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AFTER RECORDING RETURN TO:

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MUELLER MASTER COMMUNITY COVENANT

A Residential and Commercial Community located in the City of
Austin, Travis County, Texas

Master Declarant: CATELLUS AUSTIN, LLC, a Delaware
limited liability company

NOTICE: NO PORTION OF THE PROPERTY DESCRIBED ON EXHIBIT "A" IS
SUBJECT TO THE TERMS OF THIS COVENANT UNLESS AN MCC
ANNEXATION NOTICE DESCRIBING SUCH PORTION OF THE
PROPERTY IS FILED IN THE OFFICIAL PUBLIC RECORDS OF
TRAVIS COUNTY, TEXAS.

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MUELLER MASTER COMMUNITY COVENANT

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MUELLER MASTER COMMUNITY COVENANT PREAMBLE

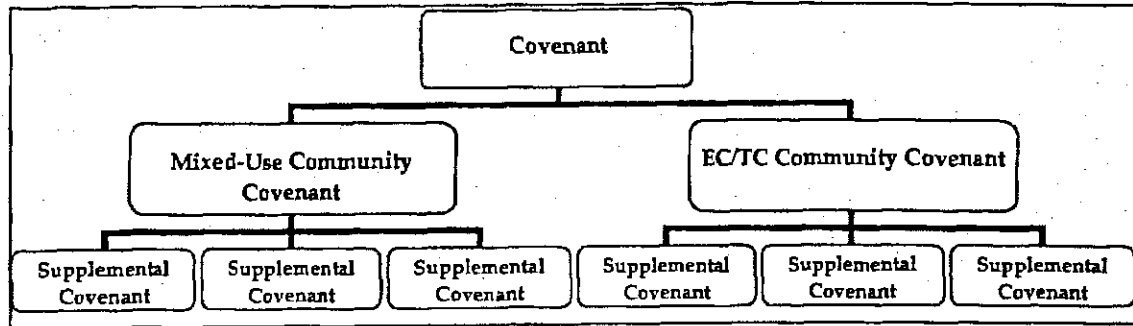
This Mueller Master Community Covenant ("Covenant") establishes a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of the Community as a master planned community. An integral part of the Community is the Mueller Master Community, Inc. (the "Master Association"), an association comprised of all the owners of real property in the Community.

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

DECLARATION OF MASTER COMMUNITY COVENANT

CATELLUS AUSTIN, LLC, a Delaware limited liability company (the "Master Declarant") has an option to purchase or is the present owner of certain real property located in Travis County, Texas, as more particularly described on Exhibit "A", attached hereto. DAUGHTERS OF CHARITY HEALTH SERVICES OF AUSTIN d/b/a SETON HEALTHCARE NETWORK, a Texas non-profit corporation ("Seton"), is the present owner of Lot 1, Block A, MUELLER SECTION 1 PHASE A SUBDIVISION, a subdivision in Travis County, Texas, according to the map or plat thereof recorded under Document No, 200400079 of the Official Public Records of Travis County, Texas ("Lot 1A1"). The property described on Exhibit "A" and Lot 1A1 are collectively referred to herein as the "Property." Master Declarant desires to create and carry out a uniform plan for the development, improvement, and sale of the Property. Portions of the Property will be made subject to this Covenant upon the filing of one or more MCC Annexation Notices pursuant to *Section 16.1* below. Upon the filing of an MCC Annexation Notice in the Official Public Records of Travis County, Texas, the portions of the Property described therein shall then constitute the Community (as defined below) and shall be governed by and fully subject to this Covenant. This Covenant contemplates the recordation of: (i) a Mixed-Use Community Covenant, described in *Table 1.1* below, which will include additional covenants, conditions and restrictions governing portions of the Community depicted on Exhibit "B", attached hereto (the "Mixed-Use Tracts"); and (ii) an EC/TC Community Covenant, described in *Table 1.1* below, which will include additional covenants, conditions and restrictions governing portions of the Community depicted on Exhibit "B", attached hereto (the "EC/TC Tracts"). The Mixed-Use Community Covenant and the EC/TC Community Covenant will each provide for the filing of Supplemental Covenants. A Supplemental Covenant will impress portions of property subject to the Mixed-Use Community Covenant or the EC/TC Community Covenant with additional and specific covenants, restrictions, conditions, limitations and/or easements.

HIERARCHY OF COVENANTS



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

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

PROPERTY VERSUS COMMUNITY

"Property"-

Described on Exhibit A. This is the land that may be made subject to this Covenant, from time to time, by the filing of one or more MCC Annexation Notices.

"Community"-

This is the portion of the land described on Exhibit A that has been made subject to this Covenant through the filing of an MCC Annexation Notice.

PART ONE: THE COMMUNITY

Chapter 1 Governing Documents

1.1 Scope and Applicability

The Community is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of the Community, and anyone else who may now or in the future have an interest in any portion of the Community. Such documents, referred to in this Covenant as the "Governing Documents," include this Covenant and the documents described in *Table 1.1*, as such documents may be amended. All owners, as well as their tenants, guests, invitees, and other occupants of Units within the Community are required to comply with the Governing Documents.

1.2 Previously Filed Supplemental Covenants

The Master Declarant has previously filed that certain Supplemental Declaration of Covenants, Conditions and Restrictions for The Hospital Site, recorded as Document No. 2004055402 in the Official Public Records of Travis County, Texas (the "Hospital Supplemental Covenant"), which has imposed easements, covenants, conditions, and restrictions upon Lot 1A1. Lot 1A1 will continue to be subject to all of the terms, covenants, conditions, restrictions, and easements set forth in the Hospital Supplemental Covenant. This Covenant will constitute the "Master Declaration" as defined in the Hospital Supplemental Covenant upon the recordation of an MCC Annexation Notice, executed by the Master Declarant and Seton, describing Lot 1A1 in the Official Public Records of Travis County, Texas. Lot 1A1 will also be made subject to the terms and provisions of the EC/TC Community Covenant upon recordation of an annexation notice executed by the Master Declarant and Seton and the Hospital Supplemental Covenant will constitute a Supplemental Covenant.

1.3 Conflicts

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

In the event of any conflict between the terms and provisions of the Covenant, and the EC/TC Covenant or the Mixed-Use Covenant, the terms of the Covenant will control. Upon annexation of Lot 1A1 into the terms of this Covenant, in the event of any conflict between the Covenant and the Hospital Supplemental Covenant, the terms of the Covenant will control; PROVIDED, HOWEVER, that in the event of any conflict between the terms and provisions of this Covenant and Section 2.2, Section 3.1, or 4.1 of the Hospital Supplemental Covenant, Section 2.2, Section 3.1 and Section 4.1 of the Hospital Supplemental Covenant will control as to Lot 1A1.

The Governing Documents use text boxes, diagrams and tables to illustrate concepts and assist the reader. If there is a conflict between any text box, diagram, or table and any provision of the Governing Documents, the provision of the Governing Documents will control.

Space has been set aside throughout this Covenant to allow the reader to make notes. Any such notes are not part of this Covenant and have no legal or binding effect.

If any court determines that any provision of this Covenant is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

1.4 Definitions

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. All other terms used in the Governing Documents have their natural, commonly accepted definitions. An index of defined terms is included in *Table 1.2*.

1.5 Interpretation of Certain References

Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to consent or approval, which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required. The consent of the Reviewer (as defined in *Chapter 5*) means the consent of a majority of the members of the New Construction Council or the Modification Committee, as applicable. Any approval or consent and any agreement, determination, waiver or joinder by the City of Austin required under the Governing Documents may be given by the City Manager of the City of Austin or its designee.

Discretion and Determination. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole, absolute, and unfettered power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, anyone authorized in the Governing Documents to exercise his or her discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action, or inaction.

EC/TC Association. All references in this Covenant to the "EC/TC Association" shall refer to the non-profit corporation created pursuant to the EC/TC Community Covenant.

Maintenance. All references in this Covenant to "maintenance" shall refer to maintenance, repair, and replacement.

Master Community-Wide Standard. The Master Community-Wide Standard is the standard of conduct, maintenance and other activities which generally prevail throughout the Community; provided, however, such standard may not conflict with, contravene, or act to amend the Governing Documents or the MDA. A community-wide standard permits the

Community to evolve as development progresses and the Community matures. Where the Governing Documents require compliance with the "Master Community-Wide Standard," the standard to be applied is the higher of: (a) the standard of use, maintenance, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community which results from the application of the Governing Documents and the MDA; or (b) the minimum standards actually set forth in the Governing Documents and the MDA (as defined below).

The Master Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the Master Association Board's (the "Board"), the New Construction Council's, and the Modification Committee's (as defined in *Chapter 5*) discretion. The Master Community-Wide Standard, over time, will be more specifically determined by the Board, the Master Declarant, the New Construction Council, and the Modification Committee through interpretation and application of the Governing Documents. The Master Community-Wide Standard may or may not be set out in writing. For example, as the Community evolves, a pattern of practice may develop with respect to the timing of landscape maintenance or certain Master Community Facility repairs. In addition, the Board may have occasion to interpret certain provisions of the Governing Documents during administration of the Community and those interpretations will become manifest through application of the Governing Documents. These patterns and interpretations may not be set out in writing, but an expectation may develop regarding the continued adherence to such practices and interpretations. While the Board will have the authority to revise the standards of conduct, maintenance and other activities within the Community from time to time provided that any such revisions otherwise comply with the Governing Documents and applicable law, the Board need not document in minute detail the evolution of each such standard of conduct, maintenance and other activity within the Community. In general, standards of conduct, maintenance and other activities which comprise the Master Community-Wide Standard will be reflected in the Governing Documents but some exceptions to that general condition will occur from time to time.

Master Development Agreement. Master Development Agreement ("MDA") between the Master Declarant and the City of Austin, a Texas home rule city and municipal corporation (the "City of Austin"). The MDA was adopted by the City of Austin on _____, _____, 2004. The MDA includes all of the Property and adopts certain standards for the development of the Property.

Mixed-Use Association. All references in this Covenant to the "Mixed-Use Association" shall refer to the non-profit corporation created pursuant to the Mixed-Use Community Covenant.

Modification Committee. All references in this Covenant to the "Modification Committee" or "MC" shall refer to the committee established pursuant to *Chapter 5* to review and act upon all applications for review and approval of Improvements to be constructed on a Unit if: (i) Improvements reviewed and approved by the New Construction Council have been constructed on a Unit; (ii) the City of Austin has issued a certificate of occupancy for such Improvements; and (iii) the application is for the modification, rather than the expansion, of

existing Improvements. In the event the pre-conditions set forth in (i) through (iii) are not satisfied, or in the event there is any uncertainty as to whether such conditions have been satisfied, jurisdiction for the review and approval of the application will lie with the New Construction Council. The pre-conditions set forth in (i) through (iii) will not apply and the Modification Committee will assume the authority of the New Construction Council upon the later of: (a) the expiration of the Development and Sale Period, or (ii) such time as certificates of occupancy have been issued for all Units planned for the Property.

New Construction Council. All references in this Covenant to the "New Construction Council" or "Council" shall refer to the council established pursuant to *Chapter 5* to review and act upon all applications for review and approval of all original Improvements to be constructed on Units.

Person. References in the Governing Documents to a "Person" or "Persons" shall refer to an individual, a corporation, a partnership, a limited liability company, trust or any other legal entity.

Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed or the filing of a legal instrument in the Official Public Records of Travis County, Texas, or such other place designated as the official location for filing documents affecting title to real estate in Travis County in order to make them a matter of public record.

Supplemental Covenant. All references in this Covenant to a "Supplemental Covenant" shall refer to a separate instrument filed pursuant to the Mixed-Use Community Covenant or the EC/TC Community Covenant containing covenants, restrictions, conditions, limitations and/or easements, to which portions of the Community encumbered by the Mixed-Use Community Covenant or the EC/TC Community Covenant are subjected. Notwithstanding any provision in the Governing Documents to the contrary, the City of Austin must consent to any Supplemental Covenant which contains covenants, restrictions, conditions, limitations and/or easements affecting all or any portion of the Community.

TABLE 1.1: GOVERNING DOCUMENTS	
Articles of Incorporation: (filed with the Secretary of State)	the Articles of Incorporation of Mueller Master Community, Inc., as they may be amended, which establish the Master Association as a not-for-profit corporation under Texas law.
Board Resolutions: (Board adopts)	the resolutions adopted by Board which establish rules, policies, and procedures for internal governance and activities of the Master Association and which regulate the operation and use of property owed or controlled by the Master Association.
By-Laws: (attached as <u>Exhibit "F"</u>)	the By-Laws of Mueller Master Community, Inc., as they may be amended, which govern the Master Association's internal affairs, such as voting, elections, meetings, etc.
EC/TC Community Covenant (recorded)	a recorded covenant which includes additional covenants, conditions and restrictions governing portions of the Community depicted on <u>Exhibit "B"</u> , attached hereto.
Mueller Master Covenant: (recorded)	creates obligations that are binding upon the Master Association and all present and future owners of property in the Community.
Master Design Guidelines: (The Master Declarant adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to <i>Chapter 5</i> , as they may be amended, which govern new construction and modifications to Units, including structures, landscaping, and other items on Units.
Mixed-Use Community Covenant (recorded)	a recorded covenant which includes additional covenants, conditions and restrictions governing portions of the Community depicted on <u>Exhibit "B"</u> , attached hereto.
Rules: (initial set attached as <u>Exhibit "D"</u>)	the use restrictions and rules of the Master Association adopted pursuant to <i>Chapter 7</i> , which regulate use of property, activities, and conduct within the Community.
Supplemental Covenant: (recorded)	a recorded supplement to the Mixed-Use Community Covenant or the EC/TC Community Covenant, which imposes additional obligations or restrictions on residential or commercial portions of the Community.

TABLE 1.2: INDEX OF SELECTED DEFINED TERMS

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Chapter 2 Community Administration

Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Master Declarant, the Master Association, the owners, and others have a role in how the community functions and in helping to fulfill that vision. This Chapter identifies these stakeholders and describes their role in administering the Community.

2.1 The Master Declarant

The Governing Documents set forth certain principles which will guide the Community during its lifetime.

The Master Declarant has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Master Declarant may exercise certain of these rights throughout the "Development and Sale Period" – the period of time during which the Master Declarant owns or has the option to acquire at least fifty (50) acres in the Property from the City of Austin under the MDA, but excluding the Film Society Property (as defined in the MDA and depicted on Exhibit "C"), the National Guard Property (as defined in the MDA and depicted on Exhibit "C"), and any developable property on which the Master Declarant: (i) has caused or intends to cause finished improvements to be constructed which may be used for residential, commercial, retail, light industrial, or office use; and (ii) is or intends to retain ownership, as opposed to market for sale to a third party. Notwithstanding the foregoing provision, in the event the current lease by and between the City of Austin and (i) the Texas National Guard pertaining to the National Guard Property or (ii) the Austin Film Society pertaining to the Film Society Property terminates or expires prior to the expiration of the Development and Sale Period, the exclusion of the National Guard Property or the Film Society Property, as the case may be, for purposes of determining the expiration of the Development and Sale Period will not apply. The failure of the Master Declarant to exercise any of these rights prior to expiration of the Development and Sale Period does not constitute a waiver of these rights. Upon expiration of the Development and Sale Period, Master Declarant shall record a notice of such expiration in the Official Public Records of Travis County, Texas.

This Covenant reserves to the City of Austin many of the rights reserved by the Master Declarant hereunder. For example, the City of Austin has the right to consent to certain actions proposed by the Master Declarant, the Board, the New Construction Council or the Modification Committee, and may enforce the terms and provisions of this Covenant. In addition, the City of Austin, upon the occurrence of events described in the MDA, may assume all the rights of the Master Declarant under the terms and provisions of this Covenant. Despite any provision in this Covenant to the contrary, the City of Austin's right to consent to certain matters under this Declaration will not be required upon expiration of the Development and Sale Period.

2.2 The Master Association

The Master Declarant will establish the Master Association as the entity responsible for the administration of the common affairs of the Community and the management, maintenance, operation, and control of the Master Community Facilities as defined in *Section 3.1*. The Master Association will also be a community-building entity that has the power to establish, operate, sponsor, and promote services, activities, events, and programs for the Community and to collect assessments on behalf of the Master Association, the Mixed-Use Association, and the EC/TC Association. On most matters, the Master Association acts through the Board. However, in some instances the Governing Documents or applicable law limits the Board's ability to act without the approval of the Master Association's members. Unless the Governing Documents or Texas law specifically provide otherwise, the Board may exercise the Master Association's rights and powers without a vote of the membership.

2.3 The Board

The Master Association may exercise all rights and powers which the Governing Documents and Texas law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

The Board may institute, defend, settle, or intervene on behalf of the Master Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Master Community Facilities, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Master Association or its members.

As more particularly described in the Bylaws, the Board consists of seven (7) directors who are appointed as follows: three (3) of the seven (7) directors are appointed by a majority of the board of directors of the Mixed-Use Association; three (3) of the seven (7) directors are appointed by a majority of the board of directors of the EC/TC Association; and one (1) of the directors will be appointed, in even numbered years, by the board of the Mixed-Use Association, and in odd numbered years, by the board of the EC/TC Association. 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 Master Declarant will be entitled to appoint, remove and replace, with the City of Austin's consent, the directors each association is entitled to appoint pursuant to this Section and the By-Laws.

2.4 The Owners

Each Person who holds record title to a Unit, as defined in *Section 3.1*, is referred to in the Governing Documents as "Owner." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit has more than one Owner, all Co-Owners

are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described therein. Each Owner and each resident within the Community will have the opportunity to participate in the administration of the Community through membership in the Master Association, the Mixed-Use Association, the EC/TC Association, and/or through service to the Community in various committee and leadership roles, as described in the Governing Documents.

2.5 Mortgagees

If a Unit is made subject to a mortgage or other form of security instrument affecting title to a Unit ("Mortgage"), then the holder or beneficiary of that Mortgage ("Mortgagee") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 15.

Chapter 3 Community Structure and Organization

The Community consists of portions of property referred to as "Units," which are intended for the exclusive use of the Owner and other occupants of such property, as well as property that is intended for common use. Units may be assigned to "Service Areas" to permit the Association to provide special services and benefits to particular areas of the Community.

3.1 Designations of Properties Comprising the Community

Area of Common Responsibility. 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, and may also include Units or portions of Units and property dedicated to the public, such as public parks or rights-of-way. The initial Area of Common Responsibility is described in Chapter 9.

The Area of Common Responsibility must be maintained in accordance with the Master Community-Wide Standard.

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

EC/TC Common Area. Any property and facilities, or any interest therein, owned by the EC/TC Association is referred to as the "EC/TC Common Area."

Master Community Facilities. Any property and facilities that the Master Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "Master Community Facilities." The Master

Community Facilities also includes any property that the Master Association holds possessory rights under a lease, license or any easement in favor of the Master Association. Some Master Community Facilities will be for the common use and enjoyment of the Community residents, e.g., subdivision swimming pools or internal pocket parks, while some portion of the Master Community Facilities will be for the use and enjoyment of the public, e.g., open space, parks, and recreational facilities. Open space, parks, and recreational facilities dedicated to the general public may be classified as Master Community Facilities under this Covenant to permit the Master Association to provide maintenance services to such facilities. No portion of any Master Community Facilities dedicated in whole or in part for public use may be designated as Special Common Area. The Master Declarant, in conformance with the MDA, from time to time and at any time may designate Master Community Facilities.

Mixed-Use Common Area. Any property and facilities, or any interest therein, owned by the Mixed-Use Association is referred to as the "Mixed-Use Common Area."

Special Common Area. Certain portions of the Master Community Facilities may be designated as "Special Common Area" and assigned and reserved for the exclusive use or primary benefit of certain Units. By way of illustration and not limitation, Special Common Area might include such things as subdivision swimming pools, entry features, landscaped medians and other portions of the Master Community Facilities. All costs associated with maintenance, repair, replacement, and insurance of Special Common Area will be assessed as a Service Area Assessment against the Owners of the Units to which the Special Common Area is assigned. No portion of any Master Community Facilities which are open to public use may be designated as Special Common Area.

Initially, the Master Declarant may designate property as Special Common Area and assign it to particular Units in the deed conveying such property to the Master Association, in an MCC Annexation Notice, in a Supplemental Covenant, or in a written notice recorded in the Official Public Records of Travis County, Texas. Since the Property will be developed in phases, the Master Declarant may assign use of Special Common Area to additional Units and/or Service Areas (as defined in Section 3.3 below) provided that such assignment does not conflict with the MDA.

During the Development and Sale Period, the Master Declarant, in an instrument recorded in the Official Public Records of Travis County, Texas, may: (i) assign a portion of the Master Community Facilities as Special Common Area (provided that no portion of the Master Community Facilities proposed for assignment includes any property or amenity open to the general public); and (ii) re-assign Special Common Area. After expiration or termination of the Development and Sale Period, Master Community Facilities may only be assigned as Special Common Area (provided that no portion of the Master Community Facilities proposed for assignment includes any property or amenity open to the general public) upon the vote of a majority of the Owners and a majority of the Owners to which the Special Common Area is to be assigned. After expiration or termination of the Development and Sale Period, Special Common Area may be re-assigned upon the vote of a majority of the Owners to which the Special Common Area is assigned and, if applicable, a majority of the Owners to which the

Special Common Area is to be assigned. No Special Common Area may be re-designated from Special Common Area to Master Community Facilities without the consent of a majority of the Board of the Master Association.

The Master Association may, upon approval of a majority of the Owners to which the Special Common Area is assigned and a majority of the Board of the Master Association, permit Owners of un-assigned Units to use all or a portion of such Special Common Area upon payment of user fees, which fees shall be used to offset the Service Area Expenses attributable to such Special Common Area.

If either the Mixed-Use Covenant or the EC/TC Community Covenant encumbers all Units which have been assigned certain Special Common Area, the Board, in its sole discretion, may assign to the Mixed-Use Association or the EC/TC Association, as applicable, the Master Association's obligation to maintain such Special Common Area and the right of the Master Association to levy Service Area Assessments associated therewith. If the Board assigns such rights and obligations to the Mixed-Use Association or the EC/TC Association, the Mixed-Use Association or the EC/TC Association, as applicable, will exercise and discharge such rights and obligations exclusively until such time as the Master Board notifies such association in writing that the Master Association has elected to assume such rights and obligations.

Units. 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.

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

3.2 Neighborhoods

Every Unit will be located within a Neighborhood. Units are grouped into "Neighborhoods" to: (i) facilitate a system of representative voting on matters which the Governing Documents require approval of the Master Association's membership; and (ii) to promote a sense of community and belonging by permitting Owners and residents within a Neighborhood to share, discuss and take action on issues unique to their Neighborhood. A Neighborhood may be comprised of any number of Units and may include Units of more than one type, as well as Units that are not contiguous to one another. Notwithstanding any provision in this Covenant to the contrary, each single Neighborhood will consist of either Units entirely located within the Mixed-Use Tracts or within 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. Each Neighborhood will elect one "Neighborhood Delegate" to cast the votes allocated

to Units in that Neighborhood on matters requiring a vote of the Owners, as described in Chapter 4, and be the official liaison between the Neighborhood and the Board.

Each MCC Annexation Notice filed to annex portions of the Property into the Community shall initially assign the property described therein to a specific Neighborhood which may then be existing or newly created. During the Development and Sale Period, the Master Declarant may record an amendment to any previously recorded MCC Annexation Notice to designate or change Neighborhood boundaries.

3.3 Service Areas

Units may also be part of one or more "Service Areas" in which the Units share 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. For example, special services may include landscaping provided by the Master Association to certain Units within a Service Area. Designating these Units as a Service Area permits the Master Association to charge the cost of these services to only those Units benefiting from the services. A Unit may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one type and may include Units that are not contiguous. Service Areas may consist of one or more Neighborhoods or a portion of a Neighborhood.

