

BYLAWS OF THE MUELLER MIXED-USE COMMUNITY, INC.

City of Austin, Travis County, Texas

BY-LAWS
OF
MUELLER MIXED-USE COMMUNITY, INC.

Article 1.

Name, Principal Office, and Definitions

1.01. **Name.** The name of the Association shall be Mueller Mixed-Use Community, Inc. (hereinafter sometimes referred to as the "**Mixed-Use Association**").

1.02. **Principal Office.** The principal office of the Mixed-Use Association shall be located in Travis County, Texas.

1.03. **Definitions.** The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Mueller Mixed-Use Community Covenant filed in the Official Records of Travis County, Texas, as may be amended and supplemented from time to time (the "**Covenant**"), unless the context indicates otherwise.

Article 2.

Mixed-Use Association: Membership, Meetings, Quorum, Voting, Proxies

2.01. **Membership.** Each Owner of a Unit is a mandatory Member of the Mixed-Use Association, as more fully set forth in the Covenant, the terms of which pertaining to membership are incorporated herein by reference.

2.02. **Place of Meetings.** Meetings of the Mixed-Use Association shall be held at the principal office of the Mixed-Use Association or at such other suitable place convenient to the Members the Board may designate, either within the Community or as convenient as possible and practical.

2.03. **Annual Meetings.** The first meeting of the Mixed-Use Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Mixed-Use Association. Meetings shall be of the Members. The Board shall set subsequent regular annual meetings so as to occur during the third quarter of the Mixed-Use Association's fiscal year on a date and at a time the Board sets.

2.04. **Special Meetings.** Special meetings of Members or Neighborhood Delegates may be called in accordance with Section 2.10(A)(3) of the Texas Non-Profit Corporation Act or any successor statute.

2.05. **Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meeting of the Members or Neighborhood Delegates shall be delivered, either personally or by mail, to each Member or Neighborhood Delegates entitled to vote at such meeting or by publication in a newspaper of general circulation, not less than 10 nor more than 60 days before the date of such meeting, by or at the direction of the President, the Secretary, or the officers or

persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member or Neighborhood Delegates at his address as it appears on the records of the Mixed-Use Association, with postage prepaid.

2.06. Waiver of Notice. Waiver of notice of a meeting of the Members or Neighborhood Delegates shall be deemed the equivalent of proper notice. Any Member or Neighborhood Delegate may, in writing, waive notice of any meeting of the Members or Neighborhood Delegates, either before or after such meeting. Attendance at a meeting by a Member or Neighborhood Delegate shall be deemed waiver by such Member or Neighborhood Delegate of notice of the time, date, and place thereof, unless such Member or Neighborhood Delegate specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting by a Member or Neighborhood Delegate shall be deemed waiver of notice of all business transacted at such meeting unless an objection by a Member or Neighborhood Delegate on the basis of lack of proper notice is raised before the business is put to a vote.

2.07. Adjournment of Meetings. If any Mixed-Use Association meeting cannot be held because a quorum is not present, a majority of the Members or Neighborhood Delegates, as the case may be, who are present at such meeting may adjourn the meeting to a time not less than 5 or more than 60 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members or Neighborhood Delegates in the manner prescribed for regular meetings. The Members or Neighborhood Delegates present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Members or Neighborhood Delegates to leave less than a quorum, provided that Members or Neighborhood Delegates representing at least 20% of the total votes in the Mixed-Use Association remain in attendance, and provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.08. Voting. The voting rights of the Members shall be as set forth in the Covenant, and such voting rights provisions are specifically incorporated by reference. The voting rights of the Neighborhood Delegates shall be as set forth in the Master Covenant, and such voting rights are specifically incorporated herein by reference.

2.09. Proxies. Neighborhood Delegates may not vote by proxy but only in person or through their designated alternates. On any matter as to which a Member is entitled personally to cast the vote for his Unit, such vote may be cast in person or by proxy, subject to the limitations of Texas law relating to use of general proxies and subject to any specific provision to the contrary in the Covenant or these By-Laws. No proxy shall be valid unless signed by the

Member for which it is given or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Mixed-Use Association prior to the meeting for which it is to be effective. Proxies shall be valid only for the specific meeting for which given and for lawful adjournments of such meeting. In no event shall a proxy be valid more than 90 days after the date of the original meeting for which it was given. Every proxy shall be revocable and shall automatically cease upon conveyance of the Unit for which it was given.

2.10. Majority. As used in these By-Laws, the term "**majority**" shall mean more than 50% of the total eligible votes in the Mixed-Use Association.

2.11. Quorum. Except as provided in these By-Laws or in the Covenant, the presence of the Members or Neighborhood Delegates representing 25% of the total votes in the Mixed-Use Association shall constitute a quorum at all Mixed-Use Association meetings.

2.12. Conduct of Meetings. The President shall preside over all Mixed-Use Association meetings, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

2.13. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members or Neighborhood Delegates may be taken without a meeting, without prior notice, and without a vote if written consent specifically authorizing the proposed action is signed by Members or Neighborhood Delegates holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members or Neighborhood Delegates entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated, and delivered to the Mixed-Use Association at its principal place of business in Texas. Such consents shall be filed with the minutes of the Mixed-Use Association and shall have the same force and effect as a vote of the Members or Neighborhood Delegates at a meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members or Neighborhood Delegates entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

Article 3.

Board of Directors.

3.01. Composition and Selection.

(a). Governing Body; Composition. The Mixed-Use Association's affairs shall be governed by a Board of Directors, each of whom shall have one equal vote. The Board of Directors shall have the authority to delegate any of its duties to agents, employees, or others; provided, in the event of such delegation, the Board of Directors shall remain responsible for any action undertaken by such delegate. The directors need not be Members of the Mixed-Use Association during the Mixed-Use Development and Sale Period. Upon expiration of the Mixed-Use Development and Sale Period, the directors must be Members, spouses of such Members, or residents of the Community; provided,

no person and his or her spouse may serve on the Board at the same time. In the case of a Member which is not a natural person, any officer, director, partner, or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Mixed-Use Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Declarant during the Mixed-Use Development and Sale Period. Directors, other than directors appointed by the Declarant during the Mixed-Use Development and Sale Period, may serve a limit of two consecutive terms, and must wait at least one term before running for re-election after serving two consecutive terms. This does not, however, prevent the outgoing director from participating in any subcommittee appointment.

(b). Number of Directors. There shall be three (3) to seven (7) directors in the Mixed-Use Association, as provided in *Section 4.04* of the Covenant.

3.02. Appointment Procedures. Until the occurrence of the events described in *Section 4.04(a)* through *(e)* of the Covenant, the initial Board of the Mixed-Use Association will consist of three (3) members and Declarant will be entitled to appoint, remove and replace two (2) members of the Mixed-Use Board, and the Declarant will be entitled to appoint, remove, and replace one (1) member of the Mixed-Use Board with the City of Austin's consent, which consent may be withheld in the City of Austin's sole and absolute discretion.

As provided in *Section 4.04* of the Covenant, directors, other than directors appointed by the Declarant during the Mixed-Use Development and Sale Period and directors appointed by the City of Austin, will be elected by Neighborhood Delegates.

3.03. Term. Each director appointed by the board of the Mixed-Use Association, unless removed in accordance with *Section 3.04* of these Bylaws, will serve for a term of two (2) years; provided, however, that the director appointed in alternate years by the board of the Mixed-Use Association will serve for a term of one (1) year.

3.04. Removal of Directors and Vacancies. Any director elected by the Neighborhood Delegates may be removed, with or without cause, by the vote of Neighborhood Delegates holding a majority of the votes entitled to be cast in the Mixed-Use Association. Any director whose removal is sought shall be given written notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be appointed by a majority of the Neighborhood Delegates. The director so appointed will serve for the unexpired term of the director removed pursuant to this Section.

Any director who has three consecutive absences from the Board meetings, or who is more than 30 days delinquent in the payment of any assessment or other charge due the Mixed-Use Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor will be appointed by the board of the Mixed-Use Association to fill the vacancy for the remainder of such director's term.

The board of the Mixed-Use Association may not re-appoint the director removed pursuant to this Section.

