



AMEND

2006193525

11 PGS



AFTER RECORDING RETURN TO:

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

**SECOND AMENDMENT TO
DECLARATION OF RESTRICTIVE COVENANTS
MUELLER COMMUNITY FEE**

Travis County, Texas

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

Cross reference to that certain Mueller Master Community Covenant, recorded as Document No. 2004238007, in the Official Public Records of Travis County, Texas, as amended, and that certain Declaration of Restrictive Covenants – Mueller Community Fee, recorded as Document No. 2006050355, in the Official Public Records of Travis County, Texas, as amended

**SECOND AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS
[MUELLER – COMMUNITY FEE]**

This Second Amendment to Declaration of Restrictive Covenants [Mueller – Community Fee] (the “**Amendment**”) is made by **CATELLUS AUSTIN, LLC**, a Delaware limited liability company (“**Master Declarant**”), and is as follows:

RECITALS

A. Master Declarant previously executed and recorded that certain Declaration of Restrictive Covenants – Mueller Community Fee, recorded as Document No. 2006050355, in the Official Public Records of Travis County, Texas, as amended that certain First Amendment to Declaration of Restrictive Covenants – Mueller Community Fee, recorded as Document No. 2006117412, in the Official Public Records of Travis County, Texas (the “**Community Fee Covenant**”).

B. Pursuant to *Section 3(b)* of the Community Fee Covenant, the Community Fee Covenant may be amended by (i) majority vote of the Board, and (ii) written consent of the Master Declarant. The Master Declarant hereby consents to this Amendment by its execution of this instrument in the space provided below.

NOW, THEREFORE, a majority of the Directors of the Mueller Master Community, Inc. Board of Directors hereby amend and modify the Community Fee Covenant as follows:

1. **Revision to Definitions.** The definition of “Transfer” in *Section 1(a)(i)* is hereby deleted in its entirety and the following is substituted in its place:

“**Transfer**” means, for the purposes of the Community Fee, any conveyance, assignment, lease, sublease or other grant or conveyance of beneficial ownership of a Unit, whether occurring in one transaction or a series of related transactions, including but not limited to: (a) the conveyance of fee simple title to any Unit; (b) the transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation which, directly, or indirectly, owns one or more Units; and (c) the transfer of more than 50 percent of the interest in net profits or net losses of any partnership, limited liability company, joint venture or other entity which, directly or indirectly, owns one or more Units; but “Transfer” shall not mean or include grants or conveyances expressly excluded under this Declaration.

2. **Revision to Definitions.** The definition of “Transfer Price” in *Section 1(a)(i)* is hereby deleted in its entirety and the following is substituted in its place:

“**Transfer Price**” means the greater of: (i) the price paid by the Transferee for the Unit; or (ii) the value of the Unit, including any Improvements or

betterments constructed thereon, as determined by the Travis County Appraisal District in its most recent valuation of such Unit for ad valorem tax purposes; provided, however, that in the case of a lease or sublease (including all further subleases), the "Transfer Price" means the present value of all rentals due and owing under the lease or sublease of the Unit discounted at a rate equal to 5.0%. If the Transfer is for a portion of the Unit, e.g., a lease, sublease or conveyance of a portion of the Unit, the Transfer Price means the greater of: (a) the price paid by the Transferee for such portion of the Unit; or (b) the value of such portion of the Unit, including any Improvements or betterments constructed thereon, as determined by the Travis County Appraisal District in its most recent valuation of such Unit for ad valorem tax purposes; provided, however, that in the case of a lease or sublease (including all further subleases), the "Transfer Price" means the present value of all rentals due and owing under the lease or sublease of the Unit discounted at a rate equal to 5.0%. . If under subsection (b) above, the Travis County Appraisal District has not separately rendered the portion of the Unit then being transferred, the value, including any Improvements or betterments constructed thereon, will be determined by allocating the value of the entire Unit on a per acre basis. For purposes of clause (ii) and (b) above, "valuation" means the appraised value without giving effect to any applicable tax exemptions.

3. **Revision to Community Fee Lien and Foreclosure.** Section 1(a)(viii) is hereby deleted in its entirety and the following is substituted in its place:

- (viii) **Community Fee Lien and Foreclosure.** Each Community Fee assessed or charged in the manner provided in this Declaration but unpaid, together with all costs and expenses of collection, including reasonable attorney's fees, is secured by a continuing lien and shall constitute a charge on or against all or a portion of the Unit covered by such lien or charge, which shall bind such property in the hands of the owner, and such owner's heirs, devisees, and personal representatives, successors or assigns. An express lien on the Unit is hereby retained by Master Association to secure the payment thereof in each such instance. In the event all or any portion of the property is subdivided into lots or a condominium regime is impressed upon the Unit, the lien retained herein shall apply to such lots or Units. Any Community Fee allocated against a subdivided lot or Unit shall be the sole obligation of the owner of the lot or Unit. In no event shall any Community Fee allocated against a subdivided lot or Unit be considered an obligation against any other subdivided lot or Unit within the Unit. The lien established herein shall be superior to all other liens and charges against the Unit or any subdivided lot or Unit within the Unit, except only for tax liens, and all sums unpaid secured by a first-lien mortgage securing sums borrowed for the purchase or improvements

of the property in question, provided such mortgage was recorded in the Official Public Records of Travis County, Texas before the delinquent Community Fee was due. The Fund Committee or the Board, at its option and without prejudice to the priority or enforceability of the Community Fee lien granted hereunder, may prepare a written notice of Community Fee setting forth the amount of the unpaid indebtedness, the name of the owner of the Unit covered by such lien or charge and a description of such Unit. Each owner, by accepting a deed to all or any portion of the Unit, shall be deemed conclusively to have granted a power of sale to the Master Association to secure and enforce at any time after such payment becomes delinquent by the non-judicial foreclosure of such lien on the defaulting owner's Unit by the Master Association in like manner as a deed of trust or real property mortgage with power of sale under Tex. Prop. Code § 51.002 (For such purpose, Robert D. Burton of Travis County, Texas is hereby designated as trustee for the benefit of the Master Association, with the Master Association retaining the power to remove any trustee with or without cause and to appoint a successor trustee without the consent or joinder of any other person.). The liens and rights to foreclosure thereof shall be in addition to and not in substitution of any other rights and remedies the Master Association may have by law, including the rights of the Master Association to institute suit against the owner personally obligated to pay the Community Fee for monetary damages and/or for foreclosure of the aforesaid lien judicially. The Master Association may also institute suit against the Master Association for the collection of the Community Fee. In any foreclosure proceeding, whether judicial or non-judicial, the owner shall be required to pay the costs, expenses, and reasonable trustee's and attorney's fees incurred. The Master Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any mortgagee holding a prior lien on any portion of the Unit, the Master Association shall report to said mortgagee any Community Fee remaining unpaid for longer than thirty (30) days after the same are due. The lien hereunder shall not be affected by the sale or transfer of any portion of the Unit or any subdivided lot or condominium unit within the Unit; except, however, that in the event of foreclosure of any first-lien mortgage, the lien for any Community Fee that was due and payable before the foreclosure sale will be extinguished, provided that past-due levy is paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the first-lien mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent owner from paying assessments

becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this section, the Master Association will upon the request and at the cost of the owner execute a release of lien relating to any lien for which written notice has been filed as provided above, except in circumstances in which the Master Association has already foreclosed such lien. The Master Association will report to the owner of a subdivided lot or condominium unit, upon such owner's written request, the status of any unpaid Community Fee. Notwithstanding anything to the contrary contained herein, as long as The Board of Regents of the University of Texas System, an agency of the State of Texas, or a successor entity ("**UTS**"), is the tenant or owner of 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 in the Official Public Records of Travis County, Texas ("**Lot 1C1**"), this Declaration does not establish a lien against Lot 1C1 or any improvements located or that may be subsequently located thereon. Further, notwithstanding the provisions contained herein with respect to amendments of this Declaration, as long as UTS is the tenant or owner of Lot 1C1, this provision will not be amended without the prior written consent of UTS.

4. **Revision to Exclusions from the Community Fee.** Section 1(a)(x)(k) is hereby deleted in its entirety and the following is substituted in its place:

- (k) **Exempt Leases.** Any lease or sublease of any Unit or any portion thereof (or assignment or Transfer of any interest in any such lease or sublease) for a period of less than 30 years;

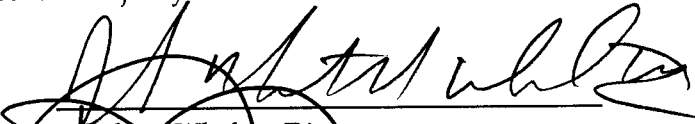
5. **Effect of Amendment.** Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Community Fee Covenant. Unless expressly amended by this Amendment, all other terms and provisions of the Community Fee Covenant remain in full force and effect as written.

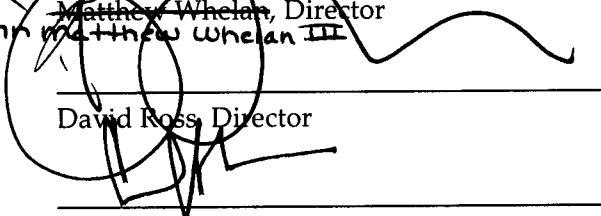
6. **Counterparts.** This instrument may be executed in two or more counterparts, each of which will be deemed an original, which together will constitute one and the same instrument.

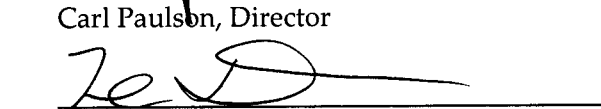
EXECUTED to be effective the 1st day of October 2006.

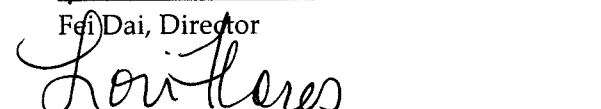
SIGNATURES APPEAR ON FOLLOWING PAGE

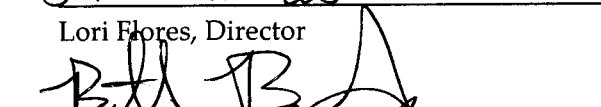
The following signatures represent a majority of the Directors of the Mueller Master Community, Inc. Board of Directors:

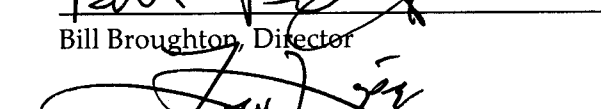

Matthew Whelan, Director
~~John Matthew Whelan III~~

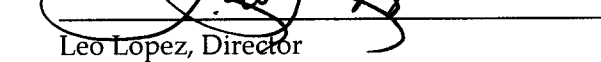

David Ross, Director


Carl Paulson, Director


Fei Dai, Director


Lori Flores, Director


Bill Broughton, Director


Leo Lopez, Director

CONSENT PROVIDED PURSUANT TO
SECTION 3(b) OF THE COMMUNITY FEE
COVENANT:

CATELLUS AUSTIN, LLC, a Delaware
limited liability company

By: _____
Gregory J. Weaver, Senior Vice President

The following signatures represent a majority of the Directors of the Mueller Master Community, Inc. Board of Directors:

Matthew Whelan, Director

David Ross, Director

Carl Paulson, Director

Fei Dai, Director

Lori Flores, Director

Bill Broughton, Director

Leo Lopez, Director

**CONSENT PROVIDED PURSUANT TO
SECTION 3(b) OF THE COMMUNITY FEE
COVENANT:**

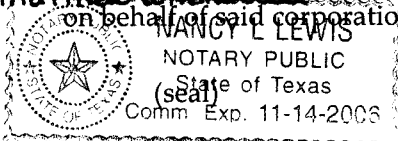
CATELLUS AUSTIN, LLC, a Delaware
limited liability company

By: _____


Gregory J. Weaver, Senior Vice President

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

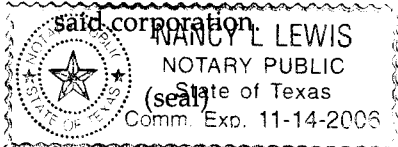
This instrument was acknowledged before me on this 29th day of September, 2006 by ~~Matthew Whelan~~ John Matthew Whelan, Director of Mueller Master Community, Inc., a Texas non-profit corporation, on behalf of said corporation.



Nancy L. Lewis
Notary Public Signature

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

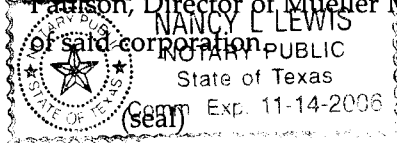
This instrument was acknowledged before me on this 29th day of September, 2006 by David Ross, Director of Mueller Master Community, Inc., a Texas non-profit corporation, on behalf of said corporation.



Nancy L. Lewis
Notary Public Signature

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

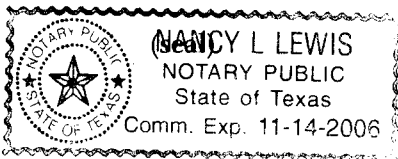
This instrument was acknowledged before me on this 29th day of September, 2006 by Carl Patton, Director of Mueller Master Community, Inc., a Texas non-profit corporation, on behalf of said corporation.



Nancy L. Lewis
Notary Public Signature

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

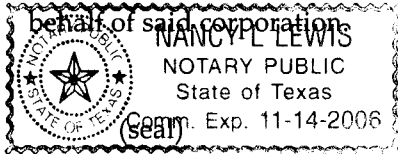
This instrument was acknowledged before me on this 29th day of September, 2006 by Fei Dai, Director of Mueller Master Community, Inc., a Texas non-profit corporation, on behalf of said corporation.



Nancy L. Lewis
Notary Public Signature

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

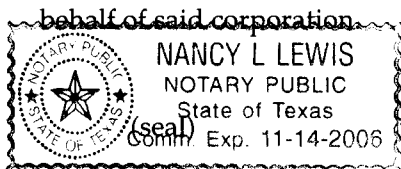
This instrument was acknowledged before me on this 29th day of September, 2006 by
Lori Flores, Director of Mueller Master Community, Inc., a Texas non-profit corporation, on



Nancy L. Lewis
Notary Public Signature

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

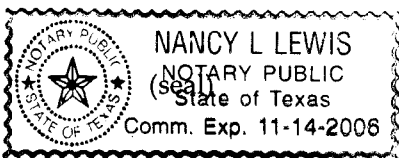
This instrument was acknowledged before me on this 29th day of September, 2006 by
Bill Broughton, Director of Mueller Master Community, Inc., a Texas non-profit corporation, on



Nancy L. Lewis
Notary Public Signature

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 29th day of September, 2006 by
Leo Lopez, Director of Mueller Master Community, Inc., a Texas non-profit corporation, on
behalf of said corporation.



Nancy L. Lewis
Notary Public Signature

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of _____, 2006
by Gregory J. Weaver, Senior Vice President of Catellus Austin, LLC, a Delaware limited
liability company, on behalf of said limited liability company.

(seal)

Notary Public Signature

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of _____, 2006 by
Lori Flores, Director of Mueller Master Community, Inc., a Texas non-profit corporation, on
behalf of said corporation.

(seal)

Notary Public Signature

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of _____, 2006 by
Bill Broughton, Director of Mueller Master Community, Inc., a Texas non-profit corporation, on
behalf of said corporation.

(seal)

Notary Public Signature

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this ____ day of _____, 2006 by
Leo Lopez, Director of Mueller Master Community, Inc., a Texas non-profit corporation, on
behalf of said corporation.

(seal)

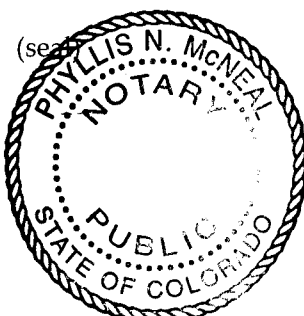
Notary Public Signature

THE STATE OF ~~TEXAS~~
COUNTY OF ~~TRAVIS~~

Colorado
Denver

This instrument was acknowledged before me on this 2nd day of Oct, 2006
by Gregory J. Weaver, Senior Vice President of Catellus Austin, LLC, a Delaware limited
liability company, on behalf of said limited liability company.

(seal)



My Commission Expires 09/22/2008

Phyllis N. McNeal
Notary Public Signature

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2006 Oct 04 04:00 PM 2006193525

CORTEZY \$56.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS