

11-GF# *Special* BKH
RETURN TO: HERITAGE TITLE
401 CONGRESS, SUITE 1500
AUSTIN, TEXAS 78701

AFTER RECORDING RETURN TO:

Robert D. Burton, Esq.
Armbrust & Brown, L.L.P.
100 Congress Ave., Suite 1300
Austin, Texas 78701



60



OTHER 2004238009
60 PGS

MIXED-USE COMMUNITY COVENANT MUELLER

Travis County, Texas

Cross reference to Mueller Master Community Covenant, recorded as Document No. _____ in the Official Public Records of Travis County, Texas. The terms and provisions of the afore-mentioned document will also apply to the any portion of the Mixed-Use Property made subject to this Declaration.

193172-12 11/09/2004

TABLE OF CONTENTS

PREAMBLE.....	1
DECLARATION OF MIXED-USE COVENANT.....	1
HIERARCHY OF COVENANTS.....	2
ARTICLE 1 DEFINITIONS.....	3
1.01 Defined Terms.....	3
1.02 General Definitions.....	6
ARTICLE 2 GENERAL RESTRICTIONS.....	6
2.01 Hazardous Activities.....	6
2.02 Insurance Rates.....	6
2.03 Mining and Drilling.....	6
2.04 Noise.....	6
2.05 Animals - Household Pets.....	7
2.06 Rubbish and Debris.....	7
2.07 Maintenance.....	7
2.08 Antennae.....	8
2.09 Location of Permitted Antennas-Detached Structures.....	8
2.10 Location of Permitted Antennas-Attached Structures.....	9
2.11 Signs.....	10
2.12 Tanks.....	10
2.13 Temporary Structures.....	10
2.14 Unsightly Articles; Vehicles.....	11
2.15 Compliance with Mixed-Use Restrictions.....	11
2.16 Liability of Owners for Damage to Master Community Facilities and Mixed-Use Common Area.....	12
2.17 No Warranty of Enforceability.....	12
ARTICLE 3 CONSTRUCTION RESTRICTIONS.....	13
3.01 Master Development Agreement.....	13
3.02 Design Guidelines.....	13
3.03 Approval for Construction.....	13
3.04 Alteration or Removal of Improvements.....	13
3.05 Drainage.....	13
3.06 Construction Activities.....	13
ARTICLE 4 MIXED-USE ASSOCIATION.....	14
4.01 Organization.....	14
4.02 Membership.....	14
4.03 Voting Rights.....	15
4.04 Election of Mixed-Use Board.....	15
4.05 Duties of the Mixed-Use Association.....	20
4.06 Powers and Authority of the Mixed-Use Association.....	21
4.07 Indemnification.....	23
ARTICLE 5 MIXED-USE ASSOCIATION FINANCES.....	24

5.01	Mixed-Use Association Expenses.....	24
5.02	Calculation of Base Assessments.....	25
5.03	Assignment of Assessment Units.....	25
5.04	Publication of Budget and Assessment; Right to Disapprove	25
5.05	Special Assessments	26
5.06	Specific Assessments	26
5.07	Authority to Assess Owners; Time of Payment	26
5.08	Obligation for Assessments.....	27
5.09	The Declarant's Financial Obligations to the Mixed-Use Association.....	27
5.10	Lien for Assessments.....	28
5.11	Exempt Property	29
5.12	Capitalization of Mixed-Use Association.....	29
5.13	Use and Consumption Fees.....	29
ARTICLE 6	MORTGAGEE PROVISIONS	30
6.01	Notices of Action	30
6.02	Special FHLMC Provision	30
6.03	Other Provisions for First Lien Holders	31
6.04	Amendments to Documents	31
6.05	No Priority	33
6.06	Notice to Master Association	33
6.07	Failure of Mortgagee to Respond	33
6.08	Construction of Article 6.....	33
ARTICLE 7	DEVELOPMENT RIGHTS	33
7.01	Mixed-Use Community Annexation Notice.....	33
7.02	Supplemental Covenants.....	34
7.03	Construction, Sales, Leasing and Development Activities	34
7.04	Right to Make Improvements, Replat.....	35
7.05	Right to Transfer or Assign the Master Declarant's Rights	35
ARTICLE 8	GENERAL PROVISIONS	37
8.01	Term and Termination.....	37
8.02	Amendment.....	37
8.03	Validity and Effective Date	38
8.04	Interpretation	38
8.05	Enforcement and Nonwaiver.....	38
8.06	Construction	39

MIXED-USE COMMUNITY COVENANT
[MUELLER]
PREAMBLE

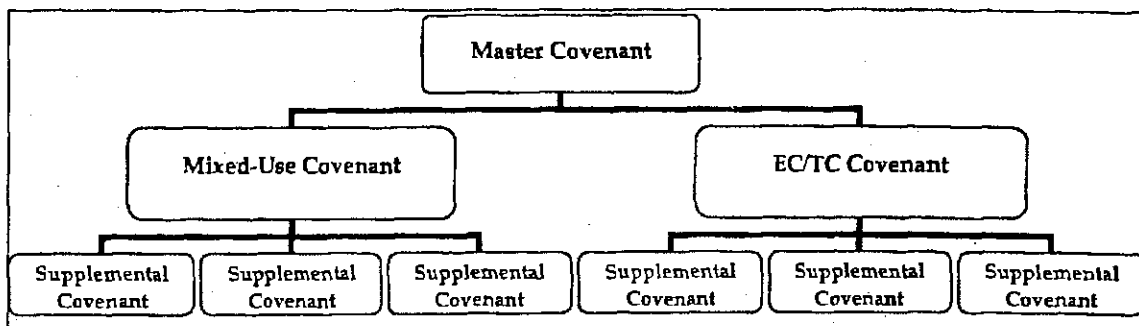
CATELLUS AUSTIN, LLC, a Delaware limited liability company (the "Declarant") has filed that certain Mueller Master Community Covenant, recorded as Document No. _____ in the Official Public Records of Travis County, Texas (the "Master Covenant"). The Master Covenant creates a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of the entire "Mueller Community", which is described on "Exhibit A" to the Master Covenant. The Master Covenant specifically calls for the filing of two subordinate covenants: the Mixed-Use Community Covenant (this "Mixed-Use Covenant" or "Declaration") and the EC/TC Community Covenant (the "EC/TC Covenant"). This Mixed-Use Covenant and the EC/TC Covenant are filed for the purpose of establishing specific covenants, conditions and restrictions which will govern the Mixed-Use and EC/TC portions of the Mueller Community. The Mixed-Use and EC/TC portions of the Mueller Community are depicted on "Exhibit B" to the Master Covenant. This Mixed-Use Covenant and the EC/TC Covenant will each provide for the creation of a non-profit community association. Each community association is formed to provide for the administration of common area and the conduct of affairs unique to the community under its jurisdiction. The terms and provisions of this Mixed-Use Covenant and the EC/TC Covenant are subordinate to the terms and provisions of the Master Covenant.

This Covenant does not and is not intended to create a condominium within the meaning of the Texas Uniform Condominium Act.

DECLARATION OF MIXED-USE COVENANT

A portion of the Mueller Community, referred to herein as the "Mixed-Use Property", is described on *Exhibit "A"*, attached hereto and incorporated herein by reference. The Declarant desires to create and carry out a uniform plan for the development, improvement, and sale of the Mixed-Use Property. Portions of the Mixed-Use Property will be made subject to this Mixed-Use Covenant upon the filing of one or more MUC Annexation Notices pursuant to *Section 7.01* below. Declarant may also subject portions of the Mixed-Use Property to the terms and provisions of this Mixed-Use Covenant by describing such portion of the Mixed-Use Property in an MCC Annexation Notice filed pursuant to the Master Covenant. Upon the filing of a MUC Annexation Notice or MCC Annexation Notice in the Official Public Records of Travis County, Texas, the portion of the Mixed-Use Property described in the MUC Annexation Notice or MCC Annexation Notice together with all other portions of the Mixed-Use Property formerly made subject to the Master Covenant will constitute the "Mixed-Use Community" (as defined below) and will be governed by and fully subject to the terms and provisions of this Mixed-Use Covenant. This Mixed-Use Covenant provides for the filing of Supplemental Covenants. A Supplemental Covenant will impress portions of property subject to this Mixed-Use Covenant with additional and specific covenants, restrictions, conditions, limitations and/or easements.

HIERARCHY OF COVENANTS



The Declarant, by executing and recording this Mixed-Use Covenant, declares that portions of the Mixed-Use Property made a part of the Mixed-Use Community by the recordation of an MUC Annexation Notice or an MCC Annexation Notice, and any additional property made subject to this Mixed-Use Covenant in the future, will constitute the "Mixed-Use Community". This Mixed-Use Covenant will run with the title to the Mixed-Use Community, will govern the development and use of the Mixed-Use Community, and will be binding upon Declarant and the present and future owners of any portion of the Mixed-Use Community, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity who now or hereafter has any legal, equitable, or beneficial interest in any portion of the Mixed-Use Community. This Mixed-Use Covenant will also be binding upon the Mixed-Use Association (as defined below), its successors and assigns.

No portion of the Mixed-Use Property is subject to the terms and provisions of this Mixed-Use Covenant until a MUC or MCC Annexation Notice covering that portion of the Mixed-Use Property is filed in the Official Public Records of Travis County, Texas. Only the Declarant may only file an MUC or MCC Annexation Notice. If the Declarant is not the owner of the portion of the Mixed-Use Property then being made subject to the terms and provisions of the Mixed-Use Covenant, the owner of the Mixed-Use Property, in addition to the Declarant, must execute the MUC or MCC Annexation Notice evidencing such owner's consent to its recordation.

MIXED-USE PROPERTY VERSUS MIXED-USE COMMUNITY

<p>"Mixed-Use Property"-</p>	<p>Described on Exhibit A. This is the land that <u>may be made</u> subject to the Mixed-Use Covenant, from time to time, by the filing of one or more MUC or MCC Annexation Notices.</p>
<p>"Mixed-Use Community"-</p>	<p>This is the portion of the land described on Exhibit A that <u>has been made</u> subject to the terms and provisions of the Mixed-Use Covenant through the filing of an MUC or MCC Annexation Notice.</p>

ARTICLE 1

DEFINITIONS

1.01 Defined Terms. Unless the context specifies or requires otherwise, the following words and phrases when used in this Declaration will have the meanings hereinafter specified:

"Assessment" or "Assessments" means all assessments imposed by the Master Association under the Master Covenant.

"Articles" means the articles of incorporation of the Mixed-Use Association filed with the Texas Secretary of State.

"Bylaws" means the bylaws of the Mixed-Use Association, attached hereto as Exhibit "B".

"Declarant" means CATELLUS AUSTIN, LLC, a Delaware limited liability company, its successors or assigns; provided that any assignment(s) of the rights of CATELLUS AUSTIN, LLC, a Delaware limited liability company, as Declarant, must be expressly set forth in writing and recorded in the Official Public Records of Travis County, Texas. Any assignment of Declarant's rights hereunder must be approved by the City of Austin, a Texas home rule city and municipal corporation (the "City of Austin").

"Declaration" means this instrument as it may be amended from time to time.

"Design Guidelines" means the Design Guidelines adopted pursuant to the Master Covenant.

"Dwelling Unit" means any portion of a structure or improvement constructed upon a Unit which may be used in whole or in part for residential purposes.

"Governing Documents" means the documents described in "Table 1.1" of the Master Covenant.

"Improvements" means all site work, landscaping, structures, improvements, and other items placed on a Unit, including but not limited to every structure and all appurtenances of every type, whether temporary or permanent, including but not limited to buildings, outbuildings, sheds, patios, tennis courts, swimming pools, sport courts, garages, driveways, storage buildings, sidewalks, gazebos, signs, fences, gates, screening walls, retaining walls, stairs, decks, parking facilities, landscaping, landscape improvements, poles, mailboxes, signs, antennae, exterior air conditioning equipment or fixtures, exterior lighting fixtures, water softener fixtures or equipment, playground equipment, and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennae, towers, and other facilities used in connection with

water, sewer, gas, electric, telephone, regular, satellite or cable television, other utilities, or otherwise.

"Manager" has the meaning set forth in *Section 4.06(d)*.

"Master Association" means the Mueller Master Community, Inc., a Texas non-profit corporation.

"Master Board" means the Board of Directors of the Master Association.

"Master Covenant" means the Mueller Master Community Covenant, recorded as Document No. _____ in the Official Public Records of Travis County, Texas, as amended from time to time.

"Master Development Agreement" or "MDA" means the Master Development Agreement between the Declarant and the City of Austin, a Texas home rule city and municipal corporation. The MDA covers all of the Mixed-Use Property and adopts certain standards for the development thereof.

"Member" means every person or entity who holds membership privileges in the Mixed-Use Association.

"Mixed-Use Assessment" means all assessment(s) imposed by the Mixed-Use Association under this Declaration.

"Mixed-Use Association" means the Mueller Mixed-Use Community, Inc., a Texas non-profit corporation, to be created pursuant to *Article 4*.

"Mixed-Use Board" means the Board of Directors of the Mixed-Use Association.

"Mixed-Use Common Area" means any property and facilities that the Mixed-Use Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit. The Mixed-Use Common Area also includes any property to which the Mixed-Use Association holds possessory rights under a lease, license or any easement in favor of the Mixed-Use Association. The Master Declarant from time to time and at any time may designate Mixed-Use Common Area.

"Mixed-Use Covenant" means this instrument as it may be amended from time to time.

"Mixed-Use Development and Sale Period" means the period of time during which the Declarant or any affiliate of the Declarant owns or has the option to acquire at least fifty (50) acres in the Mixed-Use Property from the City of Austin under the MDA, but excluding any portion of the Mixed-Use Property on which Declarant: (i) has caused or intends to cause finished improvements to be constructed which may be used for residential, commercial, retail, light industrial, or office use; and (ii) is or intends to retain ownership, as

opposed to market for sale to a third party. The failure of the Declarant to exercise any of these rights prior to expiration of the Development and Sale Period does not constitute a waiver of these rights. Upon expiration of the Development and Sale Period, Declarant shall record a notice of such expiration in the Official Public Records of Travis County, Texas.

"Mixed-Use Restrictions" means this Declaration, the Bylaws or any rule adopted by the Mixed-Use Board.

"Modification Committee" means the committee established pursuant to "Chapter 5" of the Master Covenant to review and act upon all applications for review and approval of modifications to any Improvements to be constructed on a Unit.

"Mortgage" or "Mortgages" means any mortgage(s) or deed(s) of trust securing indebtedness and covering any portion of the Mixed-Use Community given to secure the payment of a debt.

"Mortgagee" or "Mortgagees" means the holder or holders of any Mortgage(s).

"New Construction Council" means the committee created pursuant to "Chapter 5" of the Master Covenant to review and approve plans and specifications for the construction of original Improvements or the expansion of any existing Improvements.

"Owner" or "Owners" means each Person who holds record title to a Unit. A Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit has more than one Owner, all Co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Mixed-Use Restrictions.

"Person" means an individual, a corporation, a partnership, a limited liability company, trust or any other legal entity.

"Supplemental Covenant" means a separate instrument filed pursuant to this Mixed-Use Community Covenant containing covenants, restrictions, conditions, limitations and/or easements affecting a portion of the Mixed-Use Community.

"Unit" means a portion of the Mixed-Use Community, whether improved or unimproved, depicted as a separately identified lot, condominium unit, or parcel on a recorded subdivision plat, or condominium instrument, which may be independently owned and conveyed. The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on the Unit. In the case of a building within a condominium or other structure containing multiple units that may be independently owned or conveyed, each such unit will be deemed to be a separate Unit. A parcel of land is considered a single Unit until a subdivision plat or condominium instrument is recorded subdividing it into more than one Unit. The term does not include Mixed-Use Common Area or any property dedicated, in whole or in part, to the public.

1.02 General Definitions. Unless the context specifies or requires otherwise, capitalized terms used but not defined in this Declaration are used and defined as they are used and defined in the Master Covenant.

ARTICLE 2

GENERAL RESTRICTIONS

All of the Mixed-Use Community will be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

2.01 Hazardous Activities. No activities may be conducted on or within the Mixed-Use Community and no Improvements constructed on any portion of the Mixed-Use Community which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any portion of the Mixed-Use Community unless discharged in conjunction with an event approved in advance by the Master Board and the Mixed-Use Board and no open fires may be lighted or permitted except within safe and well-designed fireplaces or in contained barbecue units while attended and in use for cooking purposes.

2.02 Insurance Rates. Nothing may be done or kept on or within the Mixed-Use Community which would increase the rate of casualty or liability insurance or cause the cancellation of any such insurance on the Master Community Facilities, the Mixed-Use Common Area, or the improvements located thereon, without the prior written approval of the Master Board, in the case of Master Community Facilities, and the Mixed-Use Board, in the case of Mixed-Use Common Area.

2.03 Mining and Drilling. No portion of the Mixed-Use Community may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Mixed-Use Community. Furthermore, this provision will not be interpreted to prevent the drilling of water wells approved in advance by the Declarant during the Mixed-Use Development and Sale Period, and thereafter the New Construction Council, which are required to provide water to all or any portion of the Mixed-Use Community or the Community. All water wells must also be approved in advance by any applicable regulatory authority.

2.04 Noise. No noise or other nuisance will be permitted to exist or operate upon any portion of the Mixed-Use Community so as to be offensive or detrimental to any other portion of the Mixed-Use Community or to its occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Unit, the Master Association or the Mixed-Use Association may (but will not be obligated to) enter any such

Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm).

2.05 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on or within the Mixed-Use Community. No Owner may keep on such Owner's Unit more than three (3) cats and dogs, in the aggregate, not more than two (2) of which may be dogs. No animal will be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed within the Mixed-Use Community other than on the Unit of its Owner unless confined to a leash. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration within the Mixed-Use Community, and no kennels or breeding operation will be allowed. No animal will be allowed to run at large, and all animals will be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. All pet waste will be removed and appropriately disposed of by the Owner of the pet. All pets must be registered, licensed and inoculated as required by law.

2.06 Rubbish and Debris. No rubbish or debris of any kind may be placed or permitted to accumulate on or within the Mixed-Use Community, and no odors will be permitted to arise therefrom so as to render all or any portion of the Mixed-Use Community unsanitary, unsightly, offensive, or detrimental to any other property or to its occupants. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

2.07 Maintenance. The Owner of each Unit will jointly and severally have the duty and responsibility, at its sole cost and expense, to keep such Owner's Unit and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The New Construction Council will determine whether a violation of the maintenance obligations set forth in this Section 2.07 has occurred. Such maintenance includes, but is not limited to the following, which will be performed in a timely manner:

- (i) Prompt removal of all litter, trash, refuse, and wastes.
- (ii) Lawn mowing.
- (iii) Tree and shrub pruning.
- (iv) Watering.
- (v) Keeping exterior lighting and mechanical facilities in working order.

- (vi) Keeping lawn and garden areas alive, free of weeds, and in an attractive condition.
- (vii) Keeping planting beds free of turf grass.
- (viii) Keeping sidewalks and driveways in good repair.
- (ix) Complying with all government, health, safety and police requirements.
- (x) Repainting of Improvements.
- (xi) Repair of exterior damage, and wear and tear to Improvements.