In the event of the death, disability, or resignation of a director, the Board shall declare a vacancy and the board of the Mixed-Use Association shall appoint a successor to fill the vacancy for the remainder of such director's term.

3.05. Meetings.

(a). **Organizational Meetings.** Within ten (10) days after each annual meeting of the Mixed-Use Association, the directors will convene an organizational meeting for the purpose of electing officers. The time and place of the meeting will be fixed by the Board.

(b). **Regular Meetings.** Regular Board meetings may be held at such time and place as a majority of the directors shall determine, but at least one (1) such meeting shall be held during each fiscal year.

(c). **Special Meetings.** Special Board meetings shall be held when called by written notice signed by the President or by any two directors.

(d). **Notices; Waiver of Notice.**

(i). Notices of the Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, the Internet, or other means of electronic communication, with confirmation of transmission.

(ii). All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Mixed-Use Association's records. Notices of special meetings of the Board shall also be posted in a prominent place within the Community. Notices sent by first class mail shall be deposited into a United States mailbox at least four business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(iii). The transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if a quorum is present.

(e). **Participation in Meetings.** Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone, video or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

(f). **Quorum of Board of Directors.** At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Covenant. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

(g). **Compensation.** No director shall receive any compensation from the Mixed-Use Association for acting as such unless approved by the Members representing a majority of the total votes in the Mixed-Use Association at a regular or special meeting of the Mixed-Use Association. Any director may be reimbursed for expenses incurred on behalf of the Mixed-Use Association upon approval of a majority of the other directors.

(h). **Conduct of Meetings.** The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of the Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

(i). **Open Meetings.** Subject to the provisions of *Section 3.15*, all meetings of the Board shall be open to all Members and residents of the Community and, if required by law, all Members, but attendees other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any such individual may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, or personnel matters.

(j). **Action Without a Formal Meeting.** Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

3.06. Powers and Duties.

(a). **Powers.** The Board of Directors shall have all of the powers and duties necessary for the administration of the Mixed-Use Association's affairs and for performing all responsibilities and exercising all rights of the Mixed-Use Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done all acts and things that the Governing Documents, or Texas law do not direct to be done and exercised exclusively by the Neighborhood Delegates or the membership generally.

(b). **Duties.** The Board's duties shall include, without limitation:

(i). preparation and adoption of the annual budgets and establishing Assessments under the Covenant;

(ii). cooperating with the Master Association in assessing and collecting assessments levied by the Mixed-Use Association;

(iii). providing for the operation, care, upkeep, and maintenance of the Mixed-Use Common Area;

(iv). designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Mixed-Use Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(v). depositing all funds received on the Mixed-Use Association's behalf in a bank depository that it shall approve, and using such funds to operate the Mixed-Use Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in the depositories other than banks;

(vi). making and amending rules and regulations;

(vii). opening bank accounts on the Mixed-Use Association's behalf and designating the signatories required;

(viii). making or contracting for the making of repairs, additions, and improvements to or alterations of the Mixed-Use Common Area in accordance with the Governing Documents and these By-Laws;

(ix). enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Mixed-Use Association; provided, the Mixed-Use Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or

in any case in which the Board reasonably determines that the Mixed-Use Association's position is not strong enough to justify taking enforcement action;

(x). obtaining and carrying insurance, as provided in the Covenant, providing for payment of all premiums, and filing and adjusting claims, as appropriate;

(xi). paying the cost of all services rendered to the Mixed-Use Association or its Members and not chargeable directly to specific Members;

(xii). keeping books with detailed accounts of the Mixed-Use Association's receipts and expenditures;

(xiii). making available to any prospective purchaser of a Unit, any Member, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Mixed-Use Association;

(xiv). permitting utility suppliers to use portions of the Mixed-Use Common Area as may be determined necessary, in the Board's sole discretion, to the ongoing development or operation of the Mixed-Use Community;

(xv). cooperating with the Master Association in carrying out their purposes and responsibilities under the Master Community Covenant and the Mixed-Use Community Covenant;

(xvi). indemnifying a director, officer, or committee member or former director, officer, or committee member of the Mixed-Use Association to the extent such indemnity is required by Texas law or the Governing Documents;

(xvii). cooperating with the Board of the Master Association in upholding the Master Community-Wide Standard; and

(xviii). assisting in the resolution of disputes between Members and others without litigation, as set forth in the Covenant.

3.07. Management. The Board of Directors may employ for the benefit of the Mixed-Use Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policymaking authority. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.08. Accounts and Reports. The following management standards of performance shall be followed unless the Board, by resolution, specifically determines otherwise:

- (a). accounting and controls should conform to generally accepted accounting principles;
- (b). the Mixed-Use Association's cash accounts shall not be commingled with any other accounts;
- (c). no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Mixed-Use Association, whether in the form of commissions, finder's fee, services fees, prizes, gifts, or otherwise; anything of value received shall benefit the Mixed-Use Association;
- (d). any financial or other interest which the managing agent may have in any firm providing goods or services to the Mixed-Use Association shall be disclosed promptly to the Board of Directors;
- (e). commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Mixed-Use Association at least quarterly containing:
 - (i). an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
 - (ii). a statement reflecting all cash receipts and disbursements for the preceding period;
 - (iii). a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
 - (iv). a balance sheet as of the last day of the preceding period; and
 - (v). a delinquency report listing all Members who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and
 - (vi). an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year; (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared and reviewed by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any Mortgage on a Unit, the Master Association shall provide an audited financial statement.

3.09. **Borrowing.** The Mixed-Use Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member in the same manner provided

in Section 5.05 of the Covenant for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt outstanding exceeds or would exceed 20% of the budgeted gross expenses of the Mixed-Use Association for that fiscal year.

3.10. Right to Contract. The Mixed-Use Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, and other Members, owners or residents, or associations.

3.11. Enforcement. In addition to such other rights as are specifically granted under the Covenant, the Board shall have the power to impose monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend a Member's right to vote or any person's right to use the Mixed-Use Common Area) for violation of any duty imposed under the Governing Documents; provided, nothing herein shall authorize the Board to limit ingress and egress to or from a Unit or to suspend an Member's right to vote due to nonpayment of assessments. In addition, the Board may suspend any services provided by the Mixed-Use Association to a Member or the Member's Unit if the Member is more than 30 days delinquent in paying any assessment or other charges owed to the Mixed-Use Association. In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may first be assessed against the occupant; provided, if the fine is not paid by the occupant within the time period set by the Board, the Member shall pay the fine upon notice from the Mixed-Use Association. The Board's failure to enforce any provision of the Governing Documents shall not be deemed a waiver of the Board's right to do so thereafter.

(a). Prior to imposition of any sanction hereunder or under the Governing Documents, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 30 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if any, appointed pursuant to *Article 5*; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless the violation is cured within the 30 day notice period set forth above. Any decision by the Board or the Covenants Committee not to impose sanctions in connection with a violation of the Governing Documents shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b). If a timely request for a hearing is not made, the sanction stated in the notice may be imposed without the necessity of a hearing; provided, the Mixed-Use Association may not impose a fine or suspend Mixed-Use Common Area use rights for any violation other than a failure to pay assessments, unless the Covenants Committee, by a majority vote, first approves the proposed fine or suspension.

(c). If a hearing is requested within the allotted 30 day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(d). Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Mixed-Use Association within 10 days after the hearing date.

3.12. Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or, following compliance with the procedures set forth in the Covenant, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Member or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

3.13. Conflicts of Interest. No contract or other transaction between the Mixed-Use Association and one or more of its directors, officers or Members or any other entity in which one or more of its directors, officers or Members are directors, officers or members or are financially interested shall be either void or voidable because of such relationship or interest, because such director, officer or member is present at the meeting of the Board or a committee, which authorizes, approves, or ratifies such contract or transaction, or because his or her or their votes are counted for such purpose, if:

(a). The material facts of the relationship or interest and as to the contract or transaction are disclosed or known to the Board or committee thereof which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the interested director's votes; or

(b). The material facts of the relationship or interest and as to the contract or transaction are disclosed or known to the Members entitled to vote on such contract or transaction, if any, and the disinterested Members authorize, approve, or ratify it by vote or written consent without counting any interested owner votes; or

- (c). The contract or transaction is fair and reasonable as to the Mixed-Use Association at the time it is authorized, approved or ratified by the Board or the Members.

The interested director may be counted in determining the presence of a quorum at a meeting of the Board which authorizes, approves, or ratifies such contract or transaction.

Article 4. **Officers**

4.01. Officers. The Mixed-Use Association's officers shall be a President, Vice President, Secretary, and Treasurer. Officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.02. Election and Term of Office. Within ten (10) days after each annual meeting of the Mixed-Use Association, the directors will convene an organizational meeting for the purpose of electing officers.

4.03. Removal and Vacancies. The Board may remove any officer whenever in its judgment the Mixed-Use Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal or otherwise, for the unexpired portion of the term.

4.04. Powers and Duties. The Mixed-Use Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Mixed-Use Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Covenant and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.05. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.06. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Mixed-Use Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.07. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under *Section 3.05(g)* of these Bylaws.

Article 5.
Committees

5.01. General. The Board may appoint such committees and community clubs as it deems appropriate to perform such tasks and functions as the Board may designate by resolution. Committee members serve at the Board's discretion for such periods as the Board may designate by resolution; provided, any committee member, including committee chair, may be removed by the vote of a majority of the Board. Any resolution establishing a community club shall designate the requirements, if any, for membership therein. Each committee and community club shall operate in accordance with the terms of the resolution establishing such committee or community club.

5.02. Covenants Committee. In addition to any other committees the Board may establish pursuant to *Section 5.01* of these Bylaws, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members or residents. The Covenants Committee members shall be Members or residents of the Mixed-Use Association who are not officers, directors, or employees of the Mixed-Use Association or the spouse, parent, child, brother, or sister of an officer, director, or employee. Acting in accordance with the provisions of the Governing Documents, the Covenants Committee, if established, shall be the hearing tribunal of the Mixed-Use Association and shall conduct all hearings held pursuant to *Section 3.11* of these Bylaws.

Article 6.
Miscellaneous

6.01. Fiscal Year. The fiscal year of the Mixed-Use Association will be set by resolution of the Board, and is subject to change from time to time as the Board determines. In the absence of a resolution by the Board, the fiscal year is the calendar year.

6.02. Parliamentary Rules. Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Mixed-Use Association proceedings when not in conflict with Texas law or the Governing Documents.

6.03. Conflicts. If there are conflicts among the provisions of Texas law, the Articles of Incorporation, the Covenant, and these By-Laws, the provisions of Texas law, the Covenant, the Articles of Incorporation, and the By-Laws (in that order) shall prevail

6.04. Books and Records.

(a). Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit; any Member; or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Covenant, By-Laws, and Articles of Incorporation, including any amendments, the rules of the Mixed-Use Association, the membership register, books of account, and the

minutes of meeting of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Mixed-Use Association or at such other place within the Community as the Board shall designate.

(b). **Rules for Inspection.** The Board shall establish rules with respect to:

- (i). notice to be given to the custodian of the records;
- (ii). hours and days of the week when such an inspection may be made; and
- (iii). payment of the cost of reproducing copies of documents requested.

(c). **Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Mixed-Use Association and the physical properties owned or controlled by the Mixed-Use Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Mixed-Use Association's expense.

6.05. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid: if to a Member, resident or Neighborhood Delegate, at the address which the Member, resident or Neighborhood Delegate has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Neighborhood Delegate; or if to the Mixed-Use Association, the Board, or the managing agent, at the principal office of the Mixed-Use Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.06. Amendment. These By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51% of the total votes in the Mixed-Use Association. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

6.07. Indemnification. To the fullest extent permitted by applicable law, the Mixed-Use Association will indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that such person is or was a director, officer, committee member, employee, servant, or agent of the Mixed-Use Association against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person: (i) acted in good faith; (ii) in the case of conduct by a person in his official capacity, acted in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the

Mixed-Use Association; (iii) in the case of conduct by a person not in his official capacity, acted in a manner which such person reasonably believed to be not opposed to the best interests of the Mixed-Use Association; and (iv) with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. The termination of any action, suit, or proceeding by settlement, or upon a plea of Nolo Contendere or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner reasonably believed to be in, or not opposed to, the best interests of the Mixed-Use Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.