The Master Declarant may designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area. The assignment and designation may be made by the Master Declarant in an MCC Annexation Notice, in a Supplemental Covenant, or in a notice recorded in the Official Public Records of Travis County, Texas. During the Development and Sale Period, the Master Declarant may unilaterally amend an MCC Annexation Notice, Supplemental Covenant, or any previously recorded instrument to change Service Area boundaries.

If the Master Declarant designates property as Special Common Area and assigns such property to particular Units, such Units will automatically constitute a Service Area without the need for any further action by the Master Declarant.

In addition, the Board may, by resolution, designate Service Areas and assign Units to such Service Areas upon petition of Owners of at least 75% of the Units affected by the proposed designation as further described in Section 10.2.

Owners of Units within each Service Area may elect a "Service Area Committee" in accordance with the By-Laws to represent and act on behalf of the Owners with respect to the services and benefits that the Master Association provides to the Service Area. References to Service Areas in the Governing Documents shall also refer to such Service Area Committees, if appropriate from the context.

Chapter 4 Master Association Membership and Voting Rights

The Master Association is an entity through which each Owner can participate in the governance and administration of the Community. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.

4.1 Membership

Every Owner is automatically a member of the Master Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may be exercised by an officer, director, partner, or trustee, or by an individual the Owner designates from time to time in writing to the Master Association's Secretary.

4.2 Vote Allocation

(a) If a Unit is used for single-family residential use (which for the purpose of this Section 4.2(b) only, means a Unit which is located on a subdivided lot, in a duplex, triplex, townhome, or other multi-family residential structure, provided that such Unit is individually owned either in fee simple or through the condominium form of ownership), the Unit will be allocated one (1) vote. If a Unit may be used for single-family residential use and office purposes, e.g., a shop house or live/work studio, the Unit will be allocated (1) vote.

(b) For all other Units, the number of votes allocated to a Unit will be determined by Master Declarant at the time an MCC Annexation Notice is filed for the portion of Community which includes the Unit. The allocation of votes to Units under this subsection will be made on a consistent and equitable basis taking into consideration, among other things, the relationship of Units to the entire Community. Master Declarant's determination regarding the number of votes allocated to a Unit shall be final, binding and conclusive. The Master Declarant may modify or amend the number of votes previously assigned to Unit if the Improvements actually constructed on the Unit differ substantially from the Improvements contemplated to be constructed thereon at the time the notice allocating votes thereto was originally filed. In the event of a modification to the votes allocated to a Unit, the Master Declarant will file of record an amended notice setting forth the revised votes attributable to the Unit.

(c) All votes allocated to a Unit are subject to the limitations on voting set forth in this Covenant and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 12.8.

4.3 Voting

Due to the number of Units that may be developed in the Community, the Governing Documents provide for a representative system of voting. The Owners of Units in each Neighborhood elect a "Neighborhood Delegate" and an alternate Neighborhood Delegate, in the manner provided below, to cast the votes of all Units in the Neighborhood on matters requiring a vote of the membership, except where the Governing Documents specifically require a vote of the Owners. However, until such time as the Board first calls for election of a Neighborhood Delegate for a particular Neighborhood, each Owner of a Unit in such Neighborhood shall be considered a "Neighborhood Delegate" and may personally cast the vote allocated to such Owner's Unit on any issue requiring a vote of the Neighborhood Delegates under the Governing Documents.

Candidates for election as the Neighborhood Delegate and alternate Neighborhood Delegate from a Neighborhood shall either be Owners of Units in the Neighborhood (in the case of Units designated for commercial, residential, or mixed use), spouses of such Owners (in the case of Units designated for residential use), or residents of the Neighborhood (in the case of Units designated for residential use). The Neighborhood Delegate and the alternate Neighborhood Delegate shall be elected on a biennial basis (once every two-years), either by written ballot or at a meeting of the Owners within each Neighborhood, as the Board determines; provided, upon written petition signed by Owners holding at least 10% of the votes within any Neighborhood, the election for such Neighborhood shall be held at a meeting. The presence, in person or by proxy, of Owners representing at least 40% of the total votes in a Neighborhood shall constitute a quorum at any Neighborhood meeting.

The Board shall call for the first election of a Neighborhood Delegate from a Neighborhood not later than three (3) years after the first conveyance of a Unit in the Neighborhood to a Person other than the Master Declarant. Subsequent elections shall, if necessary, be held within thirty (30) days of the same date each year. The candidate for each position who receives the greatest number of votes shall be elected to serve until his or her successor is elected.

Any Neighborhood Delegate may be removed, with or without cause, upon the vote or written petition of Owners holding a majority of the votes allocated to the Units in the Neighborhood that the Neighborhood Delegate represents.

The Neighborhood Delegate or, in his or her absence, the alternate Neighborhood Delegate, attends Master Association meetings and casts all votes allocated to Units in the Neighborhood that he or she represents on any matter as to which such Neighborhood Delegate is entitled to vote under the Governing Documents. A Neighborhood Delegate may cast all votes allocated to Units in the Neighborhood in such delegate's discretion and may, but need not, poll the Owners of Units in the Neighborhood which he or she represents prior to voting.

Neighborhood Delegates are subordinate to the Board, and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Master Association governance beyond voting on matters put to a vote of the membership.

In any situation in which an Owner is entitled personally to exercise the vote allocated to such Owner's Unit, if there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners holding a majority of the ownership interest in the Unit determine among themselves and advise the Secretary of the Master Association in writing prior to the close of balloting. Any co-Owner may cast the vote for the Unit, and majority agreement shall be conclusively presumed unless another co-Owner of the Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement, the Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently.

4.4 Method of Exercising Voting Right

At the Board's discretion, the Owners and Neighborhood Delegates entitled to vote may exercise their vote in person, by mail, personal delivery, telephone, facsimile, electronic mail, the Internet, or other means of electronic communication. The Board may adopt rules for votes cast through electronic means in order to verify that the votes are cast by the Owner of the Unit. Written instructions describing such rules, to the extent such rules are adopted, shall be made available to Owners and Neighborhood Delegates.

NOTES:

PART TWO: COMMUNITY STANDARDS

Chapter 5 Architecture, Landscaping, and Aesthetic Standards

The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all Owners in upholding minimum design, landscaping, and aesthetic standards. This Chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Units.

5.1 General

All site work, landscaping, structures, improvements, and other items placed on a Unit ("Improvements") and any alterations to such Improvements are subject to standards for design, landscaping, and aesthetics adopted pursuant to this Chapter ("Master Design Guidelines") and the approval procedures set forth in this Chapter, except as this Chapter or the Master Design Guidelines may otherwise specify. Additional design guidelines applicable to specific property subject to the Mixed-Use Community Covenant and the EC/TC Community Covenant may also apply to a Unit.

No approval of any Improvement proposed for a Unit under this Chapter will be issued by the Reviewer (defined below) unless, on the date of issuance, all assessments levied pursuant to Chapter 12 against the Unit have been paid in full.

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; however, modifications to the interior of a structure visible from outside of the structure do require prior approval.

Approval under this Chapter is not a substitute for any approvals or reviews required by the City of Austin or Travis County or any governmental agency or entity having jurisdiction over architectural or construction matters.

For purposes of this Chapter, the entity having jurisdiction, whether the New Construction Council or the Modification Committee, in a particular case is referred to as the "Reviewer."

5.2 New Construction Counsel

(a) The New Construction Council will have exclusive authority to review and act upon all applications for review of proposed original Improvements and Improvements which are not under the jurisdiction of the Modifications Committee until the later of: (i) the expiration of the Development and Sale Period, or (ii) such time as certificates of occupancy have been issued for all Units planned for the Property.

(b) The New Construction Council will consist of five (5) members appointed as follows: (i) three (3) members will be appointed by the Master Declarant with the approval of the City of Austin; and (ii) two (2) members will be appointed by the Master Declarant. The authority of the New Construction Council will be automatically transferred and assigned to the Modification Committee upon the later of: (a) the expiration of the Development and Sale Period, or (ii) such time as certificates of occupancy have been issued for all Units planned for the Property. The authority of the New Construction Council may be transferred, in whole or in part, to the Modification Committee at any time by recordation of a written instrument executed and acknowledged by the Master Declarant and the City of Austin. Each member of the New Construction Council must possess experience in the practice of real estate/land development (not to include real estate sales), or in the practice of architecture, urban design, land use planning, or other similar professional design practice. The New Construction Council may, at any time and from time to time, appoint one or more ex-officio members to the New Construction Council who may serve in a non-voting, advisory capacity.

5.3 Modification Committee

(a) The Modification Committee will have the exclusive authority to review and act upon all applications for review and approval of Improvements to be constructed on a Unit if: (i) Improvements reviewed and approved by the New Construction Council have been constructed on a Unit; (ii) the City of Austin has issued a certificate of occupancy for such Improvements; and (iii) the application is for the modification, rather than the expansion, of existing Improvements. In the event the pre-conditions set forth in (i) through (iii) are not satisfied, or in the event there is any uncertainty as to whether such conditions have been satisfied, jurisdiction for the review and approval of the application will lie with the New Construction Council. However, the pre-conditions set forth in (i) through (iii) will not apply and the MC will assume the authority of the Council upon the later of: (a) the expiration of the Development and Sale Period, or (ii) such time as certificates of occupancy have been issued for all Units planned for the Property.

(b) The MC will consist of five (5) members appointed by the Board. The MC may, at any time and from time to time, appoint one or more ex-officio members to the MC who may serve in a non-voting, advisory capacity.

5.4 Guidelines and Procedures

(a) **Master Design Guidelines** . The initial 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. The Master Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer. The Master Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Master Design Guidelines does not guarantee approval.

The New Construction Committee will have the authority to amend the Master Design Guidelines for so long as it has review authority under *Section 5.2(a)*. Each amendment to the Master Design Guidelines must be executed by the Master Declarant and the City of Austin, which requirement will terminate on the expiration of the Development and Sale Period. Upon termination of the New Construction Committee's review authority under *Section 5.2(a)*, the Modification Committee may amend the Master Design Guidelines with the Board's consent.

Amendments to the Master Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Master Design Guidelines as amended.

The Reviewer shall make the Master Design Guidelines available to Owners and their contractors upon request. The Master Design Guidelines and any amendment to the Master Design Guidelines will be recorded.

(b) **Procedures.** Unless the Master Design Guidelines provide otherwise, no activities within the scope of this Chapter (as described in *Section 5.1*) may begin within the Community until a written application is submitted to and approved in writing by the Reviewer. Furthermore, any action taken by the Reviewer under this Chapter must be approved by a majority of its members. The application must be accompanied by plans and specifications showing the site layout, exterior elevations, exterior materials and colors, landscaping, drainage, lighting, irrigation, other features of the proposed construction, and such other information as the Reviewer or the Master Design Guidelines require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, and harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular Improvements.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in *Chapter 18* or judicial review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may: (i) approve the application with or without conditions; (ii) approve a portion of the application and disapprove other portions specifying the segments or features that are objectionable and suggestions, if any, to address the objectionable portions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than sixty (60) days after its receipt of a completed application and all required submissions. In the event the Reviewer approves the application with conditions, approves a portion of the application and disapproves other portions, or requests additional information, the Reviewer shall notify the applicant in writing of the final determination no later than thirty (30) days after the applicant's satisfaction of the conditions, correction of the deficiency, or submission of additional information requested by the Reviewer. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond in a timely manner, the applicant must give the Reviewer written notice of such failure to respond, stating that unless the Reviewer responds within thirty (30) days, approval shall be deemed granted. Upon such further failure, approval shall be deemed to have been given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Master Design Guidelines unless a written variance has been granted pursuant to *Section 5.6*.

As part of any approval, the Reviewer may require that construction commence within a specified and reasonable time period. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All improvements shall be completed within two (2) years of the commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing.

The Reviewer may exempt certain activities from the application and approval requirements of this Chapter if such activities are undertaken in compliance with the Master Design Guidelines, the Master Community-Wide Standard, and the Governing Documents.

(c) **Appeals Process.** An applicant may appeal any disapproval of its application by the Modifications Committee to the Board. No appeal is available for a decision made by New Construction Council. To request an appeal, the applicant must submit to the Master Association's Secretary, no later than fifteen (15) days after the delivery of the notification of disapproval, a copy of the original application, the notification of disapproval, and a letter requesting review of the decision. The appeal request shall also contain a response to any specific concerns or reasons for disapproval listed in the notification of disapproval. The Board may: (i) affirm the MC's decision; (ii) affirm a portion and overturn a portion of the MC's decision; or (iii) overturn the MC's entire decision. The Board shall notify the applicant and the MC in writing of its decision no later than thirty (30) days after its receipt of the request for appeal with all required information. The Board's decision shall include a description of its reasons for overturning the MC's decision. During the appeal process the Owner shall not commence any Improvements requiring approval hereunder.

5.5 No Waiver of Future Approvals

The individuals reviewing applications under this Chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Master Design Guidelines , may vary accordingly. It may not always be possible to identify objectionable features until Improvements are completed. In such cases, the Reviewer will not require changes to objectionable features, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.6 Variances

The Reviewer may grant reasonable variances or adjustments from any conditions and restrictions imposed by the Governing Documents and/or the Master Design Guidelines in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in such instruments; provided, 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 the Governing Documents. No variance shall: (a) be effective unless in writing; or (b) prevent the Reviewer from denying a variance in other circumstances. Any variance proposed by the Modification Committee will require the Board's written consent.

5.7 Fees; Compensation of Members.

During the Development and Sale Period, the Master Declarant will establish a reasonable fee to be charged by the Reviewer for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. Upon expiration or termination of the Development and Sale Period, the Reviewer will establish such fees.

Members of the Reviewer may, at the sole discretion of the Board, be entitled to reasonable compensation for services rendered, together with reimbursement for expenses incurred by them in performance of their duties. Any decision to provide such compensation may be determined and memorialized in writing by formal action of the Board. The Board will include the compensation of such persons in the Master Association's annual operating budget.

5.8 Limitation of Liability

This Chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Chapter may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all structures are of comparable quality, value, size, or are aesthetically pleasing or otherwise acceptable to other Owners. Approval of

plans and specifications must not be construed as a representation or guarantee that the structure is in compliance with governmental requirements or restrictions or requirements other than the terms of this Covenant and the Master Design Guidelines . The Reviewer may assume that information set forth on any plans and specifications submitted for review are correct, e.g., the Reviewer will not be responsible for confirming that the structure is in compliance with building setbacks.

The Reviewer, Master Declarant, the Master Association, and the City of Austin, their board members, officers, committee members, and employees of any of the foregoing shall not be liable for: (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Master Declarant has approved or featured such contractor as a builder; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Master Association shall defend and indemnify the Board, the Reviewer, and the members of each, as provided in the By-Laws.

5.9 Certificate of Compliance

Any Owner may request in writing that the Reviewer issue a certificate of compliance with respect to a specific Unit certifying that there are no known violations of this Chapter or the Master Design Guidelines . The Reviewer shall either grant or deny such written request within sixty (60) days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Reviewer and the Master Association from taking enforcement action against an Owner for any condition to which the Reviewer or the Master Association had actual knowledge on the date of such certificate and not disclosed in such certificate.

5.10 Enforcement

Any Improvements constructed, installed, or taking place in violation of this Chapter or in a manner inconsistent with plans approved in accordance with this Chapter shall be deemed to be non-conforming. Upon written request from the Master Association, the Board, or the Reviewer, Owners shall, 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 nonconforming Improvements. Should an Owner fail to remove and restore the Unit as required, the Board, or its designees shall have the right to enter the Unit, remove the violation, and restore the Unit to substantially the same condition as previously existed, and any such action shall not be deemed a trespass. Upon demand, the Owner shall reimburse all costs incurred by any of the foregoing in exercising its rights under this Section. The Master Association may assess any costs incurred in taking enforcement action under this Section, together with interest at the maximum rate then allowed by law, against the benefited Unit as a Specific Assessment.

The Reviewer and the Master Association, acting separately or jointly, may preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the Governing Documents from continuing or performing any further activities in the Community, subject to the notice and hearing procedures contained in the By-Laws. **THE CITY OF AUSTIN, REVIEWER, MASTER DECLARANT, THE MASTER ASSOCIATION, OR THEIR OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES SHALL NOT BE HELD LIABLE TO ANY PERSON FOR EXERCISING THE RIGHTS GRANTED BY THIS CHAPTER UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT OR BAD FAITH OF THE CITY OF AUSTIN, REVIEWER, MASTER DECLARANT, OR THE MASTER ASSOCIATION OR ONE OR MORE OF ITS OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES, AS THE CASE MAY BE.**

In addition to the foregoing, the Master Association and the Master Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Chapter and the decisions of Reviewer under this Chapter. The Master Declarant's rights and obligations hereunder will expire upon expiration or termination of the Development and Sale Period.

NOTES:

Chapter 6 Maintenance, Repair, and Replacement

One of the benefits of owning property in a planned community is the commitment among owners to maintain their property in a neat, attractive and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the community. This Chapter describes the Owners' responsibilities for maintenance and repair of their Units.

6.1 Maintenance by Owners

Each Owner shall maintain its Unit, including all structures, parking areas, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents and the Master Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Master Association, the Mixed-Use Association, or the EC/TC Association.

Each Owner shall also be responsible for maintaining mowing, replacing sod, pruning, and irrigating 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 Master Community-Wide Standard, unless responsibility for maintaining such landscaped areas has been assigned to or assumed by the Master Declarant or the Master Association. However, Owners may not remove trees, shrubs, or similar vegetation from this area without the prior written approval of the Reviewer pursuant to Chapter 5.

In addition to any other enforcement rights, if any Owner fails to properly perform its maintenance responsibility, the Master Association may perform such maintenance responsibilities and assess all costs incurred by the Master Association against the Unit and the Owner as a Specific Assessment in accordance with Section 12.4. The Master Association shall afford the Owner notice and a reasonable opportunity to cure the deficiency prior to entry, except when entry is required due to an emergency situation.

6.2 Maintenance of Service Area Property

Upon Board resolution, the Owners of Units within each Service Area 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. This may include, without limitation, the costs of maintaining any signage, right-of-way and green space within the Service Area or between the Service Area and adjacent public roads, or private drives within the Service Area, and lakes or ponds within the Service Area, regardless of ownership and regardless of the fact that such maintenance may be performed by the Master Association; provided, all areas that are similarly situated shall be treated the same.

6.3 Responsibility for Repair and Replacement

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, the responsibility for maintenance shall include responsibility for repair and replacement as well as such other duties (which may include irrigation) as the Board may determine necessary or appropriate to maintain the Unit to a level consistent with the Master Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Master Community-Wide Standard, the Governing Documents, and all applicable covenants.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on its Unit, less a reasonable deductible, unless the Master Association, Mixed-Use Association, or EC/TC Association carries such insurance (which they may but are not obligated to do). If the Master Association assumes responsibility for insuring a Unit, the premiums for such insurance shall be levied as a Specific Assessment against the Owner of the benefited Unit.

Within ninety (90) days after any damage to or destruction of any Improvement constructed upon a Unit, the Owner shall commence, and diligently prosecute to completion, the repair or reconstruction of the Improvement, in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to *Chapter 5*. Alternatively, the Owner shall clear the Unit of debris and maintain it in a neat and attractive landscaped condition consistent with the Master Community-Wide Standard. The Owner shall pay all repair, restoration, and/or clean-up costs not discharged by insurance proceeds.

The Mixed-Use Community Covenant, EC/TC Community Covenant, or any Supplemental Covenant may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units within portions of the Community and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

6.4 Maintenance and Repair of Party Walls and Similar Structures

Except as may otherwise be provided by law, a written agreement between Owners of adjacent Units, or other recorded documents, including a condominium declaration, applicable to adjacent Units:

(a) Each wall, fence, driveway, or similar structure built as part of the original construction on the Units that serves and/or separates any two adjoining Units shall be considered a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who use the party structure.

(b) If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of

insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution for the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(c) The right to and the obligation of contribution for party walls and similar structures between Owners, as provided in this section, shall be appurtenant to the land and shall pass to such Owner's successor-in-title.

To the extent not inconsistent with the provisions of this Section, the general rules of law regarding liability party walls and liability for property damage due to negligence or willful acts or omissions shall apply to any party structure. Any dispute concerning a party structure shall be subject to the provisions of *Chapter 18*.

NOTES:

Chapter 7 Use and Conduct

In order to maintain an environment that encourages respect for and courtesy among Owners and minimizes the potential for disputes, this Chapter sets forth basic standards regarding use, occupancy, and transfer of interests in Units. In addition, it provides a procedure by which the Board can adopt and change rules regulating use, conduct, and activities within the Community to address particular needs and desires of the Community over time.

7.1 Use of Occupancy, and Transfer of Interests in Units

(a) **Transfer of Title.** Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven (7) days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title. Failure of an Owner to comply with this subsection will have no effect on the validity of any sale or transfer of title.

(b) **Subdivision and Combination of Units.** No Person, other than the Master Declarant, shall subdivide or change the boundary lines of any Unit or combine Units without the Reviewer's prior written approval. If approved by the Reviewer, any such subdivision, change or combination will be effective only upon recording of a plat or other legal instrument reflecting the subdivision or new boundaries of the affected Unit(s). In the absence of such recorded instrument, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessments. This provision will not be construed to require the advance written approval from the Reviewer for: (i) the ground lease of all or a portion of a Unit used for commercial, retail, light industrial or office purposes; or (ii) the alteration of Units established pursuant to any condominium declaration provided that such alteration does not affect the exterior of any building or Improvement, the interior of any building or Improvement visible from any other portion of the Community, or the allocation of votes or Assessments Units to such Units.

(c) **Timesharing.** No Unit shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years.

7.2 Rulemaking Authority and Procedures

Since it is impossible to foresee all potential situations and problems that may arise within the Community, the Board has the authority to adopt and modify rules as needed to address new or changed circumstances.

The Governing Documents establish a framework of covenants and conditions that govern the Community. The Rules attached as Exhibit "D" are a part of that framework. However, within that framework, the Master Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board is authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in *Section 7.3*. In addition to the Rules established pursuant to this Covenant, rules will be adopted by the Mixed-Use Association and the EC/TC Association. It is contemplated that the board of directors of the Mixed-Use Association and the EC/TC Association will be in the best position to ascertain the needs of its members and the effect of rules adopted for portions of the Community within the jurisdiction of each association. However, on occasion, rules adopted by the Mixed-Use Association and the EC/TC Association may need to be modified or synthesized with rules adopted by the Master Association. In addition, the Master Association may determine that some rules require universal application and, to avoid confusion, such rules will be promulgated by the Master Association. The Board, at all times, will have the authority to resolve conflicts among rules adopted by the Master Association, the Mixed-Use Association, and/or the EC/TC Association, and will further have the authority to promulgate rules which will supercede rules previously adopted by the Mixed-Use Association and the EC/TC Association. The Board may indicate its desire to supercede a rule adopted by the Mixed-Use Association and/or the EC/TC Association by adopting a rule which includes a provision which states that such rule will supercede and replace any rule adopted by the Mixed-Use Association or the EC/TC Association.

(a) **Board Authority.** Subject to the notice requirements in subsection (b) of this *Section 7.2*, and a Board member's duty to act in good faith with ordinary care on behalf of the Master Association, the Board may adopt new Rules that modify, cancel, limit, create exceptions to, or expand existing Rules by majority vote of the directors at any Board meeting.

(b) **Notice.** The Board shall publish notice of the proposed action in a community newsletter, electronic bulletin board, or by other means that the Board determines will be reasonably effective in disseminating such notice on a community-wide basis at least thirty (30) days prior to the meeting of the Board at which such action is to be considered.

This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Master Community Facilities, such as hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

(c) **Effective Date.** A Rules change adopted under this section shall take effect thirty (30) days after the date on which written notice of the Rules change is published.

(d) **Conflicts.** No action taken under this section shall have the effect of modifying or repealing the Master Design Guidelines or any provision of this Covenant other than the Rules. In the event of a conflict between the Master Design Guidelines and the Rules, the Master Design Guidelines shall control. In the event of a conflict between the Rules and any

provision of this Covenant (exclusive of the Rules), the Mixed-Use Community Covenant, EC/TC Community Covenant, or Supplemental Covenant, the Covenant, Mixed-Use Community Covenant, EC/TC Community Covenant, and Supplemental Covenant (in that order) shall control.

7.3 Protection of Owners and Others

Except as may be set forth in this Covenant (either initially or by amendment) or in the Rules set forth in Exhibit "D", all Rules shall comply with the following provisions:

(a) **Similar Treatment.** Similarly situated Units shall be treated similarly; however, the Rules may vary by Neighborhood, Service Area, or housing type.

(b) **Leasing and Transfer of Units.** No Rule shall prohibit leasing or transfer of any Unit or require approval prior to transferring a Unit or leasing a Unit for a period of six (6) months or longer. No Rule shall impose any fee on transfer of any Unit greater than an amount based on the costs to the Master Association of the transfer including but not limited to administrative costs; however, this provision shall not preclude the imposition of transfer or similar fees for the benefit of the Master Association or other entities pursuant to other recorded documents.

(c) **Reasonable Rights to Develop.** No Rule may unreasonably interfere with the Master Declarant's ability to develop, market, lease, and sell any portion of the Property, the Community, or any Unit.

(d) **Interference with Easements.** No Rule may unreasonably interfere with the exercise of any easement.

The limitations in subsections (a) through (d) apply to new rules only; nothing herein shall invalidate the Rules set forth in Exhibit "D", or be construed as a limitation on amendments adopted in accordance with *Chapter 20*.

7.4 Owners' Acknowledgment and Notice to Purchasers

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of its Unit is limited and affected by the Rules, which may change from time to time. All Owners and occupants are hereby notified that the Master Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Master Association upon request. The Master Association may charge a reasonable fee to cover its reproduction costs.

Chapter 8 Compliance and Enforcement

The covenants, standards, and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the stakeholders in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This Chapter sets forth the obligation to comply and the remedies available to the Master Association for noncompliance.

8.1 Compliance

Every Owner, occupant, tenant, guest, and invitee to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this Chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants, tenants, guests, or invitees to their Units, and for any damage to the Area of Common Responsibility that such Persons may cause.

8.2 Remedies for Non-Compliance

The Master Association, the Master Declarant (during the Development and Sale Period), and every adversely affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents, subject to the limitations of and in accordance with Chapter 18. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

To the extent permitted by applicable law, all fines and sanctions imposed for the violation of the Governing Documents shall continue to accrue during the time period of any challenge, appeal, arbitration, or mediation of the alleged violation. The amount of sanction, fine or penalty accrued shall remain due and payable unless the body hearing any such challenge, appeal, arbitration, or mediation finds that the imposition of such a sanction, fine, or penalty was arbitrary or capricious.

(a) **Sanctions Requiring Prior Notice and Hearing.** After written notice and an opportunity for a hearing in accordance with the By-Laws, the Board may:

(i) impose a reasonable monetary fine, which shall constitute a lien upon the violator's Unit. In the event that any occupant, tenant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; provided, that if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

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

(iii) suspend any Person's right to use any Master Community Facilities (other than those facilities to which the public has access): (a) for any period during which any charge against such Owner's Unit remains delinquent; and (b) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation (except that no hearing is required if the Owner is more than sixty (60) days delinquent in paying any assessment or other charge owed the Master Association); provided nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

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

(v) exercise 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);

(vi) without liability to any Person, preclude any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provision of the Governing Documents, from continuing or performing any further activities in the Community;

(vii) levy 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

(viii) record a notice of violation with respect to any Unit on which a violation exists.

(b) **Other Sanctions.** The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take 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 (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(ii) exercise self-help or take action to abate a violation on the Master Community Facilities under any circumstances;

(iii) require an Owner, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit that is in violation of the Master Community-Wide Standard, the requirements of *Chapter 5*, or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter any Unit and exercise self-help to remove or cure a violation condition if an Owner fails to take action as required pursuant to subsection (iii) above within

ten (10) days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

8.3 Board Decision to Pursue Enforcement Action

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Master Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Master Association's resources; or

(d) that it is not in the Master Association's best interests, based upon hardship, expenses or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Master Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction or rule.

8.4 Attorney Fees and Costs

In any action to enforce the Governing Documents, if the Master Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys and paralegals fees and court costs reasonably incurred in such action.

8.5 Enforcement of Ordinances

The City of Austin and any other public governmental authority with jurisdiction may enforce ordinances within the Community.

NOTES:

PART THREE: MASTER ASSOCIATION OPERATIONS

Chapter 9 Property Management

One of the Master Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and residents of the Community. This Chapter establishes the Master Association's obligation to accept property that the Master Declarant designates as Master Community Facilities or Special Common Area and to maintain, operate, and insure it, along with certain other properties.

9.1 Acceptance and Control of Master Community Facilities

(a) **Transfers and Conveyances by the Master Declarant.** The Master Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. The Master Declarant and its designees may transfer or convey to the Master Association interests in real or personal property within or for the benefit of the Community, or the Community and the general public, and the Master Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. All Master Community Facilities shall be maintained by the Master Association at its expense for the benefit of the Community subject to any restrictions set forth in the deed or other instrument transferring such property to the Master Association.

(b) **Management and Control.** The Master Association is responsible for management, operation, and control of the Master Community Facilities and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), 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, for payment or no payment, 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 amount as the Board may establish, for such use.

(c) **Water Quality and Detention Facilities-Maintenance.** 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 in accordance with this Covenant. The obligation to maintain all or any portion of a Facility may also be assigned or licensed from the Master Association to the Mixed-Use Association or the EC/TC Association; provided that such association assumes such obligations. As to a specific Facility, the Master Association's maintenance obligations shall commence on the date: (i) the Facility has received final inspection and been approved by the City of Austin; (ii) the City of Austin has released the fiscal security deposit posted with the City of Austin for the construction of the Facility; and (iii) the obligation to maintain the Facility has been assigned or licensed to the Master Association and such assignment has been recorded in the Official Public Records of Travis County, Texas. All Owners of portions of the Community served by a Facility will be assessed the costs for the

performance monitoring, maintenance 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 if maintenance of the Facility has been licensed or assigned to either association). In order to evidence those Owners who will be assessed for the performance monitoring, maintenance and repair and remediation of each Facility and the Association's assumption of such obligations with respect thereto, the Master Declarant or the Board will file a MCC Annexation Notice, Supplemental Covenant, or a written notice recorded in the Official Public Records of Travis County, Texas, which shall identify the Units benefited by such Facility. However, the failure to file same shall not effect the Association's obligation to maintain the Facility or the obligation of the Owners of the portions of the Community served thereby to pay such costs. Service Area Assessments will be levied against the Units which are the beneficiary of a Facilities designated as Special Common Area.

9.2 Maintenance of Area of Common Responsibility

The Master Association shall maintain the Area of Common Responsibility and keep it in good, clean, attractive, and sanitary condition, order, and repair consistent with this Covenant and the Master Community-Wide Standard.

The Area of Common Responsibility includes, but is not limited to:

(a) 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;

(b) landscaping, sidewalks, street-lights, and signage within public rights-of-way within or abutting the Community, except to the extent that responsibility therefore is assigned to the Owners of adjacent Units pursuant to *Section 6.1*;

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

(d) any property and facilities that the Master 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 Master 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 Master Declarant revokes such privilege of use and enjoyment by written notice to the Master Association.

The Master Association may maintain other property it does not own, including, without limitation, Units and property dedicated to the public.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the Master Association's right to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Covenant, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair, and replacement of Special Common Area shall be a Service Area Expense assessed against the Service Area(s) to which the Special Common Area is assigned, notwithstanding that the Master Association may be responsible for performing such maintenance.

In the event that the Master Association fails properly to perform its maintenance responsibilities hereunder, the Master Declarant may, until expiration of the Development and Sale Period, upon not less than ten (10) days' notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Master Association for all costs incurred.

9.3 Discontinuation of Operation

The Master Association shall maintain the Master Community Facilities in continuous operation unless the Master Declarant and the City of Austin, during the Development and Sale Period, and Neighborhood Delegates representing 75% of the total votes in the Master Association, consent in writing to discontinue such operation. If the property is Special Common Area, any discontinuation shall also require the approval in writing of at least 75% (or such higher percentage if a Supplemental Covenant so requires) of the Owners to whom such Special Common Area is assigned, and, until expiration of the Development and Sale Period, the Master Declarant and the City of Austin. This Section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, or to preclude temporary closures or interruptions in operation as the Board may determine appropriate to perform maintenance or repairs. This limitation shall not apply to streets or roadways that the Master Association owns or controls; the Master Association, acting through the Board, may temporarily or permanent close portions of any such streets or roadways to control traffic or traffic flow, or to enhance privacy, or for similar purposes, without approval of the membership.

9.4 Restoring Damaged Improvements

In the event of damage to or destruction of portions of the Area of Common Responsibility for which the Master Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Master Association shall repair or reconstruct damaged Master Community Facilities unless the Master Declarant and the City of Austin (the Master Declarant and City's

consent are only required until termination of the Development and Sale Period), and Neighborhood Delegates representing at least 75% of the total votes in the Master Association, decide within sixty (60) days after the loss not to repair or reconstruct. If the damage is to Special Common Area or Units within a Service Area, any decision not to restore the damaged improvements shall also require the approval of at least 75% of the Owners of Units in the affected Service Area, the Master Declarant and the City of Austin (the Master Declarant and City's consent are only required until termination of the Development and Sale Period). If either the insurance proceeds or estimates of the loss, or both, are not available to the Master Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in determining whether the damage or destruction to the Master Community Facilities shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Master Association in a neat and attractive condition consistent with the Master Community-Wide Standard.

The Master Association shall retain and place in a capital improvements account for the benefit of all Owners, or the Owners of Units within the affected Service Area, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Neighborhood Delegates, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under *Section 11.4*.

9.5 Relationships with Other Properties

The Master Association may contract with the owner of any neighboring property to provide for sharing costs associated with: (a) maintenance and operation of mutually beneficial properties or facilities; and (b) provision of mutually beneficial services.

9.6 Relationships with Tax Exempt Organizations

The Master Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Master Community Facilities to non-profit, tax-exempt organizations, the operation of which confers some benefit upon the Community, the Master Association, its members, or residents. The Master Association may contribute money, real or personal property, or services to such entity. Any such contribution shall be a Common Expense and included as a line item in the Master Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as, but not limited

to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time.

The Master Association may maintain multiple-use facilities within the Community and allow use by tax-exempt organizations. Such use may be on a scheduled or "first-come, first-served" basis. A reasonable maintenance and use fee may be charged for the use of such facilities.

9.7 Collection Services

The Master Association may enter into a contract with the Mixed-Use Association and/or the EC/TC Association to collect, on behalf of the Mixed-Use Association and the EC/TC Association, assessments levied pursuant to the Mixed-Use Community Covenant and the EC/TC Community Covenant. The Master Association may charge a reasonable fee for such services.

Chapter 10 Provision of Services

In addition to its property management role, the Master Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This Chapter describes some of the services the Master Association may provide and the mechanism by which it may provide and the varying levels and types of services to different areas of the Community.

10.1 Provision of Services to Unit

The Master Association may arrange for or provide services to Owners and their Units directly or through contracts with other 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. By way of example and not limitation, such services might include such things as cable television, utilities, fire protection, security, trash collection, landscape maintenance, pest control, caretaker services, and technology services.

Any Master Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any portion of the charges for such service that are assessed against the Unit as Common Expense or Service Area Expense pursuant to Chapter 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services subject to the contract terms and any provision that may exist elsewhere in Governing Documents requiring the Master Association to provide such services.

10.2 Provision of Services to Service Areas

(a) **Service Areas.** The Master Association shall provide services to Units within any Service Area.

(b) **Service Areas Designated by Board.** In addition to Service Areas which may be designated or created pursuant to *Section 3.3*, any group of Owners may petition the 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. Any such petition shall be signed by Owners of a majority of the Units within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least 75% of the Units within the proposed Service Area approve the proposal in writing, the Board shall designate the Units as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to *Section 12.2(d)*. Notwithstanding the foregoing provision, the Board may elect not to provide the services or benefits if the Board determines that providing the benefits or services is not in the best interests of the Community or the Master Association.

10.3 Community Technology

(a) **Community Systems.** Without limiting the generality of *Section 10.1* and *Section 10.2*, the Master Association is specifically authorized to provide, or to enter into contracts with other Persons to provide, 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 ("Community Systems"). Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Systems as the Board determines appropriate.

The Master Association shall have no obligation to utilize any particular provider(s).

(b) **Opportunities for Community Interaction.** The Master Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Master Association activities. For example, the Master Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology related services and opportunities for Owners and occupants to interact and participate in Master Association-sponsored activities. To the extent Texas law permits, and unless otherwise specifically prohibited in the Governing Documents, the Master Association may send notices by electronic means, hold Board or Master Association meetings and permit attendance and voting by electronic means, and send and collect assessment and other invoices by electronic means.

Chapter 11 Master Association Insurance

The Master Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This Chapter describes the minimum types and amounts of coverage that the Master Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.

11.1 Required Coverage

The Master Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on:

- (i) the Master Community Facilities;
- (ii) other portions of the Area of Common Responsibility, to the extent that the Master Association has responsibility for repair and/or replacement in the event of a casualty; and
- (iii) any Service Area.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Master Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements.

The Master Association shall have the authority to insure any private or publicly owned property for which the Master Association has maintenance or repair responsibility. Such property shall include, by way of illustration and not limitation, any insurable improvements on or related to parks, rights-of-way, medians, easements, and walkways which the Master Association is obligated to maintain. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Master Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Master Association and its members for damage or injury caused by the negligence of the Master Association or any of its members, employees, agents or contractors while acting on its behalf. Such coverage shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be obtained through a combination of primary and umbrella policies.

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined by the Board's business judgment, but not less than an amount equal to one-quarter of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation;

(e) Directors and officers liability coverage; and

(f) Such additional insurance as the Board determines advisable.

11.2 Deductibles

The Board may hold any Persons who cause damage to insured property or improvements responsible for the insurance deductible payable on any insurance claim related to such damage.

The Master Association policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of *Section 11.1*. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

11.3 Policy Requirements

All Master Association policies shall provide for a certificate of insurance to be furnished to the Master Association and, upon request, to each Owner. To the extent reasonably available, until expiration or termination of the Development and Sale Period, the Master Declarant will be added as an additional insured to each policy obtained by the Master Association hereunder.

To the extent available at reasonable cost and terms, all Master Association insurance shall:

(a) be written with a company whose primary business is providing insurance and which is authorized to conduct business in Texas and which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Master Association as trustee for the benefited parties. Policies on the Master Community Facilities shall be for the benefit of the Master Association and its members, and their Mortgagees, as their interests appear, except that policies on Special Common Area shall be for the benefit of the Master Association and Owners

of Units within the Service Area to which the Special Common Area is assigned and their Mortgagees, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually; and

(d) contain an inflation guard endorsement.

11.4 Insurance Premiums

Premiums for all Master Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Special Common Areas assigned to, a particular Service Area shall be a Service Area Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

11.5 Indemnification of Officers, Directors, and Others

To the fullest extent permitted by applicable law, the Master 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 Reviewer, employee, servant, or agent of the Master 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 Master 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 Master 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 Master Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

Each Owner shall indemnify and hold harmless the Master Association from any loss, damages, and expenses, including counsel fees, which they may incur as a result of the failure of such Owner; any occupant of such Owner's Unit; or any contractor, employee, or agent of such Owner acting within the scope of his contract, agency, or employment to comply with the Governing Documents.

Chapter 12 Master Association Finances

The Chapter provides for various types of funding to cover expenses that the Master Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments that this Chapter authorizes the Master Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this Chapter.

12.1 Master Association Expenses

(a) **Common Expenses.** Except as the Governing Documents otherwise specifically provide, 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 includes such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

The characterization of a particular expense as a "Common Expense" shall not preclude the Master Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Covenant, or any other recorded covenants or agreements.

(b) **Service Area Expenses.** 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 reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "Service Area Expenses." Service Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such charge is applied at a uniform rate per Assessment Unit (defined below) among all Service Areas receiving the same service.

12.2 Budgeting for and Allocating Master Association Expenses

(a) **Preparation of Budget.** At least sixty (60) days before the beginning of each fiscal year, the Board shall 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 Board shall 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.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for which the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the

expected useful life of each, the expected repair or replacement cost, and the contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include but not be limited to assessments and any income expected from sources other than assessments levied against Units (including amounts to which the Master Association is entitled pursuant to any covenant or agreement to share costs), and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (d).

(b) **Calculation of Base Assessments.** The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Units, shall be set at an equal rate per "Assessment Unit" (as defined and allocated below). The rate per Assessment Unit multiplied by the number of Assessments Units, or fraction thereof, assigned to a Unit is the Unit's "Base Assessment." The Master 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. Any subsidy and the characterization thereof will be disclosed as a line item in the budget. The payment of a subsidy in any given year will not obligate the Master Declarant to continue payment of a subsidy to the Master Association in future years.

(c) **Assignment of Assessment Units.**

(i) If a Unit is used for single-family residential use (which for the purpose of this Section 12.2(c) only, means a Unit which is located on a subdivided lot, in a duplex, triplex, townhome, or other multi-family residential structure, provided that such Unit is individually owned either in fee simple or through the condominium form of ownership), the Unit will be allocated one (1) Assessment Unit. If a Unit may be used for single-family residential use and office purposes, e.g., a shop house or live/work studio, the Unit will be allocated (1) Assessment Unit.

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

(d) **Calculation of Service Area Assessments.** The total budgeted Service Area Expense, 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, shall be allocated among Assessment Units assigned to Units in the Service Area that are subject to assessment under *Section 12.5* and levied as a "Service Area Assessment." The Master 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 by the Master Declarant to the Master Association. Any subsidy and the characterization thereof will be disclosed as a line item in the budget. The payment of a subsidy in any given year will not obligate the Master Declarant to continue payment of a subsidy to the Master Association in future years. Unless otherwise specified in an MCC Annexation Notice, any Supplemental Covenant applicable to a Service Area, or instrument recorded pursuant to this Covenant, Service Area Assessments shall be set at a uniform rate per Assessment Unit, except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Units in proportion to the benefit received, as the Board may reasonably determine.

All amounts the Master Association collects as Service Area Assessments shall be held in trust for and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Master Association's general funds.

(e) **Publication of Budget and Assessment; Right to Disapprove.** The Board shall 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 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). The Common Expense budget shall automatically become effective unless disapproved at a meeting by Neighborhood Delegates representing at least 75% of the total votes in the Master Association. Each Service Area budget shall automatically become effective unless disapproved at a meeting by Owners of at least 75% of the Units within the Service Area, except that the right to disapprove a Service Area budget shall apply only to those line items that are attributable to services or benefits requested by the Service Area and shall not apply to any item which the Governing Documents require to be assessed as a Service Area Expense.

There shall be 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 the Units within the Service Area. Any such petition must be presented to the Board within ten (10) days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new

budget is determined. Notwithstanding any provision in this Chapter to the contrary, a budget which has been disapproved by the Owners may be increased to satisfy any obligations which the Master Association is required to discharge pursuant to the Governing Documents or applicable law.

(f) **Budget Revisions.** The 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 in subsection (e) above.

12.3 Special Assessments

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. Except as otherwise specifically provided in this Covenant, any Special Assessment for Common Expenses that would exceed 20% of the annual budget for the year immediately preceding that in which the Special Assessment is approved shall require the affirmative vote or written consent of Neighborhood Delegates representing at least 51% of the votes attributable to Units subject to assessment under *Section 12.5* and shall be allocated equally among all such Units. Any Special Assessment for Service Area Expenses shall require the affirmative vote or written consent of Owners representing at least 51% of the total votes allocated to Units in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under *Section 12.1(b)*. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

12.4 Specific Assessments

The Master Association may levy "Specific Assessments" against a particular Unit as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services the Master Association may offer (which might include the items identified in *Section 10.1*). Specific Assessments for optional services may be levied in advance of providing the requested service;
- (b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b); and
- (c) to cover the Unit's pro rata 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; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (c).

12.5 Authority to Assess Owners; Time of Payment

The Master Declarant hereby establishes, and the Master Association is hereby authorized to levy, assessments as provided for in this Chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Covenant; or (b) the month in which the Master Association first determines a budget and levies assessments pursuant to this Chapter, whichever is later. The first annual Base Assessment and Service Area Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

All assessments shall be levied and collected by the Master Association. Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment shall be due and payable in advance on the first of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

12.6 Obligation for Assessments

(a) **Personal Obligation.** By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Texas law), late charges as determined by a resolution of the Board, costs, and reasonable attorneys and paralegals fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no Person who obtains title to a Unit following foreclosure of a first priority Mortgage given in good faith and for value by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments that accrued prior to such for foreclosure.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Service Area Assessments at the rate established for the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Master Association may retroactively assess any shortfall.

No Owner may exempt itself from liability for assessments by non-use of Master Community Facilities, Special Common Area, abandonment of such Owner's Unit, or non-use

of services provided to all Units or to all Units within the Service Area to which the Unit is assigned. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Master Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

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

(b) **The Master Declarant's Financial Obligations to the Master Association.** The Master Declarant shall have no obligation to pay Base Assessments, Special Assessments, and/or Service Area Assessments on any Units it owns.

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

The Master Declarant may, but is not obligated, to reduce 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. Any subsidy and the characterization thereof will be disclosed as a line item in the budget prepared by the Board. The payment of a subsidy in any given year will not obligate the Master Declarant to continue payment of a subsidy to the Master Association in future years.

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

12.7 Lien for Assessments

(a) **Existence of Lien.** Each assessment levied pursuant to this Covenant, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Texas law), late charges as determined by a resolution of the Board, costs, and reasonable attorneys and paralegals fees, will be secured by a lien hereby granted and conveyed by the Master Declarant to the Master Association against each Unit and all Improvements thereon (such lien, with respect to any Unit not in existence on the date hereof, will be deemed granted and conveyed at the time that such Unit is created). Such lien shall be superior to all other liens except for tax liens and all sums secured by a first

mortgage lien, first deed of trust lien of record, or any bonded indebtedness, to the extent such lien or bonded indebtedness secures sums borrowed for the acquisition or improvement of the Unit, provided such bonded indebtedness was issued before the delinquent assessment was due, or the mortgage or deed of trust lien was recorded in the Official Public Records of Travis County, Texas before the delinquent assessment was due. In the event an Owner fails to pay any Assessment when due, then as a condition to the Master Association's enforcement of the Assessment lien by foreclosure in the same manner as mortgages on real property are foreclosed under Texas law as permitted by *subsection (b)* below, the 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. Such notice may be signed by one of the officers of the Master Association, a copy of such Assessment lien will be mailed to the Owner of the Unit described in the lien, and the Assessment lien will be recorded in the Official Public Records of Travis County, Texas.

(b) **Enforcement of Lien.** The Master Association's lien, when delinquent, may be enforced by suit, judgment, and judicial foreclosure. The Master Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Master Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on the Unit; and (iii) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Master Association. The Master Association may sue for unpaid Common Expenses, Service Area Expenses, and other costs without foreclosing or waiving the lien securing the same.

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

12.8 Exempt Property

The following property shall be exempt for payment of Base Assessments, Service Area Assessments, and Special Assessments:

(a) All Master Community Facilities and such portions of the property owned by the Master Declarant which are 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; provided, however, that this exemption will expire: (i) as to the Film Society Property, if the current lease between the City of Austin and the current lessee is terminated or expires and the use of the Film Society Property under any new or extended lease is not substantially similar to the permitted uses under the current lease; and (ii) as to the National Guard Property, upon the occurrence of any change in use which is not substantially similar to the present use of such property or the expiration or termination of the current lease between the City of Austin and the Texas National Guard.

12.9 Capitalization of Master Association

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

12.10 Use and Consumption Fees

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

NOTES:

PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

Chapter 13 Easements

The easements created in this Chapter establish the rights of Owners to use the Master Community Facilities and create various rights for the benefit of owners, the Master Declarant, the Master Association, and others over property within the Community. The easements created under this Chapter may exist in conjunction with rights in and to the Master Community Facilities granted to the public. Some of these rights are related to development and construction within the Community and on adjacent property, while others relate to the rights of the Master Association to come upon property of others to fulfill its responsibilities and the interrelationships between the Community and the owners of adjacent property.

13.1 Easements in Master Community Facilities

An easement is one person's right to go onto the property of another.

Each and every Owner shall have a nonexclusive right and easement of use, access, and enjoyment in and to the Master Community Facilities, subject to:

(a) The Governing Documents and any other applicable covenants and easements, including any declaration of easements and covenants to share costs or similar instruments relating to such Master Community Facilities, and any rights of non-Owners to use and enjoy portions of the Master Community Facilities;

(b) Any restrictions or limitations contained in any deed conveying such property to the Master Association;

(c) Certain Owners' rights to the exclusive use of those portions of the Master Community Facilities designated "Special Common Area";

(d) the right of the Master Declarant or the Master Association to grant easements over the Master Community Facilities to "tax-exempt organizations" pursuant to Section 9.6; and

(e) The Board's right (as limited by the MDA or any easements or restrictions applicable to the Master Community Facilities) to:

(i) adopt rules regulating Master Community Facilities use and enjoyment, including rules limiting the number of guests who may use certain Master Community Facilities, and to charge fees for such use;

(ii) suspend an Owner's right to use Master Community Facilities;

(iii) dedicate or transfer all or any part of the Master Community Facilities, subject to such approval requirements as may be set forth in this Covenant;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon certain portions of the Master Community Facilities;

(v) rent any portion of any clubhouse or other Master Community Facilities recreational facilities on an exclusive or non-exclusive short-term basis to any Person;

(vi) permit use of any recreational facilities situated on the Master Community Facilities by the general public, which use may be subject to admission charges, membership fees, or other user fees established in the Board's discretion;

(vii) permit use of any Master Community Facilities, at such charge or no charge as the Board may determine appropriate, for the purpose of offering and conducting classes or other activities for interested Owners and occupants, whether offered on a for profit or nonprofit basis; and

(viii) to the extent assessments are insufficient to pay for operating or capital expenses, mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

An Owner who does not reside in the Community shall be deemed to have assigned all rights to use and enjoy the recreational facilities within the Master Community Facilities to the occupants of such Owner's Unit.

13.2 Easement of Encroachment

An encroachment occurs when a person's home, fence, or other structure extends onto his or her neighbor's property. The section permits minor and inadvertent encroachments to remain.

There are and shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Master Community Facilities and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of not more than three (3) feet, as measured from any point on the common boundary between each Unit and the adjacent portion of the Master Community Facilities or as between said adjacent Units, as the case may be, along a line perpendicular to such boundary at such point. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

13.3 Easements for Utilities, Etc.

(a) **Installation and Maintenance.** Subject to Section 13.3(d) below, the Master Association, the Master Declarant during the Development and Sale Period, and the designees of each party shall have a perpetual nonexclusive easement upon, across, over, and under all of

the Community (but not through a structure), 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 and/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 including, but not limited to, water lines, sewers, meter boxes, telephone lines, gas lines and electric lines;

(iv) for the purpose of altering drainage and water flow across the Community; and

(v) otherwise as may be necessary, in the sole discretion of the Master Declarant and the Master Association, for development of the Community and for the performance of the Master Association's maintenance responsibilities under this Covenant.

(b) **Water, Electricity, Natural Gas, Cable, and Telephone.** The local water supplier, electric company, natural gas supplier, cable company, telephone company shall have easements across the Community for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters, boxes, and facilities. However, the exercise of this easement shall not extend to permitting entry into the structure on any Unit, nor shall any utilities be installed or relocated on the Community except as approved by the Board and, during the Development and Sale Period, the Master Declarant.

(c) **Specific Easements.** The Master Declarant also reserves (and the Master Association grants to the Master Declarant) the nonexclusive right and power to grant and record such specific easements consistent with *Section 13.3(a)* reasonably necessary to develop the Property and the Community. The Owner of any property to be burdened by an easement granted pursuant to this Section shall be given written notice in advance of the grant. The location of the specific easement shall be subject to the written approval of the Owner of the burdened property which approval shall not unreasonably be withheld, delayed, or conditioned.

(d) **Minimal Interference.** All work associated with the exercise of the easements described in subsections (a), (b), and (c) shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant. Notwithstanding anything to the contrary contained in this Section, no above ground sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Community except as: (a) may

be approved by the Master Declarant during the Development and Sale Period, or the Board after the expiration of the Development and Sale Period; or (b) may be constructed by the Master Declarant; or (c) may be permitted by the terms of any easement affecting the Community.

The easements provided for in this Section shall in no way adversely affect any other recorded easement on the Community, nor shall they be exercised in any manner that unreasonably restricts or interferes with the use and development of a Unit.

13.4 Easements to Serve Additional Property

The Master Declarant hereby reserves for itself (and the Master Association hereby grants to the Master Declarant) and its duly authorized agents, representatives, successors, successors-in-title, assigns, licensees, and Mortgagees, a perpetual nonexclusive easement over the Master Community Facilities for the purposes of enjoyment, use, access, and development of the Property and the Community. This easement includes, but is not limited to, a right of ingress and egress over the Master Community Facilities for construction of roads and for connecting and installing utilities on such property.

13.5 Easements for Maintenance, Emergency, and Enforcement

The Master Association may come onto the exterior portions of a Unit to do maintenance or to address violations of this Covenant but will give prior notice unless there is an urgent need to enter the Unit before notice can be given.

The Master Declarant hereby reserves for itself (and the Master Association grants to the Master Declarant) and its duly authorized agents, representatives, successors, successors-in-title, assigns, licenses, and Mortgagees, easements over the Community as necessary to enable the Master Association to fulfill its maintenance responsibilities under this Covenant and its enforcement rights under Chapter 8. The Master Association shall also have the right but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents; provided, nothing herein shall authorize any Person to enter any structure constructed on a Unit without permission of the Owner unless necessary to avoid imminent threat of personal injury or property damage.

Any member of the Board, any officer, manager, agent, or employee of the Master Association acting with permission of the Board, and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation to avoid an imminent threat of personal injury or property damage, entry into any portion of a Unit not generally open to the public shall only be authorized during reasonable hours and after receipt of the Owner's or occupant's consent. This right of entry shall include the right of the Master Association to enter upon a Unit to perform maintenance or to cure any condition which may

increase the possibility of a fire or other hazard, in the event that the Owner fails or refuses to perform such maintenance or cure such conditions within a reasonable time after request by the Board.

13.6 Easement for Pond Maintenance and Flood Water

The Master Declarant reserves for itself and the Master Association, and their respective successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon lakes, ponds and streams located within the Area of Common Responsibility to: (a) install, keep, maintain, and replace pumps thereon in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any wall, dam, or other structure retaining water therein; and (c) to remove trash and other debris and fulfill their maintenance responsibility as provided in this Covenant.

The Master Declarant and the Master Association shall have an easement over and across any of the Community abutting or containing any portion of any of the lakes, ponds or streams for the purpose of allowing the Master Declarant and the Master Association to exercise their rights and responsibilities as herein and otherwise set forth; provided, the Master Declarant, its designees, and the Master Association shall use reasonable care in the exercise of such easement and shall repair any damage caused in the exercise of such easement rights.

The Master Declarant further reserves for itself and the Master Association a perpetual, nonexclusive right and easement of access and encroachment over the Master Community Facilities and Units (but not the structure thereon) adjacent to or within 50 feet of ponds and streams within the Community, in order to: (a) temporarily flood and back water upon and maintain water over such portions of the Community; (b) fill, drain, dredge, deepen, clean and generally maintain the lakes, ponds, and streams within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks pertaining to such ponds and streams; and (d) enter upon and across such portions of the Community to the extent reasonably necessary for the purpose of exercising its or their rights under this Section. Nothing herein shall be construed to make the Master Declarant, the Master Association, or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrence.

13.7 Easements for Special Events

The Master Declarant reserves for itself and the Master Association, and their successors, assigns, and designees, a perpetual, nonexclusive easement over the Master Community Facilities for the purpose of conducting parades; running, biking or other sporting events; educational, cultural, artistic, musical and entertainment activities; and other activities of general community interest at such locations and times as the Master Declarant or the Master Association, in their reasonable discretion, deem appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise

of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement.

13.8 Easement for Stormwater Drainage and Detention

Each portion of the Community is hereby subjected to a non-exclusive easement appurtenant to and for the benefit of each other portion of the Community for the purpose of stormwater drainage and runoff and drainage detention in accordance with the master drainage and detention plan established for the Community, which easement shall include, but shall not be limited to, the right to tie in to existing drainage and detention facilities and to divert stormwater runoff from each Unit into such drainage and detention facilities at such points and in such a manner as approved by the Master Declarant during the Development and Sale Period, and thereafter the Board, and for the flow of stormwater runoff over the Community to such points and from such points through the stormwater drainage facilities into wetlands, ponds, or other detention facilities within or outside the Community. The foregoing easements shall be subject to any and all restrictions regarding quantity, rate, and quality of discharge that the Master Declarant or Board may hereafter impose or which may be imposed on the Community, the Master Declarant, or any Owner by any governmental entity having jurisdiction over the Community.

NOTES:

Chapter 14 Disclosures and Waivers

This Chapter discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this Chapter.

14.1 Facilities and Services Open to the Public

Certain facilities and areas within the Community will be open for use and enjoyment of the public. Such facilities and areas will include, by way of example: greenbelts, trails and paths, parks, and other neighborhood spots conducive to gathering and interaction; roads; sidewalks; and medians.

14.2 Safety and Security

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Community. The Master Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Master Association nor the Master Declarant shall in any way be considered insurers or guarantors of safety or security within the Community, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Community, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Unit that the Master Association, its Board and committees, and the Master Declarant are not insurers or guarantors of security or safety and that each Person within the Community assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

14.3 View Impairment

Neither the Master Declarant nor the Master Association guarantee or represent that any view over and across the Units, or any open space within the Community will be preserved without impairment. The Master Declarant and the Master Association shall have no obligation

to relocate, prune, or thin trees or other landscaping except to maintain the Master Community-Wide Standard or as otherwise required under a separate covenant or agreement. The Master Association (with respect to the Master Community Facilities) will have the right to add trees and other landscaping from time to time, subject to applicable law. There shall be no express or implied easements for view purposes or for the passage of light and air.

14.4 Notices and Disclaimers as to Community Systems

Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. The Master Declarant and the Master Association, or any of their respective successors or assigns shall not be liable for, and no Community System or service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

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Chapter 15 Rights of Lenders

In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this Chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies that guarantee and insure mortgage loans made by institutional lenders.

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Community. The provisions of this Chapter apply to both this Covenant and to the By-Laws, notwithstanding any other provisions contained therein.

15.1 Notices of Action

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

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

15.2 Special FHLMC Provision

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

- (a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Master Community Facilities that the Master Association owns directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Master Community Facilities shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner of a Unit (a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Community regarding assessments for Service Areas or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Covenant);

(c) By act or omission change, waive or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance, or maintenance of Units and the Master Community Facilities (the issuance and amendment of Master Design Guidelines, procedures, and Rules shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Covenant; or

(e) Use hazard insurance proceeds for any Master Community Facilities losses for other than the repair, replacement, or reconstruction of such property.

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

15.3 Other Provisions for First Lien Holders

To the extent not inconsistent with Texas law, if a residential condominium has been established in the Community, then:

(a) Any restoration or repair of the Community after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Covenant and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units subject to the regime to which at least 51% of the votes in the association established by such regime subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Master Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units subject to the regime to which at least 51% of the votes in the association established by such regime subject to Mortgages held by such Eligible Holders are allocated.

15.4 Amendments to Documents

The following provisions do not apply to amendments to the Governing Documents or termination of the Master Association as a result of destruction, damage, or condemnation

pursuant to *Section 15.3(a)* and *(b)*, or to the addition of land in accordance with *Chapter 16*. If a residential condominium has been established in the Community, then:

(a) The consent of Owners subject to the condominium regime representing at least 80% of the total votes in the association established by such regime, and the approval of the Eligible Holders of first Mortgages on Units subject to the regime to which at least 67% of the votes in the association established by such regime subject to a Mortgage appertain, shall be required to terminate the Master Association.

(b) The consent of Owners subject to the condominium regime representing at least 67% of the total votes in the association established by such regime, and the approval of Eligible Holders of first Mortgages on Units subject to the regime to which at least 51% of the votes in the association established by such regime subject to a Mortgage appertain, shall be required to materially amend any provisions of the Covenant, By-Laws, or Articles of Incorporation, or to add any material provisions thereto that establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Master Community Facilities;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Master Community Facilities;
- (vi) responsibility for maintenance and repair of property in the Community;
- (vii) expansion or contraction of the Community or the addition, annexation, or withdrawal of property to or from the Master Association's jurisdiction;
- (viii) boundaries of any Unit;
- (ix) leasing of Units;
- (x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Unit;
- (xi) establishment of self-management by the Master Association where professional management has been required by an Eligible Holder; or
- (xii) any provisions included in the Governing Documents that are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

(c) Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete or modify any of its respective requirements that necessitate an amendment to the provisions of this *Article 15*, the Board, without approval of the Owners, may record an amendment to this *Article 15* to reflect such changes.

15.5 No Priority

No provision of this Covenant or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Master Community Facilities.

15.6 Notice to Master Association

Upon request, each Owner shall be obligated to furnish to the Master Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

15.7 Failure of Mortgagee to Respond

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

15.8 Construction of Chapter 15

Nothing contained in this Chapter shall be construed to reduce the percentage vote that must otherwise be obtained under this Covenant, the By-Laws, or Texas law for any of the acts set out in this Chapter.

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PART FIVE: COMMUNITY DEVELOPMENT

Chapter 16 Expansion of the Community

Due to the need to pace development to the needs of the Community and the market demand for Units or Master Community Facilities, the Community may be developed in phases. The Master Declarant may submit Property to the Covenant as set forth in this Chapter.

16.1 Expansion

From time to time, the Master Declarant may submit to the terms of this Covenant all or any portion of the Property by recording an MCC Annexation Notice describing the additional property to be submitted and specifically subjecting it to the terms of this Covenant. The Master Declarant may record an MCC Annexation Notice without the consent of any Person except the City of Austin and the owner of such property, if not the Master Declarant.

The Master Declarant's right to expand the Community under this section expires when all the Property has been submitted to this Covenant or April 15, 2100, whichever is earlier.

Unless otherwise provided in the MDA, nothing in this Covenant shall require the Master Declarant or any successor to submit additional property to this Covenant or to develop any of the Property in any manner whatsoever.

Chapter 17 Additional Rights Reserved to the Master Declarant

This Chapter reserves various rights to the Master Declarant, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Master Declarant's development and sale of Property and the Community, to enable the Master Declarant to respond to Owners' concerns, and to protect various property rights and other interests of the Master Declarant.

17.1 Withdrawal of Property

During the Development and Sale Period, and only if approved by the City of Austin, the Master Declarant may amend this Covenant to remove any unimproved portion of the Community from the coverage of this Covenant. "Unimproved" means that no permanent structure has yet been completed on the property. Such amendment (unless otherwise specifically provided herein) shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn (if not the Master Declarant). If the property is Master Community Facilities, the Master Association must also consent to such withdrawal.

17.2 Marketing, Sales, and Development Activities

The Master Declarant and its designees or assigns may construct, use, and maintain upon portions of the Master Community Facilities such facilities and activities as, in the reasonable opinion of the Master Declarant, may be required, convenient, or incidental to the construction or sale of Units.

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

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

17.3 Right to Make Improvements, Replat

During the Development and Sale Period, the Master Declarant and the Master Association, and their employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Master Community Facilities for the purpose of making, constructing, and installing such improvements to the Master Community Facilities and to the Property to satisfy the obligations set forth in the MDA.

In addition, during the Development and Sale Period, the Master Declarant may: (i) replat any portion of the Property or Community; and (ii) convert Units it owns into Master Community Facilities.

17.4 Right to Approve Changes in the Community Standards

During the Development and Sale Period, no amendment to or modification of any Rules or Master Design Guidelines shall be effective without prior notice to and the written approval of the Master Declarant and the City of Austin.

17.5 Additional Covenants and Restrictions

During the Development and Sale Period, no one other than the Master Declarant may record any additional covenants or restrictions affecting any portion of the Community without the Master Declarant and the City of Austin's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

17.6 Exclusive Rights to Use Name of Development

No Person shall use the name "Mueller" or any derivative of such name in any logo or depiction associated with the Community in any printed or promotional material without the Master Declarant's prior written consent. However, Owners may use the name "Mueller" in printed or promotional matter where such term is used solely to specify that particular property is located within the Community, and the Master Association shall be entitled to use the name "Mueller" in its name.

17.7 Right to Transfer or Assign the Master Declarant's Rights

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

17.8 Amendment and Termination of Rights

This Chapter may not be amended without the written consent of both the Master Declarant and the City of Austin during the Development and Sale Period. The rights contained in this Chapter will terminate upon expiration of the Development and Sale Period, save and except the rights reserved pursuant to *Section 17.2* will not terminate until two (2) years after termination of the Development and Sale Period; or (b) the Master Declarant's recording of a written statement terminating such rights.

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PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

Chapter 18 Dispute Resolution and Limitation on Litigation

From time to time, disputes may arise between Owners or between an Owner and the Master Association, the Master Declarant, or others involved in the Community. This Chapter commits the parties to any such dispute to work together in an attempt to resolve the dispute without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Master Association's membership before the Master Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.

18.1 Agreement to Encourage Resolution of Disputes Without Litigation

(a) **Bound Parties.** The Master Declarant, the Master Association and its officers, directors, and committee members; all Persons subject to this Covenant; and any Person not otherwise subject to this Covenant who agrees to submit to this Chapter (collectively, "Bound Parties") agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim. However, by submitting to this Chapter the Bound Parties are in no way suspending the accrual of sanctions and fines that may be due and payable by the Unit Owner, if otherwise permitted by applicable law. All fines and sanctions imposed for the violation of the Governing Documents shall, if otherwise permitted by applicable law, continue to accrue during the time a Unit Owner seeks an alternative method for resolving any dispute under this Chapter. The amount of sanction, fine, or penalty accrued during any alternative dispute resolution shall continue to accrue and remain due and payable unless the board hearing any such challenge, appeal, arbitration, or mediation finds that the imposition of such a sanction, fine, or penalty was arbitrary and capricious.

(b) **Claims.** As used in this Chapter, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of Improvements within the Community, other than matters of aesthetic judgment under Chapter 5, which shall not be subject to review and shall not be subject to this Chapter.

(c) **Exclusions.** Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in *Section 18.2*:

(i) any suit by the Master Association against any Bound Party to collect assessments or other amounts due under *Chapter 12*;

(ii) any suit by the Master Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Master Association's ability to enforce the provisions of Part Two of this Covenant (relating to creation and maintenance of community standards);

(iii) any suit between Bound Parties that does not include the Master Declarant or the Master Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in *Section 18.2*;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by *Section 18.2(a)*, unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Chapter;

(vi) the imposition by the Master Association of any fine or sanction as a result of any violation of this Covenant (as it may be amended from time to time), where any opportunity for a hearing before the Board or a committee appointed by the Board is afforded the Bound Party; and

(vii) any dispute between the Master Declarant and the City of Austin associated with the rights, obligations, duties, interpretation, application, or enforcement of the MDA.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in *Section 18.2*.

18.2 Dispute Resolution Procedures

(a) **Notice.** Any Bound Party having a Claim ("Claimant") against another Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing ("Notice") stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e. the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Negotiation.** The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiating a resolution of the Claim, if the Master Association is not a Party and the Board, in its discretion, believes its efforts will be beneficial to the Parties and to the welfare of the Community.

(c) **Mediation.** If the Parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other period agreed upon in writing) ("Termination of Negotiations"), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Master Association. Each Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this section. In such event, the Party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying Party, (or if more than one non-complying Party, from all such Parties in equal proportions), all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

(e) **Arbitration.** If the Parties do not resolve the claim through mediation, the Claimant shall have 30 days following Termination of Mediation to submit the Claim to arbitration in accordance with the Rules of Arbitration set forth on Exhibit "E" or the Claim shall be deemed abandoned, and the Respondent shall be released and discharged from any and all liability to the Claimant arising out of such claim; provided, nothing herein shall release or discharge the Respondent from any liability to Persons not a Party to the foregoing proceedings.

Unless the Parties agree in writing to be bound by the arbitrator's decision ("Award") prior to the commencement or arbitration proceedings under the foregoing paragraph, any Party shall be free to reject the Award and sue in any court of competent jurisdiction or initiate proceedings before any appropriate administrative tribunal.

18.3 Initiation of Litigation by Master Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Master Association shall not initiate any judicial or administrative proceeding unless first approved by 75% of the Neighborhood Delegates in the Master Association. A Neighborhood Delegate representing Units owned by Persons other than himself or herself shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners holding at least 75% of the total votes attributable to Units in the Neighborhood represented by the Neighborhood Delegate. No such approval shall be required by actions or proceedings:

- (a) initiated to enforce the provisions of the Governing Documents, including collection of assessments and foreclosure of liens;
- (b) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (c) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (d) to defend claims filed against the Master Association or to assert counterclaims in proceedings instituted against it.

This section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

NOTES:

Chapter 19 Changes in the Master Community Facilities

Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of or rights to use Master Community Facilities. This Chapter explains the procedures for dealing with matters such as changing use rights in Master Community Facilities, partition of the Master Community Facilities, and condemnation.

19.1 Condemnation

If any part of the Master Community Facilities is taken by any authority having the power of condemnation or eminent domain or conveyed by the Master Association in lieu of and under threat of condemnation with such approval as may be required under *Section 19.3*, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance.

If the taking or conveyance involves a portion of the Master Community Facilities on which improvements have been constructed, the Master Association shall restore or replace such improvements on the remaining land included in the Master Community Facilities to the extent available unless within sixty (60) days after such taking the Master Declarant, during the Development and Sale Period, and Neighborhood Delegates representing at least 75% of the total votes in the Master Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of *Section 9.4* regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Master Community Facilities, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Master Community Facilities under *Section 19.3*.

19.2 Partition

Except as permitted in this Covenant, the Master Community Facilities shall remain undivided, and no Person shall bring any action to partition any portion of the Master Community Facilities without the written consent of all Owners and Mortgagees. This section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Covenant, with such approval as may be required under *Section 19.3*.

19.3 Transfer or Dedication of Master Community Facilities

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

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

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

The proceeds from the sale of Master Community Facilities other than Special Common Area shall be an asset of the Master Association to be used as the Board determines. The proceeds from the sale or mortgaging of Special Common Area shall be disbursed in the manner approved by the Owners of Units to which the Special Common Area is assigned at the time such sale or mortgage is authorized.

No conveyance or encumbrance of Master Community Facilities may deprive any Unit of rights of access or support.

NOTES:

Chapter 20 Termination, Amendment, Notice and Limitation of Liability

As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This Chapter sets out procedures by which either the Master Declarant or the Owners as a group may amend this Covenant to address such changes.

20.1 Term and Termination.

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

This Covenant shall be effective for a minimum of 21 years from the date it is recorded. After 21 years, this Covenant shall be extended automatically for successive 10-year periods unless at least 75% of the then Owners sign a document stating that this Covenant is terminated and such document is recorded within the year before any extension. In such case, this Covenant shall terminate on the date specified in the termination document.

If any provision of this Covenant would be unlawful, void, or voidable by reason of any rule restricting the period of time that covenants can affect title to property, that provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

This section shall not permit termination of any easement created in this Covenant without the consent of the holder of such easement.

20.2 Amendment.

(a) **By the Master Declarant.** The Master Declarant may unilaterally amend this Covenant if such amendment is necessary: (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination with which it is in conflict therewith; (ii) to enable any reputable title insurance company to issue title insurance coverage any portion of the Community; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. However, any amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, during the Development and Sale Period, the Master Declarant may unilaterally amend this Covenant for any other purpose: (i) with the prior written consent of the City of Austin; and (ii) 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; provided that Seton's consent will not be unreasonably conditioned, delayed or withheld. An "affiliate of Seton" means an entity in which Seton has at least fifty percent (50%) ownership interest.

(b) **By Owners.** Except as otherwise specifically provided above and elsewhere in this Covenant, this Covenant may be amended only by the affirmative vote or written consent, or any combination thereof, of the Owners representing 75% of the total votes in the Master Association. In addition, during the Development and Sale Period, any such amendment shall also require the Master Declarant and City of Austin's written consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date.** No amendment may directly or indirectly remove, revoke, or modify the status of, or any right or privilege of the Master Declarant without the written consent of the Master Declarant (or the assignee of such right or privilege). In addition, the approval requirements set forth in *Chapter 15* shall be met, if applicable.

If any Owner consents to any amendment to this Covenant or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recordation in the Official Public Records of Travis County, Texas, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Covenant.

(d) **Exhibits.** Exhibit "A", Exhibit "B", Exhibit "C" and Exhibit "E" are incorporated by this reference, and this Chapter shall govern amendment of those exhibits. Exhibit "D" is incorporated by this reference and may be amended under *Chapter 7* or pursuant to this section. All other exhibits are attached for informational purposes and may be amended as provided in those exhibits or in the provisions of this Covenant that refer to such exhibits.

20.3 Notice.

In the event that the Master Declarant or the Master Association, its officers, directors, and committee members are required to provide notice to an Owner, member of the Master Association, or Neighborhood Delegate pursuant to this Covenant, notice shall be deemed to have been given to such Owner, member, or Neighborhood Delegate on the earlier of: (i) the date on which the Owner, member, or Neighborhood Delegate actually receives the notice; or (ii) the date on which the U.S. Postal Service or other entity attempts to deliver such notice to the Owner, member, or Neighborhood Delegate at their Unit address, or at such other address

as the Owner, member, or Neighborhood Delegate has provided to the Master Association in writing.

20.4 Limitation of Liability. In no event will the Master Declarant, any affiliate of Master Declarant or any board member, officer, partner, employee, or agent of the Master Declarant or any such affiliate (a "Benefited Party") be liable to any person as a result of any act performed by a Benefited Party pursuant to the terms or provisions of the Governing Documents.

EXECUTED on this 10th day of December, 2004.

DECLARANT:

CATELLUS AUSTIN, LLC., a Delaware limited liability company

By: Ted A
Printed Name: Ted Antenucci
Title: President

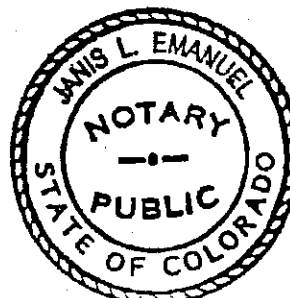
Date: 12-10-04

Jefferson Colorado
County of ~~Travis~~, State of ~~Texas~~

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

(seal)

[Signature]
Notary Public Signature



My Commission Expires 06/06/2007

EXHIBIT "A"

**DESCRIPTION OF PROPERTY WHICH MAY BE ANNEXED INTO THE
COMMUNITY**

188127-25 11/11/2004

EXHIBIT A

Property

**15.857 ACRES
MUELLER TRACT 1
ALONG 51ST STREET**

Lot 1, Block "C", MUELLER SECTION 1 PHASE A SUBDIVISION, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded under Document No. 200400079 of the Official Public Records of Travis County, Texas.

[Note: Following additional right of way dedication(s), this tract is anticipated to be approximately 14.1 acres]

**14.460 ACRES
MUELLER TRACT 2
ALONG 51ST STREET**

Lot 1, Block "B", MUELLER SECTION 1 PHASE A SUBDIVISION, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded under Document No. 200400079 of the Official Public Records of Travis County, Texas.

**19.665 ACRES
MUELLER R.O.W. AREA
(A.K.A. ROW PROPERTY)**

**FN NO. 03-164(MTH)
NOVEMBER 12, 2003
BPI JOB NO. 1400-01**

**INTERNAL ROW TRACT SURROUNDING SETON
TRACT, TRACT 1, TRACT 2 AND TRACT 3**

DESCRIPTION OF A 19.665 ACRE TRACT OF LAND OUT OF THE THOMAS HAWKINS SURVEY NO. 9 AND THE J.P. WALLACE SURVEY NO. 57, SITUATED IN THE CITY OF AUSTIN, BEING A PORTION OF THE TRACTS OF LAND CONVEYED TO THE CITY OF AUSTIN BY THE FOLLOWING DEEDS OF RECORD: VOLUME 665, PAGE 95; VOLUME 430, PAGE 201; VOLUME 680, PAGE 257, AND VOLUME 668, PAGE 396, ALL OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 19.665 ACRES ALSO BEING A PORTION OF LOTS 26, 27, 32 AND 33 OF RIDGETOP GARDENS, A SUBDIVISION OF RECORD IN BOOK 3, PAGE 50 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS;

Exhibit A (Whole Mueller Property)

SAID 19.665 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, at a 1/2 inch iron rod found in the existing easterly line of Interstate Highway 35 (R.O.W. Varies) at the southeasterly corner of the intersection of East 51st Street, being within Lot 20 Ridgetop Gardens, a subdivision of record in Book 3, Page 50 of the Plat Records of Travis County, Texas;

THENCE, along the curving easterly right-of-way line of Interstate Highway 35, over and across said Lot 20 and Lot 21 of said Ridgetop Gardens and a portion of the westerly line of the remaining portion of the said City of Austin Tract of record in Volume 665, Page 95, being a non-tangent curve to the left having a radius of 5704.58 feet, a central angle of 04°00'08", an arc length of 398.48 feet and a chord which bears S34°55'52"W, a distance of 398.40 feet to the POINT OF BEGINNING, and the westernmost northwesterly corner hereof;

THENCE, leaving the easterly right-of-way line of Interstate Highway 35, over and across said City of Austin Tract of record in Volume 665, Page 95, Lot 26 of said Ridgetop Gardens, and Lot 2, Ridgetop Gardens 26, a subdivision of record in Book 9, Page 168 of said Plat Records, for a portion of the northerly line hereof, the following four (4) courses and distances:

- 1) S62°28'52"E, a distance of 1161.77 feet to an angle point;
- 2) N72°53'09"E, a distance of 21.58 feet to an angle point;
- 3) N27°31'08"E, a distance of 532.90 feet to an angle point in the interior of said Lot 26;
- 4) N18°47'57"W, a distance of 24.53 feet to a point in the southerly right-of-way line of East 51st Street (R.O.W. Varies), same being in the interior of said Lot 2, Ridgetop Gardens 26 for the northernmost northwesterly corner hereof;

THENCE, S62°28'52"E, along the southerly right-of-way line of East 51st Street, for a portion of the northerly line hereof, a distance of 128.18 feet to a point in the interior of Lot 27 of said Ridgetop Gardens, for an angle point;

THENCE, leaving the southerly right-of-way line of East 51st Street, over and across said Lot 27, over and across said City of Austin of Tracts of record in Volume 665, Page 95 and Volume 430, Page 201, and over and across Lots 32-A and 32-B of the Resubdivision of the East One-Half of Lot 32 Ridgetop Gardens Subdivision of record in Book 9, Page 98 of the said Plat Records, for a portion of the northerly line hereof, the following seven (7) courses and distances:

- 1) S72°58'52"W, a distance of 24.47 feet to an angle point;
- 2) S27°31'08"W, a distance of 532.96 feet to an angle point;
- 3) S18°53'40"E, a distance of 21.58 feet to an angle point;

Exhibit A (Whole Mueller Property)

- 4) S62°28'52"E, a distance of 1192.58 feet to an angle point;
- 5) N72°02'37"E, a distance of 21.81 feet to an angle point;
- 6) N27°31'08"E, a distance of 532.93 feet to an angle point in the interior of said Lot 32-B;
- 7) N17°57'24"W, a distance of 23.56 feet to a point in the southerly right-of-way line of East 51st Street, for an angle point in the interior of said Lot 32-B;

THENCE, S62°28'52"E, along the southerly right-of-way line of East 51st Street, over and across said Lot 32-B and Lot 33 of said Ridgetop Gardens, for a portion of the northerly line hereof, a distance of 149.34 feet to a point in the interior of said Lot 33, for the northeasterly corner hereof;

THENCE, leaving the southerly right-of-way line of East 51st Street, over and across said Lot 33 and said City of Austin Tracts of record in Volume 430, Page 201 and Volume 668, Page 396, for the easterly line hereof, the following fifteen (15) courses and distances:

- 1) S72°02'38"W, a distance of 23.59 feet to an angle point;
- 2) S27°31'08"W, a distance of 2746.46 feet to the point of curvature of a tangent curve to the left;
- 3) Along said tangent curve to the left having a radius of 222.00 feet, a central angle of 36°07'49", an arc length of 139.99 feet and a chord which bears S09°27'14"W, a distance of 137.68 feet to the point of tangency;
- 4) S08°36'41"E, a distance of 65.11 feet to the point of curvature of a tangent curve to the left;
- 5) Along said tangent curve to the left having a radius of 55.50 feet, a central angle of 90°00'00", an arc length of 87.18 feet and a chord which bears S53°36'41"E, a distance of 78.49 feet to the point of tangency;
- 6) N81°23'19"E, a distance of 35.50 feet to an angle point;
- 7) S08°36'41"E, a distance of 84.00 feet to an angle point;
- 8) S81°23'19"W, a distance of 38.50 feet to the point of curvature of tangent curve to the left;
- 9) Along said tangent curve to the left having a radius of 85.50 feet, a central angle of 90°00'00", an arc length of 134.30 feet and a chord which bears S36°23'19"W, a distance of 120.92 feet to the point of tangency;

- 10) S08°36'41"E, a distance of 35.50 feet to an angle point;
- 11) S81°23'19"W, a distance of 50.00 feet to an angle point;
- 12) N08°36'41"W, a distance of 34.00 feet to the point of curvature of a non-tangent curve to the left;
- 13) Along said non-tangent curve to the left having a radius of 75.50 feet, a central angle of 90°00'00", an arc length of 118.60 feet and a chord which bears N53°36'41"W, a distance of 106.77 feet to the point of tangency;
- 14) S81°23'19"W, a distance of 362.05 feet to a non-tangent curve to the left;
- 15) Along said non-tangent curve to the left having a radius of 15.50 feet, a central angle of 72°56'05", an arc length of 19.73 feet and a chord which bears S44°55'17"W, a distance of 18.43 feet to a point in the curving northerly right-of-way line of Airport Boulevard (160' R.O.W.), being the southerly line of the remaining portion of said City of Austin Tract of record in Volume 668, Page 396 for the southeasterly corner hereof;

THENCE, along the curving northerly right-of-way line of Airport Boulevard, being the southerly line of said City of Austin remainder Tract of record in Volume 668, Page 396, for the southerly line hereof, being a non-tangent curve left having a radius of 1989.88 feet, a central angle of 03°52'57", an arc length of 134.84 feet and a chord which bears N33°28'41"W, a distance of 134.82 feet to the southwesterly corner hereof;

THENCE, leaving the northerly right-of-way line of Airport Boulevard, over and across said City of Austin Tract of record in Volume 668, Page 396; Volume 430, Page 201; Volume 680, Page 257 and Volume 665, Page 95, for the irregular westerly line hereof, the following twenty-one (21) courses and distances:

- 1) Along a non-tangent curve to the left having a radius of 65.50 feet, a central angle of 21°02'04", an arc length of 24.05 feet and a chord which bears S88°05'39"E, a distance of 23.91 feet to the point of tangency;
- 2) N81°23'19"E, a distance of 407.04 feet to the point of curvature of tangent curve to the left;
- 3) Along said tangent curve to the left having a radius of 45.50 feet, a central angle of 90°00'00", an arc length of 71.47 feet and a chord which bears N36°23'19"E, a distance of 64.35 feet to the point of tangency;
- 4) N08°36'41"W, a distance of 63.61 feet to the point of curvature of a tangent curve to the right;

- 5) Along said tangent curve to the right having a radius of 338.00 feet, a central angle of $36^{\circ}07'49''$, an arc length of 213.14 feet and a chord which bears $N09^{\circ}27'14''E$, a distance of 209.63 feet to the point of tangency;
- 6) $N27^{\circ}31'08''E$, a distance of 869.43 feet to an angle point;
- 7) $N21^{\circ}18'09''W$, a distance of 8.87 feet to an angle point;
- 8) $N62^{\circ}28'52''W$, a distance of 738.09 feet to the point of curvature of a tangent curve to the right;
- 9) Along said tangent curve to the right having a radius of 450.00 feet, a central angle of $38^{\circ}34'45''$, an arc length of 303.00 feet and a chord which bears $N43^{\circ}11'30''W$, a distance of 297.31 feet to the point of reverse curvature;
- 10) Along said reverse curve to the left having a radius of 756.00 feet, a central angle of $26^{\circ}01'33''$, an arc length of 343.40 feet and a chord which bears $N36^{\circ}54'54''W$, a distance of 340.46 feet to the point of tangency;
- 11) $N40^{\circ}04'19''E$, a distance of 60.00 feet to an angle point;
- 12) $N74^{\circ}47'53''E$, a distance of 26.50 feet to an angle point;
- 13) $N27^{\circ}31'08''E$, a distance of 883.11 feet to an angle point;
- 14) $N24^{\circ}25'18''W$, a distance of 40.89 feet to an angle point;
- 15) $S62^{\circ}28'52''E$, a distance of 92.19 feet to an angle point;
- 16) $S27^{\circ}31'08''W$, a distance of 948.26 feet to the point of curvature of a non-tangent curve to the right;
- 17) Along said non-tangent curve to the right having a radius of 816.00 feet, a central angle of $20^{\circ}14'04''$, an arc length of 288.18 feet, and a chord which bears $S34^{\circ}01'09''E$, a distance of 286.68 feet to the point of reverse curvature;
- 18) Along said reverse curve to the left having a radius of 390.00 feet, a central angle of $38^{\circ}34'44''$, an arc length of 262.60 feet and a chord which bears $S43^{\circ}11'29''E$, a distance of 257.67 feet to the point of tangency;
- 19) $S62^{\circ}28'52''E$, a distance of 744.77 feet to an angle point;
- 20) $N27^{\circ}31'08''E$, a distance of 1170.00 feet to an angle point;

- 21) N62°28'52"W, a distance of 2501.67 feet to a point in the curving easterly right-of-way line of Interstate Highway 35, being the westerly line of said City of Austin remainder Tract of record in Volume 665, Page 95;

THENCE, along the easterly right-of-way line of Interstate Highway 35, being the westerly line of said City of Austin remainder Tract of record in Volume 665, Page 95, being along a non-tangent curve to the right having a radius of 5704.58 feet, a central angle of 00°56'15", an arc length of 93.35 feet and a chord which bears N32°27'41"E, a distance of 93.34 feet to the POINT OF BEGINNING, containing an area of 19.665 acres (856,626 sq. ft.) of land, more or less, within these metes and bounds.

BASIS OF BEARINGS:

The Basis of Bearings is provided by the City of Austin GPS sub-harn data and is referenced to the NAD 83/93 Harn horizontal control datum Texas State Plane Coordinate System, Central Zone and NAVD 88 vertical control datum.

**32.212 ACRES
MUELLER SETON TRACT**

**FN NO. 03-164(MTH)
JULY 15, 2003
BPI JOB NO. 1400-01**

Lot 1, Block "A", MUELLER SECTION 1 PHASE A SUBDIVISION, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded under Document No. 200400079 of the Official Public Records of Travis County, Texas, as more particularly described as follows:

A 32.212 ACRE TRACT OF LAND OUT OF THE THOMAS HAWKINS SURVEY, SITUATED IN THE CITY OF AUSTIN, BEING A PORTION OF THE TRACTS OF LAND CONVEYED TO THE CITY OF AUSTIN BY THE FOLLOWING DEEDS OF RECORD: VOLUME 665, PAGE 95; VOLUME 430, PAGE 201, AND VOLUME 680, PAGE 257, ALL OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 32.212 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, at a concrete monument found at the southeasterly corner of the intersection of existing southerly line of East 51st Street (R.O.W. Varies) and the existing easterly line of Interstate Highway 35 (R.O.W. Varies), being within Lot 20 Ridgeway Gardens, a subdivision of record in Book 3, Page 50 of the Plat Records of Travis County, Texas;

THENCE, leaving the easterly right-of-way line of Interstate Highway 35, along the existing southerly right-of-way line of East 51st Street, being over and across Lots 20 and Lots 22-26 (inclusive) of said Ridgeway Gardens, the following three (3) courses and distances:

- 1) Along a curve to the left having a radius of 1213.92 feet, a central angle of $08^{\circ}31'38''$, an arc length of 180.67 feet and a chord which bears $S\ 67^{\circ}24'07''\ E$, a distance of 180.50 feet to a concrete monument found at the point of compound curvature;
- 2) Along said compound curve to the left having a radius of 588.56 feet, a central angle of $09^{\circ}08'18''$, an arc length of 93.87 feet and a chord which bears $S\ 67^{\circ}14'54''\ E$, a distance of 93.77 feet to a 1/2 inch iron rod with cap found at the end of said compound curve;
- 3) $S\ 62^{\circ}28'52''\ E$, a distance of 791.14 feet to a point in the northerly line of said Lot 26;

THENCE, $S\ 27^{\circ}31'08''\ W$, leaving the existing southerly right-of-way line of East 51st Street, over and across said Lot 26 and said City of Austin Tract conveyed in Volume 665, Page 95, a distance of 658.00 feet to a 1/2 inch iron rod with cap set for the POINT OF BEGINNING, and the northwesterly corner hereof;

THENCE, continuing over and across said City of Austin Tracts, for the northerly, easterly, southerly and westerly lines hereof, the following nine (9) courses and distances:

- 1) $S\ 62^{\circ}28'52''\ E$, a distance of 1240.00 feet to a PK Nail with cap set for the northeasterly corner hereof;
- 2) $S\ 27^{\circ}31'08''\ W$, a distance of 1170.00 feet to a PK Nail with cap set for the southeasterly corner hereof, from which an iron pipe found in the northerly right-of-way line of Airport Boulevard (R.O.W. Varies), being the southwesterly corner of that certain City of Austin Tract of record in Volume 668, Page 396, same being the southeasterly corner of that certain tract of land conveyed to James Bascom Giles, et ux from the City of Austin by deed of record in Volume 773, Page 477 of said Deed Records bears $S\ 56^{\circ}31'13''\ W$, a distance of 1518.70 feet;
- 3) $N\ 62^{\circ}28'52''\ W$, a distance of 744.77 feet to a 1/2 inch iron rod with cap set at the point of curvature of a tangent curve to the right;
- 4) Along said tangent curve to the right having a radius of 390.00 feet, a central angle of $38^{\circ}34'44''$, an arc length of 262.60 feet and a chord which bears $N\ 43^{\circ}11'29''\ W$, a distance of 257.67 feet to a 1/2 inch iron rod with cap set at the point of compound curvature to the left;
- 5) Along said compound curve to the left having a radius of 816.00 feet, a central angle of $20^{\circ}14'04''$, an arc length of 288.18 feet and a chord which bears $N\ 34^{\circ}01'09''\ W$, a distance of 286.68 feet to a 1/2 inch iron rod with cap set at the end of said compound curve for the southwesterly corner hereof;
- 6) $N\ 27^{\circ}31'08''\ E$, a distance of 948.26 feet to the POINT OF BEGINNING, containing an area of 32.212 acres (1,403,134 sq. ft.) of land, more or less, within these metes and bounds.

BASIS OF BEARINGS:

The Basis of Bearings is provided by the City of Austin GPS sub-harn data and is referenced to the NAD 83/93 Harn horizontal control datum Texas State Plane Coordinate System, Central Zone and NAVD 88 vertical control datum.

**59.629 ACRES
MUELLER TRACT 3
IH 35 ALONG DELWOOD**

**FN NO. 04-310(MJJ)
AUGUST 5, 2004
BPI JOB NO. 1400-01.991**

DESCRIPTION OF A 59.629 ACRE TRACT OF LAND OUT OF THE THOMAS HAWKINS SURVEY NO. 9 AND THE J.P. WALLACE SURVEY NO. 57, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THOSE CERTAIN TRACTS OF LAND CONVEYED TO THE CITY OF AUSTIN BY DEEDS OF RECORD IN VOLUME 430, PAGE 201; VOLUME 694, PAGE 149; VOLUME 842, PAGE 485; VOLUME 2206, PAGE 347; VOLUME 776, PAGE 621; VOLUME 680, PAGE 257; VOLUME 665, PAGE 95 AND VOLUME 668, PAGE 396 ALL OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 59.629 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2 inch iron pipe found in the curving easterly line of Airport Boulevard (160' R.O.W.), being the southeasterly corner of Lot 4, Block "N" Delwood Section Two, a subdivision of record in Volume 4, Page 282A of the Plat Records of Travis County, Texas, for the southernmost southwesterly corner hereof;

THENCE, along the easterly lines of Lots 4-14, Block "N" of said Delwood Section Two, the easterly lines of Lots 1-12 and Lots 14-20, Block "H" of said Delwood Section Two, the easterly lines of Lots 16-22, Block "G" of said Delwood Section Two, the northerly line of that certain 0.275 acre tract of land conveyed to Bruce C. Davis by deed of record in Volume 6203, Page 463 of said Deed Records and the northerly line of Lot 1, Emerald Oaks Addition, a subdivision of record in Volume 82, Page 58 of said Plat Records, for the southwesterly line hereof, the following eleven (11) courses and distances:

- 1) N27°18'32"E, a distance of 737.72 feet to a 1/2 inch iron rod with cap found for an angle point in the easterly line of said Lot 12, Block "N";
- 2) N07°18'29"W, a distance of 6.34 feet to a 1/2 inch iron pipe found at the common easterly corner of said Lots 12 and 13, Block "N";
- 3) N32°25'25"W, a distance of 115.25 feet to a 1/2 inch iron pipe found at the common easterly corner of said Lots 13 and 14, Block "N";

- 4) N49°28'41"W, a distance of 102.02 feet to a 1/2 inch iron pipe found at the common easterly corner of said Lot 14, Block "N" and said Lot 20, Block "H";
- 5) N61°29'40"W, a distance of 332.59 feet to a 1 inch iron pipe found at the northwesterly corner of said Lot 15, Block "H", being the northeasterly corner of said Lot 14, Block "H" and the southeasterly corner of said Lot 12, Block "H", for an angle point hereof;
- 6) N44°18'34"E, a distance of 112.31 feet to a 1/2 inch iron rod found at the common easterly corner of said Lots 10 and 11, Block "H";
- 7) N30°44'12"E, a distance of 87.52 feet to a 1/2 inch iron rod found at the common easterly corner of said Lots 9 and 10, Block "H";
- 8) N17°16'12"E, a distance of 92.63 feet to 1/2 inch iron rod found in the southerly line of said Lot 8, Block "H", being the northeasterly corner of said Lot 9, Block "H";
- 9) S88°01'02"E, a distance of 106.10 feet to a 1/2 inch iron rod found at the northeasterly corner of said Lot 8, Block "H";
- 10) N39°56'52"W, a distance of 1025.58 feet to a 1 inch iron pipe found in the easterly line of said Lot 17, Block "G";
- 11) N62°30'49"W, a distance of 445.22 feet to a 1/2 inch iron rod found in the easterly line of Interstate Highway 35 (R.O.W. varies), being the northwesterly corner of said Lot 1, Emerald Oaks Addition, for the southwesterly corner hereof;

THENCE, along the easterly line of Interstate Highway 35, being the westerly line hereof, the following four (4) courses and distances:

- 1) N27°49'52"E, a distance of 122.57 feet to a 1-1/2 inch iron rod found for the point of curvature of a non-tangent curve to the right;
- 2) Along said non-tangent curve to the right having a radius of 5704.58 feet, a central angle of 04°00'11", an arc length of 398.57 feet and a chord which bears N29°49'54"E, a distance of 398.49 feet to a 1 inch iron bolt found for the end of said curve;
- 3) N31°48'31"E, a distance of 406.45 feet to a 1/2 inch iron rod with cap found for the point of curvature of a non-tangent curve to the right;
- 4) Along said non-tangent curve to the right having a radius of 5704.58 feet, a central angle of 00°11'05", an arc length of 18.40 feet and a chord which bears N31°54'00"E, a distance of 18.40 feet to a 1/2 inch iron rod with cap set in the easterly line of Barbara Jordan Boulevard, a 93 foot wide dedicated right-of-way by Mueller Section 1 Phase A Subdivision, a subdivision of record in Document No. 200400079 of the Official Public Records of Travis County, Texas and also being the westernmost southwesterly corner of that certain 19.665 acre tract of land conveyed to Catellus Austin, LLC. by deed of record

in Document No. 2003285270 of said Official Public Records, for the northwesterly corner hereof;

THENCE, leaving the easterly line of Interstate Highway 35, along the southerly and irregular westerly lines of said 19.665 acre tract, being the southerly and irregular westerly lines of said Mueller Section 1 Phase A Subdivision, for the northerly and irregular easterly lines hereof, the following fifteen (15) courses and distances:

- 1) S62°28'52"E, a distance of 1169.48 feet to a 1/2 inch iron rod with cap set;
- 2) S24°25'18"E, a distance of 40.89 feet to a 1/2 inch iron rod with cap set;
- 3) S27°31'08"W, a distance of 883.11 feet to a 1/2 inch iron rod with cap set;
- 4) S74°47'53"W, a distance of 26.50 feet to a 1/2 inch iron rod with cap set;
- 5) S40°04'19"W, a distance of 60.00 feet to a 1/2 inch iron rod with cap set for the point of curvature of a non-tangent curve to the right;
- 6) Along said non-tangent curve to the right having a radius of 756.00 feet, a central angle of 26°01'33", an arc length of 343.40 feet and a chord which bears S36°54'54"E, a distance of 340.46 feet to a 1/2 inch iron rod with cap set for the point of curvature of a reverse curve to the left;
- 7) Along said reverse curve to the left having a radius of 450.00 feet, a central angle of 38°34'45", an arc length of 303.00 feet and a chord which bears S43°11'30"E, a distance of 297.31 feet to a 1/2 inch iron rod with cap set for the end of said curve;
- 8) S62°28'52"E, a distance of 738.09 feet to a 1/2 inch iron rod with cap set;
- 9) S21°18'09"E, a distance of 8.87 feet to a 1/2 inch iron rod with cap set;
- 10) S27°31'08"W, a distance of 869.43 feet to a 1/2 inch iron rod with cap set for the point of curvature of a tangent curve to the left;
- 11) Along said tangent curve to the left having a radius of 338.00 feet, a central angle of 36°07'49", an arc length of 213.14 feet and a chord which bears S09°27'14"W, a distance of 209.63 feet to a 1/2 inch iron rod with cap set for the end of said curve;
- 12) S08°36'41"E, a distance of 63.61 feet to a 1/2 inch iron rod with cap set for the point of curvature of a tangent curve to the right;
- 13) Along said tangent curve to the right having a radius of 45.50 feet, a central angle of 90°00'00", an arc length of 71.47 feet and a chord which bears S36°23'19"W, a distance of 64.35 feet to a 1/2 inch iron rod with cap set for the end of said curve;

- 14) S81°23'19"W, a distance of 407.04 feet to a 1/2 inch iron rod with cap set for the point of curvature of a tangent curve to the right;
- 15) Along said tangent curve to the right having a radius of 65.50 feet, a central angle of 21°02'04", an arc length of 24.05 feet and a chord which bears N88°05'39"W, a distance of 23.91 feet to a 1/2 inch iron rod with cap set in the curving easterly line of Airport Boulevard, being the southernmost southeasterly corner of said 19.665 acre tract, for the southeasterly corner hereof;

THENCE, along the curving easterly line of Airport Boulevard, being the southerly line hereof, along a non-tangent curve to the left having a radius of 1989.88 feet, a central angle of 14°40'44", an arc length of 509.79 feet and a chord which bears N42°45'31"W, a distance of 508.40 feet to the **POINT OF BEGINNING**, containing an area of 59.629 acres (2,597,450 sq. ft.) of land, more or less, within these metes and bounds.

**515.591 ACRES
MUELLER TRACT 4**

**FN NO. 04-408(MJJ)
AUGUST 5, 2004
BPI JOB NO. 1400-01.991**

DESCRIPTION OF A 515.591 ACRE TRACT OF LAND OUT OF THE THOMAS HAWKINS SURVEY NO. 9, THE J.P. WALLACE SURVEY NO. 57, THE JOSEPH BURLESON SURVEY, THE HENRY WARNELL SURVEY AND THE J.C. HARRELSON SURVEY, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING OUT OF THE FOLLOWING TRACTS OF LAND CONVEYED TO THE CITY OF AUSTIN IN THE FOLLOWING FIFTY-TWO (52) INSTRUMENTS OF RECORD IN THE DEED RECORDS OF TRAVIS COUNTY, TEXAS:

VOLUME 428, PAGE 242; VOLUME 428, PAGE 244; VOLUME 428, PAGE 245; VOLUME 430, PAGE 201, VOLUME 621, PAGE 31; VOLUME 651, PAGE 526; VOLUME 668, PAGE 396; VOLUME 681, PAGE 293; VOLUME 682, PAGE 289; VOLUME 2773, PAGE 8; VOLUME 2884, PAGE 462; VOLUME 2884, PAGE 469; VOLUME 2940, PAGE 2385; VOLUME 3063, PAGE 510; VOLUME 2992, PAGE 2172; VOLUME 3948, PAGE 320; VOLUME 2012, PAGE 421; VOLUME 1947, PAGE 78; VOLUME 1964, PAGE 397; VOLUME 1950, PAGE 94; VOLUME 1946, PAGE 385; VOLUME 1949, PAGE 332; VOLUME 1872, PAGE 131; VOLUME 1994, PAGE 238; VOLUME 1959, PAGE 430; VOLUME 2054, PAGE 266; VOLUME 2171, PAGE 381; VOLUME 2178, PAGE 344; VOLUME 2692, PAGE 463; VOLUME 3330, PAGE 1266; VOLUME 2172, PAGE 123; VOLUME 1688, PAGE 23; VOLUME 1698, PAGE 280; VOLUME 1707, PAGE 310; VOLUME 1698, PAGE 382; VOLUME 1700, PAGE 301; VOLUME 2539, PAGE 103; VOLUME 1714, PAGE 171; VOLUME 1714, PAGE 156; VOLUME 1714, PAGE 167; VOLUME 1714, PAGE 164;

Exhibit A (Whole Mueller Property)

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VOLUME 1699, PAGE 163; VOLUME 2394, PAGE 263; VOLUME 2388, PAGE 303; VOLUME 1714, PAGE 505; VOLUME 1814, PAGE 174; VOLUME 2388, PAGE 268; VOLUME 2171, PAGE 358; VOLUME 2927, PAGE 65; VOLUME 2211, PAGE 314; VOLUME 2518, PAGE 288; AND VOLUME 3637, PAGE 1979; AND ALSO BEING OUT OF PORTIONS OF THE FOLLOWING STREETS VACATED BY THE CITY OF AUSTIN: OLD MANOR ROAD (ORDINANCE NO. 570502-B); KLEBERG LANE (ORDINANCE NO. 570509-B); OLD MANOR ROAD (ORDINANCE NO. 580410-D); OLD MANOR ROAD AND NOLEN STREET (ORDINANCE NO. 610105-A); LOVELL DRIVE (ORDINANCE NO. 880414-E); WARWICK DRIVE; OLD MANOR ROAD (VOLUME 10942, PAGE 1004); LOVELL DRIVE (ORDINANCE NO. 791011-K, VOLUME 6776, PAGE 2043); NOLEN STREET (FILE NO. V 15-1215) AND OUT OF A PORTION OF LOVELL LANE, WARWICK DRIVE AND NOLEN STREET; AND ALSO BEING OUT OF A PORTION OF LOTS 33-39, RIDGETOP GARDENS, OF RECORD IN BOOK 3, PAGE 50, OF LOTS 1-8, S.R. NOLEN SUBDIVISION, OF RECORD IN BOOK 3, PAGE 144, THE REMAINDER OF BLOCKS "A" AND "E" AND ALL OF BLOCK "D", DEVONSHIRE PARK, OF RECORD IN BOOK 6, PAGE 128, OF LOTS 1-5, BLOCK "A", LOTS 1-3, BLOCK "B" AND LOTS 1-8, BLOCK "F", DEVONSHIRE PARK SECTION ONE RESUBDIVISION, OF RECORD IN BOOK 9, PAGE 40 AND OF LOTS 1-5, BLOCK "C" AND LOTS 23 AND 24, BLOCK "F", DEVONSHIRE PARK SECTION TWO, OF RECORD IN BOOK 14, PAGE 56, ALL OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS;

SAID 515.591 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2 inch iron rod with cap set in the southerly line of East 51st Street (90' R.O.W.), being the northeasterly corner of that certain 19.665 acre tract of land conveyed to Catellus Austin, LLC. by deed of record in Document No. 2003285270 of the Official Public Records of Travis County, Texas, for the northwesterly corner hereof;

THENCE, along the southerly line of East 51st Street, over and across Lots 33-39 of said Ridgetop Gardens, being over and across said City of Austin tracts of record in Volume 2773, Page 8, Volume 2884, Page 462, Volume 2884, Page 469, Volume 2940, Page 2385, Volume 3063, Page 510, Volume 2992, Page 2172, Volume 621, Page 31 and Volume 428, Page 245, for the most northerly line hereof, the following eight (8) courses and distances:

- 1) S62°28'52"E, a distance of 502.02 feet to a 1/2 inch iron rod found for the point of curvature of a non-tangent curve to the left;
- 2) Along said non-tangent curve to the left having a radius of 1702.35 feet, a central angle of 06°13'00", an arc length of 184.71 feet and a chord which bears S66°07'07"E, a distance of 184.62 feet to a 1/2 inch iron rod with cap found for the end of said curve;
- 3) S68°43'22"E, a distance of 73.30 feet to a 1 inch iron bolt found for the point of curvature of a non-tangent curve to the right;

- 4) Along said non-tangent curve to the right having a radius of 1330.45 feet, a central angle of $08^{\circ}18'52''$, an arc length of 193.07 feet and a chord which bears $S64^{\circ}32'56''E$, a distance of 192.90 feet to a 1/2 inch iron rod found for the end of said curve;
- 5) $S60^{\circ}20'26''E$, a distance of 147.97 feet to a 1/2 inch iron rod found for the point of curvature of a non-tangent curve to the left;
- 6) Along said non-tangent curve to the right having a radius of 910.36 feet, a central angle of $25^{\circ}35'26''$, an arc length of 406.60 feet and a chord which bears $S47^{\circ}40'24''E$, a distance of 403.23 feet to a 1/2 inch iron rod found for the end of said curve;
- 7) $S34^{\circ}54'27''E$, a distance of 106.67 feet to a 1/2 inch iron rod found for the point of curvature of a non-tangent curve to the left;
- 8) Along said non-tangent curve to the left having a radius of 1000.23 feet, a central angle of $14^{\circ}00'56''$, an arc length of 244.68 feet and a chord which bears $S41^{\circ}51'29''E$, a distance of 244.07 feet to a 1/2 inch iron rod with cap set for the northernmost northeasterly corner hereof;

THENCE, leaving the southerly line of East 51st Street, continuing over and across said City of Austin tract of record in Volume 428, Page 245, for a portion of the northerly line hereof, the following nine (9) courses and distances:

- 1) $S41^{\circ}08'03''W$, a distance of 393.66 feet to a 1/2 inch iron rod with cap set for an angle point;
- 2) $S03^{\circ}00'00''E$, a distance of 602.27 feet to a 1/2 inch iron rod with cap set for an angle point;
- 3) $N87^{\circ}00'00''E$, a distance of 521.40 feet to a 1/2 inch iron rod with cap set for the point of curvature of a tangent curve to the right;
- 4) Along said tangent curve to the right having a radius of 120.00 feet, a central angle of $45^{\circ}19'09''$, an arc length of 94.92 feet and a chord which bears $S70^{\circ}20'25''E$, a distance of 92.46 feet to a 1/2 inch iron rod with cap set for the end of said curve;
- 5) $S47^{\circ}40'51''E$, a distance of 393.70 feet to a 1/2 inch iron rod with cap set for an angle point;
- 6) $S42^{\circ}04'53''W$, a distance of 259.62 feet to a 1/2 inch iron rod with cap set for an angle point;
- 7) $S48^{\circ}09'29''E$, a distance of 631.60 feet to a 1/2 inch iron rod with cap set for an angle point;

- 8) N42°17'44"E, a distance of 278.81 feet to a 1/2 inch iron rod with cap found for an angle point;
- 9) S42°54'23"E, a distance of 455.28 feet to a cut "X" found in concrete in the westerly line of that certain tract of land conveyed to the State of Texas by deed of record in Document No. 2000151986 of Official Public Records, being the easterly line of said City of Austin tract of record in Volume 428, Page 245, for an angle point hereof;

THENCE, S26°33'20"W, along a portion of the easterly line of said City of Austin tract of record in Volume 428, Page 245, being a portion of the westerly line of said State of Texas tract of record in Document No. 2000151986, a distance of 26.13 feet to a punch hole found in concrete being an angle point in the easterly line of said City of Austin tract of record in Volume 428, Page 245 and the westernmost southwesterly corner of said State of Texas tract of record in Document No. 2000151986 for an angle point hereof;

THENCE, along the common line of said City of Austin tract of record in Volume 428, Page 245 and said State of Texas tract of record in Document No. 2000151986, for a portion of the northerly line hereof, the following two (2) courses and distances:

- 1) S57°42'29"E, a distance of 41.78 feet to a 3/8 inch iron pipe found for an angle point;
- 2) S28°33'02"W, a distance of 127.11 feet to a 1/2 inch iron rod found in the westerly line of that vacated portion of Old Manor Road by City of Austin Ordinance No. 880414-D of record in Volume 10942, Page 997 of said Real Property Records, for an angle point;

THENCE, S47°23'12"W, continuing along the common line of said City of Austin tract of record in Volume 428, Page 245 and said State of Texas tract of record in Document No. 2000151986, being the westerly line of said vacated portion of Old Manor Road by City of Austin Ordinance No. 880414-D, a distance of 104.60 feet to a 1/2 inch iron rod found at the southernmost southwesterly corner of said State of Texas tract of record in Document No. 2000151986, being the southwesterly corner of said vacated portion of Old Manor Road in Ordinance No. 880414-D, being the northwesterly corner of said vacated portion of Old Manor Road by Ordinance No. 880414-E of record in Volume 10942, Page 1004 of said Real Property Records, for an angle point hereof;

THENCE, S74°23'59"E, along the southerly line of said State of Texas tract of record in Document No. 2000151986, being the northerly line of said vacated portion of Old Manor Road in Volume 10942, Page 1004 and the southerly line of said vacated portion of Old Manor Road of record in Volume 10942, Page 997, for a portion of the northerly line hereof, a distance of 112.05 feet to a 1/2 inch iron rod found at the northeasterly corner of said vacated portion of Old Manor Road of record in Volume 10942, Page 1004, being the southeasterly corner of said vacated portion of Old Manor Road of record in Volume 10942, Page 997 and also being the northwesterly corner of said Lot 1, Block "A" Devonshire Park Section One Resubdivision;

THENCE, S62°09'12"E, along the northerly line of said City of Austin tract of record in Volume 2539, Page 103, being the northerly line of said Block "A" Devonshire Park Section One Resubdivision, being the southerly line of said State of Texas tract of record in Document No. 2000151986, a distance of 271.80 feet to a 1/2 inch iron rod found at the northwesterly corner of that certain 0.293 acre tract of land conveyed to the State of Texas by deed of record in Document No. 2000151987 of said Official Public Records;

THENCE, along the westerly and southerly lines of said 0.293 acre State of Texas tract, over and across said City of Austin tract of record in Volume 2539, Page 103, over and across said vacated portion of Warwick Drive of record in Volume 10942, Page 1004 and over and across said Block "A" and "B" Devonshire Park Section One Resubdivision, for a portion of the northerly line hereof, the following three (3) courses and distances:

- 1) S02°54'55"E, a distance of 183.39 feet to a cotton spindle found for an angle point;
- 2) N87°04'57"E, a distance of 53.72 feet to a cotton spindle found for the point of curvature of a non-tangent curve to the right;
- 3) Along said non-tangent curve to the right having a radius of 660.00 feet, a central angle of 02°16'57", an arc length of 26.29 feet and a chord which bears N88°10'51"E, a distance of 26.29 feet to a cotton spindle found at the southeasterly corner of said 0.293 acre State of Texas tract, being the southwesterly corner of that certain 0.349 acre tract of land conveyed to the State of Texas by deed of record in Document No. 2000151987 of said Official Public Records;

THENCE, continuing over and across said City of Austin tract of record in Volume 2539, Page 103, along the southerly and easterly lines of said 0.349 acre State of Texas tract, for a portion of the northerly line hereof, the following two (2) courses and distances:

- 1) Along a curve to the right having a radius of 660.00 feet, a central angle of 12°40'31", an arc length of 146.01 feet and a chord which bears S84°20'06"E, a distance of 145.71 feet to a cut "X" found in concrete at the southeasterly corner of said 0.349 acre State of Texas tract, for an angle point hereof;
- 2) N12°09'29"E, a distance of 64.44 feet to a 1/2 inch iron rod found in the northerly line of said City of Austin tract of record in Volume 2539, Page 103, being the northeasterly corner of said 0.349 acre State of Texas tract and the southwesterly corner of that certain tract of land conveyed to the Carter Family Partnership by deed of record in Volume 11359, Page 163 of said Real Property Records and also being the southeasterly corner of said State of Texas tract of record in Document No. 2000151986, for an angle point hereof;

THENCE, S62°21'20"E, along the northerly line of said City of Austin tract of record in Volume 2539, Page 103, being the southerly line of said Carter Family Partnership tract, for a portion of the northerly line hereof, a distance of 940.56 feet to a point in the curving westerly

line of Manor Road (80' R.O.W.), being the northeasterly corner of said City of Austin tract of record in Volume 2539, Page 103 and the southeasterly corner of said Carter Family Partnership tract, for the easternmost northeasterly corner hereof;

THENCE, along the westerly line of Manor Road, being the easterly line of said City of Austin tract of record in Volume 2539, Page 103, for a portion of the easterly line hereof, along a curve to the left having a radius of 757.02 feet, a central angle of $10^{\circ}09'02''$, an arc length of 134.12 feet and a chord which bears $S03^{\circ}43'49''W$, a distance of 133.94 feet to a 1/2 inch iron rod with cap found for the end of said curve;

THENCE, $S01^{\circ}21'12''E$, continuing along the westerly line of Manor Road, in part the easterly line of said City of Austin tract of record in Volume 2539, Page 103 and in part along the easterly line of said Block "C", Devonshire Park Section Two and in part along the easterly line of said vacated portion of Lovell Drive of record in Ordinance No. 791011-K, and in part with the easterly line of said Block "F", Devonshire Park Section Two and over and across said City of Austin tract of record in Volume 1698, Page 382, a distance of 903.24 feet to a 1/2 inch iron rod with cap found for the point of curvature of a non-tangent curve to the right;

THENCE, continuing along the westerly line of Manor Road, over and across said City of Austin tracts of record in Volume 1698, Page 382, Volume 1814, Page 174, Volume 1714, Page 505 and said portion of vacated Kleberg Lane of record in Ordinance No. 570509-B, in part along the easterly lines of said City of Austin tracts of record in Volume 2927, Page 65, Volume 2178, Page 344, Volume 2171, Page 381, Volume 2692, Page 463 and Volume 2927, Page 65 and in part along the southeasterly line of said vacated portion of Old Manor Road of record in Ordinance No. 610105-A, for a portion of the easterly line hereof, the following seven (7) courses and distances:

- 1) Along a non-tangent curve to the right having a radius of 762.43 feet, a central angle of $111^{\circ}22'08''$, an arc length of 1481.97 feet and a chord which bears $S54^{\circ}20'59''W$, a distance of 1259.45 feet to a 1/2 inch iron rod with cap found for the end of said curve;
- 2) $N69^{\circ}58'23''W$, a distance of 241.22 feet to a 1 inch bolt found for the point of curvature of a non-tangent curve to the left;
- 3) Along said non-tangent curve to the left having a radius of 1472.70 feet, a central angle of $51^{\circ}30'54''$, an arc length of 1324.11 feet and a chord which bears $S84^{\circ}17'42''W$, a distance of 1279.96 feet to a 1/2 inch iron rod found for the end of said curve;
- 4) $S58^{\circ}32'03''W$, a distance of 1053.37 feet to a 1/2 inch iron rod found for an angle point;
- 5) $S58^{\circ}39'53''W$, a distance of 54.14 feet to a 1/2 inch iron rod found for an angle point;
- 6) $S49^{\circ}31'01''W$, a distance of 261.13 feet to a 1 inch bolt found for an angle point;

- 7) S49°28'18"W, a distance of 72.03 feet to a 1/2 inch iron rod found at the intersection of the westerly line of Manor Road with the northerly line of Anchor Lane (50' R.O.W.), for the southernmost southeasterly corner hereof;

THENCE, along the northerly line of Anchor Lane, being the southerly line of said City of Austin tracts of record in Volume 2211, Page 314, Volume 2927, Page 65 and Volume 682, Page 289, being in part the northerly line of vacated Ease 38 1/2 Street of record in Ordinance R, Page 249 and in part the northerly lines of Lots 1 and 2, Block "E" Manor Hill, a subdivision of record in Book 8, Page 10 of said Plat Records, for the most southerly line hereof, the following two (2) courses and distances:

- 1) N63°09'44"W, a distance of 1027.86 feet to a hilti nail found for an angle point;
- 2) N63°11'58"W, a distance of 1049.66 feet to a 1/2 inch iron rod found at the intersection of the northerly line of Anchor Lane with the easterly line of Airport Boulevard (160' R.O.W.), for the southwesterly corner hereof;

THENCE, along the easterly line of Airport Boulevard, being the westerly lines of said City of Austin tract of record in Volume 682, Page 289 and over and across said City of Austin tract of record in Volume 668, Page 396, for the southwesterly line hereof, the following two (2) courses and distances:

- 1) N07°42'43"W, a distance of 1926.44 feet to a 1/2 inch iron pipe found for the point of curvature of a non-tangent curve to the left;
- 2) Along said non-tangent curve to the left having a radius of 1989.88 feet, a central angle of 23°44'16", an arc length of 824.41 feet and a chord which bears N19°40'05"W, a distance of 818.53 feet to a 1/2 inch iron rod with cap set for the southernmost southeasterly corner of said 19.665 acre Catellus Austin, LLC. tract, for an angle point hereof;

THENCE, leaving the easterly line of Airport Boulevard, being the easterly line of said 19.665 acre Catellus Austin, LLC. tract, for the westerly line hereof, the following fifteen (15) courses and distances:

- 1) Along a curve to the right having a radius of 15.50 feet, a central angle of 72°56'05", an arc length of 19.73 feet and a chord which bears N44°55'17"E, a distance of 18.43 feet to a 1/2 inch iron rod with cap set for the end of said curve;
- 2) N81°23'19"E, a distance of 362.05 feet to a 1/2 inch iron rod with cap set for the point of curvature of a tangent curve to the right;
- 3) Along said tangent curve to the right having a radius of 75.50 feet, a central angle of 90°00'00", an arc length of 118.60 feet and a chord which bears S53°36'41"E, a distance of 106.77 feet to a 1/2 inch iron rod with cap set for the end of said curve;

- 4) S08°36'41"E, a distance of 34.00 feet to a 1/2 inch iron rod with cap set for an angle point;
- 5) N81°23'19"E, a distance of 50.00 feet to a 1/2 inch iron rod with cap set for an angle point;
- 6) N08°36'41"W, a distance of 35.50 feet to a 1/2 inch iron rod with cap set for the point of curvature of a tangent curve to the right;
- 7) Along said tangent curve to the right having a radius of 85.50 feet, a central angle of 90°00'00", an arc length of 134.30 feet and a chord which bears N36°23'19"E, a distance of 120.92 feet to a 1/2 inch iron rod with cap set for the end of said curve;
- 8) N81°23'19"E, a distance of 38.50 feet to a 1/2 inch iron rod with cap set for an angle point;
- 9) N08°36'41"W, a distance of 84.00 feet to a 1/2 inch iron rod with cap set for an angle point;
- 10) S81°23'19"W, a distance of 35.50 feet to a 1/2 inch iron rod with cap set for the point of curvature of a tangent curve to the right;
- 11) Along said tangent curve to the right having a radius of 55.50 feet, a central angle of 90°00'00", an arc length of 87.18 feet and a chord which bears N53°36'41"W, a distance of 78.49 feet to a 1/2 inch iron rod with cap set for the end of said curve;
- 12) N08°36'41"W, a distance of 65.11 feet to a 1/2 inch iron rod with cap set for the point of curvature of a tangent curve to the right;
- 13) Along said tangent curve to the right having a radius of 222.00 feet, a central angle of 36°07'49", an arc length of 139.99 feet and a chord which bears N09°27'14"E, a distance of 137.68 feet to a 1/2 inch iron rod with cap set for the end of said curve;
- 14) N27°31'08"E, a distance of 2746.46 feet to a 1/2 inch iron rod with cap set for an angle point;
- 15) N72°02'38"E, a distance of 23.59 feet to the **POINT OF BEGINNING**, containing an area of 515.591 acres (22,459,129 sq. ft.) of land, more or less, within these metes and bounds.

21.238 ACRES
MUELLER TRACT 5
FILM SOCIETY PROPERTY

FN NO. 04-407(MJJ)
AUGUST 5, 2004
BPI JOB NO. 1400-01.991

DESCRIPTION OF A 21.238 ACRE TRACT OF LAND OUT OF THE JOSEPH BURLESON SURVEY, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THOSE CERTAIN TRACTS OF LAND CONVEYED TO THE CITY OF AUSTIN BY DEEDS OF RECORD IN VOLUME 621, PAGE 31 AND VOLUME 428, PAGE 245 BOTH OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 21.238 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2 inch iron rod found in the curving southerly line of East 51st Street (R.O.W. varies), being the southwesterly corner of the westerly terminus of a portion of vacated Old 51st Street by City Ordinance No. 810129-K dated January 29, 1981 and the southwesterly corner of Lot 1, FVMF Addition, a subdivision of record in Volume 80, Page 209 of the Plat Records of Travis County, Texas;

THENCE, S62°29'38"E, leaving the southerly line of East 51st Street, over and across said City of Austin tract, along the southerly line of vacated Old 51st Street, being a portion of the southerly line of said Lot 1 and also being a portion of the northerly line hereof, a distance of 328.97 feet to a 1/2 inch iron rod with cap set for the northeasterly corner hereof;

THENCE, leaving the southerly line of vacated Old 51st Street, being the southerly line of said Lot 1, over and across said City of Austin tracts, for the easterly, southerly and westerly lines hereof, the following six (6) courses and distances:

- 1) S42°04'53"W, a distance of 816.39 feet to a 1/2 inch iron rod with cap set for the southeasterly corner hereof;
- 2) N47°40'51"W, a distance of 393.70 feet to a 1/2 inch iron rod with cap set for the point of curvature of a tangent curve to the left;
- 3) Along said tangent curve to the left having a radius of 120.00 feet, a central angle of 45°19'09", an arc length of 94.92 feet and a chord which bears N70°20'25"W, a distance of 92.46 feet to a 1/2 inch iron rod with cap set for the end of said curve;

- 4) S87°00'00"W, a distance of 521.40 feet to a 1/2 inch iron rod with cap set for the southwesterly corner hereof;
- 5) N03°00'00"W, a distance of 602.27 feet to a 1/2 inch iron rod with cap set for an angle point;
- 6) N41°08'03"E, a distance of 393.66 feet to a 1/2 inch iron rod with cap set in the curving southerly line of East 51st Street, for the northwesterly corner hereof;

THENCE, along the southerly line of East 51st Street, being a portion of the northerly line hereof, the following three (3) courses and distances:

- 1) Along a non-tangent curve to the left having a radius of 1000.23 feet, a central angle of 17°43'33", an arc length of 309.44 feet and a chord which bears S57°43'43"E, a distance of 308.21 feet to a 1/2 inch iron rod found for the end of said curve;
- 2) S66°37'37"E, a distance of 366.27 feet to a 1/2 inch iron rod found for the point of curvature of a non-tangent curve to the left;
- 3) Along said non-tangent curve to the left having a radius of 1477.39 feet, a central angle of 13°23'28", an arc length of 345.30 feet and a chord which bears S73°16'55"E, a distance of 344.51 feet to the **POINT OF BEGINNING**, containing an area of 21.238 acres (925,134 sq. ft.) of land, more or less, within these metes and bounds.

**16.839 ACRES
MUELLER TRACT 6
NATIONAL GUARD PROPERTY**

**FN NO. 04-312(MJJ)
AUGUST 5, 2004
BPI JOB NO. 1400-01.991**

DESCRIPTION OF A 16.839 ACRE TRACT OF LAND OUT OF THE JOSEPH BURLESON SURVEY, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED TO THE CITY OF AUSTIN BY DEED OF RECORD IN VOLUME 428, PAGE 245 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 16.839 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a spike nail found in the southerly line of vacated Old 51st Street by City Ordinance No. 810129-K dated January 29, 1981, being the southerly line of Lot 1, FVMF

Exhibit A (Whole Mueller Property)

Page 20 of 23

Addition, a subdivision of record in Volume 80, Page 209 of the Plat Records of Travis County, Texas and also being a point in the westerly line of that certain 13.94 acre lease to the 911 Emergency Management Center, for the northeasterly corner hereof;

THENCE, S42°17'44"W, leaving the southerly line of vacated Old 51st Street, being the southerly line of said Lot 1, over and across said City of Austin tract, along a portion of the westerly line of said 13.94 acre lease tract, passing at a distance of 960.00 feet a 1/2 inch iron rod with cap found for the southwesterly corner of said 13.94 acre lease tract and continuing for a total distance of 1238.81 feet to a 1/2 inch iron rod with cap set for the southeasterly corner hereof;

THENCE, continuing over and across said City of Austin tract, for the southerly and westerly lines hereof, the following two (2) courses and distances:

- 1) N48°09'29"W, a distance of 631.60 feet to a 1/2 inch iron rod with cap set for the southwesterly corner hereof;
- 2) N42°04'53"E, a distance of 1076.01 feet to a 1/2 inch iron rod with cap set in the southerly line of vacated Old 51st Street, being the southerly line of said Lot 1, for the northwesterly corner hereof;

THENCE, S62°29'38"E, along a portion of the southerly line of vacated Old 51st Street, being a portion of the southerly line of said Lot 1, for the northerly line hereof, a distance of 657.38 feet to the **POINT OF BEGINNING**, containing an area of 16.839 acres (733,496 sq. ft.) of land, more or less, within these metes and bounds.

**3.303 ACRES
MUELLER TRACT 7
WILBARGER CREEK**

**FN NO. 04-314(MJJ)
AUGUST 5, 2004
BPI JOB NO. 1400-01.991**

DESCRIPTION OF A 3.303 ACRE TRACT OF LAND OUT OF THE JOSEPH BURLESON SURVEY, THE HENRY WARNELL SURVEY AND THE A.B. SPEAR SURVEY, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THOSE CERTAIN TWO (2) 2 ACRE TRACTS OF LAND CALLED "FIRST TRACT" AND "SECOND TRACT" CONVEYED TO THE CITY OF AUSTIN BY DEED OF RECORD IN VOLUME 2376, PAGE 157, A PORTION OF THAT CERTAIN 1.83 ACRE TRACT OF LAND CONVEYED TO THE CITY OF AUSTIN BY DEED OF RECORD IN VOLUME 2683, PAGE 579, AND ALSO BEING A PORTION OF THAT CERTAIN 12,130 SQUARE FOOT TRACT OF LAND CONVEYED TO THE CITY OF AUSTIN BY DEED OF RECORD IN VOLUME 1111, PAGE 53 ALL OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 3.303 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Exhibit A (Whole Mueller Property)

Page 21 of 23

BEGINNING, at a brass disc found in concrete in the curving southerly line of East 51st Street (90' R.O.W.), being the northeasterly corner of Lot 1, F.V.M.F. Addition, a subdivision of record in Volume 80, Page 209 of the Plat Records of Travis County, Texas;

THENCE, along the curving southerly line of East 51st Street, being the most northerly line hereof, along a curve to the right having a radius of 852.39 feet, a central angle of $21^{\circ}07'33''$, an arc length of 314.29 feet and a chord which bears $S74^{\circ}47'47''E$, a distance of 312.51 feet to a 1/2 inch iron rod found at the northwesterly corner of Lot 1-A, Resubdivision of Lot 62, Manor Hills Section 8, a subdivision of record in Volume 17, Page 98 of said Plat Records, for the northernmost northeasterly corner hereof;

THENCE, leaving the southerly line of East 51st Street, along the westerly line of said Lot 1-A and along the westerly line and southerly line of Lot 8-A of said Resubdivision of Lot 62, Manor Hills Section 8, being a portion of the northerly line hereof, the following six (6) courses and distances:

- 1) $S27^{\circ}30'28''W$, a distance of 25.31 feet to a 1/2 inch iron rod found for an angle point;
- 2) $S23^{\circ}04'23''W$, a distance of 188.55 feet to a 5/8 inch iron pipe found at the southwest corner of said Lot 8-A, for an angle point hereof;
- 3) $S39^{\circ}44'32''E$, a distance of 91.31 feet to a 1/2 inch iron rod with cap found for an angle point;
- 4) $S25^{\circ}32'32''E$, a distance of 77.82 feet cut "X" in concrete found for an angle point;
- 5) $S38^{\circ}47'32''E$, a distance of 175.06 feet to a 1/2 inch iron rod found for an angle point;
- 6) $S58^{\circ}36'11''E$, a distance of 135.00 feet to a point in the curving westerly line of Old Manor Road (R.O.W. varies), being the southeasterly corner of said Lot 8-A, for the easternmost northeasterly corner hereof;

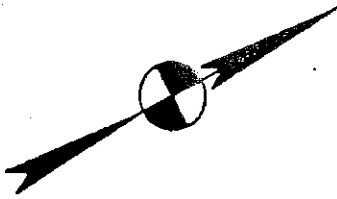
THENCE, along the curving westerly line of Old Manor Road, for the easterly line hereof, along a curve to the left having a radius of 2250.00 feet, a central angle of $04^{\circ}46'58''$, an arc length of 187.82 feet and a chord which bears $S51^{\circ}34'00''W$, a distance of 187.77 feet to a 1/2 inch iron rod found for the southeasterly corner hereof;

THENCE, leaving the westerly line of Old Manor Road, over and across said 1.83 acre tract, said 12,130 square foot tract, said 2 acre "Second Tract" and said 2 acre "First Tract", for the southerly line hereof, the following (2) courses and distances:

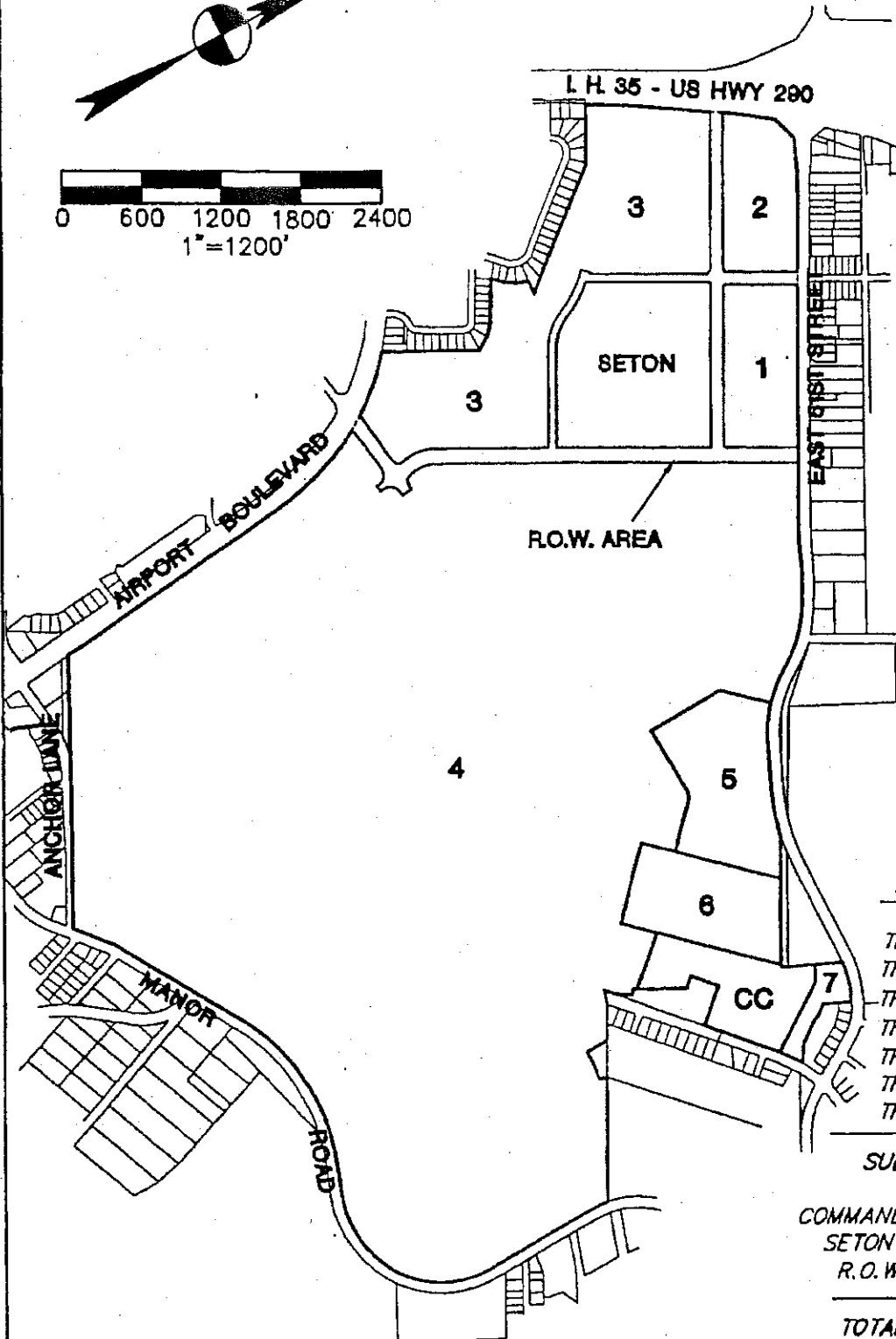
- 1) $N35^{\circ}04'40''W$, a distance of 603.91 feet to a 1/2 inch iron rod with cap found for an angle point;

- 2) N64°41'10"W, a distance of 132.39 feet to a 1/2 inch iron rod with cap found in the easterly line of said Lot 1, being the westerly line of said 2 acre "First Tract", for the southwesterly corner hereof;

THENCE, N22°59'00"E, along a portion of the easterly line of said Lot 1, being a portion of the westerly line of said 2 acre "First Tract", for the westerly line hereof, a distance of 207.43 feet to the **POINT OF BEGINNING**, containing an area of 3.303 acres (143,875 sq. ft.) of land, more or less, within these metes and bounds.



0 600 1200 1800 2400
1"=1200'



AREA SUMMARY TABLE

TRACT 1	=	15.857 ACRES
TRACT 2	=	14.460 ACRES
TRACT 3	=	59.629 ACRES
TRACT 4	=	515.591 ACRES
TRACT 5	=	21.238 ACRES
TRACT 6	=	16.839 ACRES
TRACT 7	=	3.303 ACRES
<hr/>		
SUBTOTAL	=	646.917 ACRES
<hr/>		
COMMAND CENTER	=	13.944 ACRES
SETON TRACT	=	32.212 ACRES
R.O.W. AREA	=	19.665 ACRES
<hr/>		
TOTAL AREA	=	712.738 ACRES

Bury+Partners
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EXHIBIT OF RMMA REDEVELOPMENT

CATELLUS

RMMA

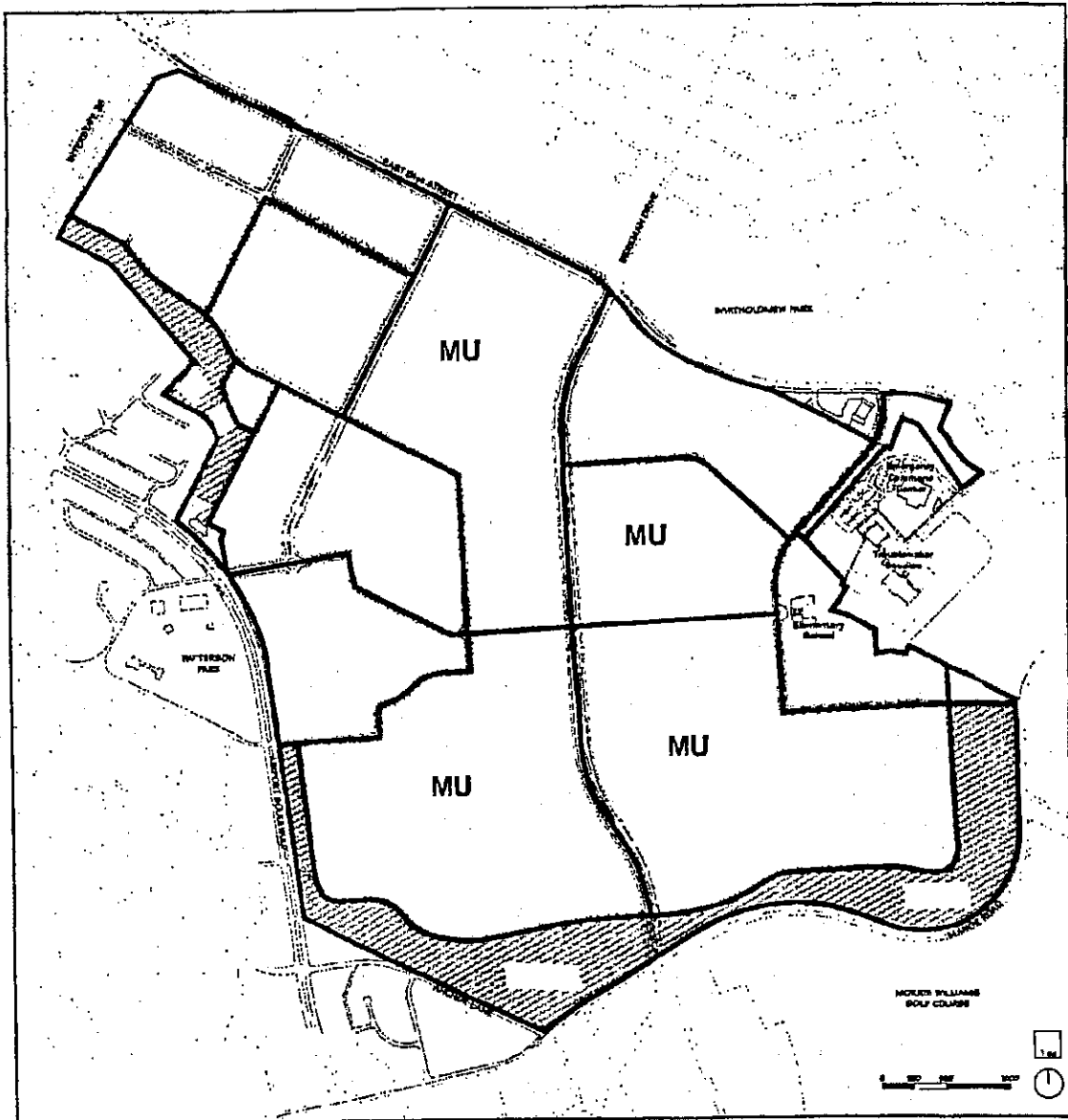
DATE: 10/27/04 FILE: H:\1400\01\140001X19.dwg FN No.: N/A DRAWN BY: M.J.J. PROJ. No: 1400-01

EXHIBIT "B"

DEPICTION OF MIXED-USE AND EC/TC AREAS

[see attached pages]

188127-25 11/11/2004

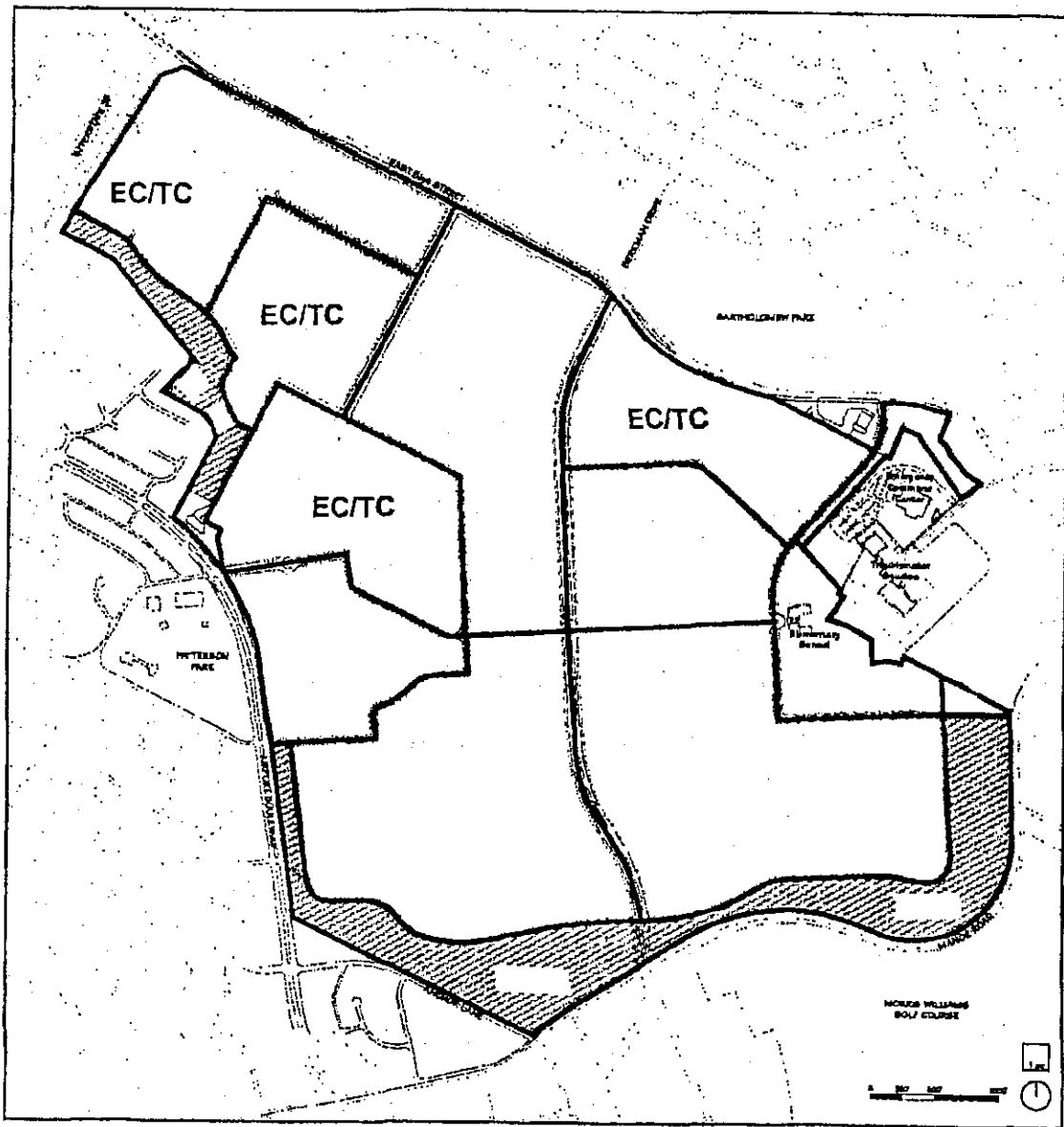


MU - Mixed Use Property

PLANNED UNIT DEVELOPMENT: LAND USE PLAN

RMMA Reuse and Redevelopment Master Plan

Prepared for the City of Austin by ROMA Design Group



EC/TC - EC/TC Property

PLANNED UNIT DEVELOPMENT: LAND USE PLAN

RMMA Reuse and Redevelopment Master Plan

Prepared for the City of Austin by ROMA Design Group

EXHIBIT "C"

DEPICTION OF FILM SOCIETY PROPERTY AND NATIONAL GUARD PROPERTY

[see attached pages]

188127-25 11/11/2004

21.238 ACRES
MUELLER TRACT 5
FILM SOCIETY PROPERTY

FN NO. 04-407(MJJ)
AUGUST 5, 2004
BPI JOB NO. 1400-01.991

DESCRIPTION OF A 21.238 ACRE TRACT OF LAND OUT OF THE JOSEPH BURLESON SURVEY, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THOSE CERTAIN TRACTS OF LAND CONVEYED TO THE CITY OF AUSTIN BY DEEDS OF RECORD IN VOLUME 621, PAGE 31 AND VOLUME 428, PAGE 245 BOTH OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 21.238 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2 inch iron rod found in the curving southerly line of East 51st Street (R.O.W. varies), being the southwesterly corner of the westerly terminus of a portion of vacated Old 51st Street by City Ordinance No. 810129-K dated January 29, 1981 and the southwesterly corner of Lot 1, FVMF Addition, a subdivision of record in Volume 80, Page 209 of the Plat Records of Travis County, Texas;

THENCE, S62°29'38"E, leaving the southerly line of East 51st Street, over and across said City of Austin tract, along the southerly line of vacated Old 51st Street, being a portion of the southerly line of said Lot 1 and also being a portion of the northerly line hereof, a distance of 328.97 feet to a 1/2 inch iron rod with cap set for the northeasterly corner hereof;

THENCE, leaving the southerly line of vacated Old 51st Street, being the southerly line of said Lot 1, over and across said City of Austin tracts, for the easterly, southerly and westerly lines hereof, the following six (6) courses and distances:

- 1) S42°04'53"W, a distance of 816.39 feet to a 1/2 inch iron rod with cap set for the southeasterly corner hereof;
- 2) N47°40'51"W, a distance of 393.70 feet to a 1/2 inch iron rod with cap set for the point of curvature of a tangent curve to the left;
- 3) Along said tangent curve to the left having a radius of 120.00 feet, a central angle of 45°19'09", an arc length of 94.92 feet and a chord which bears N70°20'25"W, a distance of 92.46 feet to a 1/2 inch iron rod with cap set for the end of said curve;
- 4) S87°00'00"W, a distance of 521.40 feet to a 1/2 inch iron rod with cap set for the southwesterly corner hereof;
- 5) N03°00'00"W, a distance of 602.27 feet to a 1/2 inch iron rod with cap set for an angle point;
- 6) N41°08'03"E, a distance of 393.66 feet to a 1/2 inch iron rod with cap set in the curving southerly line of East 51st Street, for the northwesterly corner hereof;

THENCE, along the southerly line of East 51st Street, being a portion of the northerly line hereof, the following three (3) courses and distances:

- 1) Along a non-tangent curve to the left having a radius of 1000.23 feet, a central angle of $17^{\circ}43'33''$, an arc length of 309.44 feet and a chord which bears $S57^{\circ}43'43''E$, a distance of 308.21 feet to a 1/2 inch iron rod found for the end of said curve;
- 2) $S66^{\circ}37'37''E$, a distance of 366.27 feet to a 1/2 inch iron rod found for the point of curvature of a non-tangent curve to the left;
- 3) Along said non-tangent curve to the left having a radius of 1477.39 feet, a central angle of $13^{\circ}23'28''$, an arc length of 345.30 feet and a chord which bears $S73^{\circ}16'55''E$, a distance of 344.51 feet to the **POINT OF BEGINNING**, containing an area of 21.238 acres (925,134 sq. ft.) of land, more or less, within these metes and bounds.

16.839 ACRES
MUELLER TRACT 6
NATIONAL GUARD PROPERTY

FN NO. 04-312(MJJ)
AUGUST 5, 2004
BPI JOB NO. 1400-01.991

DESCRIPTION OF A 16.839 ACRE TRACT OF LAND OUT OF THE JOSEPH BURLESON SURVEY, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN TRACT OF LAND CONVEYED TO THE CITY OF AUSTIN BY DEED OF RECORD IN VOLUME 428, PAGE 245 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 16.839 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a spike nail found in the southerly line of vacated Old 51st Street by City Ordinance No. 810129-K dated January 29, 1981, being the southerly line of Lot 1, FVMF Addition, a subdivision of record in Volume 80, Page 209 of the Plat Records of Travis County, Texas and also being a point in the westerly line of that certain 13.94 acre lease to the 911 Emergency Management Center, for the northeasterly corner hereof;

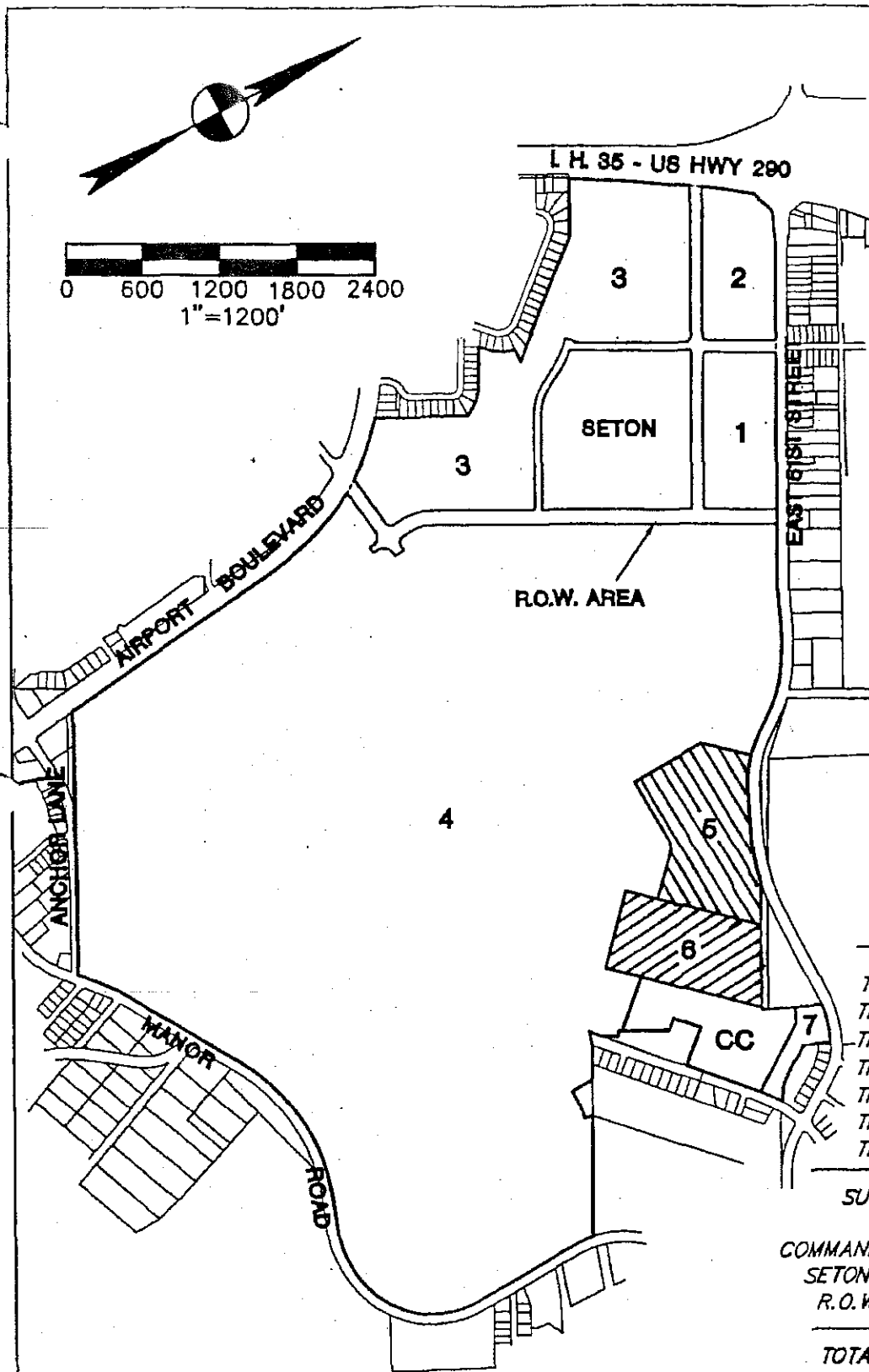
THENCE, $S42^{\circ}17'44''W$, leaving the southerly line of vacated Old 51st Street, being the southerly line of said Lot 1, over and across said City of Austin tract, along a portion of the westerly line of said 13.94 acre lease tract, passing at a distance of 960.00 feet a 1/2 inch iron rod with cap found for the southwesterly corner of said 13.94 acre lease tract and continuing for a total distance of 1238.81 feet to a 1/2 inch iron rod with cap set for the southeasterly corner hereof;

THENCE, continuing over and across said City of Austin tract, for the southerly and westerly lines hereof, the following two (2) courses and distances:

- 1) $N48^{\circ}09'29''W$, a distance of 631.60 feet to a 1/2 inch iron rod with cap set for the southwesterly corner hereof;

- 2) N42°04'53"E, a distance of 1076.01 feet to a 1/2 inch iron rod with cap set in the southerly line of vacated Old 51st Street, being the southerly line of said Lot 1, for the northwesterly corner hereof;

THENCE, S62°29'38"E, along a portion of the southerly line of vacated Old 51st Street, being a portion of the southerly line of said Lot 1, for the northerly line hereof, a distance of 657.38 feet to the **POINT OF BEGINNING**, containing an area of 16.839 acres (733,496 sq. ft.) of land, more or less, within these metes and bounds.



AREA SUMMARY TABLE

TRACT 1	=	15.857 ACRES
TRACT 2	=	14.460 ACRES
TRACT 3	=	59.629 ACRES
TRACT 4	=	515.591 ACRES
TRACT 5	=	21.238 ACRES
TRACT 6	=	16.839 ACRES
TRACT 7	=	3.303 ACRES

SUBTOTAL = 646.917 ACRES

COMMAND CENTER	=	13.944 ACRES
SETON TRACT	=	32.212 ACRES
R.O.W. AREA	=	19.665 ACRES

TOTAL AREA = 712.738 ACRES

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EXHIBIT OF RMMA REDEVELOPMENT

CATELLUS

RMMA

DATE: 10/27/04 FILE: H:\1400\01\140001x19.dwg FN No.: N/A DRAWN BY: M.J.J. PROJ. No: 1400-01

EXHIBIT "D"

Rules

The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities that fall outside of "the norm." In fact, it is expressly intended that the Reviewer under *Chapter 5*, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the Master Design Guidelines. As such, while something may be approved or permitted for one Unit under one set of circumstances, the same thing may be disapproved for another Unit under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any appropriate circumstances.

The following Rules shall apply to all of the Community until such time as they are amended, modified, repealed, or limited by rules of the Master Association adopted pursuant to the Covenant.

1. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board, the following activities are restricted within the Community:

(a) Any activity or condition that interferes with the reasonable enjoyment of any part of the Community or that detracts from the overall appearance of the Community;

(b) Subdivision of a Unit less than 10 acres into two or more Units, or changing the boundary lines of any Unit less than 10 acres after a subdivision plat including such Unit has been approved and recorded, except that the Master Declarant shall be permitted to subdivide or replat Units;

(c) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(d) Conducting, participating in, or holding any events, functions, or programs that involve games of chance, raffles, gambling, wagering, betting, or similar activities where the participants pay money or give other valuable consideration for the opportunity to receive monetary or other valuable consideration; provided, the foregoing is not intended to bar the occasional use of the interior of a Unit for the activities described in this subparagraph so long as such use is: (i) in conjunction with fundraising activities for a non-profit or charitable organization, (ii) a private, social, non-commercial activity; or (iii) a lottery conducted in accordance with Texas law.

(e) Any modifications to any portion of a Unit visible from any other Unit, property, or adjacent street, sidewalk, or alley, including, but not limited to, any changes to landscaping or other structures or signage or other means of advertisement or promotion, or

any other personal property or improvements on any portion of a Unit visible from any other Unit, property or any adjacent street, sidewalk, or alley, except as authorized pursuant to Chapter 5, or as otherwise provided herein or under applicable law; provided:

(f) a reasonable number of holiday and religious decorations may be displayed on a Unit for up to 30 days prior to the holiday or religious observance and up to 14 days thereafter without prior approval, subject to the right of the Master Association to require removal of any such decorations which it deems (A) to be excessive in number, size, or brightness, relative to other Units in the area; (B) to draw excessive attention or traffic; or (C) unreasonably to interfere with the use and enjoyment of neighboring properties.

2. Prohibited Conditions. The following shall be prohibited within the Community:

(a) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years.

3. Dissemination of Information Regarding Activities or Uses that are in Violation of the Covenant. A Unit Owner, or any other person or entity on behalf of a Unit Owner, is prohibited from disseminating information through or otherwise advertising in any medium, including, without limitation, the Internet, bulleting boards, newsletters, newspapers, or any other publications regarding or soliciting persons to engage in any activity or use that would otherwise be prohibited under this Covenant. (For example, placing or distributing advertisements soliciting tenants for a short-term rentals in Units where such use is not authorized by this Covenant would be a violation of this Covenant).

EXHIBIT "E"

Rules of Arbitration

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought, and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").
2. Each Party shall select an arbitrator ("Party Appointed Arbitrator"). The Party Appointed Arbitrators shall, by agreement, select one or two neutral arbitrators ("Neutral(s)") so that the total arbitration panel ("Panel") has an odd number of arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within 14 days from the date of the Arbitration Notice, the remaining arbitrators shall conduct the proceedings, selecting a Neutral in place of any missing Party Appointed Arbitrator. The Neutral arbitrator(s) shall select a chairperson ("Chair").
3. If the Panel is not selected under Rule 2 within 14 days from the date of the Arbitration Notice, Claimant may notify any Texas Chapter of The Community Associations Institute, which shall appoint one neutral arbitrator who shall thereafter be the sole arbitrator ("Arbitrator"), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.
4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.
5. The Arbitrator or Chair, as the case may be ("Arbitrator"), shall fix the date, time, and place for the hearing. The place of the hearing shall be within the Community unless otherwise agreed by the Parties.
6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.
7. All persons who, in the Arbitrator's judgment, have a direct interest in the arbitration are entitled to attend hearings.
8. There shall be no stenographic record of the proceedings.
9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

188127-25 11/11/2004

10. The Parties may offer such evidence as is relevant and material to the Claim and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

12. There shall be no post-hearing briefs.

13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an Opinion is necessary, it shall be in summary form.

14. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.

15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

EXHIBIT "F"

BYLAWS OF THE MUELLER MASTER COMMUNITY, INC.

City of Austin, Travis County, Texas

BY-LAWS
OF
MUELLER MASTER COMMUNITY, INC.

Article 1.

Name, Principal Office, and Definitions

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

1.02. Principal Office. The principal office of the Master Association shall be located in Travis County, Texas.

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

Article 2.

Master Association: Membership, Meetings, Quorum, Voting, Proxies

2.01. Membership. Each Owner of a Unit is a mandatory member ("Member") of the Master Association, as more fully set forth in the Covenant, the terms of which pertaining to membership are incorporated herein by reference.

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

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

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

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

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

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

2.07. Adjournment of Meetings. If any Master Association meeting cannot be held because a quorum is not present, a majority of the Neighborhood Delegates who are present at such meeting may adjourn the meeting to a time not less than 5 or more than 60 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Neighborhood Delegates in the manner prescribed for regular meetings. The Neighborhood Delegates present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Neighborhood Delegates to leave less than a quorum, provided that Neighborhood Delegates representing at least 50% of the total votes in the Master Association remain in attendance, and provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

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

2.09. Proxies. Neighborhood Delegates may not vote by proxy but only in person or through their designated alternates; provided, any Neighborhood Delegate who is only entitled to cast the vote(s) for his own Unit(s) pursuant to Section 4.3 of the Covenant may cast such vote in person or by proxy until such time as the Board first calls for election of a Neighborhood Delegate to represent the Neighborhood where the Unit is located. On any matter as to which a Member is entitled personally to cast the vote for his Unit, such vote may be cast in person or by proxy, subject to the limitations of Texas law relating to use of general proxies and subject to any specific provision to the contrary in the Covenant or these By-Laws. No proxy shall be

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

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

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

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

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

Article 3.

Board of Directors.

3.01. Composition and Selection.

(a). Governing Body: Composition. The Master Association's affairs shall be governed by a Board of Directors, each of whom shall have one equal vote. The Board of Directors shall have the authority to delegate any of its duties to agents, employees, or others; provided, in the event of such delegation, the Board of Directors shall remain responsible for any action undertaken by such delegate. The directors need not be Members of the Master Association during the Development and Sale Period. Upon expiration of the Development and Sale Period, the directors must be Members, spouses of such Members, or residents of the Community; provided, no person and his or her

spouse may serve on the Board at the same time. In the case of a Member which is not a natural person, any officer, director, partner, or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Master 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 Master Declarant during the Development and Sale Period. Directors, other than directors appointed by the Master Declarant during the Development and Sale Period, may serve a limit of two consecutive terms, and must wait at least one term before running for re-election after serving two consecutive terms. This does not, however, prevent the outgoing director from participating in any subcommittee appointment.

(b). Number of Directors. There shall be seven (7) directors in the Master Association, as provided in *Section 2.3* of the Covenant.

3.02. Appointment Procedures. The directors of the Master Association will be appointed as follows: three (3) of the seven (7) directors will be appointed by a majority of the board of directors of the Mueller Mixed-Use Community, Inc., a Texas non profit corporation (the "Mixed-Use Association"), to be created by the Master Declarant to administer the common affairs of certain residential property within the Community; three (3) of the seven (7) directors will be appointed by a majority of the board of directors of the Mueller EC/TC Community, Inc., a Texas non-profit corporation (the "EC/TC Association"), to be created by the Master Declarant to administer the common affairs of certain commercial property within the Community; and one (1) of the directors will appointed, in even numbered years, by the board of the Mixed-Use Association, and in odd numbered years, by the board of the EC/TC Association. 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 Master Declarant, in accordance with *Section 2.3* of the Covenant, will appoint the directors each association is entitled to appoint pursuant to this Section.

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

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

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

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

In the event of the death, disability, or resignation of a director, the Board shall declare a vacancy and the board of the Mixed-Use Association or the EC/TC Association, as applicable, shall appoint a successor to fill the vacancy for the remainder of such director's term. The Master Declarant, until such time as articles of incorporation have been filed establishing the Mixed-Use Association and the EC/TC Association, will be entitled to appoint, in accordance with Section 2.3 of the Master Covenant, a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by the Master Declarant.

3.05. Meetings.

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

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

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

(d). Notices: Waiver of Notice.

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

(ii). All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on

the Master Association's records. Notices of special meetings of the Board shall also be posted in a prominent place within the Community. Notices sent by first class mail shall be deposited into a United States mailbox at least four business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

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

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

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

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

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

(i). Open Meetings. Subject to the provisions of Section 3.15, all meetings of the Board shall be open to all Members and residents of the Community and, if required by law, all Members, but attendees other than directors may not participate in any

discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any such individual may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, or personnel matters.

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

3.06. Powers and Duties.

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

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

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

(ii). cooperating with the Mixed-Use Association and the EC/TC Association in assessing and collecting assessments on behalf of each association;

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

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

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

(vi). making and amending rules and regulations;

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

(viii). making or contracting for the making of repairs, additions, and improvements to or alterations of the Master Community Facilities in accordance with the Governing Documents and these By-Laws;

(ix). enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Master Association; provided, the Master Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Master Association's position is not strong enough to justify taking enforcement action;

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

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

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

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

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

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

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

(xvii). cooperating with the Mixed-Use Association and the EC/TC Association and their members in upholding the Master Community-Wide Standard; and

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

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

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

- (a). accounting and controls should conform to generally accepted accounting principles;
- (b). the Master Association's cash accounts shall not be commingled with any other accounts;
- (c). no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Master Association, whether in the form of commissions, finder's fee, services fees, prizes, gifts, or otherwise; anything of value received shall benefit the Master Association;
- (d). any financial or other interest which the managing agent may have in any firm providing goods or services to the Master Association shall be disclosed promptly to the Board of Directors;
- (e). commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the Master Association at least quarterly containing:
 - (i). an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
 - (ii). a statement reflecting all cash receipts and disbursements for the preceding period;
 - (iii). a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv). a balance sheet as of the last day of the preceding period; and

(v). a delinquency report listing all Members who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(vi). an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year; (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared and reviewed by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any Mortgage on a Unit, the Master Association shall provide an audited financial statement.

3.09. **Borrowing.** The Master Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Neighborhood Delegate approval in the same manner provided in Section 12.3 of the Covenant for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt outstanding exceeds or would exceed 20% of the budgeted gross expenses of the Master Association for that fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

Article 4. Officers

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

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

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

4.04. **Powers and Duties.** The Master 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 Master Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Covenant and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

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

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

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

Article 5. Committees

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

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

5.03. **Service Area Committees.** In addition to any other committees appointed as provided above, for each Service Area that has no formal organizational structure a Service

Area Committee may be created by the Board to determine the nature and extent of services, if any, to be provided to the Service Area by the Master Association in addition to those provided to all Members in accordance with the Covenant. A Service Area Committee may advise the Board on any other issues but shall not have the authority to bind the Board. Such Service Area Committees shall consist of three to five Members or residents from the Service Area to which the committee will have jurisdiction.

Service Area Committee members shall be elected for a term of one year or until their successors are elected, or such other term as may be permitted under a Supplemental Covenant governing the Service Area. Any director elected to the Board of Directors from a Service Area shall be an *ex officio* member of the Committee.

In the conduct of its activities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board.

Article 6.
Miscellaneous

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

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

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

6.04. **Books and Records.**

(a). **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit; any Member; or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Covenant, By-Laws, and Articles of Incorporation, including any amendments, the rules of the Master 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 Master Association or at such other place within the Community as the Board shall designate.

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

(i). notice to be given to the custodian of the records;

(ii). hours and days of the week when such an inspection may be made; and

(iii). payment of the cost of reproducing copies of documents requested.

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

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

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

6.07. Indemnification. To the fullest extent permitted by applicable law, the Master 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 Reviewer, employee, servant, or agent of the Master 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 Master 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 Master 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 Master Association, or, with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2004 Dec 27 03:37 PM 2004238007

KNOWLESR \$280.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.