# SUMMARY OF MUELLER MASTER COMMUNITY COVENANT, MIXED-USE COMMUNITY COVENANT AND EC/TC COMMUNITY COVENANT

**PREPARED BY**
**ARMBRUST & BROWN, L.L.P.**
**June 7, 2005**

# TABLE OF CONTENTS



*** MCC - Master Community Covenant**
**MUCC - Mixed-Use Community Covenant**
**EC/TC CC - EC/TC Community Covenant**

<u>SUMMARY OF MUELLER MASTER COMMUNITY COVENANT, MIXED-USE COMMUNITY COVENANT AND EC/TC COMMUNITY COVENANT</u>

**PREPARED BY**
**ARMBRUST & BROWN, L.L.P.**
**June 7, 2005**

This is a summary of significant provisions of the (i) Mueller Master Community Covenant, recorded under Document No. 2004238007 in the Official Public Records of Travis County, Texas (the "**Master Community Covenant**"), (ii) Mueller Mixed-Use Community Covenant, recorded under Document No. 2004238009 in the Official Public Records of Travis County, Texas (the "**Mixed-Use Community Covenant**") and (iii) Mueller EC/TC Community Covenant, recorded under Document No. 2004238008 in the Official Public Records of Travis County, Texas (the "**EC/TC Community Covenant**"). Capitalized terms used but not defined have the meanings ascribed to such terms in the Master Community Covenant, the Mixed-Use Community Covenant and the EC/TC Community Covenant, as applicable.

<u>MASTER COMMUNITY COVENANT</u>

1. <u>Property Subject to the Master Community Covenant</u> [See MCC Preamble]

   (a) Catellus Austin, LLC, the Declarant under the Master Community Covenant (the "**Declarant**"), may subject any portion of the property identified on <u>Exhibit "A"</u> to the Master Community Covenant (the "**Property**") to the terms and provisions of the Master Community Covenant by recording an MCC Annexation Notice in the Official Public Records of Travis County, Texas.

   (b) Portions of the property which have been made subject to the Master Community Covenant are referred to as the "**Community.**"

   (c) **No portion of the Property is subject to the terms and provisions of the Master Community Covenant until a MCC Annexation Notice covering that portion of the Property is filed.**

2. <u>Annexation Process; Hierarchy of Covenants</u> [See MCC Preamble and Chapter 2]

   (a) As described below in the executive summary of the Mixed-Use Community Covenant and the EC/TC Community Covenant, once a portion of the Property has been subjected to the terms and provisions of the Master Community Covenant, the Declarant may (but is not obligated to) also subject such portion of the Property to the terms and provisions of either the Mixed-Use Community Covenant or the EC/TC Community Covenant.

   (b) **No portion of the Property is subject to the terms and provisions of the Mixed-Use Community Covenant or the EC/TC Community Covenant until a Mixed-Use Annexation Notice, EC/TC Annexation Notice or MCC Annexation Notice covering that portion of the Property is filed.**

   (c) During the Development and Sale Period (as defined below), no one other than the Declarant may record any additional covenants or restrictions affecting any portion of the Community without the Declarant and the City of Austin's written consent.

(i) The "**Development and Sale Period**" is the period of time during which the Declarant owns or has the option to acquire at least fifty (50) acres in the Property from the City of Austin, but excluding the Film Society Property and the National Guard Property (each as depicted on Exhibit "C" to the Master Community Covenant), and any developable property on which the Declarant:

(A) 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

(B) is or intends to retain ownership, as opposed to market for sale to a third party.

(d) Summary: the Declarant may (but is not obligated to) subject a portion of the Property to the terms and provisions of the following covenants:

(i) the Master Community Covenant only, or

(ii) the Master Community Covenant and the Mixed-Use Community Covenant; or

(iii) the Master Community Covenant and the EC/TC Community Covenant; or

(iv) the Master Community Covenant, the Mixed-Use Community Covenant and a Supplemental Covenant under the Mixed-Use Community Covenant; or

(v) the Master Community Covenant, the EC/TC Community Covenant and a Supplemental Covenant under the EC/TC Community Covenant.

(e) The terms and provisions of the Mixed-Use Community Covenant and the EC/TC Community Covenant are subordinate to the terms and provisions of the Master Community Covenant.

3. The Master Association – Membership, Board of Directors, Neighborhoods and Voting [See MCC Chapters 3 and 4]

(a) **General Information**

(i) The Mueller Master Community, Inc. (the "**Master Association**") is the entity responsible for the administration of the common affairs of the Community and the management, maintenance, operation and control of any property and facilities that the Master Association holds for the common use or benefit of more than one Unit (as defined below) (the "**Master Community Facilities**").

(ii) A "**Unit**" is a portion of the 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.

(b) **Membership; Allocation of Votes**

(i) Each Person who holds record title to a Unit is an "**Owner.**" Every Owner is automatically a member of the Master Association.

(ii) If a Unit is used for single-family residential use, or may be used for single-family residential use and office purposes, the Unit will be allocated one vote.

(iii) For all other Units, the number of votes allocated to a Unit will be determined by the Declarant at the time an MCC Annexation Notice is filed for the portion of the Community which includes the Unit.

(c) **Neighborhoods and Voting**

(i) Every Unit will be located within a "**Neighborhood.**" A Neighborhood may be comprised of any number of Units and may include Units of more than one type, as well as Units which are not contiguous to one another. Each Neighborhood will consist of either Units entirely located within the portions of the Property which may be made subject to the Mixed-Use Community Covenant (the "**Mixed-Use Tracts**") or within the portions of the Property which may be made subject to the EC/TC Community Covenant (the "**EC/TC Tracts**") (i.e., no single Neighborhood will include Units which are located in the Mixed-Use Tracts and the EC/TC Tracts).

(ii) Each Neighborhood will elect (once every two years) one "**Neighborhood Delegate**" and an alternate Neighborhood Delegate to cast the votes allocated to Units in that Neighborhood on matters requiring a vote of the Owners, and be the official liaison between the Neighborhood and the Board of Directors of the Master Association (the "**Master Association Board**").

(iii) The Master Association Board must call for the first election of a Neighborhood Delegate not later than three years after the first conveyance of a Unit in the Neighborhood to a Person other than the Declarant. Until the first election for a Neighborhood Delegate has been called, each Owner of a Unit in such Neighborhood is considered a Neighborhood Delegate and may Personally cast the vote allocated to such Owner's Unit.

(d) **The Master Association Board**

(i) The Master Association Board consists of seven directors who are appointed as follows:

(A) Three of the seven directors are appointed by a majority of the Board of Directors (the "**Mixed-Use Association Board**") of the Mueller Mixed-Use Community, Inc. (the "**Mixed-Use Association**"), to serve a <u>two-year term</u> unless properly removed.

(B) Three of the seven directors are appointed by a majority of the Board of Directors (the "**EC/TC Association Board**") of the Mueller EC/TC

Community, Inc. (the "**EC/TC Association**"), to serve a <u>two-year term</u> unless properly removed.

(C) One of the seven directors will be appointed, in even numbered years, by the Mixed-Use Association Board, and one of the directors will be appointed, in odd numbered years, by the EC/TC Association Board, in each case to serve a <u>one-year term</u> unless properly removed.

(D) **<u>However</u>, until the Mixed-Use Association and the EC/TC Association have been established (by the filing of articles of incorporation with the Texas Secretary of State), the Declarant will be entitled to appoint, remove and replace, <u>with the City of Austin's consent</u>, all of the directors of the Master Association.**

4. <u>Approvals Required For Construction – The New Construction Council, Modification Committee and Master Design Guidelines</u> [See MCC Chapter 5]

(a) **The New Construction Council**

(i) Until the later of: (i) the expiration of the Development and Sale Period, or (ii) certificates of occupancy have been issued for all Units planned for the Property, the New Construction Council has exclusive authority to review and act upon all applications for review of proposed <u>original</u> Improvements within the Community. A separate body, the "**Modification Committee**" (described below), is responsible for reviewing and acting upon all applications for review and approval of modifications of then-existing Improvements which have been previously reviewed and approved by the New Construction Council.

(ii) The New Construction Council is comprised of five members:

(A) three members will be appointed by the Declarant, with the approval of the City of Austin and

(B) two members will be appointed by the Declarant.

(iii) Each member of the New Construction Council must possess experience in the practice of:, or in the practice of any of the following:

(A) real estate/land development (not including real estate sales);

(B) architecture;

(C) urban design;

(D) land use planning; or

(E) other similar professional design practice.

(iv) The New Construction Council may at any time appoint one or more ex-officio members who may serve in a non-voting, advisory capacity.

(b) **The Modification Committee**

(i) Until the later of: (i) the expiration of the Development and Sale Period, or (ii) certificates of occupancy have been issued for all Units planned for the Property, the Modification Committee will have exclusive authority to review and act upon all applications for review and approval of Improvements to be constructed on a Unit if:

(A) Improvements reviewed and approved by the New Construction Council have been constructed on a Unit;

(B) the City of Austin has issued a certificate of occupancy for such Improvements; and

(C) the application is for the modification, rather than the expansion, of existing Improvements.

(ii) The Modification Committee is comprised of five members appointed by the Master Association Board.

(iii) The Modification Committee may at any time appoint one or more ex-officio members who may serve in a non-voting, advisory capacity.

(c) **The Master Design Guidelines; Approval of Plans and Specifications**

(i) The Master Design Guidelines contain general provisions applicable to all of the Community as well as specific provisions that vary among uses, housing types, Improvements or locations within the Community.

(ii) Unless the Master Design Guidelines provide otherwise, no site work, landscaping, structures, Improvements and other items placed on a Unit, and any alterations to such Improvements, may begin within the Community until a written application is submitted to and approved in writing by the New Construction Council or the Modification Committee, as applicable (the "**Reviewer**").

(iii) The New Construction Council will have the authority to amend the Master Design Guidelines for so long as it has review authority.

(iv) The Reviewer will make a determination on each application after receipt of a completed application with all required information. The Reviewer may:

(A) approve the application with or without conditions;

(B) approve a portion of the application and disapprove other portions; or

(C) or disapprove the application.

(v) No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structure in a manner which complies with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure, except for modifications to the interior of a structure visible from outside of the structure.

(vi) An applicant may appeal any disapproval of its application by the Modification Committee to the Master Association Board. No appeal is available for a decision made by the New Construction Council.

(vii) The Reviewer may grant reasonable variances or adjustments from any conditions and restrictions to overcome practical difficulties and unnecessary hardships; however, no variance may be materially detrimental or injurious to other Units or the Master Community Facilities or deviate substantially from the general intent and purpose of the Master Design Guidelines or any applicable Governing Documents.

(viii) Any Improvements constructed, installed, or taking place in violation of applicable provisions of the Master Community Covenant or in a manner inconsistent with plans approved in accordance with the Master Community Covenant are deemed to be non-conforming. Upon written request from the Master Association, the Master Association Board, or the Reviewer, Owners must, at their own cost and expense, remove any non-conforming structure or Improvement and restore the Unit to substantially the same condition as existed prior to the non-conforming Improvements.

(ix) During the Development and Sale Period, no amendment to or modification of the Master Design Guidelines is effective without prior notice to and the written approval of the Declarant and the City of Austin.

5. Responsibility for Property Within the Community [See MCC Chapters 3, 6 and 9]

(a) Each Owner must maintain its Unit and the landscaping within that portion of any adjacent Master Community Facilities or public right-of-way, street or alley lying between the Unit boundary and any wall, fence or curb located on the Master Community Facilities or public right-of-way, street or alley in a manner consistent with the Governing Documents and standard of conduct, maintenance and other activities which generally prevail throughout the Community (the "**Master Community-Wide Standard**"), unless such maintenance responsibility is assumed by or assigned to the Master Association, the Mixed-Use Association or the EC/TC Association.

(b) The Master Association is responsible for management, operation and control of the Master Community Facilities and all improvements thereon, subject to any covenants set forth in the deed or other instrument transferring the property to the Master Association. The Master Association may enter into leases, licenses or operating agreements with respect to portions of the Master Community Facilities, as the Board deems appropriate. The Master Association may permit use of Master Community Facilities by Persons other than Owners and occupants of Units and may charge use fees, in such amounts as the Master Association Board may establish, for such use.

(c) Certain water quality and water detention facilities (collectively, the "**Facilities**", and singularly, the "**Facility**") constructed within the Community will be maintained by the

Master Association and will be designated as either Master Community Facilities or Special Common Area. This obligation may be assigned or licenses from the Master Association to the Mixed-Use Association or the EC/TC Association. All Owners of portions of the Community served by a Facility will be assessed the costs for the performance, monitoring and repair and remediation of the Facility through assessments which will be levied by the Master Association (or the Mixed-Use Association or EC/TC Association, as applicable, if the obligations have been assigned).

(d) All of the properties and facilities for which the Master Association has responsibility under the Governing Documents, or for which the Master Association otherwise agrees to assume responsibility, regardless of who owns them, are collectively referred to in the Governing Documents as the "**Area of Common Responsibility.**" The Area of Common Responsibility includes all of the Master Community Facilities and Special Common Area (as defined below), and may also include Units or portions of Units and property dedicated to the public, such as public parks or rights-of-way. Initially, the Area of Common Responsibility includes, but is not limited to:

(i) the Master Community Facilities including, but not limited to, all landscaping and other flora, parks, ponds, signage, structures and improvements, including any private streets, and bike and pedestrian pathways/trails, situated upon the Master Community Facilities;

(ii) landscaping, sidewalks, street lights and signage within public rights-of-way within or abutting the Community, except to the extent that responsibility therefor is assigned to the Owners of adjacent Units;

(iii) such portions of any additional property as may be included within the Area of Common Responsibility pursuant to the Master Community Covenant, any Supplemental Covenant, or any covenant or agreement for maintenance entered into by, or otherwise binding on, the Master Association; and

(iv) any property and facilities that the Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Master Association and some or all of its members. The Declarant shall identify any such property and facilities by written notice to the Master Association, and they shall remain part of the Area of Common Responsibility and be maintained by the Master Association until the Declarant revokes such privilege of use and enjoyment by written notice to the Master Association.

(e) Upon resolution of the Master Association Board, the Owners of Units within each Service Area (as defined below) shall be responsible for paying, through Service Area Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Service Area.

(i) "**Service Area**" is an area within the Community where Units share portions of the Master Community Facilities assigned and reserved for the exclusive use or primary benefit of certain Units ("**Special Common Area**") or receive special benefits or services from the Master Association that the Master Association does not provide to all Units within the Community.

(f) Generally, costs associated with maintenance, repair and replacement of the Area of Common Responsibility is a Common Expense to be allocated among all Units as part of the Base Assessment, and all costs associated with maintenance, repair and replacement of the Special Common Area is a Service Area expense assessed against the Service Area to which the Special Common Area is assigned.

6. Community Rules and Regulations [See MCC Chapter 7]

(a) Use and conduct of property within the Community are governed by the Rules attached as Exhibit "D" to the Master Community Covenant.

(i) During the Development and Sale Period, no amendment to or modification of the Rules is effective without prior notice to and the written approval of the Declarant and the City of Austin.

(b) Subject to notice requirements as set forth in the Master Community Covenant, and a Master Association Board member's duty to act in good faith with ordinary care on behalf of the Master Association, the Master Association Board may adopt new Rules that modify, cancel, limit, create exceptions to, or expand existing Rules by majority vote of the directors at any meeting.

(c) The Master Association Board must publish notice of the proposed action in a community newsletter, electronic bulletin board, or by other means that it determines will be reasonably effective in disseminating such notice on a community-wide basis at least thirty (30) days prior to the meeting at which such action is to be considered. A rules change takes effect thirty (30) days after notice has been published.

7. Remedies for Non-Compliance with Governing Documents [See MCC Chapter 8]

(a) The Master Association, the Declarant (during the Development and Sale Period) and every adversely affected Owner has the right to file suit to enforce the Governing Documents, subject to compliance with dispute resolution provisions of the Master Community Covenant.

(b) The Master Association Board may impose certain additional sanctions for violations of the Governing Documents. Certain sanctions require prior notice and a hearing; others do not.

(i) **Sanctions Requiring Prior Notice and Hearing:**

(A) imposition of a reasonable monetary fine, which constitutes a lien upon the violator's Unit;

(B) suspension of an Owner's right to vote (no hearing required if the Owner is more than ninety (90) days delinquent in paying any Base or Special Assessment);

(C) suspension of any Person's right to use any Master Community Facilities (other than facilities to which the public has access) (1) for any period during which any charge against such Owner's Unit remains delinquent;

and (2) for a period not to exceed thirty (30) days for a single violation or for a longer period for any continuing violation (no hearing required if the Owner is more than sixty (60) days delinquent in paying any assessment or other charge owed the Master Association);

(D) suspension of services the Master Association provides to the Owner's Unit (no hearing required if the Owner is more than sixty (60) days delinquent in paying any assessment or other charge owed the Master Association);

(E) exercise of self-help or take action to abate any violation of the Governing Documents in a non-emergency situation (including removing Personal property that violates the Governing Documents);

(F) precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the Governing Documents from continuing or performing any further activities in the Community;

(G) levy of Specific Assessments to cover costs the Master Association incurs in bringing a Unit into compliance with the Master Community-Wide Standard or other requirements under the Governing Documents; and

(H) recording of a notice of violation with respect to any Unit on which a violation exists.

(ii) **Sanctions Not Requiring Prior Notice and Hearing:**

(A) exercise of self-help or taking of action to abate a violation on a Unit in any situation that requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other Persons or their property;

(B) exercise of self-help or taking of action to abate a violation on the Master Community Facilities in any circumstance;

(C) requiring an Owner, at its own expense, to perform maintenance or to remove any structure on such Owner's Unit that is in violation of the Master Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(D) entering any Unit and exercise self-help to remove or cure a violation condition if an Owner fails to take action as required under (C) above within ten (10) days after receipt of written notice to do so; and

(E) bringing suit for monetary damages or an injunction to stop or prevent any violation.

(c) In any action to enforce the Governing Documents, if the Master Association prevails, it is entitled to recover all costs, including attorneys fees and court costs.

8. Provision of Services to Units [See MCC Chapter 10]

(a) The Master Association may arrange for or provide services to Owners and their Units directly or through contracts with third parties. The Master Association may enter into bulk service agreements by which a particular service is provided to all Units or it may offer various services at the option of each Owner, or both.

(b) The Master Association must provide services to Units within any Service Area.

(c) Any group of Owners may petition the Master Association Board to designate their Units as Service Area for the purpose of receiving from the Master Association: (i) special benefits or services that are not provided to all Units; or (ii) a higher level of service than the Master Association otherwise provides.

(d) The Master Association is authorized to provide, or to enter into contracts for the provision of, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services and security monitoring) and related components, including associated infrastructure, equipment, hardware and software to serve the community.

9. Master Association Insurance [See MCC Chapter 11]

(a) The Master Association must obtain and maintain in effect

(i) blanket property insurance policies covering the Master Community Facilities, other portions of the Area of Common Responsibility for which the Master Association has responsibility and any Service Area;

(ii) commercial general liability insurance on the Area of Common Responsibility; and

(iii) workers compensation insurance and employers liability insurance as required by law, all as more fully set forth in the Master Community Covenant.

10. Master Association Finances [See MCC Chapter 12]

(a) **Common Expenses**

(i) Generally, all of the expenses that the Master Association incurs, or expects to incur, in connection with the ownership, maintenance and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners, are considered "**Common Expenses.**" Common Expenses also include operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Master Association Board finds necessary or appropriate.

(b) **Service Area Expenses**

(i) All expenses that the Master Association incurs or expects to incur in connection with the ownership, maintenance and operation of Special Common Areas, or in providing other benefits and services to a Service Area, including any operating reserves or reserves for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "**Service Area Expenses.**"

(c) **Budgeting for Master Association Expenses**

(i) At least sixty (60) days before the beginning of each fiscal year, the Master Association Board must prepare a budget of the estimated Common Expenses for the coming year, including an amount to fund the reserves of the Master Association. In addition, the Master Association Board must prepare separate budgets for each Service Area reflecting the estimated Service Area Expenses that the Master Association expects to incur for the benefit of such Service Area in the coming year.

(d) **Publication of Budget and Assessment; Right to Disapprove**

(i) The Master Association Board must publish notice of each applicable budget with notice of the amount of the Base Assessment and any Service Area Assessment to be levied pursuant to such budgets in a community newsletter, electronic bulletin board, or by other means that the Master Association Board determines will be reasonably effective in disseminating such budgets 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(s).

(ii) The Common Expense budget becomes automatically effective unless disapproved at a meeting by Neighborhood Delegates representing at least seventy-five percent (75%) of the total votes in the Master Association.

(iii) Each Service Area budget becomes automatically effective unless disapproved at a meeting by Owners of at least seventy-five percent (75%) of the Units in the Service Area, except that the right to disapprove a Service Area budget only applies to those line items that are attributable to services or benefits requested by the Service Area and does not apply to any item which the Governing Documents require to be assessed as a Service Area Expense.

(iv) 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 the Neighborhood Delegates as provided for special meetings in the By-Laws, and in the case of a Service Area budget, on petition of Owners of a majority of Units within the Service Area.

(v) The Master Association Board may revise the budget and adjust the Base Assessment or Service Area Assessments anytime during the year, subject to the same publication requirements and rights to disapprove set forth above.

11. Assessments [See MCC Chapter 12]

(a) **Calculation of Base Assessments**

(i) 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, must be set at an equal rate per "**Assessment Unit**" (as discussed below). The rate per Assessment Unit multiplied by the number of Assessment 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 Master Association.

(b) **Assignment of Assessment Units**

(i) If a Unit is used for single-family residential use (e.g., a Unit which is located on a subdivided lot, in a duplex, triplex, townhome or other multi-family residential structure), or for both single-family residential use and office purposes (e.g., a shop house or live/work studio), the Unit will be allocated one (1) Assessment Unit.

(ii) For all other Units, the number of Assessment Units allocated to a Unit will be determined by the Declarant at the time an MCC Annexation Notice is filed for the portion of the Community which includes the Unit. The allocation of Assessment Units to such Units will be made on a consistent and equitable basis taking into consideration, among other things, the relationship of Units to the entire Community. The Declarant's determination as to the allocation of Assessment Units is final and binding; however, the Declarant may modify or amend the number of Assessment Units previously assigned to a Unit if the Improvements actually constructed on the Unit differ substantially from the contemplated Improvements when the allocation was made. In the event of a modification of the Assessment Units allocated to a Unit, the Declarant will file of record an amended notice setting forth the revised Assessment Units attributable to the Unit.

(c) **Calculation of Service Area Assessments**

(i) The total budgeted Service Area Expenses, less any surplus in such Service Area budget from prior years and any income anticipated from sources other than assessments against Units in the Service Area, must be allocated among Assessment Units assigned to Units in the Service Area that are subject to assessment and levied as a "**Service Area Assessment.**" The Declarant may, but is not obligated to, reduce a Service Area Assessment which would otherwise be levied against one or more Units for any year by the payment of a subsidy to the Master Association.

(d) **Special Assessments**

(i) The Master Association may levy "**Special Assessments**" to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Generally, any Special Assessment for Common Expenses or Service Area Expenses that would exceed twenty percent (20%) of the annual budget for the year immediately preceding requires majority approval of the Owners or Neighborhood Delegates, as applicable.

(e) **Specific Assessments**

(i) The Master Association may levy "**Specific Assessments**" against a particular Unit as follows:

(A) to cover the costs of providing services to the Unit upon request of the Owner;

(B) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, so long as notice and a hearing are provided in accordance with the By-Laws; and

(C) to cover the Units pro rate share of any costs that the Master Association incurs in bringing the Service Area of which the Unit is a part into compliance with the provisions of the Governing Documents, so long as notice and a hearing are provided in accordance with the By-Laws.

(f) **Working Capital Assessment**

(i) The first Owner of each Unit other than the Declarant will make a contribution to the working capital of the Master Association in an amount equal to one-sixth ($1/6^{th}$) of the annual Base Assessment attributable to the Unit for that year.

(g) **Exemption for the Declarant from Obligation to Pay Assessments**

(i) The Declarant has no obligation to pay Base Assessments, Special Assessments and/or Service Area Assessments on any Units it owns. This exemption will not apply to any Unit for which the Declarant:

(A) has caused finished improvements to be constructed which may be used for residential, commercial, retail, light industrial, or office use; and

(B) intends to retain ownership, as opposed to market for sale to a third party.

(ii) The Declarant may, but is not obligated to, reduce the Base Assessments, Special Assessments and/or Service Area Assessments which would otherwise be levied against Units for any fiscal year by the payment of a subsidy to the Master Association.

(h) **Liens for Assessments**

(i) Each assessment levied, together with interest (compute from its due date at ten percent (10%) or such higher rate as the Master Association Board may establish), late charges, costs and reasonable attorneys fees, will be secured by a lien granted by the Declarant to the Master Association against each Unit and all Improvements thereon.

(ii) If an Owner fails to pay an Assessment when due, then the Master 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. This notice may be signed by one of the officers of the Master Association, a copy will be mailed to the Owner of the Unit described in the notice, and the lien will be recorded.

(iii) The Master Association's lien, when delinquent, may be enforced by suit, judgment and judicial foreclosure.

(iv) 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 extinguishes the lien as to any installments of such assessments due prior to the foreclosure.

(i) **Property Exempt from Assessments**

(i) The following property is exempt from payment of Base Assessments, Service Area Assessments and Special Assessments:

(A) all Master Community Facilities and any property owned by the Declarant included in the Area of Common Responsibility;

(B) any property dedicated to and accepted by any governmental authority or public utility; and

(C) the Film Society Property and the National Guard Property, subject to termination from exemption as provided in the Master Community Covenant.

12. Easements [See MCC Chapter 13]

(a) Every Owner has a nonexclusive right and easement of use, access and enjoyment in and to the Master Community Facilities, subject to certain exceptions as set forth in the Master Community Covenant.

(b) The Master Association, and the Declarant during the Development and Sale Period, together with the designees of each, have a perpetual, nonexclusive easement over all of the Community for ingress, egress, installation, monitoring, replacing, repairing and maintaining:

(i) cable television systems, master television antenna systems, or other devices for sending or receiving data or other electronic signals;

(ii) security and similar systems;

(iii) roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage and all utilities;

(iv) systems of drainage and water flow across the Community; and

(v) otherwise as may be necessary for development of the Community and to carry out the Master Association's maintenance responsibilities.

(c) The Declarant reserves for itself and its designees certain other easements, including easements:

(i) over the Master Community Facilities for the purposes of enjoyment, use, access and development of the Property and the Community (i.e., to build roads and install utilities);

(ii) over the Community as necessary to enable the Master Association to fulfill its maintenance responsibilities;

(iii) granting any member of the Master Association Board or its designee emergency access to Units to avoid imminent threat of Personal injury or property damage;

(iv) to enter upon lakes, ponds and streams located within the Area of Common Responsibility generally for maintenance thereof;

(v) over each portion of the Community for stormwater drainage and runoff; and

(vi) over the Master Community Facilities for purposes of holding certain special events (e.g., parades, sporting events, cultural/entertainment events, etc.).

(d) The Declarant reserves the right and power to grant and record specific easements reasonably necessary to develop the Property and the Community.

13. <u>The Declarant's Special Rights</u> [See MCC Chapters 16 and 17]

(a) **Annexation**

(i) The Declarant may subject any portion of the Property to the terms of the Master Community Covenant by recording an MCC Annexation Notice describing the additional property to be submitted and specifically subjecting it to the terms of the Master Community Covenant.

(b) **Withdrawal of Property**

(i) During the Development and Sale Period, and only if approved by the City of Austin, the Declarant may amend the Master Community Covenant to remove any unimproved portion of the Community from the coverage of the Master Community Covenant.

(c) **Assignment of the Declarant's Rights**

(i) The Declarant may transfer any or all of its rights and obligations under the Master Community Covenant or in the By-Laws, in whole or in part, to other Persons provided that such transfer is approved in advance by the City of Austin. Any such transfer must be in a recorded instrument signed by the Declarant.

(d) **Marketing Activities**

(i) The Declarant and its designees may construct, use and maintain on the Master Community Facilities as it deems required, convenient or incidental to the construction or sale of Units.

(e) **Replatting and Improvements**

(i) During the Development and Sale Period, the Declarant and the Master Association, and their designees, may enter and use the Master Community Facilities to make, construct and install improvements to the Master Community Facilities.

(ii) During the Development and Sale Period, the Declarant may replat any portion of the Property or the Community and convert Units it owns into Master Community Facilities.

14. Dispute Resolution [See MCC Chapter 18]

(a) The Master Community Covenant contains detailed dispute resolution provisions governing disputes between the Declarant, the Master Association and its officers, directors and committee members, all Persons subject to the Master Community Covenant and any Person not otherwise subject to the Master Community Covenant but who agrees to submit to such dispute resolution provisions.

15. Changes in the Master Community Facilities [See MCC Chapter 19]

(a) The Master Association may dedicate portions of the Master Community Facilities to the City of Austin, or to any other local, state or federal governmental or quasi-governmental entity or may transfer or convey Master Community Facilities:

(i) if Master Community Facilities other than Special Common Area, upon the written direction of Neighborhood Delegates representing at least sixty-seven percent (67%) of the total votes in the Master Association, and the Declarant during the Development and Sale Period; and

(ii) if Special Common Area, upon written approval of Owners of at least sixty-seven percent (67%) of the Units to which such Special Common Area is assigned, and the Declarant during the Development and Sale Period.

16. Amendment of the Master Community Covenant [See MCC Chapter 20]

(a) **By the Declarant**

(i) The Declarant may unilaterally amend the Master Community Covenant if such amendment is necessary to:

(A) bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination with which it is in conflict;

(B) enable any reputable title insurance company to issue title insurance coverage for any portion of the Community;

(C) enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (e.g., Fannie Mae) to make, purchase, insure or guarantee mortgage loans on the Units; or

(D) satisfy the requirements of any local, state or federal governmental agency.

(ii) During the Development and Sale Period, the Declarant may unilaterally amend the Master Community Covenant for any other purpose:

(A) with the prior written consent of the City of Austin and

(B) with the prior written consent of Seton (so long as Seton or any affiliate of Seton is the owner of Lot 1A1) if such amendment will materially and adversely affect the rights or responsibilities of Seton (which consent will not be unreasonably withheld, conditioned or delayed).

(b) **By the Owners**

(i) The Master Community Covenant may generally be amended by the Owners only by the affirmative vote or written consent of the Owners representing seventy-five percent (75%) of the total votes in the Master Association. In addition, during the Development and Sale Period, any such amendment also requires the written consent of the Declarant and the City of Austin.

## MIXED-USE AND EC/TC COMMUNITY COVENANTS

*** **NOTE:** While the Mixed-Use Community Covenant and the EC/TC Community Covenant (together, the "**Subordinate Covenants**") will each apply to a different portion of the Property within the Community, the terms and provisions of the Subordinate Covenants are substantially the same. As such, where possible, this summary will discuss the Subordinate Covenants together. Where there are significantly different or additional provisions in one of the covenants that are not in the other, these differences or additional provisions will be highlighted and discussed herein.

1. Property Subject to the Subordinate Covenants [See MUCC and EC/TC CC Preamble]

   (a) Catellus Austin, LLC is the Declarant under both the Master Community Covenant and the Subordinate Covenants, and may subject any portion of the property identified on Exhibit "A" to the Mixed-Use Community Covenant (the "**Mixed-Use Property**") or the EC/TC Community Covenant (the "**EC/TC Property**") to the terms and provisions of the Mixed-Use Community Covenant or the EC/TC Community Covenant by recording an MCC Annexation Notice in the Official Public Records of Travis County, Texas.

   (b) Portions of the Mixed-Use Property which have been made subject to the Mixed-Use Community Covenant are referred to as the "**Mixed-Use Community.**"

   (c) Portions of the EC/TC Property which have been made subject to the Mixed-Use Community Covenant are referred to as the "**EC/TC Community.**"

2. Annexation; Hierarchy of Covenants [See MUCC and EC/TC CC Preamble]

   (a) As described above in the executive summary of the Master Community Covenant, once a portion of the Property has been subjected to the terms and provisions of the Master Community Covenant, the Declarant may (but is not obligated to) also subject such portion of the Property to the terms and provisions of either the Mixed-Use Community Covenant or the EC/TC Community Covenant.

   (b) **No portion of the Mixed-Use Property or the EC/TC Property is subject to the terms and provisions of the Mixed-Use Community Covenant or the EC/TC Community Covenant, as applicable, until a MCC Annexation Notice, Mixed-Use Annexation Notice of EC/TC Annexation Notice covering that portion of the Mixed-Use Property or EC/TC Property is filed.**

   (c) During the Development and Sale Period (as defined below), no one other than the Declarant may subject any portion of the Community to the terms and provisions of the Mixed-Use Community Covenant or the EC/TC Community Covenant without the Declarant and the City of Austin's written consent.

   (d) The terms and provisions of the Mixed-Use Community Covenant and the EC/TC Community Covenant are subordinate to the terms and provisions of the Master Community Covenant.

3. Duties of the Subordinate Associations [See MUCC and EC/TC CC Article 4]

(a) **Insurance**

(i) The Mixed-Use Association and the EC/TC Association (as applicable) must obtain and maintain in effect policies of insurance that, in the opinion of the Mixed-Use Board and the EC/TC Board (as applicable), are reasonably necessary or appropriate to carry out the Mixed-Use Association's and the EC/TC Association's functions (as applicable). Such policies expressly include commercial crime insurance, including fidelity insurance covering all individuals or entities responsible for handling funds.

(b) **Rules and Bylaws**

(i) The Mixed-Use Association and the EC/TC Association (as applicable) may establish (and amend or repeal and re-enact, in its discretion) the Bylaws and such rules not in conflict with the Mixed-Use Community Covenant or the EC/TC Community Covenant (as applicable) and the Governing Documents as it deems proper.

(c) **Records**

(i) The Mixed-Use Association and the EC/TC Association (as applicable) must keep books and records of their affairs.

(d) **Other Duties**

(i) The Mixed-Use Association and the EC/TC Association have and perform the following other duties:

(A) to accept, own, operate and maintain all Mixed-Use Common Area and EC/TC Common Area (as applicable), together with all improvements located thereon;

(B) to maintain in good repair the Mixed-Use Common Area and EC/TC Common Area (as applicable), and all lands, improvements, security devices, landscaping and other property owned by or leased to the Mixed-Use Association and the EC/TC Association (as applicable) including, without limitation, all sidewalks, pathways, private streets, driveways and fences located within the Mixed-Use Community and the EC/TC Community (as applicable);

(C) to pay all real and personal property taxes and other taxes and assessments levied upon the Mixed-Use Common Area and EC/TC Common Area (as applicable) to the extent that such taxes and assessments are not levied directly upon the Owners; and

(D) to accept, operate and maintain all Special Common Area assigned to the Mixed-Use Association and the EC/TC Association (as applicable).

4. Powers of the Subordinate Associations [See MUCC and EC/TC CC Article 4]

(a) **Right of Entry and Enforcement**

(i) The Mixed-Use Association and the EC/TC Association (as applicable) may enter any Mixed-Use Common Area or EC/TC Common Area (as applicable) at any time, and any Unit or any Improvement thereon without notice (in an emergency) or after twenty-four (24) hours written notice (in a non-emergency) for the purpose of enforcing the Mixed-Use Restrictions or the EC/TC Restrictions (as applicable) or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Mixed-Use Restrictions or the EC/TC Restrictions (as applicable).

(b) **Conveyances**

(i) The Mixed-Use Association and the EC/TC Association (as applicable) may generally convey Mixed-Use Common Area or EC/TC Common Area (as applicable) for the purpose of constructing improvements or facilities thereon.

(c) **Manager**

(i) The Mixed-Use Association and the EC/TC Association (as applicable) may generally retain and pay for the services of a Manager to manage and operate the Mixed-Use Association or the EC/TC Association (as applicable), including the Mixed-Use Common Area or EC/TC Common Area (as applicable).

(d) **Legal and Accounting Services**

(i) The Mixed-Use Association and the EC/TC Association (as applicable) may generally retain and pay for legal and accounting services.

(e) **Common Area Services**

(i) The Mixed-Use Association and the EC/TC Association (as applicable) may pay for water, sewer, garbage removal, landscaping, gardening and all other utilities or services to and maintenance of the Mixed-Use Common Area or EC/TC Common Area (as applicable).

(f) **Construction on Common Area**

(i) The Mixed-Use Association and the EC/TC Association (as applicable) may construct new Improvements on or additions to the Mixed-Use Common Area or EC/TC Common Area (as applicable).

(g) **Contracts; Property Ownership**

(i) The Mixed-Use Association and the EC/TC Association (as applicable) may generally enter into contracts and acquire, own and dispose of property.

(h) **Financial Accounts**

(i) The Mixed-Use Association and the EC/TC Association (as applicable) may establish operating and other accounts for the purpose of receiving and depositing Assessments.

(i) **Other Services and Properties**

(i) The Mixed-Use Association and the EC/TC Association (as applicable) may generally retain and pay for other property and services, and pay any other taxed or Assessments that the Mixed-Use Association and the EC/TC Association (as applicable) is required or permitted to secure or pay for.

5. The Subordinate Associations – Membership, Board of Directors, Neighborhoods and Voting [See MUCC and EC/TC CC Article 4]

(a) **Membership; Allocation of Votes**

(i) Every Owner of a Unit in the Mixed-Use Community is automatically a member of the Mixed-Use Association.

(ii) Every Owner of a Unit in the EC/TC Community is automatically a member of the EC/TC Association.

(iii) In both the Mixed-Use Community and the EC/TC Community, if a Unit is used for single-family residential use, or may be used for single-family residential use and office purposes, the Unit will be allocated one vote.

(iv) For all other Units, the number of votes allocated to a Unit will be determined by the Declarant at the time an MCC Annexation Notice is filed for the portion of the Mixed-Use Community or EC/TC Community which includes the Unit.

(b) **Voting; Board of Directors**

(i) Mixed-Use Community

(A) Neighborhood Delegates will not vote on matters to be voted upon by Owners under the Mixed-Use Community Covenant. Under the Mixed-Use Community Covenant, Owners within the Mixed-Use Community will vote by individually casting the votes allocated to each Owner's Unit. However, Neighborhood Delegates who represent Neighborhoods within the Mixed-Use Community will elect certain members of the Mixed-Use Association Board as set forth below.

(B) Some members of the Mixed-Use Association Board are elected by the Declarant without the City of Austin's Consent, some are elected by the Declarant with the City of Austin's consent, and some are elected by Neighborhood Delegates who represent Neighborhoods within the Mixed-Use Community, all as set forth in the table on the following page:

**TABLE 1 - SUMMARY OF ELECTION TRANSITION: MIXED-USE ASSOCIATION BOARD**

| | Initial Board Elected By: (3 Members) | Upon the Issuance of 25% of Certificates of Occupancy for All Units Planned for the Mixed-Use Property, Board Members Elected By: (5 Members) | Upon the Issuance of 50% of Certificates of Occupancy for All Units Planned for the Mixed-Use Property, Board Members Elected By: (5 Members) | Upon the Issuance of 75% of Certificates of Occupancy for All Units Planned for the Mixed-Use Property, Board Members Elected By: (7 Members) | Upon the Issuance of 90% of Certificates of Occupancy for All Units Planned for the Mixed-Use Property, Board Members Elected By: (7 Members) | Upon the Expiration of the Mixed-Use Development and Sale Period, Board Members Elected By: (7 Members) |
|---|---|---|---|---|---|---|
| **Member #1** | Declarant | Declarant | Declarant | Declarant | Declarant | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) |
| **Member #2** | Declarant | Declarant | Declarant | Declarant | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) |
| **Member #3** | Declarant (with City of Austin's consent) | Declarant | Declarant | Declarant | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) |
| **Member #4** | | Declarant (with City of Austin's consent) | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) | Declarant | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) |
| **Member #5** | | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) |
| **Member #6** | | | | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) |
| **Member #7** | | | | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) | Members of the Mixed-Use Association (by vote of Neighborhood Delegates) |

(ii) EC/TC Community

(A) Neighborhood Delegates will not vote on matters to be voted upon by Owners under the EC/TC Community Covenant. Under the EC/TC Community Covenant, Owners within the EC/TC Community will vote by individually casting the votes allocated to each Owner's Unit.

