

**CERTIFICATE OF FORMATION
OF
PFLUGERVILLE DOWNTOWN EAST COMMERCIAL COMMUNITY, INC.**

The undersigned natural person, being of the age of eighteen (18) years or more, a citizen of the State of Texas, acting as incorporator of a nonprofit corporation under the Texas Business Organizations Code, does hereby adopt the following Certificate of Formation for such corporation:

**ARTICLE I
NAME**

The name of the corporation is: Pflugerville Downtown East Commercial Community, Inc. (hereinafter called the **"Association"**).

**ARTICLE II
NONPROFIT CORPORATION**

The Association is a nonprofit corporation.

**ARTICLE III
DURATION**

The Association shall exist perpetually.

**ARTICLE IV
PURPOSE AND POWERS OF THE ASSOCIATION**

The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to, the Texas Business Organizations Code, and does not contemplate pecuniary gain or profit to its members. In furtherance of its purposes, the Association shall have the following powers which, unless indicated otherwise by this Certificate of Formation, that certain Pflugerville Downtown East Master Covenant [Commercial], recorded or to be recorded in the Official Public Records of Travis County, Texas, as the same may be amended from time to time, the **"Covenant"**, the Bylaws, or Applicable Law, may be exercised by the Board of Directors:

- (a) all rights and powers conferred upon nonprofit corporations by Applicable Law;
- (b) all rights and powers conferred upon property associations by Applicable Law, in effect from time to time, provided, however, that the Association shall not have the power to institute, defend, intervene in, settle or compromise proceedings in the name of any Owner or Member; and
- (c) all powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in this Certificate of Formation, the Bylaws, the Covenant, or Applicable Law.

Notwithstanding any provision in Article XIV to the contrary, any proposed amendment to the provisions of this Article IV shall be adopted: (i) until expiration or termination of the Development Period by the Declarant and a Majority of the Board; and (ii) after expiration or termination of the Development Period only upon an affirmative vote of Members holding one-hundred percent (100%) of the total number of votes of the Association and the Declarant.

Terms used but not defined in this Certificate of Formation, shall have the meaning subscribed to such terms in the Covenant.

ARTICLE V
REGISTERED OFFICE; REGISTERED AGENT

The street address of the initial registered office of the Association is 600 W 5th Street, Suite 900, Austin, Texas 78701. The name of its initial registered agent at such address is Robert D. Burton.

ARTICLE VI
MEMBERSHIP

Membership in the Association shall be dependent upon holding all or a portion of the fee simple interest in any Lot or Condominium Unit (each as defined and set forth in the Covenant). Any person or entity acquiring such a qualifying property interest shall automatically become a member of the Association, and such membership shall be appurtenant to, and shall run with, the property interest. The foregoing shall not be deemed or construed to include persons or entities holding an interest merely as security for performance of an obligation. Membership may not be severed from or in any way transferred, pledged, mortgaged, or alienated except together with the title to the qualifying property interest, and then only to the transferee of title to said property interest. Any attempt to make a prohibited severance, transfer, pledge, mortgage, or alienation shall be void.

ARTICLE VII
VOTING RIGHTS

Voting rights of the members of the Association shall be determined as set forth in the Covenant.

ARTICLE VIII
INCORPORATOR

The name and street address of the incorporator is:

NAME

Robert D. Burton

ADDRESS

Winstead PC
600 W 5th Street, Suite 900
Austin, Texas 78701

**ARTICLE IX
BOARD OF DIRECTORS**

The affairs of the Association shall be managed by an initial Board of Directors consisting of three (3) individuals, who need not be members of the Association. The Board shall fulfill all of the functions of, and possess all powers granted to, Boards of Directors of nonprofit corporations pursuant to the Texas Business Organizations Code. The number of Directors of the Association may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

NAME

ADDRESS

All of the powers and prerogatives of the Association shall be exercised by the Board of Directors named above until their successors are elected or appointed in accordance with the Covenant.

**ARTICLE X
LIMITATION OF DIRECTOR LIABILITY**

A member of the Board of Directors of the Association shall not be personally liable to the Association for monetary damages for any act or omission in his capacity as a board member, except to the extent otherwise expressly provided by Applicable Law. Any repeal or modification of this Article shall be prospective only, and shall not adversely affect any limitation of the personal liability of a member of the Board of Directors existing at the time of the repeal or modification.

**ARTICLE XI
INDEMNIFICATION**

Each person who acts as a member of the Board of Directors, officer or committee member of the Association shall be indemnified by the Association against any costs, expenses and liabilities which may be imposed upon or reasonably incurred by him in connection with any civil or criminal action, suit or proceeding in which he may be named as a party defendant or in which he may be a witness by reason of his or her being or having been a member of the Board of Directors, officer, or committee member of the Association, or by reason of any action alleged to have been taken or omitted by him or her in either such capacity. Such indemnification shall

be provided in the manner and under the terms, conditions and limitations set forth in *Section 3.7* of the Covenant.

ARTICLE XII DISSOLUTION

The Association may be dissolved with the written and signed assent of not less than ninety percent (90%) of the total number of votes of the Association, as determined under the Covenant. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization to be devoted to such similar purposes.

ARTICLE XIII ACTION WITHOUT MEETING

Any action required or permitted by Applicable Law to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote if written consent specifically authorizing the proposed action is signed by the Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all the Members entitled to vote thereon were present. If the action is proposed by the Association, the Board of Directors shall provide each Member written notice at least ten (10) days in advance of the date the Board proposes to initiate securing consent as contemplated by this Article XIII. Consents obtained pursuant to this Article XIII shall be dated and signed within sixty (60) days after receipt of the earliest dated consent and delivered to the Association at its principal place of business in Texas. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE XIV AMENDMENT

Except as otherwise provided by the terms and provisions of *Article IV* of this Certificate of Formation, this Certificate of Formation may only be amended by a Majority of the Board of Directors; provided, however, that any amendment to this Certificate of Formation must be approved in advance and in writing by the Declarant during the Development Period.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand, this ____ day of _____, 20____.

Robert D. Burton, Incorporator