2.08 **Antennae.** Except as expressly provided below, no exterior radio, computer, or television antennae or aerial or satellite dish or disc may be erected, maintained or placed on a Unit without the prior written approval of the New Construction Council; provided, however, that:

- (i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or
- (ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or
- (iii) an antenna that is designed to receive television broadcast signals;

(collectively, (i) through (iii) are referred to herein as the "Permitted Antennas") will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the New Construction Council, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant, the Master Association, and/or the Mixed-Use Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system solely for the benefit of all or any portion of the Mixed-Use Community.

2.09 **Location of Permitted Antennas-Detached Structures.** A Permitted Antenna may be installed solely on the principal dwelling or habitable structure constructed within the Unit but may not encroach upon any street, Master Community Facilities, Mixed-Use Common Area, or any other portion of the Mixed-Use Community. A Permitted Antenna may be installed in a location from which an acceptable quality signal can be obtained and where least visible from the street and other portions of the Mixed-Use Community. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the New Construction Council are as follows:

- (i) Attached to the back of the principal dwelling or habitable structure, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view from other portions of the Mixed-Use Community; then
- (ii) Attached to the side of the principal dwelling or habitable structure, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view from other portions of the Mixed-Use Community.

2.10 Location of Permitted Antennas-Attached Structures. A Permitted Antenna may be installed on a dwelling or habitable structure which shares a common wall or is otherwise attached to another dwelling or habitable structure if the Owner has an exclusive use area in which to install the Permitted Antenna. An "exclusive use area" is an area in which only the Owner may enter and use to the exclusion of all other Owners and residents. An Owner may install a Permitted Antenna within an exclusive use balcony or patio. **NO OWNER MAY INSTALL OR ERECT A SATELLITE DISH ON THE ROOF OR EXTERIOR WALL OF ANY BUILDING UNLESS THE OWNER HAS THE EXCLUSIVE RIGHT TO USE THE ROOF OR EXTERIOR WALL. IF THE ROOF OR EXTERIOR WALL IS CHARACTERIZED IN ANY CONDOMINIUM DECLARATION FILED PURSUANT TO THE TEXAS UNIFORM CONDOMINIUM ACT, OR ANY SUCCESSOR STATUTE, AS "GENERAL COMMON ELEMENT" OR "LIMITED COMMON ELEMENT" ASSIGNED TO MORE THAN ONE OWNER, THE ROOF AND/OR WALL IS NOT AN EXCLUSIVE USE AREA.**

In the event an acceptable quality signal cannot be received from a Permitted Antenna installed entirely within an exclusive use balcony or patio, a Permitted Antenna may be installed within the private residential yard space assigned exclusively for the Owner's use. The Permitted Antenna must be installed in a location as close to the Owner's residence as is practicable while still permitting reception of an acceptable quality signal, and provided that landscape screening is placed adjacent to the Permitted Antenna which shields the Permitted Antenna from the view of any street, Master Community Facilities, Mixed-Use Common Area or another dwelling or habitable structure. If a Permitted Antenna is proposed to be installed in a private yard space, the owner of such residence will provide written notification to the New Construction Council which includes justification for the location of the Permitted Antenna. After installation of the Permitted Antenna, the New Construction Council or its designee may inspect the Permitted Antenna to determine whether the Owner has complied with the safety guidelines and rules set forth herein or adopted by the New Construction Council. The cost of landscape screening may not unreasonably increase the cost of installing the Permitted Antenna and the New Construction Council will assist the Owner in selecting a low cost but effective landscaping screen.

The New Construction Council may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

Satellite dishes one meter or less in diameter, e.g., DirectTV or Dish satellite dishes, are permitted, HOWEVER, you are required to comply with the rules regarding installation and placement. These rules and regulations may be modified by the New Construction Council from time to time. Please contact the New Construction Council for the current rules regarding installation and placement.

2.11 Signs. No sign of any kind may be displayed to the public view on any Unit without the prior written approval of the New Construction Council, except for:

- (i) signs which are permitted pursuant to the Design Guidelines or rules adopted by the New Construction Council;
- (ii) signs which are part of Declarant's overall marketing or construction plans or activities for the Mixed-Use Community;
- (iii) one (1) temporary "For Sale" or "For Rent" sign placed on the Dwelling Unit or Unit. The sign will be limited to a maximum face area of five (5) square feet on each visible side and, if free standing, is mounted on a single or frame post. The overall height of the sign from finished grade at the spot where the sign is located may not exceed four (4) feet. The sign must be removed within two (2) business days following the sale or lease of the Dwelling Unit and/or the Unit;
- (iv) permits as may be required by legal proceedings; and
- (v) permits as may be required by any governmental entity.

An Owner or resident will be permitted to post a "no soliciting" sign near or on the front door to their Dwelling Unit or Unit, provided, that the sign may not exceed twenty-five (25) square inches.

2.12 Tanks. The New Construction Council must approve any tank used or proposed in connection with a Unit, including tanks for storage of fuel, water, oil, or LPG, and including swimming pool filter tanks. No elevated tanks of any kind may be erected, placed or permitted on any Unit without the advance written approval of the New Construction Council. All permitted tanks must be screened from view in accordance with a screening plan approved in advance by the New Construction Council. This provision will not apply to a tank used to operate a standard residential gas grill.

2.13 Temporary Structures. No tent, shack, or other temporary building, improvement, or structure may be placed on or within the Mixed-Use Community without the prior written approval of the New Construction Council; provided, however, that temporary structures necessary for storage of tools and equipment, and for office space for architects, builders, and foremen during actual construction may be maintained with the prior approval of

New Construction Council, approval to include the nature, size, duration, and location of such structure.

2.14 Unsightly Articles: Vehicles. No article deemed to be unsightly by the New Construction Council will be permitted to remain on any Unit so as to be visible from adjoining property or from public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles and garden maintenance equipment must be kept at all times except when in actual use, in enclosed structures or screened from view and no repair or maintenance work may be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics must be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash may be kept, stored, or allowed to accumulate on any portion of the Mixed-Use Community except within enclosed structures or appropriately screened from view. No: (i) racing vehicles; or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag will be permitted to remain visible on any Unit or to be parked on any roadway within the Mixed-Use Community.

Parking on public streets within the Mixed-Use Community is subject to all applicable governmental regulations and ordinances. Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, motor homes, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages is prohibited; provided, construction, service and delivery vehicles will be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit.

No mobile homes, trailers or recreational vehicles may be used as a residence, either temporary or permanent, at any time.

2.15 Compliance with Mixed-Use Restrictions. Each Owner his or her family, occupants of a Unit, tenants, and the guests, invitees, and licensees of the preceding must comply strictly with the provisions of the Mixed-Use Restrictions as the same may be amended from time to time. Failure to comply with any of the Mixed-Use Restrictions will constitute a violation of the Mixed-Use Restrictions and may result in a fine against the Owner in accordance with "Section 8.2" of the Master Covenant, and will give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Manager, the Master Board on behalf of the Master Association, the Mixed-Use Board on behalf of the Mixed-Use Association, the New Construction Council, the Modification Committee, or by an aggrieved Owner. Without limiting any rights or powers of the Master Association or the Mixed-Use Association, either board may (but will not be obligated to) remedy or attempt to remedy any violation of any of the provisions of Mixed-Use Restrictions, and the Owner whose violation has been so remedied will be personally liable to the Master Association or the Mixed-Use Association for all costs and expenses of effecting (or attempting to effect) such remedy. If

such Owner fails to pay such costs and expenses upon demand by the Master Association or the Mixed-Use Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Unit(s). Any such amounts assessed and chargeable against a Unit will be secured by the liens reserved in this Declaration and/or the Master Covenant for assessments and may be collected by any means provided in this Declaration and/or the Master Covenant for the collection of assessments, including, but not limited to, foreclosure of such liens against the Owner's Unit(s). The Mixed-Use Board will have the authority to levy fines against any Owner for violation of the Mixed-Use Restrictions in accordance with the Bylaws. Any reasonable fine imposed by the Mixed-Use Board will constitute a lien upon the violator's Unit. In the event that any occupant, tenant, guest, or invitee of a Unit violates the Mixed-Use Restrictions and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, that if the fine is not paid by the violator within the time period set by the Board, the Owner will pay the fine upon notice from the Board;

If you fail to comply with Mixed-Use Restrictions you can be fined or a claim may be pursued against you in court.

2.16 Liability of Owners for Damage to Master Community Facilities and Mixed-Use Common Area. No Owner may in any way alter, modify, add to or otherwise perform any work upon the Master Community Facilities or Mixed-Use Common Area without the prior written approval of the Master Board or the Mixed-Use Board, as applicable. Each Owner will be liable to the Master Association and/or the Mixed-Use Association for any and all damages to: (i) the Master Community Facilities, Mixed-Use Common Area and any improvements constructed thereon; or (ii) any Improvements constructed on any Unit, the maintenance of which has been assumed by the Master Association or the Mixed-Use Association, which damages were caused by the neglect, misuse, act, omission, or negligence of such Owner or Owner's family, or by any tenant or other occupant of such Owner's Unit, or any guest or invitee of such Owner, or the contractors, agents or employees of any of them. The full cost of all repairs of such damage will be an assessment against such Owner's Unit, secured by a lien against such Owner's Unit and collectable in the same manner as provided for in "Chapter 12" of the Master Covenant or *Article 5* of this Declaration, as applicable.

2.17 No Warranty of Enforceability. Neither the Declarant, the Master Association, nor the Mixed-Use Association makes any warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in this Declaration. Any Owner acquiring a Unit in reliance on one or more of such restrictive covenants, terms, or provisions will assume all risks of the validity and enforceability thereof and, by acquiring the Unit, agrees to hold the City of Austin, Declarant, Master Association, and/or Mixed-Use Association harmless therefrom.

ARTICLE 3

CONSTRUCTION RESTRICTIONS

3.01 Master Development Agreement. Each Unit within the Mixed-Use Community is governed by the MDA. The MDA may change from time to time in accordance with the terms of the MDA. The requirements of the MDA apply to the Mixed-Use Property and the Mixed-Use Community. In the event of any conflict between the terms of this Declaration and the terms of the MDA, the terms of the MDA will prevail.

3.02 Design Guidelines. Any and all Improvements erected, placed, constructed, painted, altered, modified, or remodeled on any portion of the Mixed-Use Community must comply with the requirements of the Design Guidelines, unless a variance is obtained pursuant to the Master Covenant. The Design Guidelines may be supplemented, modified, amended, or restated as authorized by the Master Covenant.

The Design Guidelines include additional requirements applicable to the construction of Improvements within the Mixed-Use Community. Each Owner is advised to consult the Design Guidelines.

3.03 Approval for Construction. No Improvements will be constructed upon any Unit without the prior written approval of the New Construction Council.

3.04 Alteration or Removal of Improvements. Unless otherwise permitted by "Section 5.1" of the Master Covenant, any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement or the removal of any Improvement, other than removals or alterations prosecuted by the Declarant, will be performed only with the prior written approval of the New Construction Council.

3.05 Drainage. There will be no interference with the established drainage patterns over any of the Mixed-Use Community, including the Units unless adequate provision is made for proper drainage and such provision is approved in advance by the New Construction Council. Specifically, and not by way of limitation, no Improvement, including landscaping, may be installed which impedes the proper drainage of water between Units.

3.06 Construction Activities. This Declaration will not be construed or applied so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon or within the Mixed-Use Community or any Unit within the Mixed-Use Community. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Unit does not conform to usual practices in the area as determined by the New Construction

Council in its sole and reasonable judgment, the New Construction Council will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon the Mixed-Use Community or any Unit there is excessive accumulation of debris of any kind which would render the Unit or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Mixed-Use Community, then the New Construction Council may contract for or cause such debris to be removed, and the Owner of the Unit will be liable for all reasonable expenses incurred in connection therewith.

ARTICLE 4

MIXED-USE ASSOCIATION

4.01 Organization. The Mixed-Use Association will be a non-profit corporation created for the purposes, charged with the duties, and vested with the powers prescribed by law or set forth in the Articles, Bylaws or in this Declaration. Neither the Articles nor Bylaws will be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration or the Master Covenant. Declarant will cause the Mixed-Use Association to be created on or before the conveyance of all or any portion of the Mixed-Use Community to a third party other than Declarant.

4.02 Membership.

- (a) Any Person, upon becoming an Owner, will automatically become a Member of the Mixed-Use Association. Membership will be appurtenant to and will run with the ownership of the Unit that qualifies the Owner thereof for membership. Membership in the Mixed-Use Association may not be severed from the ownership of a Unit, or in any way transferred, pledged, mortgaged, or alienated, except together with the title to the said Unit.
- (b) Each and every Owner will have a nonexclusive right and easement of use, access, and enjoyment in and to the Mixed-Use Common Area, subject to:
 - (i) The Mixed-Use Restrictions and any other applicable covenants and easements, including any declaration of easements and covenants to share costs or similar instruments relating to such Mixed-Use Common Area, and any rights of non-Owners to use and enjoy portions of the Mixed-Use Common Area;
 - (ii) Any restrictions or limitations contained in any deed conveying such property to the Mixed-Use Association;
 - (iii) The Board's right (as limited by the MDA or any easements or restrictions applicable to the Mixed-Use Common Area) to:

- (A) adopt rules regulating Mixed-Use Common Areas use and enjoyment, including rules limiting the number of guests who may use certain portions of the Mixed-Use Common Area, and to charge use fees for such use;
- (B) suspend an Owner's right to use Mixed-Use Common Area;
- (C) dedicate or transfer all or any part of the Mixed-Use Common Area, subject to such approval requirements as may be set forth in this Declaration;
- (D) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon certain portions of the Mixed-Use Common Area;
- (E) rent any portion of any clubhouse or other Mixed-Use Common Area recreational facilities on an exclusive or non-exclusive short-term basis to any Person;
- (F) permit use of any recreational facilities situated on the Mixed-Use Common Area by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Mixed-Use Board's discretion;
- (G) permit use of any Mixed-Use Common Area, at such charge or no charge as the Mixed-Use Board may determine appropriate, for the purpose of offering and conducting classes or other activities for interested Owners and occupants, whether offered on a for profit or nonprofit basis; and
- (H) to the extent assessments are insufficient to pay for operating or capital expenses, mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

An Owner who does not reside in the Mixed-Use Community will be deemed to have assigned all rights to use and enjoy the recreational facilities within the Mixed-Use Common Area to the occupants of such Owner's Unit.

4.03 Voting Rights. Each Unit will have the number of votes allocated to such Unit in accordance with "Section 4.2" of the Master Covenant.

4.04 Election of Mixed-Use Board. The Board of the Mixed-Use Association will consist of three (3) to seven (7) directors. Until the occurrence of the events described in this

Section 4.04(a) through (e) below, 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 described in the Master Covenant, every Unit in the Mixed-Use Community will be located within a Neighborhood. Neighborhoods are designated in an MCC Annexation Notice filed by the Master Declarant to make portions of the Mixed-Use Community subject to the terms and provisions of the Master Covenant. As also described in the Master Covenant, each Neighborhood will elect one "Neighborhood Delegate" to cast the votes allocated to Units in that Neighborhood on matters requiring a vote of Owners under the Master Covenant.

Neighborhood Delegates will not vote on matters to be voted upon by Owners under this Declaration. Neighborhood Delegates only vote on matters to be decided by the Owners under the Master Covenant. Under this Declaration, Owners will vote by individually casting the votes allocated to such Owner's Unit pursuant to Section 4.02 of this Declaration. For example, pursuant to Section 8.02(ii) of this Declaration, Owners holding a certain percentage of votes in the Mixed-Use Association are required to approve any amendment to this Declaration. Neighborhood Delegates will not cast such votes on behalf of the Owners. At a meeting called for the purpose of amending this Declaration, each Owner, in person or by proxy, will cast their vote in favor of or against any such amendment.

However, Neighborhood Delegates will have a role under the terms of this Declaration and the Bylaws of the Mixed-Use Association. Neighborhood Delegates who represent Neighborhoods within the Mixed Use Community will elect the members of the Board of the Mixed-Use Association in accordance with the following schedule (Table 4.04 below illustrates the election transition schedule described in (a) through (e) below):

- (a) Within thirty (30) days after certificates of occupancy have been issued by the City of Austin for 25% of all Units planned for the Mixed-Use Property, the Mixed-Use Board will be increased to five (5) members and the Declarant will be entitled to appoint, remove and replace three (3) members of the Mixed-Use Board, 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, and the Neighborhood Delegates will elect one (1) member of the Mixed-Use Board. The member elected by the Neighborhood Delegates will serve for a two (2) year term or until the occurrence of the events described in subsection (b), whichever occurs first. Until the occurrence of the events described in subsection (b) and upon the expiration of the term of the member elected by the Neighborhood Delegates, the Neighborhood Delegates will elect such member's successor.

- (b) Within thirty (30) days after certificates of occupancy have been issued by the City of Austin for 50% of all Units planned for the Mixed-Use Property, the Declarant will be entitled to appoint, remove and replace three (3) members of the Mixed-Use Board and the Neighborhood Delegates will elect two (2) members of the Mixed-Use Board. Each member elected by the Neighborhood Delegates will serve for a two (2) year term or until the occurrence of the events described in subsection (c), whichever occurs first. Until the occurrence of the events described in subsection (c) and upon the expiration of the term of a member elected by the Neighborhood Delegates, the Neighborhood Delegates will elect such member's successor.
- (c) Within thirty (30) days after certificates of occupancy have been issued by the City of Austin for 75% of all Units planned for the Mixed-Use Property, the Mixed-Use Board will be increased to seven (7) members and the Declarant will be entitled to appoint, remove and replace four (4) members of the Mixed-Use Board and the Neighborhood Delegates will elect three (3) members of the Mixed-Use Board. Each member elected by the Neighborhood Delegates will serve for a two (2) year term or until the occurrence of the events described in subsection (d), whichever occurs first. Until the occurrence of the events described in subsection (d) and upon the expiration of the term of a member elected by the Neighborhood Delegates, the Neighborhood Delegates will elect such member's successor.
- (d) Within thirty (30) days after certificates of occupancy have been issued by the City of Austin for 90% of all Units planned for the Mixed-Use Property, the Declarant will be entitled to appoint, remove and replace one (1) member of the Mixed-Use Board and the Neighborhood Delegates will elect six (6) members of the Mixed-Use Board. Three (3) members of the Mixed-Use Board elected by the Neighborhood Delegates will serve for a term of one (1) year and three (3) members of the Mixed-Use Board elected by the Neighborhood Delegates will serve for a term of two (2) years. Upon expiration of the term of a member elected by the Neighborhood Delegates, a successor will be elected in accordance with the Bylaws and this subsection (d). The Mixed-Use Board will be entitled to alter the terms of the initial Mixed-Use Board members elected by the Neighborhood Delegates under this subsection (d) to permit subsequent elections to occur during annual meetings of the Mixed-Use Association.
- (e) Upon expiration of the Development and Sale Period, the Declarant appointed member of the Mixed-Use Board will resign and the Neighborhood Delegates for the Mixed-Use Community will elect a successor who will serve for a term of one (1) year. Upon expiration of the term of such member, a successor will be elected in accordance with the Bylaws and this subsection (e). The Mixed-Use Board will be entitled to alter the term of the initial Mixed-Use Board member elected by the

Neighborhood Delegates under this *subsection (e)* to permit subsequent elections to occur during annual meetings of the Mixed-Use Association.

A member of the Board appointed by the Neighborhood Delegates may be removed and/or replaced in accordance with the Bylaws.

TABLE 4.04 - SUMMARY OF ELECTION TRANSITION: MIXED-USE BOARD

Initial Board	Issuance of 25% of certificates of occupancy	Issuance of 50% of certificates of occupancy	Issuance of 75% of certificates of occupancy	Issuance of 90% of certificates of occupancy	Expiration of Mixed-Use Development and Sale Period
Declarant	Declarant	Declarant	Declarant	Declarant	Elected by Neighborhood Delegates
Declarant	Declarant	Declarant	Declarant	Elected by Neighborhood Delegates	Elected by Neighborhood Delegates
Declarant (With City of Austin's Consent)	Declarant	Declarant	Declarant	Elected by Neighborhood Delegates	Elected by Neighborhood Delegates
	Declarant (with City of Austin's consent)	Elected by Neighborhood Delegates	Declarant	Elected by Neighborhood Delegates	Elected by Neighborhood Delegates
	Elected by Neighborhood Delegates	Elected by Neighborhood Delegates	Elected by Neighborhood Delegates	Elected by Neighborhood Delegates	Elected by Neighborhood Delegates
			Elected by Neighborhood Delegates	Elected by Neighborhood Delegates	Elected by Neighborhood Delegates
			Elected by Neighborhood Delegates	Elected by Neighborhood Delegates	Elected by Neighborhood Delegates

REMINDER OF PAGE INTENTIONALLY LEFT BLANK

4.05 Duties of the Mixed-Use Association. The Mixed-Use Association acting through the Mixed-Use Board will have and perform each of the following duties:

(a) Mixed-Use Community.

- (1) Ownership and Control. To accept, own, operate, and maintain all Mixed-Use Common Area, together with all improvements of whatever kind and for whatever purpose that may be located thereon.
- (2) Repair and Maintenance. To maintain in good repair and condition Mixed-Use Common Area and all lands, Improvements, security devices, landscaping, and other property owned by or leased to the Mixed-Use Association, including, without limitation, all sidewalks, pathways, private streets, driveways and fences located within the Mixed-Use Community.
- (3) Taxes. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to the Mixed-Use Common Area to the extent that such taxes and assessment are not levied directly upon the Members. The Mixed-Use Association will have all rights granted by law to contest the legality and the amount of such taxes and assessments.
- (4) Special Common Area. To accept, operate and maintain all Special Common Area assigned to the Mixed-Use Association in accordance with "Section 3.1" of the Master Covenant.

(b) Insurance. To obtain and maintain in effect policies of insurance that, in the opinion of the Mixed-Use Board, are reasonably necessary or appropriate to carry out the Mixed-Use Association's functions. The Mixed-Use Association will be required to obtain commercial crime insurance, including fidelity insurance covering all individuals or entities responsible for handling funds of the Mixed-Use Association in an amount determined by the Mixed-Use Board's business judgment, but not less than an amount equal to one-quarter of the annual Base Assessments on all Units plus reserves on hand. If reasonably available, fidelity insurance policies must contain a waiver of all defenses based upon the exclusion of individuals or entities serving without compensation

(c) Rules and Bylaws. To make, establish, and promulgate and in its discretion, to amend or repeal and re-enact the Bylaws and such rules not in conflict with this Declaration and the Governing Document, as it deems proper, covering any and all aspects of its functions, including the use and occupancy of Mixed-Use Common Area. In the event of any conflict between the terms and provisions of any rule adopted by the Mixed-Use Board and the Governing Documents, the

terms and provisions of the Governing Documents will control. The Master Covenant specifically entitles the Master Board to promulgate rules which will supersede any rule adopted by the Mixed-Use Board. In the event of any conflict between a rule adopted by the Mixed-Use Board and a rule adopted by the Master Board, the rule adopted by the Master Board will control.

- (d) Records. To keep books and records of the Mixed-Use Association's affairs and to make such books and records available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours.
- (e) Other. To carry out and enforce all duties of the Mixed-Use Association set forth in this Declaration, the Bylaws, or the Articles of the Mixed-Use Association.

4.06 Powers and Authority of the Mixed-Use Association. The Mixed-Use Association will have the powers of a Texas non-profit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in this Declaration, the Articles and the Bylaws. The Mixed-Use Association will also have the power to do and perform any and all acts that may be necessary or proper for, or incidental to, the exercise of any of the express powers granted to it by the laws of Texas or by this Declaration. Without in any way limiting the generality of the two preceding sentences, the Mixed-Use Association and the Mixed-Use Board, acting on behalf of the Mixed-Use Association, will have the power and authority at all times as follows:

- (a) Assessments. To levy assessments as provided herein.
- (b) Right of Entry and Enforcement. To enter at any time in an emergency without notice, or in a non-emergency after twenty-four (24) hours written notice, without being liable to any Owner or any other person or entity, upon any Unit or into any Improvement thereon, or to enter at any time without notice onto any Mixed-Use Common Area, for the purpose of enforcing the Mixed-Use Restrictions or for the purpose of maintaining or repairing any area, Improvement, or other facility to conform to the Mixed-Use Restrictions. The expense incurred by the Mixed-Use Association in connection with the entry upon any Unit and the maintenance and repair work conducted thereon will be a personal obligation of the Owner of the Unit entered upon, will be deemed a special Mixed-Use Assessment against such Unit, will be a lien upon the Unit entered upon and Improvements thereon, and will be enforced in the same manner and to the same extent as provided in Article 5 hereof for regular and special Mixed-Use Assessments. The Mixed-Use Association, acting through the Mixed-Use Board, will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin any breach or

threatened breach of the Mixed-Use Restrictions. The Mixed-Use Association, acting through the Mixed-Use Board, is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Mixed-Use Restrictions. Notwithstanding any provision herein to the contrary, the Mixed-Use Association may not alter or demolish any Improvements on any Unit other than Mixed-Use Common Area in enforcing the Mixed-Use Restrictions before judicial proceedings are instituted by the Mixed-Use Association or the written consent of the Owner(s) of the affected Unit(s) has been obtained.

- (c) Conveyances. To grant and convey to any Person any real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way, or Mortgages, out of, in, on, over, or under any Mixed-Use Common Area for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder:

- (1) Roads, streets, sidewalks, street lights, signs, driveways, parking lots, trails, paths and fences;
- (2) Lines, cables, wires, conduits, pipelines, or other devices for utility purposes;
- (3) Sewers, water systems, storm water drainage systems, sprinkler systems, and pipelines, or any other water quality features or improvements; or
- (4) Any other improvements or facilities.

Nothing set forth above, however, will be construed to permit the use or occupancy of any improvement or other facility in any way that would violate applicable use and occupancy restrictions imposed thereon by the Mixed-Use Restrictions or by any governmental authority.

- (d) Manager. To retain and pay for the services of a Manager to manage and operate the Mixed-Use Association, including the Mixed-Use Common Area, to the extent deemed advisable by the Mixed-Use Board; provided, however, that the Mixed-Use Board will have no power to discharge, limit the authority of, or interfere with the exercise of functions by any manager appointed pursuant to the Master Covenant. Additional personnel may be employed directly by the Mixed-Use Association or may be furnished by the Manager. To the extent permitted by law, the Mixed-Use Association and the Mixed-Use Board may delegate any duties, powers, and functions to the Manager. The Members of the Mixed-Use Association hereby release the Mixed-Use Association and the members of the Mixed-Use Board from liability for any omission or improper exercise by the Manager of any such duty, power, or function so

delegated(INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE MIXED-USE ASSOCIATION OR BOARD'S NEGLIGENCE IN CONNECTION THEREWITH).

- (e) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Mixed-Use Association.
- (f) Mixed-Use Common Area Services. To pay for water, sewer, garbage removal, landscaping, gardening, and all other utilities or services to, and all maintenance of the Mixed-Use Common Area, including, but not limited to, any recreational facilities; to maintain and repair any recreational facilities, easements, roads, roadways, rights-of-way, parkways, median strips, sidewalks, paths, trails, fences, ponds, and lakes located within or upon the Mixed-Use Common Area; and to maintain and repair other portions of the Mixed-Use Common Area.
- (g) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or Assessments that the Mixed-Use Association or the Mixed-Use Board is required or permitted to secure or to pay for pursuant to applicable law or under the terms of the Mixed-Use Restrictions.
- (h) Construction on Mixed-Use Common Area. To construct new Improvements on or additions to Mixed-Use Common Area.
- (i) Contracts: Property Ownership. To enter into contracts with Persons on such terms and provisions as the Mixed-Use Board may determine, and to acquire, own, and dispose of all manner of real and personal property, whether by grant, lease, gift, or otherwise.
- (j) Financial Accounts. To establish operating and other accounts for the purpose of receiving and depositing Assessments in the name of the Mixed-Use Association as the Mixed-Use Board may deem appropriate from time to time and as may be consistent with generally accepted accounting principles.

4.07 Indemnification. To the fullest extent permitted by applicable law, but without duplication of (and subject to) any rights or benefits arising under the Articles or Bylaws, 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 Mixed-Use 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 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 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. The Mixed-Use Board may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee, servant, or agent of the Mixed-Use Association, against any liability asserted against such person or incurred by such person in any such capacity, or arising out of the status of such person as such, whether or not the Mixed-Use Association would have the power to indemnify such person against such liability hereunder or otherwise.

ARTICLE 5

MIXED-USE ASSOCIATION FINANCES

5.01 Mixed-Use Association Expenses.

- (i) Common Expenses. Except as the Governing Documents otherwise specifically provide, all of the expenses that the Mixed-Use Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Mixed-Use Common Area, and otherwise for the general benefit of the Owners, are considered "Common Expenses." Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Mixed-Use Common Area as the Mixed-Use Board finds necessary or appropriate.