(B) Some members of the EC/TC Association Board are elected by the Declarant without the City of Austin's Consent, some are elected by the Declarant with the City of Austin's consent, and some are elected by the Members of the EC/TC Association, all as set forth in the table below:

**TABLE 1 - SUMMARY OF ELECTION TRANSITION: EC/TC ASSOCIATION BOARD**

| | Initial Board Elected By: (3 Members) | Upon the Issuance of 25% of Certificates of Occupancy for All Units Planned for the EC/TC Property, Board Members Elected By: (5 Members) | Upon the Issuance of 50% of Certificates of Occupancy for All Units Planned for the EC/TC Property, Board Members Elected By: (5 Members) | Upon the Issuance of 75% of Certificates of Occupancy for All Units Planned for the EC/TC Property, Board Members Elected By: (7 Members) | Upon the Issuance of 90% of Certificates of Occupancy for All Units Planned for the EC/TC Property, Board Members Elected By: (7 Members) | Upon the Expiration of the EC/TC Development and Sale Period, Board Members Elected By: (7 Members) |
|---|---|---|---|---|---|---|
| **Member #1** | Declarant | Declarant | Declarant | Declarant | Declarant | Members of the EC/TC Association |
| **Member #2** | Declarant | Declarant | Declarant | Declarant | Members of the EC/TC Association | Members of the EC/TC Association |
| **Member #3** | Declarant (with City of Austin's consent) | Declarant | Declarant | Declarant | Members of the EC/TC Association | Members of the EC/TC Association |
| **Member #4** | | Declarant (with City of Austin's consent) | Members of the EC/TC Association | Declarant | Members of the EC/TC Association | Members of the EC/TC Association |
| **Member #5** | | Members of the EC/TC Association | Members of the EC/TC Association | Members of the EC/TC Association | Members of the EC/TC Association | Members of the EC/TC Association |
| **Member #6** | | | | Members of the EC/TC Association | Members of the EC/TC Association | Members of the EC/TC Association |
| **Member #7** | | | | Members of the EC/TC Association | Members of the EC/TC Association | Members of the EC/TC Association |

6. General Restrictions [See MUCC and EC/TC CC Article 2]

(a) The Subordinate Covenants provide for customary general restrictions regarding the following matters:

(i) hazardous activities;

(ii) activities which would affect insurance rates;

(iii) mining and drilling;

(iv) noise;

(v) animals – household pets;

(vi) rubbish and debris;

(vii) maintenance;

(viii) antennae;

(ix) signs;

(x) tanks;

(xi) temporary structures; and

(xii) unsightly articles and vehicles.

7. Construction Restrictions [See MUCC and EC/TC CC Article 3]

(a) Any and all Improvements erected, placed, constructed, painted, altered, modified or remodeled on any portion of the Mixed-Use Community or the EC/TC Community must comply with the requirements of the Design Guidelines, unless a variance is obtained pursuant to the Master Covenant.

(b) No Improvements will be constructed upon any Unit without the prior written approval of the New Construction Council.

(c) Unless otherwise permitted pursuant to 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, will be performed only with the prior written approval of the New Construction Council.

8. Subordinate Association Finances [See MUCC and EC/TC CC Article 5]

(a) **Common Expenses**

(i) Generally, all of the expenses that the Mixed-Use Association and the EC/TC Association (as applicable) incurs, or expects to incur, in connection with the ownership, maintenance and operation of the Mixed-Use Common Area and the

EC/TC Common Area (as applicable), and otherwise for the general benefit of the Owners, are considered "**Common Expenses.**" Common Expenses also include operating reserves and reserves for repair and replacement of capital items within the Mixed-Use Common Area and the EC/TC Common Area (as applicable) as the Mixed-Use Association Board and the EC/TC Association Board (as applicable) finds necessary or appropriate.

(b) **Budgeting for Master Association Expenses**

(i) At least sixty (60) days before the beginning of each fiscal year, the Mixed-Use Association Board and the EC/TC Association Board each must prepare a budget of the estimated Common Expenses for the coming year, including an amount to fund its reserves.

(c) **Publication of Budget and Assessment; Right to Disapprove**

(i) The Mixed-Use Association Board and the EC/TC Association Board must publish notice of each applicable budget with notice of the amount of the Base Assessment to be levied pursuant to such budgets in a community newsletter, electronic bulletin board, or by other means that the Mixed-Use Association Board and the EC/TC Association Board determines will be reasonably effective in disseminating such budgets 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(s).

(ii) Each Common Expense budget becomes automatically effective unless disapproved at a meeting by Owners representing at least seventy-five percent (75%) of the total votes in the Mixed-Use Association or the EC/TC Association (as applicable).

(iii) 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 By-Laws.

(iv) The Mixed-Use Association Board and the EC/TC Association Board (as applicable) 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 above.

9. <u>Assessments</u> [See MUCC and EC/TC CC Article 5]

(a) **Calculation of Base Assessments**

(i) 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, must be set at an equal rate per "**Assessment Unit**" (as discussed below). The rate per Assessment Unit multiplied by the number of Assessment 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 Master Association.

(b) **Assignment of Assessment Units**

(i) If a Unit is used for single-family residential use (e.g., a Unit which is located on a subdivided lot, in a duplex, triplex, townhome or other multi-family residential structure), or for both single-family residential use and office purposes (e.g., a shop house or live/work studio), the Unit will be allocated one (1) Assessment Unit.

(ii) For all other Units, the number of Assessment Units allocated to a Unit will be determined by the Declarant at the time an MCC Annexation Notice is filed for the portion of the Community which includes the Unit. The allocation of Assessment Units to such Units will be made on a consistent and equitable basis taking into consideration, among other things, the relationship of Units to the entire Community. The Declarant's determination as to the allocation of Assessment Units is final and binding; however, the Declarant may modify or amend the number of Assessment Units previously assigned to a Unit if the Improvements actually constructed on the Unit differ substantially from the contemplated Improvements when the allocation was made. In the event of a modification of the Assessment Units allocated to a Unit, the Declarant will file of record an amended notice setting forth the revised Assessment Units attributable to the Unit.

(c) **Special Assessments**

(i) The Mixed-Use Association Board and the EC/TC Association Board (as applicable) may levy "**Special Assessments**" to cover Common Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Generally, any Special Assessment for Common Expenses that would exceed twenty percent (20%) of the annual budget for the year immediately preceding requires majority approval of the votes in the Mixed-Use Association or the EC/TC Association (as applicable).

(d) **Specific Assessments**

(i) The Mixed-Use Association Board and the EC/TC Association Board (as applicable) may levy "**Specific Assessments**" against a particular Unit to cover costs incurred in bringing the Unit into compliance with the Mixed-Use Restrictions or the EC/TC Restrictions (as applicable), so long as notice and a hearing are provided in accordance with the By-Laws.

(e) **Working Capital Assessment**

(i) The first Owner of each Unit other than the Declarant will make a contribution to the working capital of the Mixed-Use Association or the EC/TC Association (as applicable) in an amount equal to one-sixth ($1/6^{th}$) of the annual Base Assessment attributable to the Unit for that year.

(f) **Exemption for the Declarant from Obligation to Pay Assessments**

(i) The Declarant has no obligation to pay Base Assessments and/or Special Assessments on any Units it owns. This exemption will not apply to any Unit for which the Declarant:

(A) has caused finished improvements to be constructed which may be used for residential, commercial, retail, light industrial, or office use; and

(B) intends to retain ownership, as opposed to market for sale to a third party.

(ii) The Declarant may, but is not obligated to, reduce the 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 or the EC/TC Association (as applicable).

(g) **Liens for Assessments**

(i) Each assessment levied, together with interest (compute from its due date at ten percent (10%) or such higher rate as the Mixed-Use Association Board or the EC/TC Association Board (as applicable) may establish), late charges, costs and reasonable attorneys fees, will be secured by a lien granted by the Declarant to the Mixed-Use Association or the EC/TC Association (as applicable) against each Unit and all Improvements thereon.

(ii) If an Owner fails to pay an Assessment when due, then the Mixed-Use Association or the EC/TC Association (as applicable) 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. This notice may be signed by one of the officers of the Mixed-Use Association or the EC/TC Association (as applicable), a copy will be mailed to the Owner of the Unit described in the notice, and the lien will be recorded.

(iii) The Mixed-Use Association's lien and the EC/TC Association's lien (as applicable), when delinquent, may be enforced by suit, judgment and judicial foreclosure.

(iv) 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 extinguishes the lien as to any installments of such assessments due prior to the foreclosure.

(h) **Property Exempt from Assessments**

(i) The following property is exempt from payment of Base Assessments and Special Assessments:

(A) all Mixed-Use Common Area, EC/TC Common Area any property included within the Area of Common Responsibility; and

(B) any property dedicated to and accepted by any governmental authority or public utility.

10. Easement [See MUCC and EC/TC CC Article 4]

(a) Every Owner has a nonexclusive right and easement of use, access and enjoyment in and to the Mixed-Use Common Area and the EC/TC Common Area (as applicable), subject to certain exceptions as set forth in the Mixed-Use Community Covenant and the EC/TC Community Covenant.

11. The Declarant's Special Rights [See MUCC and EC/TC CC Article 7]

(a) **Annexation**

(i) The Declarant may subject any portion of the Property to the terms of the Mixed-Use Community Covenant or the EC/TC Community Covenant by recording a Mixed-Use Annexation Notice, EC/TC Annexation Notice or MCC Annexation Notice describing the additional property to be submitted and specifically subjecting it to the terms of the Mixed-Use Community Covenant or the EC/TC Community Covenant. The Declarant may also cause an annexation notice to be filed covering a portion of the Mixed-Use Property or the EC/TC Property (as applicable) for the purpose of encumbering such property with the EC/TC Community Covenant or the Mixed-Use Community Covenant (as applicable) and any previously recorded Supplemental Covenant.

(b) **Addition of Property**

(i) Declarant may add additional land to the Mixed-Use Property and the EC/TC Property provided such land is included with the Property pursuant to the Master Covenant. To do this, Declarant must record in the Official Public Records of Travis County, Texas a notice of addition of land describing the additional property to be submitted and including a statement that such land will be considered Mixed-Use Property or EC/TC Property (as applicable) and that, upon the further filing of an Mixed-Use Annexation Notice, EC/TC Annexation Notice or MCC Annexation Notice, it will be subject to the terms of the Mixed-Use Community Covenant or the EC/TC Community Covenant (as applicable).

(c) **Supplemental Covenants**

(i) The Declarant may record one or more Supplemental Covenants applicable to all or a portion of the Mixed-Use Property or the EC/TC Property and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for such property.

(d) **Assignment of the Declarant's Rights**

(i) The Declarant may transfer any or all of its rights and obligations under the Mixed-Use Community Covenant and the EC/TC Community Covenant or in the By-Laws, in whole or in part, to other Persons provided that such transfer is approved in advance by the City of Austin. Any such transfer must be in a recorded instrument signed by the Declarant.

(e) **Marketing Activities**

(i) The Declarant and its designees may construct, use and maintain upon portions of the Mixed-Use Community and the EC/TC Community such facilities and activities as it deems required, convenient or incidental to the construction or sale of Units.

(f) **Replatting and Improvements**

(i) During the Development and Sale Period, the Declarant, the Mixed-Use Association and the EC/TC Association (as applicable), and their designees, may enter and use the Mixed-Use Community and the EC/TC Community to make, construct and install improvements to the Mixed-Use Common Area and the EC/TC Common Area.

(ii) During the Development and Sale Period, the Declarant may replat any portion of the Mixed-Use Property, the EC/TC Property, the Mixed-Use Community or the EC/TC Community and convert Units it owns into Mixed-Use Common Area and EC/TC Common Area.

12. <u>Amendment of the Subordinate Covenants</u> [See MUCC and EC/TC CC Article 8]

(a) **By the Declarant**

(i) The Declarant may unilaterally amend the Subordinate Covenants if such amendment is necessary to:

(A) bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination with which it is in conflict;

(B) enable any reputable title insurance company to issue title insurance coverage for any portion of the Mixed-Use Community or the EC/TC Community (as applicable);

(C) enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (e.g., Fannie Mae) to make, purchase, insure or guarantee mortgage loans on the Units; or

(D) satisfy the requirements of any local, state or federal governmental agency.

(ii) During the Development and Sale Period, the Declarant may <u>unilaterally</u> amend the Subordinate Covenants for any other purpose:

(A) with the prior written consent of the City of Austin and

(B) with the prior written consent of Seton (so long as Seton or any affiliate of Seton is the owner of Lot 1A1) if such amendment will materially and adversely affect the rights or responsibilities of Seton (which consent will not be unreasonably withheld, conditioned or delayed).

(b) **By the Owners**

(i) The Subordinate Covenants may generally be amended by the Owners only by the affirmative vote or written consent of the Owners representing seventy-five percent (75%) of the total votes in the Mixed-Use Association or the EC/TC Association (as applicable). In addition, during the Development and Sale Period, any such amendment also requires the written consent of the Declarant and the City of Austin.