lot 1 Owner. As and when the Association is created and subject to the provisions hereinafter set forth, every Person that is an Owner shall be a member of the Association. A member who owns a Commercial Site(s) shall be entitled to one vote, or a prorated share thereof, for each ten thousand (10,000) gross square feet, or portion thereof, of land area, within the Commercial Site(s) owned by such member. Where more than one Person is a member by virtue of an ownership interest in the same Commercial Site, the vote for such Commercial Site shall be exercised as they among themselves determine, but in no event shall more than one (1) vote, or prorated share thereof, for each ten thousand (10,000) gross square feet portion thereof, be cast with respect to any such Commercial Site. In the event of disagreement among such Persons and an attempt by two or more of them to cast the vote allocated to such Commercial Site, such Persons shall not be recognized and the vote of such Commercial Site shall not be counted. A Person's membership rights as a member shall automatically terminate upon such Person's sale or other transfer of its Commercial Site; provided,

however, that no termination of membership shall affect such Person's obligation to pay Assessments (as hereinafter defined and provided for) due and payable for any period prior to the date of such termination, and there will be no refund for Assessments paid for periods falling after the date of such termination. As of the date of this Declaration, the Owners have the following number of votes: (a) Lot 1 Owner has [\_\_\_\_\_] votes and (b) MEDC has [\_\_\_\_\_] votes.

The members of the Association are sometimes hereinafter individually referred to as a "**Member**" and collectively referred to as "**Members**". The votes of the Members shall be cast under such rules and procedures not inconsistent with this Declaration as may be prescribed in this Declaration or in the Bylaws of the Association, as amended from time to time, or by applicable Law.

(c) The affairs of the Association shall be managed by a board of directors (the "**Board of Directors**"). Subject to the provisions of the immediately succeeding grammatical paragraph, the number, term, election and qualifications of the Board of Directors shall be fixed in the Certificate of Formation and Bylaws. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to tribunals, to Managers, to officers of the Association, or to agents and employees of the Association as may be permitted by applicable law (as applicable, "**Authorized Representatives**"), but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or by any Authorized Representatives within their scope of authority without a vote of the Members, except as otherwise specifically provided in this Declaration, the Certificate of Formation, the Bylaws or by Law.

The Board of Directors shall consist of three (3) directors appointed by MEDC and Lot 1 Owner (or such other number as may be determined in accordance with the Certificate of Formation and Bylaws), and shall be elected by the Members.

The membership rights of any Member, including the right to vote, may be suspended by the Board of Directors pursuant to authority granted herein, or in the Association's Certificate of Formation or Bylaws, as amended from time to time, during the period of time while any Assessment or other obligation remains unpaid or unperformed or for violation of any rule of the Association. Any such suspension shall not affect such Member's obligation to pay any Assessments or other obligation coming due during the period of suspension and shall not affect the permanent charge and lien on the Member's Commercial Site in favor of the Association.

(d) The membership rights of any Member, including the right to vote, may be assigned by said Member to its lessee or tenant under a lease having a term of at least ten (10) years; provided, however, that said Member may not assign to such lessee or tenant any vote or votes not attributable to that portion of the Commercial Site actually leased by such lessee or tenant.

(e) All matters concerning meetings of Members of the Association including the time and manner in which notice of any of said meetings shall be given to said Members and the quorum required for the transaction of business at any of said meetings, shall be as specified in this Declaration or in the Bylaws of the Association, as amended from time to time, or by applicable Law.

**12. Power to Adopt Rules and Regulations; Manager.** (a) The Association, from time to time, may adopt, amend, enforce and repeal rules and regulations, to be known as the “**Association Rules**”, governing and pertaining to, among other things and without limitation: (i) the use, operation, maintenance and enjoyment of all or any portion of the Drainage Property, the Common Areas and any improvements located thereon; (ii) fines for the infraction of the Association Rules; (iii) standards for release of sedimentation into the Storm Water Retention and Detention Facilities during construction activity on any Commercial Sites; and (iv) prohibitions against the dumping of trash, landscaping and other materials into the Storm Water Retention and Detention Facilities. Any and all such Association Rules shall be commercially reasonable. All such Association Rules shall apply uniformly, equitably and without discrimination. At least thirty (30) days advance notice of the contemplated adoption, amendment or repeal of any Association Rules shall be given in writing to each Owner. In the event of any direct conflict between the Association Rules and the provisions of this Declaration, the provisions of this Declaration shall prevail. With respect to the enforcement of the Association Rules, the Association shall have available to it any and all rights and remedies established pursuant to this Declaration, including, without limitation, the right to enjoin any breach of the Association Rules and the right to seek the specific performance of obligations pertaining to the Association Rules. The Association also shall have the right to impose and enforce the collection of reasonable fines for breaches of the Association Rules.

(b) The Association may employ, retain or contract for the services of a Manager to perform or assist in the performance of the functions of the Association; provided, however, that (i) any such contract shall be terminable upon no more than thirty (30) days notice without any termination fee (other than management fees earned through the effective date of termination), and (ii) any such contract shall be on arms-length terms and at market rates. The Board of Directors shall not be liable for any omission or improper exercise by a Manager of any right, duty, power or function.

**13. Ownership of Other Property.** The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property in connection with the operation of the Association and the Association’s performance of its duties and obligations under this Declaration. The Association shall not own any interests in any real property other than the Common Area and any easements appurtenant thereto and/or granted to or for the benefit of the Association hereunder.

**14. Books and Records.** The Association shall make available for inspection, upon not less than ten (10) Business Days prior written request, during normal business hours

or under other reasonable circumstances, to Owners and Mortgage (as defined in **Section 16(i)** below) holders, current copies of the Certificate of Formation and Bylaws, and the books, records and financial statements of the Association prepared pursuant to the Bylaws. Any and all such inspections shall be at the cost and expense of such Owners or Mortgage holders, as the case may be, and the Association may charge a reasonable fee for copying any documents, books, records and financial statements. The Board of Directors of the Association may cause the books, records and accounts of the Association to be audited once each calendar year (the “**Association Audit**”), the cost and expense of such audit to be borne by the Association and paid for out of the base annual assessments as provided in **Section 16** hereof. The Association Audit shall be conducted and certified by an officer of the Association, or an independent certified public accountant selected by the Association. The Association Audit shall be completed and certified copies thereof furnished to all Members on or before one hundred twenty (120) days after the end of each calendar year, unless otherwise extended by the Board of Directors in its sole and absolute discretion.

**15. Property Rights in the Common Area.** (a) Legal title in and to Common Area (or if such Common Area is created and exists by virtue of grant of easement, then the easement right and the benefit of use in and to the Common Area) shall be vested in the Association, and benefit, use and enjoyment of the Common Area shall be determined and controlled by the Association.

(b) The Association shall have the right at any time to dedicate or transfer all or any part of Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Members entitled to vote thereon, provided that no such dedication or transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless approved by not less than two-thirds (2/3) of the total votes of all classes of Members entitled to vote and who are voting upon written ballot which shall be sent to all Members entitled to vote at least thirty (30) days in advance of the canvass thereof setting forth the reasons for such proposed action. If, in connection with a dedication of all or any portion of the Common Area as provided above, the Association needs or desires any other Owner(s) or occupant(s) to join in the execution of any applications, deeds, plats or other documents, then the Owner(s) and/or occupant(s) shall do so promptly upon request therefor.

(c) The Association shall have the right to grant such easements and rights-of-way to such utility companies or public agencies or authorities as it shall deem necessary for the proper service and maintenance of Common Area or other portions of the Property; provided that, if any such easements or right(s)-of-way are to be located within the boundary lines of a Commercial Site, the Association shall attempt to limit the location thereof to setback areas and to other areas which will not materially and adversely affect the development and use of such Commercial Site.

**16. Assessments.** (a) By acceptance of a deed for a Commercial Site, each Owner, as a Member of the Association, shall be deemed to have covenanted and agreed to pay, and

shall be required to pay, to the Association: (i) base annual assessments and charges, and (ii) special assessments for the Storm Water Retention and Detention Facilities, which special assessments are assessed in a commercially reasonable and non-discriminatory manner (items (i) and (ii) above to be collectively referred to as “Assessments”), such Assessments to be fixed, established and collected from time to time, all as hereinafter provided. If, pursuant to the terms hereof, the Owner of a Commercial Site is deemed to be a ground lessee, then both the fee Owner and ground lessee of such Commercial Site shall be personally liable for payment of any Assessments and other charges due and payable under and pursuant to this Declaration. The Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Commercial Site and the improvements thereon against which each such Assessment is made. Each such Assessment, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall also be the personal obligation of the Owner(s) that own the applicable Commercial Site. In the case of co-ownership of a Commercial Site, each co-owner shall be jointly and severally liable for the entire amount of any Assessment. Should the Association employ an attorney to collect any Assessment, it shall be entitled to collect, in addition thereto, all costs of collection including without limitation reasonable attorney’s fees. No Owner may waive or otherwise exempt itself from liability for any Assessments for any reason including, by way of illustration and not limitation, non-use of the Common Areas or any services provided by the Association or abandonment of a Commercial Site. No diminution or abatement of any Assessment or set-off shall be claimed or allowed for any reason whatsoever, including, by way of illustration and not limitation, any alleged failure of the Association or the Board of Directors to (1) take some action, (2) perform some function required to be taken or performed by the Association or the Board of Directors under this Declaration, the Certificate of Formation, the Bylaws or otherwise, or (3) provide some service required or permitted to be provided under the terms of this Declaration or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance or any order or directive of any municipal or other governmental authority.

(b) The Assessments levied hereunder shall be used for the purpose of paying all costs and expenses incurred by the Association in connection with providing the services provided to the Owners pursuant to the terms of this Declaration and for the improvement, maintenance, repair and restoration of the Common Areas, including but not limited to, (i) the payment of taxes and insurance attributable to the Common Area, if any, (ii) construction of improvements thereon (but expressly excluding any costs associated with the initial construction and installation of the Storm Water Retention and Detention Facilities), (iii) repairs, replacements and additions thereto, (iv) payment of legal fees, (v) payment of the salary, fee, administrative costs and other charges of any Manager, (vi) establishment of reasonable reserves for future repairs, replacements and improvements, and (vii) payment of the cost of labor, equipment, materials, management, and supervision necessary to carry out the authorized functions of the Association.

(c) The base annual assessments shall be based on and calculated according to the following:

(1) The amount of base annual assessment for a calendar year, which shall be determined by the Board of Directors of the Association, in their reasonable discretion, shall be based upon a budget prepared by the Association, as the case may be, for said calendar year, shall be assessed against each Commercial Site, and shall be fixed and calculated on a per acre (prorated to the nearest one-hundredth of an acre) basis for land area comprising each Commercial Site. Accordingly, the fixed base annual assessment for each Commercial Site shall be equal to the product of (a) the total base annual assessments then being levied by the Association for the applicable calendar year and (b) a fraction, the numerator of which shall be the total acreage (to the nearest one-hundredth of an acre) of the applicable Commercial Site, and the denominator of which shall be the total acreage (to the nearest one-hundredth of an acre) of all Commercial Sites (including any property added to the Property and made subject to the terms of this Declaration). The base annual assessment shall apply to all classes of membership; provided, however, that the Board of Directors of the Association, as applicable, may set the initial base annual assessment for a portion of a calendar year and prorate accordingly the amount due.

(2) In the event that the base annual assessment is insufficient to pay the costs of operating the Association and/or operating, maintaining, repairing, improving and/or restoring the Common Areas for any calendar year, the Association shall have the right to levy an additional base annual assessment to cover any such deficiency which will be allocated among and charged to all Members and Commercial Sites in the same manner as the normal base annual assessment for the applicable year.

(d) In addition to the base annual assessments authorized hereinabove, the Association may levy in any calendar year special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or the unexpected maintenance, repair and/or replacement, of Common Area and capital improvements thereon, if any, including the necessary fixtures, facilities, equipment and personal property related thereto, provided that from and after the date the Association shall have been formed any such assessment shall have been approved by not less than two-thirds (2/3) of the votes cast at a duly called meeting of the Association, written notice of which shall be sent to all Members of the Association at least thirty (30) days in advance setting forth the purpose of the meeting. The amount of such special assessment to be paid by each Member of the Association shall be fixed and equal to the total amount of the special assessment multiplied by a fraction, the numerator of which shall be the base annual assessment payable by such Member for the calendar year during which such special assessment is approved, and the denominator of which shall be the total base annual assessment for all Members of the Association for the calendar year during which such special assessment is approved. Special assessments levied pursuant to this

subsection shall be due and payable by the Members in such manner and at such times as determined by the Board of Directors in its sole and absolute discretion, and may be payable, in the Board of Directors' sole and absolute discretion, in installments extending beyond the calendar or fiscal year in which such special assessment is approved and levied. If, at the time the annual budget for base annual assessments for any calendar year during the term of this Declaration is being prepared, the Board of Directors of the Association knows of the amount of any special assessment, then such special assessment shall be included in such annual budget.

(e) The base annual assessments payable, as provided for herein, shall be established on a calendar year basis. The Board of Directors shall, on or before January 31st of each calendar year (and, for the first partial calendar year during the term of this Declaration, within sixty (60) days after the date of this Declaration), prepare an operating budget setting forth an itemized statement of the anticipated disbursements for the applicable calendar year and shall fix the amount of the base annual assessment payable to the Association against each Commercial Site and shall, at that time, prepare a roster of the Commercial Sites and assessments applicable thereto, which shall, with the aforesaid itemized statement, be kept in the office of the Association and shall be open to inspection at reasonable times by any Member upon forty-eight (48) hours' written notice. Unless otherwise provided by the Association, the Association shall send written notice of the amount of the base annual assessment to every Member subject thereto at least thirty (30) days in advance of the due date. Unless otherwise provided by the Association, the entire base annual assessment shall become due and payable, in advance, on or before February 15th (said date or any other such date as may be established by the Association in its sole and absolute discretion sometimes hereinafter referred to as "**due date**") of the calendar year for which such annual assessment is levied and shall be collected by the Association. Failure of the Association to comply with the terms and provisions of this grammatical paragraph shall not relieve any Member of paying any Assessment for any calendar year. If such failure for a calendar year shall occur, each Member shall continue to pay, until such time that the Association establishes the base annual assessment for the applicable calendar year, the base annual assessment in the amount paid for the prior calendar year. If the base annual assessment established by the Association is more than the amount paid by the Member as provided in the immediately preceding grammatical sentence, then each Member immediately shall pay to the Association such Member's share of any such deficiency. If the base annual assessment established by the Association is less than the amount paid by the Member as aforesaid, then each Member shall be refunded its excess overpayment, without interest.

(f) Upon payment of a reasonable fee and upon written request of any Owner, mortgagee under any Mortgage or prospective owner of a Commercial Site, the Association shall issue an acknowledged certificate in recordable form setting forth the amounts of any unpaid Assessments or other amounts due hereunder, if any, with respect to the applicable Commercial Site, and setting forth generally whether or not, to the Association's actual knowledge (and without prejudice to the Association's rights and remedies under this Declaration with respect to matters of which it has no actual



knowledge), the existing Owner is in violation of any of the terms, provisions and/or conditions of this Declaration. Said written statement shall be conclusive upon the Association as to requirements and obligations set forth in this Declaration in favor of the Persons who rely thereon in good faith. Such statements shall be furnished by the Association within a reasonable period of time, but not to exceed twenty (20) Business Days from the receipt of a written request for such written statement, accompanied by the required fee, mailed to the notice address of the Association.

(g) If any Assessment or other amount under this Declaration is not paid on or before the tenth (10th) day after the due date with respect thereto, then such Assessment and/or other amount shall become delinquent, and shall, until paid in full, together with such interest thereon at the Default Interest Rate from the due date (without taking into consideration the aforementioned ten (10) day cure period) and the third party costs of collection thereof, be a charge and continuing lien on the applicable Commercial Site, and all improvements thereon, against which each such Assessment or other amount is made. In addition to the lien rights afforded to the Association hereunder, the personal obligation of the then Owner to pay such Assessment and other amounts shall remain its personal obligation and shall further pass as a personal obligation to its successors in title whether or not expressly assumed by such successors.

(h) If an Assessment or other amount due under this Declaration is not paid within ninety (90) days after the due date with respect thereto (without taking into consideration the ten (10) day cure period set forth in subsection (g) above), the Association may: (1) bring an action at law against the Owner personally obligated to pay the Association, and/or (2) in an appropriate judicial proceeding, foreclose the lien created in favor of the Association by the provisions of this **Section 16**, and in connection therewith, the Association may avail itself of any and all rights and remedies available to a foreclosing mortgagee under Texas common law or statutory means of foreclosure, and (3) collect in said action or through said proceeding the delinquent Assessments, together with the Default Interest Rate thereon, the late charge permitted to be charged in the following paragraph and the third party costs of collection, the third party costs of preparation and filing of any lien, and reasonable attorneys' fees of any such action or proceeding. The lien provided for under this **Section 16** shall secure the payment of the Assessments, the Default Interest Rate thereon, the aforesaid late charge and the aforesaid costs and reasonable attorneys' fees. No Member may waive or otherwise avoid liability for Assessments due as provided for herein by non-use of the Common Areas and facilities or abandonment or transfer of its Commercial Site. The remedies herein provided shall not be exclusive, and the Association may enforce any other remedies to collect delinquent assessments as may be provided in this Declaration, by law and/or in equity. Notwithstanding anything to the contrary contained herein, the Association will promptly provide to any Tenant a copy of any default notice or any notice relating to potential defaults delivered to Owner, and the Association will not exercise any rights relating to such notices unless Tenant has failed to cure or remedy any act or omission of Owner within sixty (60) days after receiving written notice thereof (or within such

additional period as is reasonably required to correct such default, provided that Tenant uses reasonable diligence to cure same).

In addition to the other remedies and rights afforded to the Association in the event an Assessment (or any installment thereof) or other amount due under this Declaration becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions: (a) if not paid in full on or before the tenth (10th) day after such Assessment or other amount is due, assess a late charge of not more than five percent (5%) of the delinquent amount; (b) assess the interest charge as provided in subsection (g) above; (c) bring an action at law against any Member personally obligated to pay the delinquent installments; (e) subject to the terms of the immediately preceding grammatical paragraph, file a statement of lien with respect to the Commercial Site; and (f) suspend the rights of the Owner and the Owner's occupants to exercise any voting rights otherwise permitted under **Section 11** of this Declaration.