The characterization of a particular expense as a "Common Expense" will not preclude the Mixed-Use Association from seeking reimbursement for, or a contribution toward, such expenses from Owners or other individuals or entities who may be responsible for the expenses incurred.

- (ii) Budgeting for and Allocating Mixed-Use Association Expenses. At least sixty (60) days before the beginning of each fiscal year, the Mixed-Use Board will prepare a budget of the estimated Common Expenses for the coming year, including an amount to fund the reserves of the Mixed-Use Association. The estimated expenses in the budget will include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense. In determining the amount of such reserve

contribution, the Mixed-Use Board will take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contributions over the useful life of the asset. Each budget will also reflect the sources and estimated amounts of funds to cover such expenses, which may include but not be limited to Assessments and any income expected from sources other than Assessments levied against Units, and the amount to be generated through the levy of Base Assessments pursuant to *Section 5.02*.

5.02 Calculation of Base Assessments. The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Units, will be set at an equal rate per "Assessment Unit" (as defined and allocated below). The rate per Assessment Unit multiplied by the number of Assessments Units, or fraction thereof, assigned to a Unit is the Unit's "Base Assessment." The Declarant may, but is not obligated, to reduce a Base Assessment which would otherwise be levied against one or more Units for any year by the payment of a subsidy to the Mixed-Use Association. Any subsidy and the characterization thereof will be disclosed as a line item in the budget. The payment of a subsidy in any given year will not obligate the Declarant to continue payment of a subsidy to the Mixed-Use Association in future years.

5.03 Assignment of Assessment Units. Each Unit will be allocated the number of Assessments Units allocated to such Unit pursuant to "Section 12.2(c)" the Master Covenant.

5.04 Publication of Budget and Assessment; Right to Disapprove. The Mixed-Use Board will publish notice of the annual budget with notice of the amount of the Base Assessment to be levied pursuant to such budget in a community newsletter, electronic bulletin board, or by other means that the Mixed-Use Board determines will be reasonably effective in disseminating the budget and assessments on a community-wide basis, at least thirty (30) days prior to the due date of the assessments to be levied pursuant to such budget. The Common Expense budget will automatically become effective unless disapproved at a meeting by Owners representing at least 75% of the total votes in the Mixed-Use Association.

There is no obligation to call a meeting for the purpose of considering any budget except, in the case of the Common Expense budget, on petition of Owners as provided for special meetings in the Bylaws. Any such petition must be presented to the Mixed-Use Board within ten (10) days after delivery of the budget and notice of any assessment.

If a proposed budget is disapproved or the Mixed-Use Board fails for any reason to determine the budget for any year, then the budget most recently in effect will continue in effect until a new budget is determined.

The Mixed-Use Board may revise the budget and adjust the Base Assessment anytime during the year, subject to the same publication requirements and rights to disapprove set forth in this *Section 5.04*.

5.05 Special Assessments. The Master Association may levy "Special Assessments" to cover Common Expenses that are non-routine, unanticipated, or in excess of those anticipated in the budget. Except as otherwise specifically provided in this Declaration, any Special Assessment for Common Expenses that would exceed 20% of the annual budget for the year immediately preceding that in which the Special Assessment is approved will require the affirmative vote or written consent of Owners representing at least 51% of the votes in the Mixed-Use Association and will be allocated equally among all such Units. Special Assessments will be payable in such manner and at such times as the Mixed-Use Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

5.06 Specific Assessments. The Master Association may levy "Specific Assessments" against a particular Unit to cover costs incurred in bringing the Unit into compliance with the Mixed-Use Restrictions or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Mixed-Use Board will give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the Bylaws, before levying any Specific Assessment hereunder.

5.07 Authority to Assess Owners: Time of Payment. The Declarant hereby establishes, and the Mixed-Use Association is hereby authorized to levy, assessments as provided for in this Article 5. The obligation to pay assessments will commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration; or (b) the month in which the Mixed-Use Association first determines a budget and levies assessments pursuant to this Article 5, whichever is later. The first annual Base Assessment levied on each Unit will be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit. The Master Association, acting through the Master Board, will have the authority to collect all Assessments levied by the Mixed-Use Association against the Units. In the event the Master Association elects to exercise such authority, the Master Association and the Mixed-Use Association will execute an agreement for the collection of Assessments which agreement may provide for the payment of a reasonable fee to the Master Association in exchange for such services.

Assessments will be paid in such manner and on such dates as the Mixed-Use Board may establish. The Mixed-Use Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Mixed-Use Board so elects, assessments may be paid in two or more installments. Unless the Mixed-Use Board otherwise provides, the Base Assessment will be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Mixed-Use Board may require the outstanding balance on all assessments to be paid in full immediately. The Mixed-Use Board will cooperate with the Master Board to coordinate the due dates and collection of Assessments under this Declaration with assessments levied by the Master Board pursuant to the Master Covenant.

5.08 Obligation for Assessments. By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments levied pursuant to this Declaration. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Mixed-Use Board may establish, subject to the limitations of Texas law), late charges as determined by a resolution of the Mixed-Use Board, costs, and reasonable attorneys and paralegals fees, will be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee will be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no individual or entity that obtains title to a Unit following foreclosure of a first priority Mortgage given in good faith and for value by exercising the remedies provided in its Mortgage will be liable for unpaid assessments that accrued prior to such for foreclosure. The Mixed-Use Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice will not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner will continue to pay Base Assessments at the rate established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Mixed-Use Association may retroactively assess any shortfall.

No Owner may exempt itself from liability for assessments by non-use of Mixed-Use Common Area, abandonment of such Owner's Unit, or non-use of services provided to Units. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off may be claimed or allowed for any alleged failure of the Mixed-Use Association or Mixed-Use Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Mixed-Use Board will furnish to any Owner liable for any type of assessment a certificate signed by an officer of the Mixed-Use Association or its designated agent setting forth whether such assessment has been paid. Such certificate will be conclusive evidence of payment. The Mixed-Use Board may require the advance payment of a reasonable processing fee for the issuance of such certificate.

5.09 The Declarant's Financial Obligations to the Mixed-Use Association. The Declarant will have no obligation to pay Base Assessments and/or Special Assessments on any Units it owns.

The Declarant's exemption from Base Assessments and Special Assessments will not apply to any Unit upon which the Declarant: (i) has caused finished improvements to be constructed which may be used for residential, commercial, retail, light industrial, or office use; and (ii) intends to retain ownership, as opposed to market for sale to a third party. Assessments will commence on any such Unit owned by the Declarant no later than the date a certificate of occupancy for such Improvements has been issued to the Declarant by the City of Austin.

The Declarant may, but is not obligated, to reduce Base Assessments and/or Special Assessments which would otherwise be levied against Units for any fiscal year by the payment of a subsidy to the Mixed-Use Association. Any subsidy and the characterization thereof will be disclosed as a line item in the budget prepared by the Mixed-Use Board. The payment of a subsidy in any given year will not obligate the Declarant to continue payment of a subsidy to the Mixed-Use Association in future years.

The Mixed-Use Association is specifically authorized to enter into arms-length contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities.

5.10 Lien for Assessments.

- (i) Existence of Lien. Each assessment levied pursuant to this Mixed-Use Covenant, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Mixed-Use Board may establish, subject to the limitations of Texas law), late charges as determined by a resolution of the Mixed-Use Board, costs, and reasonable attorneys and paralegals fees, will be secured by a lien hereby granted and conveyed by the Declarant to the Mixed-Use Association against each Unit and all Improvements thereon (such lien, with respect to any Unit not in existence on the date hereof, will be deemed granted and conveyed at the time that such Unit is created). Such lien shall be superior to all other liens except for tax liens and all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the Unit, provided such mortgage or deed of trust lien was recorded in the Official Public Records of Travis County, Texas before the delinquent assessment was due. In the event an Owner fails to pay any Assessment when due, then as a condition to the Mixed-Use Association's enforcement of the Assessment lien by foreclosure in the same manner as mortgages on real property are foreclosed under Texas law as permitted by subsection (b) below, the Mixed-Use Association will prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Unit covered by such lien and a description of the Unit. Such notice may be signed by one of the officers of the Mixed-Use Association, a copy of such Assessment lien will be mailed to the Owner of the Unit described in the lien, and the Assessment lien will be recorded in the Official Public Records of Travis County, Texas.
- (ii) Enforcement of Lien. The Mixed-Use Association's lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as deeds of trust and/or mortgages on real property are foreclosed under Texas law. The Mixed-Use Association may bid for the

Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Mixed-Use Association following foreclosure: (i) no right to vote will be exercised on its behalf; (ii) no assessment will be levied on the Unit; and (iii) each other Unit will be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Mixed-Use Association. The Mixed-Use Association may sue for unpaid Common Expenses, Specific Assessments, and other costs without foreclosing or waiving the lien securing the same.

- (iii) Effect of Sale or Transfer. Sale or transfer of any Unit will not affect the assessment lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage will extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit will not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments will be deemed to be Common Expenses collectible from Owners of all Units subject to assessment, including such acquirer, its successors and assigns.

5.11 Exempt Property. The following property will be exempt for payment of Base Assessments and Special Assessments:

- (i) All Mixed-Use Common Area, Mixed-Use Common Area, and such portions of the property owned by the Declarant which are included in the Area of Common Responsibility (as defined in the Master Covenant); and
- (ii) Any property dedicated to and accepted by any governmental authority or public utility.

