

ATTACHMENT 2

BYLAWS OF MONTECILLO COMMERCIAL ASSOCIATION, INC.

Notwithstanding anything to the contrary in these Bylaws, a number of provisions are modified by the Declarant's reservations in that certain Montecillo Master Covenant [Commercial], recorded in the Official Public Records of El Paso County, Texas (the "Covenant"), including the number, qualification, appointment, removal, and replacement of Directors.

ARTICLE I NAME, PRINCIPAL OFFICE, AND DEFINITIONS

Section 1.1. Name. The name of the Association shall be Montecillo Commercial Association, Inc., a Texas nonprofit corporation (hereinafter referred to as the "Association") which shall be the property owner's association governing the Montecillo Commercial community (the "Community") located in El Paso County, Texas which is subject to that certain Montecillo Master Covenant [Commercial], recorded in the Official Public Records of El Paso County, Texas (the "Covenant").

Section 1.2. Principal Office. The principal office of the Association shall be located in El Paso County, Texas.

Section 1.3. Definitions. Capitalized terms used herein but not defined in these Bylaws shall have the same meaning as set forth in the Covenant, as the same may be amended and supplemented from time to time, unless the context indicates otherwise.

ARTICLE II MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

Section 2.1. Membership. Each Owner of a Condominium Unit or Lot is a mandatory member ("Member") of the Association, as more fully set forth in the Covenant.

Section 2.2. Place of Meetings. Meetings of the Association shall be held where designated by the Board, either within the Community or as convenient as possible and practical.

Section 2.3. Majority. As used in these Bylaws, the term "Majority" shall mean more than half.

MONTECILLO COMMERCIAL ASSOCIATION, INC.
BYLAWS

Section 2.4. Annual Meetings. An annual meeting of the Association will be held once during each twelve (12) month period on a date and at a time determined by the Board.

At each annual meeting, at a minimum, the Members are required to vote on whether: (a) to re-characterize any excess income to the Association as a return of capital to be applied to the following year's expenses or to be refunded to the Association's reserves; or (b) to return such excess income to the Members. If at least a Majority of the Members vote in favor of re-characterizing excess income as a return of capital, then such amounts shall be applied as approved either to the following year's expenses or refunded to the Association's reserves.

Section 2.5. Special Meetings. It is the duty of the president to call a special meeting of the Association if directed to do so by a majority of the Board or by a petition signed by Members representing at least forty percent (40%) of the votes in the Association. The meeting must be held within thirty (30) days after the Board resolution or receipt of petition. The notice of any special meeting must state the time, place, and purpose of the meeting. No business, except the purpose stated in the notice of the meeting, may be transacted at a special meeting.

Section 2.6. Notice of Meetings. At the direction of the Board, written notice of meetings of the Association will be given to each Member at least ten (10) days but not more than sixty (60) days prior to the meeting. Notices of meetings will state the date, time, and place the meeting is to be held. Notices will identify the type of meeting as annual or special, and will state the particular purpose of a special meeting. Notices may also set forth any other items of information deemed appropriate by the Board. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at such party's address as it appears on the records of the Association, with postage prepaid.

Section 2.7. Waiver of Notice. Waiver of notice of a meeting by a Member shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting, either before or after such meeting. Attendance at a meeting shall be deemed waiver by such Person of notice of the time, date, and place thereof, unless such Person specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall be deemed waiver of notice of all business transacted at such meeting unless an objection is raised based on the lack of proper notice before the business is put to a vote.

Section 2.8. Quorum. Except as provided in these Bylaws or in the Covenant, the presence of Members representing at least ten percent (10%) of the votes in the Association constitute a quorum.

Section 2.9. Conduct of Meetings. The President or any other person appointed by the Board shall preside over all Association meetings, and the Secretary, or the Secretary's designee, 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.

MONTECILLO COMMERCIAL ASSOCIATION, INC.
BYLAWS

Section 2.10. 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. Except as otherwise provided in the Covenant, action may be taken at any legally convened meeting of the Members upon the affirmative vote of the Members having a Majority of the total votes present at such meeting. The person holding legal title to a Condominium Unit or Lot shall be entitled to cast the vote allocated to such Condominium Unit or Lot and not the person merely holding beneficial title to the same unless such right is expressly delegated to the beneficial Owner thereof in writing.

Section 2.11. Proxies. On any matter as to which a Member is entitled personally to cast the vote for his Condominium Unit or Lot, such vote may be cast in person (or through any other method of exercising the Member's voting rights, if authorized pursuant to Article III of the Covenant) or by proxy, subject to the limitations of Applicable Law relating to use of general proxies and subject to any specific provision to the contrary in the Covenant or these Bylaws. 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 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 ninety (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 Condominium Unit or Lot for which it was given.

Section 2.12 Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote if written consent specifically authorizing the proposed action is signed by the Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within sixty (60) days after receipt of the earliest dated consent, dated, and delivered to the Association at its principal place of business in Texas. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE III
BOARD OF DIRECTORS

Section 3.1. Authority; Number of Directors.

(a) The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. The number of Directors shall be fixed by the Board of Directors from time to time. The initial Directors shall be three (3) in number and shall be those Directors named in the Certificate. The initial Directors shall serve until their successors are elected and qualified.

(b) At such time as Declarant no longer has the right to appoint and remove any members of the Board as provided in the Covenant, the President of the Association will thereupon call a meeting of the Members of the Association wherein the Members will elect one (1) Director for a three (3) year term, one (1) Director for a two (2) year term, and one (1) Director for a one (1) year term. Upon expiration of the term of a Director elected by the Members as provided herein, his or her successor will be elected by the Members for a term of two (2) years.

It is not presently intended that the majority of the Community will be restricted to residential use. However, in the event it is determined that Section 209.00591 of the Texas Property Code applies to the Community and/or the Association, then on or before the tenth (10th) anniversary of the date this Declaration is Recorded, or sooner as determined by Declarant, the Board will call a meeting of Members of the Association for the purpose of electing one-third (1/3) of the Board (the "Initial Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds (2/3) of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.

(c) A Director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed.

(d) Until such time as Declarant no longer has the right to appoint and remove any members of the Board of Directors as provided in the Covenant, Directors need not be Members of the Association. At such time as Declarant no longer has the right to appoint and remove all members of the Board, all of the Directors must be Members. 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 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 as set forth herein.

MONTECILLO COMMERCIAL ASSOCIATION, INC.
BYLAWS

Section 3.2. Compensation. The Directors shall serve without compensation for such service.

Section 3.3. Removal of Directors and Vacancies. Any Director elected by the Members may be removed, with or without cause, by the vote of Members holding a Majority of the votes entitled to be cast in the 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 elected by the Members. The Director so appointed will serve for the unexpired term of the Director removed pursuant to this Section. In the event of the death, disability, or resignation of a Director, the remaining Board shall declare a vacancy and shall appoint a successor to fill the vacancy for the remainder of such Director's term.

ARTICLE IV MEETINGS OF DIRECTORS

Section 4.1. Definition of Board Meetings. A meeting of the Board means a deliberation between a quorum of the Board, or between a quorum of the Board and another person, during which Association business is considered and the Board takes formal action.

Section 4.2. Regular Meetings. Regular meetings of the Board shall be held annually or such other frequency as determined by the Board, at such place and hour as may be fixed from time to time by resolution of the Board.

Section 4.3. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days' notice to each Director.

Section 4.4. 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.

Section 4.5. Quorum. A Majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a Majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors. 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 five (5) nor more than thirty (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.

MONTECILLO COMMERCIAL ASSOCIATION, INC.
BYLAWS

Section 4.6. Record; Minutes. The Board shall keep a record of each regular or special Board meeting in the form of written minutes of the meeting. The Board shall make meeting records, including approved minutes, available to a Member for inspection and copying on the Member's written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the Board.

Section 4.7. Telephone and Electronic Meetings. Any action permitted to be taken by the Board may be taken by telephone or electronic methods by means of which all persons participating in the meeting can hear each other. Participation in such a meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.8. Consent in Writing. Any action which may be taken at a meeting of the Board of Directors, is permitted to be taken by the Board by unanimous written consent. Unanimous written consent occurs if all Directors individually or collectively consent in writing to such action. The written consent must be filed with the minutes of Board meetings. Action by written consent shall be in lieu of a meeting and has the same force and effect as a unanimous vote of the Directors.

ARTICLE V POWERS AND DUTIES OF THE BOARD

Section 5.1. Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Documents and as provided by Applicable Law. The Board may do or cause to be done all acts and things that the Documents or Applicable Law do not direct to be done and exercised exclusively by the Members.

Section 5.2. Management. The Board of Directors may employ for the benefit of the 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.

Section 5.3. Borrowing. The Association shall have the power to borrow money for any legal purpose.

MONTECILLO COMMERCIAL ASSOCIATION, INC.
BYLAWS

Section 5.4. Right to Contract. The 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 occupants, or associations.

Section 5.5. 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 Condominium Unit or Lot of the violator, and to suspend a Member's right to vote or any person's right to use the Common Area (other than those facilities open to the public) for violation of any duty imposed under the Documents; provided, nothing herein shall authorize the Board to limit ingress and egress to or from a Condominium Unit or Lot. In addition, the Board may suspend any services provided by the Association to a Member or the Member's Condominium Unit or Lot if the Member is more than thirty (30) days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, guest or invitee of a Condominium Unit or Lot violates the 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 Association. The Board's failure to enforce any provision of the Documents shall not be deemed a waiver of the Board's right to do so thereafter.

Section 5.6. Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the 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 any proceeding 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.

ARTICLE VI OFFICERS AND THEIR DUTIES

Section 6.1. Officers. The Association's officers shall be a President, a Vice President, a Secretary, and a 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.

Section 6.2. Election and Term of Office. Within ten (10) days after each annual meeting of the Association, the Directors will convene an organizational meeting for the purpose of electing officers.

MONTECILLO COMMERCIAL ASSOCIATION, INC.
BYLAWS

Section 6.3. Removal and Vacancies. The Board may remove any officer whenever in its judgment the 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.

Section 6.4. Powers and Duties. The 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 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.

Section 6.5. 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.

ARTICLE VII MISCELLANEOUS

Section 7.1. Fiscal Year. The fiscal year of the 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.

Section 7.2. Conflicts. If there are conflicts among the provisions of Applicable Law, the Certificate of Formation, the Covenant, and these Bylaws, the provisions of Applicable Law, the Covenant, the Certificate of Formation, and the Bylaws (in that order) shall prevail.

Section 7.3. 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 Condominium Unit or Lot; any Member; or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to such Member's interest in a Condominium Unit or Lot: the Covenant, Bylaws, and Certificate of Formation, including any amendments, the rules of the 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 Association or at such other place within the Community as the Board shall designate.

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

MONTECILLO COMMERCIAL ASSOCIATION, INC.
BYLAWS

- (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 Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

Section 7.4. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws 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 at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Condominium Unit or Lot of such Member; or if to the Association, the Board, or the managing agent, at the principal office of the 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.

Section 7.5. Amendment. These Bylaws may be amended by a Majority of the Board; provided, however, that until expiration or termination of the Development Period, an amendment to these Bylaws must be approved in advance and in writing by the Declarant.

Section 7.6. Indemnification. To the fullest extent permitted by Applicable Law, the 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, including the Montecillo Commercial Reviewer (as defined in the Covenant), employee, servant, or agent of the 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 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 Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

MONTECILLO COMMERCIAL ASSOCIATION, INC.
BYLAWS