(i) The liens and permanent charges of all Assessments (annual, special, or otherwise) provided for herein shall be subordinate to the lien of any deed of trust or mortgage (collectively, "**Mortgage**") placed on a Commercial Site if, and only if, all Assessments and charges with respect to such Commercial Site authorized herein and having a due date on or prior to the date such Mortgage is filed for record have been paid in full. The liens and permanent charges hereby subordinated are only such liens and charges as relate to Assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed for record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the Commercial Site pursuant to a sale under power contained in such Mortgage. Such subordination shall not relieve the Owner of the mortgaged Commercial Site of its personal obligation to pay any and all Assessments and charges coming due at a time when it is the Owner of such Commercial Site; and shall not relieve such Commercial Site from the liens and permanent charges provided for herein (except to the extent a subordinated lien and permanent charge are extinguished as a result of subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure or by sale or transfer in any proceeding in lieu of foreclosure or by sale under power). No sale or transfer of such Commercial Site to the mortgagee, or to any other Person, pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure, or pursuant to a sale under power shall relieve any existing or previous Owner of such Commercial Site of any personal obligation, or relieve such Commercial Site, or the then Owner of such Commercial Site, from liability for any Assessments or charges authorized hereunder coming due after such sale or transfer. Notwithstanding the foregoing, the Association may at any time, either before or after any Mortgage or Mortgages are placed on such Commercial Site, waive, relinquish, or quitclaim, in whole or in part, the right of the Association to Assessments and other charges collectible by the Association hereunder with respect to such Commercial Site coming due during the period while such Commercial Site is or may be held by the prior mortgagee or mortgagees which have become an Owner as the result of a sale or transfer pursuant to a decree of foreclosure, sale under power, or any other proceeding in lieu of foreclosure.

(j) All portions of the Property (1) dedicated to and accepted by the City, or any other public authority, body or agency, or (2) owned by the Association, shall be exempt from Assessments, charges and liens created under this Declaration.

(k) In addition to the personal obligation of each Owner of a Commercial Site to pay all Assessments thereon and the Association's perpetual lien on a Commercial Site for such Assessments, all successors to the fee simple title of a Commercial Site, except to the extent otherwise expressly provided in this **Section 16**, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys fees against such Commercial Site, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. In addition, such successor shall be entitled to rely on the statement of liens and amounts due shown on any certificate issued by or on behalf of the Association as provided in this Declaration. Notwithstanding the foregoing, in no event shall a Person that owned a Commercial Site be obligated for any amounts due and payable under this Declaration which first arise and accrue from and after the date that such Person shall have conveyed and transferred all of its interest in and to, and is no longer the Owner of, the applicable Commercial Site.

**17. Quorum.** The quorum required for any action authorized to be taken by the Members of the Association hereunder shall be as follows: At any meeting called to take action hereunder, the presence at the meeting of Members or of proxies or of representatives entitled to cast at least sixty percent (60%) of the total votes under this Declaration shall constitute a quorum. In the case of any vote by written ballot, in lieu of a meeting, a return at the first canvass of ballots representing at least sixty percent (60%) of the total votes under this Declaration shall constitute a quorum. If the required quorum is not forthcoming at any meeting or canvass, another meeting or canvass may be called, subject to the giving of proper notice, and the required quorum at any such subsequent meeting or canvass shall be at least one-half (1/2) of the required quorum at the preceding meeting or canvass, provided that no such subsequent meeting shall be held or canvass taken more than sixty (60) days following the preceding meeting or canvass.

**18. Administration of Common Area.**

(a) The administration of the Association and Common Area and the maintenance, repair, replacement, and operation thereof, and those acts required of the Association by this Declaration shall be the duty and responsibility of the Association. Such administration shall be governed by this Declaration and the Certification of Formation and Bylaws, as amended from time to time. The powers and duties of the Association shall be those set forth in said documents, together with those reasonably implied to effect the Association's purposes, and shall be exercised in the manner provided herein and therein.

(b) The Association shall be authorized to and may, as determined by the Board of Directors thereof, in its sole but reasonable discretion, provide the following services:

(1) Take any and all actions necessary to enforce all Covenants and restrictions affecting the Property and perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Property.

(2) Provide management services and administrative services, including, but not limited to, legal, auditing, accounting and financial support incident to the services to be provided hereunder.

(3) Provide liability and hazard insurance covering improvements and activities on and in the Common Area.

(4) Maintain the Common Area in good condition and repair, including, without limitation, the Storm Water Retention and Detention Facilities within or serving the Property and designated by the Association for maintenance, repair and replacement by the Association.

(5) Provide any other services that, in the Association's reasonable judgment, are appropriate or necessary to further the common interests of the Owners and to improve and enhance the attractiveness, desirability and safety of the Property.

## **19. Easements and Licenses.**

(a) The Parties hereby reserve, for the benefit of all Owners of the Property, (1) perpetual non-exclusive drainage easements under, over, upon and across portions of the Property as may be depicted on the recorded plats of the Property and/or pursuant to recorded easement agreements, for conveyance of storm water through above-ground and/or underground drainage facilities or over and across the surface thereof, (2) perpetual non-exclusive easements for above-ground detention/retention of storm water in the Storm Water Retention and Detention Facilities for water quality purposes across portions of the Property as may be depicted upon the recorded plats of the Property and/or pursuant to recorded easement agreements (collectively, the "**Easements**").

(b) If it becomes evident, in the Association's reasonable determination, that additional utility or drainage easements, whether or not contemplated or mentioned in this Declaration, between or across portions of the Property are reasonably necessary and desirable to effectuate the purposes of this Declaration, then, upon request of Association, and provided said proposed additional easements will not unreasonably interfere with the development, use and occupancy of any Commercial Site, unreasonably affect access to, or operation of, any such Commercial Site, or materially increase the operating costs of

any Commercial Site, each Owner agrees to grant such additional easements across its Commercial Site, without charge therefor, subject to such reasonable terms and conditions as shall be agreed upon between the Association and such Owner. Any such new easement or easements shall be signed by the Association and/or all Owners of portions of the Property which compose the land within such new easements and shall be recorded in the office of the Johnson County Register of Deeds.

(c) The Parties hereby create, grant and reserve a perpetual, non-exclusive license for access, ingress and egress over, under, across, in and upon all portions of the Property (and the improvements thereon) for the benefit of the Association, its successors and assigns, agents and employees, to enter upon all portions of the Property (and the improvements thereon) for purposes of (i) exercising the rights and remedies granted or reserved to the Association pursuant to this Declaration, and (ii) performing any and all duties and obligations of the Association under this Declaration. Notwithstanding anything to the contrary contained herein, the right of the Association to enter any Commercial Site pursuant to the Declaration, including, without limitation, this Section 19(c), will be subject to the following requirements: (i) the Association will provide at least twenty-four (24) hours' written notice to each of Owner and Tenant (except in the event of an emergency, in which case the entering party will give such notice as is reasonable under the circumstances); (ii) the Association's entry on the Commercial Site will, to the extent permitted by law, comply with the applicable Tenant's/Owner's standard confidentiality and security procedures of which it is given notice; (iii) each of Owner and Tenant will have a right to have a representative present during the Association's presence on the Property; (iv) the Association's entry and presence will not materially interfere with operations on the Commercial Site; and (v) the Association's right of entry will not extend to the interior of any buildings on the Commercial Site.

(d) The Parties hereby create, grant and reserve a perpetual non-exclusive easements, for the benefit of every Owner, the Property and each Commercial Site and all portions thereof, in, on and over all portions of the Common Areas for the purpose of the use and enjoyment of such Common Areas for the purposes for which the same are created and designed. The easements granted pursuant to this subsection (d) shall be appurtenant to and shall pass with the title to every Commercial Site, subject to the provisions of this Declaration, including, but not limited to, the easements set forth in this Declaration and all conditions, restrictions, easements, rights-of-way, covenants, equitable servitudes and other encumbrances granted or reserved by the Association. Any Owner may, subject to the Association Rules, delegate, in accordance with this Declaration, the Certificate of Formation and the Bylaws its right of enjoyment in the Common Areas to its occupants and tenants. No such delegation shall relieve any Owner of its obligations under this Declaration.

(e) Any easements created under this Declaration or under any plat of subdivision for sanitary sewer and storm water drainage are subject to the following conditions: (a) no such drainage shall result in water being discharged at a rate or in a volume in excess of that permitted by the design standards for the storm sewer and

drainage system serving the Property and each Commercial Site; and (b) no Owner shall permit the flow or discharge into the sanitary sewer or storm sewer or drainage system for the Property of Hazardous Materials or any other substances (or any prohibited concentrations thereof) from its Commercial Site not permitted under Laws to be discharged into the public sanitary or storm sewer systems serving the Property.

(f) The easements and licenses granted hereunder are non-exclusive and shall be used in such a manner so as not to obstruct, prevent or unreasonably interfere with the use and enjoyment for their intended purposes of such easements and/or licenses by all other Persons entitled to use the same. No Owner shall cause or permit its Commercial Site to be used in a manner which would obstruct, prevent or unreasonably interfere with the use and enjoyment for their intended purposes of any Common Areas or other Commercial Sites. Each Owner and its occupants and their respective successors, assigns, agents and employees shall have the right to use all portions of their respective Commercial Sites occupied by Common Areas for such other purposes permitted under this Declaration as do not adversely interfere with and are not inconsistent with the use of such Common Areas for their intended purposes.

(g) Notwithstanding anything to the contrary contained herein, any of the easements granted in this **Section 19** may be terminated after the expiration or termination of this Declaration by abandonment or non-use for a continual period of five (5) consecutive years, subject to the terms of this subsection (g). If the Owner(s) of the Commercial Site(s) burdened with such easement alleges such abandonment or non-use, such Owner(s) shall give written notice of such allegation by United States registered or certified mail, return receipt requested, mailed to the Association and to any Owner(s) of the Commercial Site(s) benefited by such easement (using the address on file with the Association for such Owner(s)), stating the belief that such easement has been abandoned. If the Association or any of the Owner(s) of any benefited Commercial Site(s) dispute the abandonment of such easement, the Association and/or such Owner(s) shall serve notice of such dispute by certified or registered mail upon the fee Owner(s) of the burdened Commercial Site(s) within thirty (30) days of the receipt of notice of alleged abandonment or non-use. Such notice of dispute shall (i) identify the name and address of the Person giving the notice and the legal description of the benefited Commercial Site(s), if any; and (ii) state the use of the easement which has been made within such five (5) year period which forms the basis of the claim of non-abandonment or continued use. If the Association and any record Owner(s) of the fee of any benefited Commercial Site(s) shall not serve such notice of dispute upon the fee title Owner(s) of the burdened Commercial Site(s) within said thirty (30) day period, then, with respect to such benefited Commercial Site(s), said easement conclusively shall be deemed abandoned and terminated, which presumption shall be binding upon the Association and all Persons having or acquiring an interest in the burdened Commercial Site(s) or the subject benefited Commercial Site(s), and all such Persons shall execute all appropriate documents evidencing and confirming the same, upon request therefor. In the event that the Association or the record fee title owner of any benefited Commercial Site(s) shall serve such notice of dispute upon the fee title owner of the burdened Commercial Site(s)

within said thirty (30) day period, such dispute may be resolved by the owner of the fee title of the burdened Commercial Site(s) bringing an appropriate judicial action to have the easement with respect to such benefited Commercial Site(s) declared abandoned and terminated.

(h) Nothing contained in this **Section 19** including, without limitation, the grant of any or all easements and/or licenses under this **Section 19**, shall be deemed to constitute a dedication of any Commercial Site, or any portion thereof, to any governmental body or agency or to the general public, it being the intention of the Parties that this Declaration shall be strictly limited to and for the purposes set forth in this Declaration. The Owner of any portion of the Property may, however, extend the benefit of the easements granted under this **Section 19** to each of its occupants, but such grant shall be subject to the provisions of this Declaration.

(i) Unless specifically set forth in this Declaration to the contrary, all rights, privileges and easements declared or granted under this **Section 19** or elsewhere in this Declaration are non-exclusive easements and shall be appurtenant to the portions of the Property which are to be benefited thereby, as provided herein. Unless provided otherwise herein, all rights, privileges and easements declared or granted under this Declaration, are irrevocable and for the benefit of the Owners and their beneficiaries and their respective heirs, representatives, successors, assigns, officers, directors, shareholders, partners, employees, agents, tenants, occupants, licensees, invitees, customers, and others claiming by or through them as the holders of interests in and to their respective Commercial Sites.

(j) All easements and licenses granted under this Declaration shall exist by virtue of this Declaration, without the necessity of confirmation by any other document. Upon the termination of any easement or license (in whole or in part) or its release in respect of all of any part of any Commercial Site, such easement or license shall be deemed to have been terminated or released without the necessity of confirmation by any other document; provided, however, that upon the request of the Association, each Owner and occupant owning or occupying any Commercial Site shall sign and acknowledge a document memorializing the existence (including without limitation, the location and any conditions) or the termination or release (in whole or in part), as the case may be, of any easement or license, provided that the form and substance of the document is reasonably acceptable to each such Owner or occupant.

(k) All easements and licenses granted under this **Section 19** or elsewhere in this Declaration are superior to all present and future leases, sales, conveyances, transfers, assignments, contracts, Mortgages, deeds of trust and other liens, encumbrances and documents in any way affecting any portion of the Property, and any Person foreclosing any such Mortgage, lien or encumbrance and any Persons acquiring title or an interest in any portion of the Property as a result thereof shall acquire and hold the title to such portion subject to such easements and licenses and the covenants, agreements, conditions

and restrictions declared in this Declaration and all amendments, revisions and supplements hereto.

(l) Except as otherwise provided in this **Section 19**, whenever any easement created under this **Section 19** applies to the use of a facility in the Property which has not been constructed or installed as of the date of this Declaration, the easement created for the use of the same shall not be effective until the particular facility to which the easement pertains is constructed or installed, and open for use. Moreover, the exact location of the subject easement shall be confined to, and defined by, the location of the facility to which it pertains after construction or installation of such facility. Relocation of any facility in accordance herewith shall automatically constitute a relocation of the easement granted hereunder, without the necessity of any consent or approval by the Owners or occupants of any Commercial Sites. Upon relocation of any facilities in accordance herewith, each Owner and occupant shall join in the execution of a recordable instrument amending this Declaration and confirming the location of the relocated easements and facilities, and such instrument shall have the same effect and priority as this Declaration. In the event any Owner or occupant fails to execute any instrument within ten (10) days after request by the Association, the Association shall have the right, power and privilege to do so as attorney-in-fact for and in the name and stead of such Owner or occupant; and the power of attorney granted thereby shall be irrevocable and is coupled with an interest.

(m) Notwithstanding the fact that the Parties are, in certain circumstances, both the grantor and the grantee of some of the rights and easements created under this **Section 19**, the Parties intent is that there be no merger of interests with respect to such rights and easements, it being understood and agreed that the easements created under this **Section 19** are for the benefit of and appurtenant to the land within the applicable portions of the Property, and not for the benefit of any particular Person (except as may otherwise be specifically provided in this Declaration).

**20. Subdivision and Consolidation.** No Commercial Site shall be subdivided, whether by plat, deed, lease, or otherwise, until a written plan for such proposed subdivision shall have been submitted to and approved in writing by the City or by Johnson County and the submission thereto of a plat of subdivision or a plat of consolidation, as appropriate.

**21. Maintenance of Property.** (a) Every Owner of a Commercial Site, without cost or expense to the Association, the Board of Directors or any other Owner, shall maintain any and all buildings, landscaping, fences, drives, parking lots, open drainage easements and other improvements located on its Commercial Site, and including any areas containing easements granted to the Association pursuant to **Section 19** above (but excluding Common Areas on such Owner's Commercial Site, which are the responsibility of the Association hereunder) in good and well-maintained condition and repair and shall keep such premises planted, the lawns cut, shrubbery trimmed, and shall otherwise maintain such Commercial Site in a clean, sightly and safe condition,



reasonable wear and tear only excepted. Each Owner, without cost or expense to the Association, the Board of Directors and/or any other Owner, shall at all times maintain, repair and replace or cause to be maintained, repaired and replaced all improvements on its Commercial Site (except for Common Areas thereon which are the responsibility of the Association hereunder) in compliance with the Association Rules, any other rules and regulations promulgated by the Board of Directors, from time to time, and all Laws and Ordinances.

(b) If any improvement (or any portion thereof) on a Commercial Site is damaged or destroyed, the Owner of such Commercial Site upon which such improvement is located (a) promptly shall remove any debris resulting from such damage or destruction, and (b) as soon as is reasonably possible after the occurrence or event causing such damage or destruction, either shall (i) promptly commence the restoration of such improvement (or affected portion thereof), and thereafter diligently and continuously pursue completion of such restoration, to the condition existing immediately prior to such damage or destruction or (ii) raze and remove such improvement (or affected portion thereof) and grade and landscape the affected area. Once an Owner commences such reconstruction, restoration, or razing work, such Owner shall proceed diligently and continuously with such work in compliance with all Laws until the same is completed. Any Owner reconstructing or restoring its improvements after such damage or destruction, as provided above, shall comply with all of the requirements set forth in this Declaration with respect to construction, alteration and reconstruction of improvements within or located on the Property. Nothing contained in this Declaration shall permit any Owner which elects to raze its improvements to do so in a manner that interferes with or affects the structural integrity of any other Owner's improvements, or in a manner that interferes with another Owner's or occupant's use of the easements created under and pursuant to this Declaration.

**22. Interruption of Construction of Improvements.** In the event construction of any improvements is commenced upon any Commercial Site and is subsequently interrupted for a period exceeding six (6) months, subject to force majeure, the Owner of said Commercial Site shall promptly remove the partially completed improvements and restore the Commercial Site to the condition in which it existed immediately prior to commencement of construction. Notwithstanding the foregoing, (a) if such interruption of construction results from a cause not reasonably within the control of the Owner of the applicable Commercial Site, excluding specifically, the financing of such construction, the Association shall grant an extension of said six (6) month period for the additional period of such interruption, not to exceed a six (6) month extension, and (b) if such interruption of construction results from force majeure, the six (6) month period shall be extended for the period of such interruption caused by force majeure.

**23. Property Rights.** (a) In the event that the need for maintenance, repair or replacement of the Common Areas, or any part thereof, other than that relating to ordinary wear and tear, is caused through or by (i) the negligent or willful act or omission of any Owner, its tenants, contractors or other occupants, or (ii) use of such Common

Areas by any Owner, its tenants, contractors or other occupants in excess of and beyond normal and customary use of such Common Areas, then the expenses, costs and fees incurred by the Association for such maintenance, repair or replacement shall be a personal obligation of both the applicable Owner and if any such tenant, occupant or contractor is at fault, the relevant tenant, contractor and/or other occupant. If not repaid to the Association within fifteen (15) days after the Association gives notice to the Owner of the total amount due, or of amounts due from time to time, then the sums due shall become an assessment against the Owner's Commercial Site, and the Association shall have the rights and remedies afforded to them under **Section 16** above with respect to Assessments.

(b) As soon as practical after an event causing damage to or destruction of any improvement or portion of the Common Areas owned or required to be maintained by the Association, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of such improvement or portion of the Common Areas so damaged or destroyed. "**Repair and reconstruction**" as used in this **Section 23** shall mean restoring the damaged or destroyed improvements or portion of the Common Areas to substantially the same condition in which they existed prior to the damage or destruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed improvements or portion of the Common Areas. The Association may take any and all necessary or appropriate action to effect repair and reconstruction and no consent or other action by any Owner shall be necessary in connection therewith. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

The proceeds received by the Association from any hazard insurance covering the Common Areas shall be used for the purpose of such repair and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, or the Association is required to pay any deductible with respect to such insurance, the Association may levy, assess and collect in advance from Owners a special assessment as provided in **Section 16** above in an amount sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction and/or such deductible. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

(c) Whenever all or any part of the Common Areas owned by the Association shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, the award or payment shall be payable to the Association. If the taking involves a portion of the Common Areas on which improvements have been constructed, then the Association shall, to the extent reasonably practicable, restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans reasonably approved by the Association. If such improvements are to be repaired or restored, the above provisions in this **Section 23** regarding the

disbursement of funds in respect to casualty, damage or destruction which is to be repaired shall apply.

**24. Insurance.** Each Owner and/or occupant of a Commercial Site shall at all times maintain or cause to be maintained commercial general liability insurance, all-risk, fire and casualty insurance and such other insurance policies as the Association, may reasonably require from time to time, all in form, substance and amount, and covering such risks, and issued by such insurance companies, and naming such parties as additional insureds or loss payees, and containing such standard mortgagee clauses, as the Association, in their discretion shall reasonably require from time to time. The types and amounts of insurance coverages to be procured and maintained pursuant to this **Section 24** shall be commercially reasonable. The all-risk fire and casualty insurance to be carried by each Owner and/or an occupant shall have limits no less than the full replacement value of the improvements and personal property on the applicable Commercial Site. The commercial general liability insurance to be maintained hereunder shall have a limit of not less than \$5,000,000 (per occurrence)(or such greater amount as reasonably may be required by the Association from time to time), and shall include Broad Form Contractual Liability insurance coverage with at least the following endorsements: (1) deleting any employee exclusion on personal injury coverage; (2) naming the Association, the Board of Directors and any other Person(s) designated from time to time by the Association as additional insureds; (3) providing for blanket contractual liability coverage; (4) broad form property damage coverage; and (5) providing that the policies cannot be cancelled, terminated or modified without at least thirty (30) days' prior written notice to each named additional insured(s). All such insurance shall be primary and noncontributory, shall contain a waiver of subrogation endorsement, shall provide that an act or omission of one of the insureds or named insureds which would otherwise void or reduce coverage shall not void or reduce coverages to the insured or other additional named insureds, as the case may be, and shall afford coverage for all claims based on acts, omissions, injury and damage which occurred or arise (or the onset of which occurred or arose) in whole or in part during the policy period.

Prior to the commencement of any construction on its Commercial Site and prior to commencing occupancy of any existing buildings or other improvements, and as a condition to the continued occupancy of its building and other improvements, each Owner shall furnish to the Association paid certificates of the insurance required to be maintained pursuant to this Declaration. Thereafter, a certificate evidencing the above shall be furnished from time to time as required by the Association or the Board of Directors. In the event that the Association or the Board of Directors are notified of the termination or pending expiration of any insurance policy required to be maintained hereunder, and/or any Owner of any Commercial Site fails to promptly furnish adequate evidence of the maintenance of insurance required to be maintained hereunder, then, in any such event and upon sixty (60) days prior notice to such Owner (and such Owner's failure to comply with the terms of this **Section 24** prior to the expiration of such sixty (60) day period), the Association or the Board of Directors may (but shall not be obligated to) obtain and pay for, on behalf of the subject Owner, the policies of insurance

required hereunder, and all reasonable costs and expenses (together with interest thereon at the Default Interest Rate until paid) incurred by such in connection therewith shall be paid by the subject Owner to such parties upon demand and, if not paid as aforesaid, shall constitute a lien against the Commercial Site of such Owner, which may be foreclosed in the same manner, and which shall have the same priority, as the lien of Assessments, as specified in **Section 16** above. Unless each Owner provides the Association with evidence of the insurance coverage required in this Declaration, the Association may (but need not) purchase insurance at the Owner's expense to protect the Association's interests in the Property. This insurance may, but need not, protect the Owner's interests. The coverage that the Association purchases may not pay any claim that such Owner makes or any claim that is made against such Owner in connection with such Owner's Commercial Site. The Owner may later cancel any insurance purchased by the Association, but only after providing evidence that it has obtained insurance as required herein. If the Association purchases insurance for a Commercial Site, the Owner of such Commercial Site will be responsible for the costs of that insurance, including interest and any other charges that the Association may impose in connection with the placement of insurance, until the effective date of the cancellation or expiration of the insurance. The costs of insurance may be more than the cost of insurance an Owner may be able to obtain on its own.

The Association shall have the right, in their sole and absolute discretion and from time to time, to waive and/or reduce the insurance limits and coverages required hereunder to be maintained by an Owner or with respect to any Commercial Site. Any such waiver or reduction shall not affect any other Owner's or Commercial Site's obligation to procure and maintain the insurance required hereunder.

**25. Association's Rights and Reservations.** (a) The Association shall have and hereby reserves for itself and for the benefit of its successors and assigns owning or developing all or any portion of the Property the right to the reasonable use of the Common Areas in connection with the development, construction, and operation of any and all portion of the Property.

(b) No provision of this Declaration shall be construed to prevent or limit the Association's rights to, and the Association shall have the right to, complete the development, construction, and operation of any and all portion the Property. Nothing in this Section shall limit or impair the reserved rights of the Association as elsewhere provided in this Declaration.

(c) The Association agrees for the benefit of the Owners that, except where this Declaration provides that any decision may be made in the Association's or the Board of Director's sole and absolute discretion (or words of a similar meaning), such party shall not exercise or refuse to exercise any of its rights, powers, duties or obligations under this Declaration in a manner that would arbitrarily, capriciously and unreasonably interfere with the ownership, occupancy, use, enjoyment or access to any Commercial Site.

**26. Real Estate Taxes.** (a) Each Owner shall pay or cause to be paid directly before delinquency all real estate taxes and other special and general taxes and assessments which may be levied or assessed against its Commercial Site and the improvements thereon (including, without limitation, any tax or assessment attributable to any interest or easement created by this Declaration), including, without limitation, any and all real estate taxes and other special taxes and assessments levied or assessed against that portion of the Common Areas lying within such Commercial Site. If, by Law, any tax and/or assessment may be paid in installments at the option of the taxpayer, the Person responsible for paying the tax or assessment may exercise the option to pay the same in installments as they may become due from time to time.

(b) Any Owner may contest (or allow to be contested), at its own cost and expense and in good faith, by appropriate proceedings diligently prosecuted, any real estate tax or other special tax or assessment levied upon its Commercial Site; provided and subject to the condition that, such real estate taxes or other special tax or assessment so levied applies only to such Owner's Commercial Site and no other property. Any such contested tax or assessment shall be paid, however, prior to the time when the affected Commercial Site can be subjected to sale under any Law pursuant to a proceeding which may result in impairment of the rights created under this Declaration or terminate any provision of this Declaration as applied to any Commercial Site.

**27. Intentionally Omitted.**

**28. Miscellaneous.**

(a) Constructive Notice and Acceptance. Every Person that now or hereafter acquires any right, title, estate, or interest in or to any Commercial Site is and shall conclusively be deemed to have consented and agreed to every Covenant, term, provision and condition contained herein, whether or not any reference to this Declaration is contained in the instrument by which such Person acquires its interest in said Commercial Site.

(b) Interpretation. It is specifically provided and agreed that the customary rule requiring documents to be construed most strictly against the party preparing such documents shall not apply to this Declaration.

(c) Enforcement. Failure of any Owner to satisfy and pay any monetary Covenant or obligation within ten (10) days after the same is due under this Declaration shall give the Association, as applicable, the right (in addition to any other rights and remedies afforded to the Association under this Declaration) to pursue any and all remedies available at law and in equity, including, without, seeking specific performance of such obligation. Violation or breach by an Owner of any non-monetary Covenant, term, provision or condition herein contained (a "**Non-Monetary Default**") shall give the Association the right (in addition to any other rights and remedies afforded to Association

under this Declaration, at law or in equity), after thirty (30) days' advance written notice of such violation or breach has been given to the Owner of any Commercial Site as to which a breach or violation of these Covenants or any term, provision, condition or requirement set forth in this Declaration exists (or without notice if the Association in their sole discretion of either determines that such violation or breach has resulted in an emergency situation), and provided that such Owner fails to complete the cure of such violation or breach to the reasonable satisfaction of the Association, as the case may be, within the aforementioned thirty (30) day period (or without any cure period if the Association in their sole discretion of either determines that such violation or breach has resulted in an emergency situation), to enter upon said Commercial Site, and summarily cure, abate and/or remove, at the expense of the Owner or occupant thereof, any improvement, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof, or to prosecute a proceeding at law or in equity against the Person or Persons who have violated or are attempting to violate any of the Covenants, terms, provisions or conditions herein contained, and to enjoin or prevent them from doing so or to cause said violation to be remedied or to recover damages for said violation. Notwithstanding the foregoing, if a Non-Monetary Default is of a nature that cannot be cured within the aforementioned thirty (30) day period, then such Owner shall have as long as is reasonably necessary (not to exceed an additional ninety (90) days after the expiration of the aforementioned thirty (30) day period) to complete the cure of such Non-Monetary Default, provided and subject to the condition that such Owner shall have commenced the cure of such Non-Monetary Default within such thirty (30) day period and thereafter shall diligently and continuously pursue completion of the cure of such Non-Monetary Default to the reasonable satisfaction of the Association, as the case may be. The Association may from time to time at any reasonable hour or hours and upon reasonable prior notice to the applicable Owner (except in the event of an emergency in which case no notice shall be required), enter and inspect any Commercial Site to ascertain compliance herewith. Failure by the Association to enforce any Covenant, term, provision or condition herein contained shall in no event be deemed to be a waiver of its right to do so thereafter nor of its right to enforce any other Covenant hereof. Wherever in this Declaration the consent or approval of the Association is required, such consent shall be effective only if in writing. All remedies provided for herein or at law or in equity shall be cumulative and not exclusive.

In the event that the Association shall fail to comply with any of its obligations under this Declaration, and such failure shall continue for thirty (30) days after the Association's receipt of written notice of such failure from an Owner, then such Owner shall have the right, but not the obligation, to (1) in the event that the Association's failure causes the Common Areas to be in a dangerous condition or the threat of major bodily injury or death is imminent as a result of the condition of the Common Areas, at such Owner's sole risk, cure such failure and perform the Association's obligations that have not been performed (in which event the Association, as the case may be, promptly after demand therefor, shall reimburse such Owner for the reasonable cost of such performance), and (2) in all other events, pursue any and all remedies available at law and in equity; provided, however, that (i) if another provision of this Declaration provides specific relief

or a remedy on account of such failure, then such specific relief or remedy shall be such Owner's sole and exclusive rights and remedies under and pursuant to this Declaration, at law and in equity, and (ii) in no event shall such Owner have the right to amend or modify this Declaration in any manner, or be relieved of or released from any of the terms, provisions, Covenants, conditions, obligations or liabilities contained in this Declaration, including, without limitation, the obligation to pay any Assessments or other amounts coming due hereunder. Notwithstanding the foregoing, if such failure is of a nature that (x) cannot be cured within the aforementioned thirty (30) day period, then the Association, as the case may be, shall have as long as is reasonably necessary to complete the cure of such failure provided and subject to the condition that the Association shall have commenced the cure of such failure within such thirty (30) day period and thereafter shall diligently and continuously pursue completion of the cure of such failure, or (y) is not susceptible to being cured, then the Association shall forever be relieved of and released from the applicable obligation(s).

Notwithstanding anything to the contrary contained herein, the Association will promptly provide to any Tenant a copy of any default notice or any notice relating to potential defaults delivered to Owner, and the Association will not exercise any rights relating to such notices unless Tenant has failed to cure or remedy any act or omission of Owner within sixty (60) days after receiving written notice thereof (or within such additional period as is reasonably required to correct such default, provided that Tenant uses reasonable diligence to cure same).

(d) Paragraph Headings. Paragraph headings are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope or intent of the particular paragraph to which they refer.

(e) Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, and for the purposes hereof all Covenants as contained herein shall be deemed to be severable each from the other without qualification.

(f) Amendments; Variance.

(i) This Declaration may be amended by an affirmative vote of the then Owners having not less than sixty-five percent (65%) of the total number of votes held by the Owners (as determined in accordance with the terms of **Section 11** hereof), as of the date such vote is taken; provided, however, that: (a) no amendment shall in any manner materially adversely affect any obligations with respect to any Owner without the consent of such Owner; and (b) no amendment shall adversely affect the rights of a holder of any Mortgage without such holder's consent.

(iii) The Parties hereby retain the right of the Association to grant in writing to individual Owners waivers, exceptions to and/or variances from the

Covenants contained herein as the Association shall, from time to time, in its sole and absolute discretion, deem appropriate. Any such waivers, exceptions and/or variances shall not affect any other Owner's obligation to comply with all provisions of this Declaration and shall not be deemed a waiver of any future obligation of any Owner.

(g) Additional Land. The Association, from time to time, shall have the right to render other land that is adjoining or adjacent to the Property or to any street right-of-way adjacent to the Property or to any other property then subject to this Declaration subject and subservient to this Declaration in all respects by executing and recording a supplement to this Declaration containing a description of the land to be added; a statement that all other persons, firms or corporations having an interest in such land have joined in such supplement; a statement of the additional restrictions or burdens to which such land shall be subjected, if any, and a statement of any waivers, exceptions to and/or variances from the covenants, terms, provisions and/or conditions contained herein, if any; and a statement of the restrictions, burdens or provisions of this Declaration which shall be applicable to such land in modified form, if any, following the execution, delivery and recording of such supplement, but subject to its terms, such land and the then and future owners, tenants, mortgagees and other occupants of all or any part thereof shall in all respects be fully subject to this Declaration and all rights, privileges, obligations, duties, liabilities, responsibilities, burdens and restrictions contained herein, except those which are specifically excluded by such supplement. Notwithstanding anything contained herein, the Association may not render other land that is adjoining or adjacent to the Property if the addition of such property shall materially and adversely affect the use, operation, maintenance or capacity of the Storm Water Retention and Detention Facilities. Upon satisfaction of the conditions set forth in this paragraph, any such additional land shall be deemed to be "Property" for all purposes under this Declaration.

(h) Applicable Law. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the State of Texas, without giving effect to choice of laws principles.

(i) Successors and Assigns. All of the rights, Covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon the Parties and each subsequent holder of any interests in any portion of the Property and their grantees, heirs, successors, personal representatives and assigns with the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Property or any part thereof. Reference in the respective deeds of conveyance, or in any Mortgage or trust deed or other evidence of obligation, to the easements and covenants herein described shall be sufficient to create and reserve such easements and covenants to the respective grantees, Mortgages or trustees of such parcels as fully and completely as though said easements and covenants were fully recited and set forth in their entirety in such documents.



(j) Not a Public Dedication. Nothing herein contained shall be deemed to be a grant, gift or dedication of any portion of the Property to the general public or for the general public or for any public proposes whatsoever, it being the intention of this Declaration that this Declaration shall be strictly limited to and for the parties described herein.

(k) Compliance With Law. Each Owner shall at all times comply with all Laws and all applicable regulations of the local fire insurance rating organization having jurisdiction or any other organization or board exercising a similar function with respect to the construction, maintenance, operation and use of such Owner's Commercial Site and the improvements thereon.

(l) Owner's Liability. From and after the closing of the sale or other transfer of a Commercial Site, the Owner so selling or transferring shall have no further liability for the obligations with respect to such Commercial Site which arise and accrue from and after the date of the recording of the conveyance document; provided, however, that nothing herein contained shall be construed so as to relieve or release the Commercial Site of any lien, charge or other amount arising by reason of such liability or the selling or transferring Owner of such Commercial Site from any liabilities or obligations incurred under this Declaration prior to such recording. This subsection (l) shall not apply with respect to any Mortgage or other similar financing documents or instruments unless and until either (1) such mortgagee or holder of such instrument shall have acquired title (other than a security title) to said Commercial Site or to any interest therein (other than a security interest) pursuant to the foreclosure of such security instrument, the exercise of any power of sale contained therein, or any deed or proceeding taken in lieu of the foreclosure of any such security instrument or the exercise of any power of sale contained therein, or (2) a Person other than a mortgagee or other holder of a security instrument shall acquire title (other than a security title) to a Commercial Site or any interest therein (other than a security interest) pursuant to the foreclosure of any such security instrument, the exercise of any power of sale contained therein, or the taking of any proceeding or deed in lieu of the foreclosure of any such security instrument or the exercise of any power of sale contained therein.

(m) Delay In Performance -- Force Majeure. Notwithstanding anything to the contrary contained in this Declaration, if the performance of any non-monetary act or obligation under this Declaration is prevented or delayed by an act of God, fire, earthquake, flood, underground collapse, explosion, action of the elements, war, invasion, insurrection, mob violence, sabotage, malicious mischief, inability to procure or general shortage of labor, equipment or facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor union, condemnation, threatened condemnation, requisitions, laws, orders of government or civil or military or naval authorities or any other cause whether similar or dissimilar to the foregoing not within the reasonable control of the Person required to perform such act or obligation, then provided and subject to the condition that such Person provides notice of such prevention or delay to the Association, within twenty (20) days after the occurrence thereof (including an

estimate of the length of such delay), then such Person shall be excused from the performance of such act or obligation for so long as such Person is so prevented or delayed by reason thereof. Notwithstanding anything contained in this subsection (m) to the contrary, the foregoing force majeure provisions shall apply to the Association's and each Owner's obligations hereunder except those that require the payment of money or the procurement and maintenance of insurance.

(n) Registration By Owner's Of Mailing Addresses And Notices. Each Owner shall register its mailing address with the Secretary of the Association from time to time. If an Owner fails to register its mailing address, the Association may continue to use the address on file for notices to the prior Owner and notices sent to such address(es) on file shall be binding on such Owner and Member who has failed to register. Any notices required to be sent under the provisions of this Declaration shall be sent by personal delivery or by courier guarantying next business day delivery or by United States mail, by registered or certified mail, return receipt requested, postage prepaid and shall be deemed to have been received upon the earlier of actual receipt or the date on which delivery is first refused by the recipient thereof; in each case addressed as follows:

If to the Owner of any Commercial Site, to the most recent address of the Owner of such Commercial Site on file with the Secretary of the Association;

If to Association:      Mansfield Economic Development Corporation  
Attn: Richard Nevins  
301 S. Main Street  
Mansfield, Texas 76063

Seefried Industrial Properties, Inc.  
3030 LBJ Freeway, Suite 1650  
Dallas, Texas 75234  
Attention: Jonathan Stites

or to such alternative or additional addresses as the Association may direct by written notice from time to time.

(o) Waiver. No failure on the part of the Association or the Board of Directors to give notice of default or to exercise or to delay in exercising any right or remedy hereunder shall operate as a waiver, except to the extent otherwise expressly provided in this Declaration. No waiver by the Association shall be effective unless it is in writing, signed by the president or vice president of the Board on behalf of the Association.

(p) Conflicts Between Documents. In case of conflict between the terms and provisions of this Declaration and the terms and provisions of the Certificate of Formation or the Bylaws, the Declaration shall control. In case of conflict between the Certificate of Formation and the Bylaws, the Certificate of Formation shall control.

(q) Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the written consent of at least sixty-five percent (65%) of the total number of votes held by the Owners (as determined in accordance with the terms of **Section 11** hereof) as of the date such vote is taken. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments as provided in **Section 16** hereof or any other assessments, costs, expenses, interest, charges or other amounts owed by an Owner to the Association committee pursuant to this Declaration, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This subsection (s) shall not be amended unless such amendment is approved by the percentage consent, and pursuant to the same procedures, necessary to institute proceedings as provided above.

(r) Limitations of Liability And Indemnification. The Association shall indemnify every board member, officer, trustee and committee member of the Association (including, without limitation, the Board of Directors) against any and all costs and expenses, including, without limitation, reasonable attorneys' fees, reasonably incurred by or imposed upon such board member, officer, director, or committee member in connection with any action, suit, or other proceeding (including, without limitation, settlement of any suit or proceeding, if approved by the Board of Directors) to which he or she may be a party by reason of being or having been a board member, officer, trustee, or committee member. The board members, officers, trustees, and committee members shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual gross negligence, willful misfeasance, malfeasance, misconduct or bad faith. The board members, officers, trustees and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such board members, officers, trustees and committee members may also be Owners and are acting in their capacity as Owners instead of as board members, officers, trustees or committee members), and the Association shall indemnify and forever hold each such board members, officers, trustees and committee members free and harmless against any and all damage, injury and liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any board member, officer, trustee or committee member, or former board member, officer, trustee or committee member, may be entitled.

(s) Time Is Of The Essence. Time is of the essence in the performance by the relevant Persons of the obligations set forth in this Declaration.

(t) Declaration for Exclusive Benefit Of Owners And Occupants. The provisions of this Declaration are for the exclusive benefit of the Owners and the occupants of Commercial Sites, and, except as otherwise expressly provided in this Declaration, not for the benefit of any other Person. Except as otherwise provided in this

Declaration, this Declaration shall not be deemed to have conferred any rights, express or implied, upon any third person.

(u) No Partnership, Joint Venture Or Principal-Agent Relationship. Neither anything contained in this Declaration nor any acts of the Parties or the Association performed pursuant to this Declaration shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the Parties, the Association and any Owners and occupants of Commercial Sites.

(v) Litigation Expenses. If the Association or any Owner shall bring an action or proceeding (including, without limitation, any cross-complaint, counterclaim or third party claim) against any other Owner or the Association, as the case may be, by reason of the breach or alleged violation of any Covenant, term, provision or obligation of this Declaration, or for the enforcement of any provision of this Declaration, or otherwise arising out of this Declaration, the Prevailing Person (as hereinafter defined) in such action or proceeding shall be entitled to receive from the other Owner (or the Association, as the case may be) its costs and expenses of suit including, without limitation, reasonable attorneys' fees and disbursements, which shall be payable whether or not such action is prosecuted to judgment. "**Prevailing Person**" shall mean a Person who, in an adversarial proceeding is awarded damages or other relief substantially equal to the relief sought by such Person, or who successfully defends such proceeding, or who dismisses an action for recovery under this Declaration in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action. No Owner shall have the right to enforce a specific term, provision, Covenant and/or condition contained in the Declaration against any other Owner if such other Owner shall have, pursuant to the terms of this Declaration, obtained from the Association or the Board of Directors a variance or waiver of any of such specific term, provision, Covenant and/or condition.

(w) Entire Agreement. This Declaration and the Exhibits to this Declaration contain the entire agreement with respect to the subject matter of this Declaration as of the date hereof. Any prior correspondence, memoranda or agreements concerning the subject matter hereof are superseded in total by and integrated into this Declaration and the Exhibits to this Declaration. The provisions of this Declaration and the Exhibits to this Declaration shall be construed liberally as a whole according to their common meaning and not strictly for or against any Person.

(x) Rules of Construction. When used in the sections and paragraphs of this Declaration, the words "**hereof**", "**herein**", and "**hereunder**", and words of similar import, shall mean and refer to this Declaration as a whole and not only to the particular section or paragraph in which such words appear.

[SIGNATURE PAGE FOLLOWS]

3731219-6 11724.0254000

**SEEFRIED:**

**CLPF EASY DRIVE LP**, a Delaware limited partnership

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

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the County in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ the \_\_\_\_\_ of CLPF EASY DRIVE LP, a Delaware limited partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**Legal Description of MEDC Property**

STATE OF TEXAS  
COUNTY OF JOHNSON

BEING a tract of land situated in J.Q. Wheeler Survey, Abstract No. 903, Johnson County, Texas, being a portion of that tract of land as described in deed to Mansfield Economic Development Corporation, recorded in Instrument No. 2017-14639, Deed Records, Johnson County, Texas (DRJCT), being a portion of the final plat of Easy Drive, 7th Street, and Klein Boulevard, an addition to the City of Mansfield, Johnson County, Texas as recorded in Volume 11, Page 897, Plat Records, Johnson County, Texas (PRJCT), and being more particularly described as follows:

BEGINNING at a 1/2" rebar capped Brittain - Crawford found in the north line of Klein Tools Boulevard at the most easterly R.O.W. clip corner of the intersection of the north line of said Klein Tools Boulevard (90' R.O.W) and the east line of South 7th Avenue (70' R.O.W.) per said final plat of Easy Drive, 7th Street, and Klein Boulevard as recorded in Volume 11, Page 897, PRJCT;

THENCE North 71 degrees 34 minutes 24 seconds West, along a right-of-way clip line, a distance of 19.94 feet to a 1/2" rebar capped Brittain - Crawford found at the most westerly R.O.W. clip corner of said intersection and lying in the east line of said South 7th Avenue;

THENCE along the east line of said South 7th Avenue, as follows:

Northwesterly, along a non-tangent curve to the right, having a radius of 985.00 feet, a central angle of 09 degrees 54 minutes 40 seconds, an arc distance of 170.39 feet, and a chord that bears North 17 degrees 51 minutes 05 seconds West, 170.17 feet to the end of said curve;

North 12 degrees 53 minutes 45 seconds West, a distance of 1,308.90 feet to the northwest corner of the herein described tract of land;

THENCE North 89 degrees 10 minutes 53 seconds East, departing the east line of said South 7th Avenue, across said Mansfield Economic Development Corporation tract, a distance of 1,115.25 feet to the east line of said Mansfield Economic Development Corporation tract and the west line of a tract of land as described in deed to Klein Tools, Inc., recorded in Instrument No. 2012-29016, DRJCT;

THENCE along the east line of said Mansfield Economic Development Corporation tract and the west line of said Klein Tools tract, as follows:

South 30 degrees 26 minutes 32 seconds East, a distance of 218.39 feet to a 1/2" rebar found;

South 66 degrees 57 minutes 18 seconds East, a distance of 115.98 feet (deeds 116.25 feet & 116.06 feet) to a 1/2" rebar found;

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South 27 degrees 37 minutes 17 seconds East, a distance of 580.36 feet to a 1/2" rebar capped Brittain - Crawford found at the northeast corner of said Klein Tools Boulevard per said plat recorded in Volume 11, Page 897, PRJCT;

THENCE South 60 degrees 05 minutes 47 seconds West, departing the west line of said Klein Tools tract, along the north line of said Klein Tools Boulevard, a distance of 1,428.57 feet to the POINT OF BEGINNING and containing 1,483,901 square feet or 34.066 acres of land.

NOTE:

Bearings are referenced to Texas State Plane Coordinate System, North Central Zone (4202), North American Datum of 1983 as derived from GPS observation.



**EXHIBIT B**  
**Legal Description of Lot 1 Property**

STATE OF TEXAS  
COUNTY OF JOHNSON

BEING a tract of land situated in J.Q. Wheeler Survey, Abstract No. 903, Johnson County, Texas, being a portion of that tract of land as described in deed to Mansfield Economic Development Corporation, recorded in document 2017-14639, Deed Records, Johnson County, Texas (DRJCT), ), being a portion of the final plat of Easy Drive, 7th Street, and Klein Boulevard, an addition to the City of Mansfield, Johnson County, Texas as recorded in Volume 11, Page 897, Plat Records, Johnson County, Texas, and being more particularly described as follows:

COMMENCING at a 1/2" rebar capped Goodwin & Marshall set at the southwest corner of 7th Street (70' R.O.W.) per the final plat of Easy Drive, 7th Street, and Klein Boulevard as recorded in Volume 11, Page 897, Plat Records, Johnson County, Texas;

THENCE North 60 degrees 33 minutes 59 seconds East, along the south line of said 7th Street, a distance of 70.00 feet to a 1/2" rebar capped Goodwin & Marshall set at the southeast corner of said 7th Street, being the POINT OF BEGINNING of the herein described tract of land;

THENCE North 29 degrees 26 minutes 01 seconds West, along the east line of said 7th Street, a distance of 4.12 feet to a 1/2" rebar capped BRITTAIN & CRAWFORD found at a right-of-way clip corner;

THENCE North 15 degrees 24 minutes 18 seconds East, along a right-of-way clip line, a distance of 21.33 feet to a 1/2" rebar capped BRITTAIN & CRAWFORD found at a right-of-way clip corner;

THENCE North 60 degrees 05 minutes 47 seconds East, along the south line said Klein Boulevard (90' R.O.W.), a distance of 1335.11 feet to a 1/2" rebar capped Goodwin & Marshall set at the northeast corner of the herein described tract of land, from which a 1/2" rebar capped found at the southeast corner of said Klein Boulevard bears North 60 degrees 05 minutes 47 seconds East, 96.33 feet;

THENCE S 28 degrees 59 minutes 46 seconds East, departing the south line of said Klein Boulevard, across said Mansfield Economic Development Corporation tract, a distance of 2159.15 feet to a 1/2" rebar capped Goodwin & Marshall set in the south line of said Mansfield Economic Development Corporation tract and a north line of a tract of land as described in deed to Set/Back Partners, recorded in Volume 2226, Page 464, DRJCT, from which the southeast corner of said Mansfield Economic Development Corporation tract bears North 60 degrees 17 minutes 59 seconds East, 89.82 feet, and a 5/8" rebar found at the most easterly northeast corner of said Set/Back Partners tract bears North 60 degrees 17 minutes 59 seconds East, 872.95 feet;

THENCE South 60 degrees 17 minutes 59 seconds West, along the south line of said Mansfield Economic Development Corporation tract and said north line of said Set/Back Partners tract

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affected by Boundary Line Agreement recorded in Volume 3857, Page 277, DRJCT, at a distance of 12.7 feet passing a 1/2" rebar capped BEASELEY found, continuing a total distance of 459.89 feet to the southwest corner of the herein described tract of land, from which a 5/8" rebar found at a reentrant corner of said Set/Back Partners tract bears South 60 degrees 17 minutes 59 seconds West, 999.53 feet;

THENCE departing said north line of said Set/Back Partners tract, across said Mansfield Economic Development Corporation tract, as follows:

North 29 degrees 56 minutes 46 seconds West, a distance of 662.35 feet;

South 60 degrees 19 minutes 53 seconds West, a distance of 867.81 feet;

North 29 degrees 26 minutes 01 seconds West, a distance of 1472.27 feet to the POINT OF BEGINNING and containing 2,316,787 square feet or 53.186 acres of land.

NOTE:

Bearings are referenced to Texas State Plane Coordinate System, North Central Zone (4202), North American Datum of 1983 as derived from GPS observation.

**EXHIBIT C**  
**Legal Description of Drainage Property**

STATE OF TEXAS  
COUNTY OF JOHNSON

BEING a tract of land situated in J.Q. Wheeler Survey, Abstract No. 903, Johnson County, Texas, being a portion of that tract of land as described in deed to Mansfield Economic Development Corporation, recorded in document 2017-14639, Deed Records, Johnson County, Texas (DRJCT), being a portion of the final plat of Easy Drive, 7th Street, and Klein Boulevard as recorded in Volume 11, Page 897, Plat Records, Johnson County, Texas, and being more particularly described as follows:

BEGINNING at the southeast corner of said 7th Street per Volume 11, Page 897, Plat Records, Johnson County, Texas;

THENCE across said Mansfield Economic Development Corporation tract, as follows:

South 29 degrees 26 minutes 01 seconds East, a distance of 1472.27 feet;

North 60 degrees 19 minutes 53 seconds East, a distance of 867.81 feet;

South 29 degrees 56 minutes 46 seconds East, a distance of 662.35 feet to the south line of said Mansfield Economic Development Corporation tract and a north line of a tract of land as described in deed to Set/Back Partners, recorded in Volume 2226, Page 464, DRJCT, from which a 5/8" rebar found at the most easterly northeast corner of said Set/Back Partners tract bears North 60 degrees 17 minutes 59 seconds East, 1332.83 feet;

THENCE South 60 degrees 17 minutes 59 seconds West, along the south line of said Mansfield Economic Development Corporation tract and said north line of said Set/Back Partners tract affected by Boundary Line Agreement recorded in Volume 3857, Page 277, DRJCT, at a distance of 554.7 feet passing a 1/2" rebar capped BEASLEY found, continuing a total distance of 999.53 feet to 5/8" rebar found at the southwest corner of said Mansfield Economic Development Corporation tract and a reentrant corner of said Set/Back Partners tract, from which a 1/2" rebar capped Pacheco Koch found bears South 22 degrees 50 minutes East, 4.4 feet;

THENCE North 29 degrees 42 minutes 59 seconds West, along the west line of said Mansfield Economic Development Corporation tract and a reentrant line of said Set/Back Partners tract, a distance of 863.10 feet (Set/Back Partners deed 863.24 feet, Mansfield deed 867.65 feet) to a 1-1/2" steel pipe found at the most northerly northeast corner of said Set/Back Partners tract, the southeast corner of a tract of land as described in deed to Ira T. Kimbrough and Andree E. Kimbrough Real Estate LLC, recorded in 2012-12986, DRJCT, and being an angle point in the west line of said Mansfield Economic Development Corporation tract;

THENCE North 29 degrees 25 minutes 30 seconds West, along the east line of said Kimbrough tract and the west line of said Mansfield Economic Development Corporation tract, a distance of

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98.31 feet;

THENCE departing the east line of said Kimbrough tract, across said Mansfield Economic Development Corporation tract, as follows:

North 60 degrees 34 minutes 04 seconds East, a distance of 40.04 feet;

North 29 degrees 26 minutes 01 seconds West, a distance of 1192.67 feet;

North 60 degrees 05 minutes 47 seconds East, at a distance of 20.03 feet passing the west line of said 7th Street, continuing a total distance of 105.04 feet to a 1/2" rebar capped Brittain - Crawford found at a R.O.W. clip corner in the south line of said Klein Boulevard;

THENCE South 15 degrees 24 minutes 18 seconds West, along a R.O.W. clip line, a distance of 21.33 feet to a 1/2" rebar capped Brittain - Crawford found at a R.O.W. clip corner in the east line of said 7th Street;

THENCE South 29 degrees 26 minutes 01 seconds East, along the east line of said 7th Street, a distance of 4.12 feet to the POINT OF BEGINNING and containing 807,605 square feet or 18.540 acres of land.

NOTE:

Bearings are referenced to Texas State Plane Coordinate System, North Central Zone (4202), North American Datum of 1983 as derived from GPS observation.

**EXHIBIT D**  
**Site Plan Depicting Storm Water Retention and Detention Facilities**  
[Site Plan to be Attached]

**EXHIBIT D**  
**Additional Notice Addresses**

[To Be Attached]