5.12 Capitalization of Mixed-Use Association. The first Owner of each Unit other than the Declarant will make a contribution to the working capital of the Mixed-Use Association in an amount equal to one-sixth ($1/6^{\text{th}}$) of the annual Base Assessment attributable to the Unit for that year. This amount will be in addition to, not in lieu of, the annual Base Assessment levied on the Unit and will not be considered an advance payment of such assessments. The working capital assessment hereunder will be due and payable to the Mixed-Use Association immediately upon transfer of title to the Unit.

5.13 Use and Consumption Fees. The Mixed-Use Board may charge use, consumption, and activity fees to any individual or entity using the services or facilities of the Mixed-Use Association or participating in Mixed-Use Association-sponsored activities. The Mixed-Use Board may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (e.g., Owners and non-Owners).

ARTICLE 6

MORTGAGEE PROVISIONS

6.01 Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage that provides a written request to the Mixed-Use Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Units to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (i) Any condemnation loss or any casualty loss that affects a material portion of the Community or that affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (ii) any delinquency in the payment of assessments or charges owned by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Mixed-Use Restrictions relating to such Unit or the Owner or occupant which is not cured within sixty (60) days;
- (iii) any lapse, cancellation, or material modification of any insurance policy maintained by the Mixed-Use Association; or
- (iv) Any proposed action that would require the consent of a specified percentage of Eligible Holders.

6.02 Special FHLMC Provision. If any portion of the Mixed-Use Community is subject to a residential condominium form of ownership, then so long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless approved by at least 67% of the total votes in the association established by the condominium regime, the Mixed-Use Association will not:

- (i) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Mixed-Use Common Area that the Mixed-Use Association owns directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Mixed-Use Common Area will not be deemed a transfer within the meaning of this subsection);
- (ii) Change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner of a Unit;
- (iii) By act or omission change, waive or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance, or

maintenance of Units and the Mixed Use Common Area (the issuance and amendment of Design Guidelines, procedures, and rules adopted by the Master Board and/or the Mixed-Use Board will not constitute a change, waiver, or abandonment within the meaning of this provision);

- (iv) Fail to maintain insurance, as required by this Declaration; or
- (v) Use hazard insurance proceeds for any Mixed-Use Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against the Mixed-Use Common Area and may pay overdue premiums on casualty insurance coverage upon the lapse of an Mixed-Use Association policy, and first Mortgagees making such payments will be entitled to immediate reimbursement from the Mixed-Use .

6.03 Other Provisions for First Lien Holders. To the extent not inconsistent with Texas law, if a residential condominium has been established in the Mixed-Use Community, then:

- (i) Any restoration or repair of the Mixed-Use Community after a partial condemnation or damage due to an insurable hazard must be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units subject to the regime to which at least 51% of the votes in the association established by such regime subject to Mortgages held by such Eligible Holders are allocated.
- (ii) Any election to terminate the Mixed-Use Association after substantial destruction or a substantial taking in condemnation will require the approval of the Eligible Holders of first Mortgages on Units subject to the regime to which at least 51% of the votes in the association established by such regime subject to Mortgages held by such Eligible Holders are allocated.

6.04 Amendments to Documents. The following provisions do not apply to amendments to the Mixed-Use Restrictions or termination of the Mixed-Use Association as a result of destruction, damage, or condemnation, or to the addition of portions of the Mixed-Use Property to the terms and provisions of this Declaration. If a residential condominium has been established in the Mixed-Use Community, then:

- (i) The consent of Owners subject to the condominium regime representing at least 80% of the total votes in the association established by such regime, and the approval of the Eligible Holders of first Mortgages on Units subject to the regime to which at least 67% of the votes in the

association established by such regime subject to a Mortgage appertain, will be required to terminate the Mixed-Use Association.

- (ii) The consent of Owners subject to the condominium regime representing at least 67% of the total votes in the association established by such regime, and the approval of Eligible Holders of first Mortgages on Units subject to the regime to which at least 51% of the votes in the association established by such regime subject to a Mortgage appertain, will be required to materially amend any provisions of the Declaration, Bylaws, or Articles, or to add any material provisions thereto that establish, provide for, govern, or regulate any of the following:
 - (a) voting;
 - (b) assessments, assessment liens, or subordination of such liens;
 - (c) reserves for maintenance, repair, and replacement of the Mixed-Use Common Area;
 - (d) insurance of fidelity bonds;
 - (e) rights to use the Mixed-Use Common Area;
 - (f) responsibility for maintenance and repair of property in the Mixed-Use Community;
 - (g) expansion or contraction of the Mixed-Use Community or the addition, annexation, or withdrawal of property to or from the Mixed-Use Association's jurisdiction;
 - (h) boundaries of any Unit;
 - (i) leasing of Units;
 - (j) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;
 - (k) establishment of self-management by the Mixed-Use Association where professional management has been required by an Eligible Holder; or
 - (l) any provisions included in the Mixed-Use Restrictions that are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

- (iii) Should the Federal National Mortgage Association or the Federal Home Mortgage Corporation subsequently delete or modify any of its respective requirements that necessitate an amendment to the provisions of this *Article 6*, the Mixed-Use Board, without approval of the Owners, may record an amendment to this *Article 6* to reflect such changes.

6.05 No Priority. No provision of this Declaration or the Bylaws gives or will be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Mixed-Use Common Area.

6.06 Notice to Master Association. Upon request, each Owner will be obligated to furnish to the Mixed-Use Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

6.07 Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Mixed-Use Board to respond to or consent to any action will be deemed to have approved such action if the Mixed-Use Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Mixed-Use Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

6.08 Construction of Article 6. Nothing contained in this *Article 6* will be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, Bylaws, or Texas law for any of the acts set out in this *Article 6*.

ARTICLE 7

DEVELOPMENT RIGHTS

7.01 Mixed-Use Community Annexation Notice. Upon the filing in the Official Public Records of Travis County, Texas, this Declaration serves to provide notice that at any time, and from time to time, all or any portion of the Mixed-Use Property may be made subject to the terms, covenants, conditions, restrictions and obligations of this Declaration. This Declaration will apply to and burden a portion or portions of the Mixed-Use Property upon the filing of an MUC Annexation Notice or MCC Annexation Notice describing such property by a legally sufficient description and expressly providing that such property will be considered a part of the Mixed-Use Community and will be subject to the terms, covenants conditions, restrictions and obligations of this Declaration. To be effective, an annexation notice must be executed by the Declarant and the record title owner of the portion of the Mixed-Use Property being made subject to this Declaration if such property is not owned by the Declarant. Declarant may also cause an annexation notice to be filed covering a portion of the Mixed-Use Property for the purpose of encumbering such property with this Declaration and any Supplemental Covenant previously recorded by Declarant (which annexation notice may amend, modify or supplement the restrictions set forth in the Supplemental Covenant which

will apply to such portion of the Mixed-Use Property). To make the terms and provisions of this Declaration applicable to a portion of the Mixed-Use Property, Declarant will be required only to cause an annexation notice to be recorded containing the following provisions:

- (i) A reference to this Declaration, which reference will state the volume and initial page number of the Official Public Records of Travis County, Texas wherein this Declaration is recorded;
- (ii) A reference, if applicable, to the Supplemental Covenant which will apply to such portion of the Mixed-Use Property (with any amendment, modification, or supplementation of the restrictions set forth in the Supplemental Covenant which will apply to such portion of the property), which reference will state the volume and initial page number of the Official Public Records of Travis County, Texas wherein the Supplemental Covenant is recorded;
- (iii) A statement that all of the provisions of this Declaration will apply to such portion of the Mixed-Use Property; and
- (iv) A legal description of such portion of the Mixed-Use Property.

7.02 Supplemental Covenants. The Mixed-Use Property will be developed pursuant to a coordinated plan, which may, from time to time, be amended or modified. Declarant may record one or more Supplemental Covenants applicable to all or a portion of the Mixed-Use Property and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for such property.

7.03 Construction, Sales, Leasing and Development Activities. The Declarant and its designees or assigns may construct, use, and maintain upon portions of the Mixed-Use Community such facilities and activities as, in the reasonable opinion of the Declarant, may be required, convenient, or incidental to the construction, sales, leasing and development of the Mixed-Use Community or Units located therein.

Such permitted facilities and activities include, but are not limited to, business offices, signs, flags (whether hung from flag poles or attached to a structure), model units, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Declarant and its employees, agents, and designees may park vehicles in designated parking areas.

The Declarant and its designees, during the course of development of the Mixed-Use Community, may use portions of the Mixed-Use Community for temporary storage and for facilitating construction on adjacent property. The Declarant will not be obligated to pay any use fees, rent, or similar charges for its use of Mixed-Use Community pursuant to this Section.

7.04 Right to Make Improvements, Replat. During the Development and Sale Period, the Declarant and the Mixed-Use Association, and their employees, agents, and designees will have a right of access and use and an easement over and upon all of the Mixed-Use Common Area for the purpose of making, constructing, and installing such improvements to the Mixed-Use Common Area and to the Mixed-Use Community. In addition, during the Development and Sale Period, the Declarant may: (i) replat any portion of the Mixed-Use Property or Mixed-Use Community; and (ii) convert Units it owns into Mixed-Use Common Area.

7.05 Right to Transfer or Assign the Master Declarant's Rights. Any or all of the Declarant's special rights and obligations set forth in this Declaration or in the Bylaws may be transferred in whole or in part to other individuals or entities provided such transfer complies with the MDA or is otherwise approved in advance by the City of Austin. However, such a transfer will not reduce an obligation or enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. No such transfer or assignment will be effective unless it is in a recorded instrument signed by the Declarant. The foregoing sentence will not preclude the Declarant from permitting other individuals or entities to exercise, on a one-time or limited basis, any right reserved to the Declarant in this Declaration where the Declarant does not intend to transfer such right in its entirety. In such case, it will not be necessary to record any written assignment unless necessary to evidence the Declarant's consent to such exercise.

7.06 Addition to Mixed-Use Property. Declarant may, at any time and from time to time, add additional land to the Mixed-Use Property provided that such land is included within the "Property" as such term is defined in the Master Covenant and, upon the filing of a notice of addition of land, such land will be considered part of the Mixed-Use Property for purposes of this Declaration, and upon the further filing of an MUC Annexation Notice or MCC Annexation Notice meeting the requirements of Section 7.01 above such added lands will be considered part of the Mixed-Use Community subject to this Declaration and the terms, covenants, conditions, restrictions and obligations set forth in this Declaration, and the rights, privileges, duties and liabilities of the persons subject to this Declaration will be the same with respect to such added land as with respect to the lands originally covered by this Declaration. To add lands to the Mixed-Use Property, Declarant will be required only to record in the Official Public Records of Travis County, Texas, a notice of addition of land (which notice may be contained within any Supplemental Covenant affecting such land) containing the following provisions:

- (i) A reference to this Declaration, which reference will state the volume and initial page number of the Official Public Records of Travis County wherein this Declaration is recorded;
- (ii) A statement that such land will be considered Mixed-Use Property for purposes of this Declaration, and that upon the further filing of an MUC Annexation Notice or MCC Annexation Notice meeting the requirements of Section 7.01, all of the terms, covenants, conditions, restrictions and obligations of this Declaration will apply to the added land; and

(iii) A legal description of the added land.

ARTICLE 8

GENERAL PROVISIONS

8.01 Term and Termination.

There is an old concept of law known as the "Rule Against Perpetuities" that restricts how long covenants can affect the title to land. Many jurisdictions no longer observe such rule, however, where the rule applies, the term of the covenants cannot exceed 21 years after the death of a named person who is living at the time the covenants are recorded.

This Declaration will be effective for a minimum of 21 years from the date it is recorded. After 21 years, this Declaration will be extended automatically for successive 10-year periods unless at least 75% of the then Owners sign a document stating that this Declaration is terminated and that document is recorded within the year before any extension. In such case, this Declaration will terminate on the date specified in the termination document. If any provision of this Declaration would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision will expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. This section will not be construed to permit the termination of any easement created in this Declaration without the consent of the holder of such easement.

8.02 Amendment.

- (i) By the Declarant. The Declarant may unilaterally amend this Declaration if such amendment is necessary: (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination with which it is in conflict therewith; (ii) to enable any reputable title insurance company to issue title insurance coverage any portion of the Mixed-Use Community; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, any amendment under this paragraph will not adversely affect the title to any Unit unless the Owner of such Unit consents in writing. In addition, during the Development and Sale Period, the Declarant may unilaterally amend this Declaration for any other purpose with the prior written consent of the City of Austin.
- (ii) By Owners. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by

the affirmative vote or written consent, or any combination thereof, of the Owners representing 75% of the total votes in the Mixed-Use Association. In addition, during the Development and Sale Period, any such amendment will also require the written consent of the Declarant and City of Austin. Notwithstanding the above, the percentage of votes necessary to amend a specific clause will not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

8.03 Validity and Effective Date. No amendment may directly or indirectly remove, revoke, or modify the status of, or any right or privilege of the Declarant without the written consent of the Declarant (or the assignee of such right or privilege). In addition, the approval requirements set forth in *Article 6* must be met, if applicable. If any Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment will become effective upon recordation unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment will be presumed to have been validly adopted. In no event will a change of conditions or circumstances operate to amend any provisions of this Declaration.

8.04 Interpretation. The provision of this Declaration will be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Mixed-Use Community, provided, however, that the provisions of this Declaration will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Mixed-Use Community. This Declaration will be construed and governed under the laws of the State of Texas.

8.05 Enforcement and Nonwaiver.

- (a) Except as otherwise provided herein, any Owner of a Unit, at such Owner's own expense, Declarant, the Master Association, the Mixed-Use Association, and the City of Austin will have the right to enforce all of the provisions of this Declaration. The Master Association and the Mixed-Use Association may initiate, defend or intervene in any action brought to enforce any provision of this Declaration. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof.
- (b) Every act or omission whereby any provision of the Mixed-Use Restrictions is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Unit (at such Owner's own expense), Declarant, the Master Association, the Mixed-Use Association, or the City of Austin.

- (c) Any violation of any federal, state, or local law, ordinance, or regulation pertaining to the ownership, occupancy, or use of any portion of the Mixed-Use Community is hereby declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth herein.
- (d) The failure to enforce any provision of the Mixed-Use Restrictions at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Mixed-Use Restrictions.

8.06 **Construction.** The provisions of this Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof will not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular includes the plural and the plural the singular. All captions and titles used in this Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

DECLARANT:

CATELLUS AUSTIN, LLC., a Delaware limited liability company

By: Ted A. Antenucci

Printed Name: Ted Antenucci

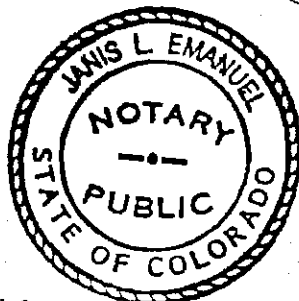
Title: President

Date: 12-10-04

Jefferson Colorado
County of Travis, State of Texas

This instrument was acknowledged before me on this 10th day of December 2004 by Ted Antenucci President of Catellus Austin, LLC, a Delaware limited liability company, on behalf of said limited liability company.

(seal)



My Commission Expires 06/06/2007

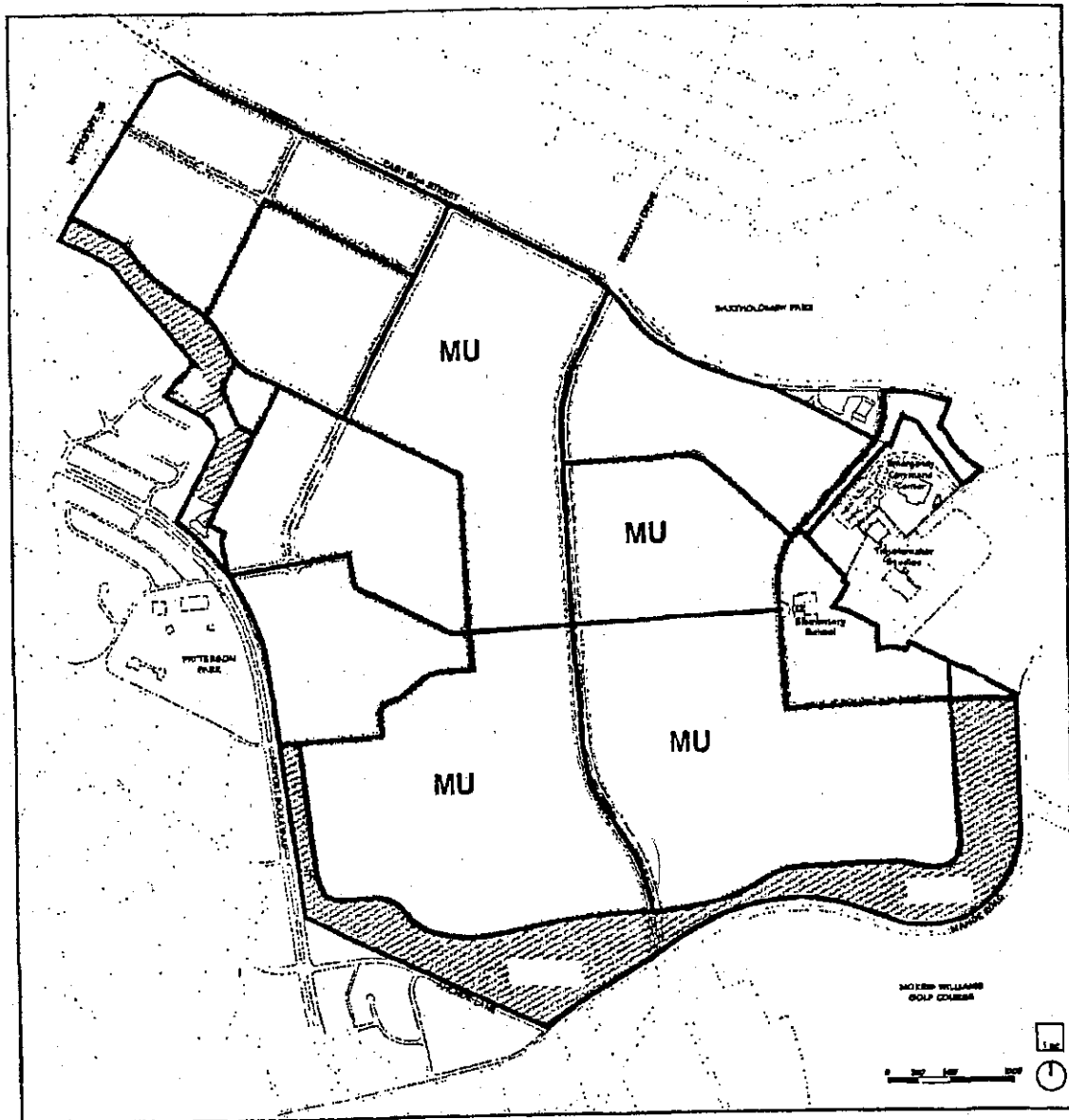
Janis L. Emanuel
Notary Public Signature

EXHIBIT "A"

DEPICTION OF MIXED-USE PROPERTY

[see attached page]

193172-12 11/09/2004



MU - Mixed Use Property

PLANNED UNIT DEVELOPMENT: LAND USE PLAN
RMMA Reuse and Redevelopment Master Plan
Prepared for the City of Austin by ROMA Design Group

EXHIBIT "B"

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.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2004 Dec 27 03:37 PM 2004238009

KNOWLES \$132.00

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS