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This document is being re-recorded to correct the document number referenced on page 18.

AFTER RECORDING RETURN TO:

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



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OTHER 2007171400  
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## MUELLER SUPPLEMENTAL COVENANT

[Lots 27-34, Block 32; Lots 8-25, Block 33; and Lots 17-30, Block 40, all out of Amended  
Plat of Mueller Section IV Subdivision, a subdivision located in Travis County,  
Texas, according to the map or plat recorded as Document No. 200700092 in the  
Official Public Records of Travis County, Texas]

## MIXED-USE COMMUNITY

*Travis County, Texas*

[22.5' x 70' AFFORDABLE ROW HOUSE]

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

Cross Reference to Mueller Master Community Covenant, recorded as Document No. 2004238007, Official Public Records of Travis County, Texas, as amended, Mueller Mixed-Use Community Covenant, recorded as Document No. 2004238009, Official Public Records of Travis County, Texas, as amended, and Mueller Design Book, recorded as Document No. 2005193821 in the Official Public Records of Travis County, Texas, as amended. The terms and provisions of the aforementioned documents will also apply to the property made subject to this supplemental covenant.

**MUELLER MIXED-USE COMMUNITY –**  
**SUPPLEMENTAL COVENANT**  
**[22.5' X 70' AFFORDABLE ROW HOUSE]**

LOTS 27-34, BLOCK 32; LOTS 8-25, BLOCK 33; AND LOTS 17-30, BLOCK 40,  
AMENDED PLAT OF MUELLER SECTION IV SUBDIVISION

This Mueller Mixed-Use Community Supplemental Covenant [22.5' x 70' Affordable Row House] (this "**Supplemental Covenant**") is made by CATELLUS AUSTIN, LLC, a Delaware limited liability company (the "**Master Declarant**"), and is as follows:

**RECITALS**

A. Pursuant to that certain MCC Annexation Notice – Mueller Section IV, recorded in the Official Public Records of Travis County, Lots 27-34, Block 32; Lots 8-25, Block 33; and Lots 17-30, Block 40, all out of Amended Plat of Mueller Section IV Subdivision, a subdivision (the "**Subdivision**") located in Travis County, Texas, according to the map or plat recorded as Document No. 200700092 in the Official Public Records of Travis County, Texas (the "**Property**"), is subject to the terms and provisions of that certain Mueller Master Community Covenant, recorded as Document No. 2004238007 in the Official Public Records of Travis County, Texas, as amended (the "**Master Covenant**"), and that certain Mueller Mixed-Use Community Covenant, recorded as Document No. 2004238009, in the Official Public Records of Travis County, Texas, as amended (the "**Mixed-Use Covenant**").

B. Catellus Austin Land LP, a Delaware limited partnership, is the owner of the Property and consents to the recordation of this Supplemental Covenant by its execution of this Supplemental Covenant in the space provided below.

C. Pursuant to *Section 7.02* of the Mixed-Use Covenant, Master Declarant may record one or more supplemental covenants applicable to all or a portion of the property which is made subject to the Mixed-Use Covenant and designate the use, classification and such additional covenants, conditions and restrictions as Master Declarant may deem appropriate for such property. Pursuant to *Section 1.5* of the Master Covenant, 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. The City of Austin hereby consents to this Supplemental Covenant by its execution of this instrument in the space provided below. To the extent required by the Governing Documents, this Supplemental Covenant will be considered an amendment to the Master Covenant.

D. Master Declarant desires to carry out a uniform plan for the improvement and development of the Property for the benefit of the present and all future owners thereof.

E. Master Declarant desires to provide a mechanism for the preservation of the community and for the maintenance of common areas and, to that end, desires to subject the

Property to the covenants, conditions, and restrictions set forth in this Supplemental Covenant for the benefit of the Property, and each owner thereof, which shall be in addition to the covenants, conditions, and restrictions set forth in the Master Covenant and the Mixed-Use Covenant.

**NOW, THEREFORE**, it is hereby declared: (i) that all of the Property shall be held, sold, conveyed, and occupied subject to the following covenants, conditions, and restrictions which shall run with the Property and shall be binding upon all parties having right, title, or interest in or to the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to the Property, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions, and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) that this Supplemental Covenant shall supplement and be in addition to the covenants, conditions, and restrictions of the Master Covenant and the Mixed-Use Covenant.

## **ARTICLE I DEFINITIONS**

Unless the context specifies or requires otherwise, capitalized terms used but not defined in this Supplemental Covenant are used and defined as they are used and defined in the Master Covenant. References herein to the "**Reviewer**" shall refer to the "**New Construction Council**" or "**Modification Committee**", both as defined in the Master Covenant, as applicable. Whether the New Construction Council or Modification Committee has jurisdiction over a particular approval will be determined as set forth in the Master Covenant.

## **ARTICLE II GENERAL RESTRICTIONS**

All of the Property shall be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations:

**2.01    Master Design Guidelines.** Pursuant to *Chapter 5* of the Master Covenant, all terms and provisions of the Master Design Guidelines, commonly referred to as the "Mueller Design Book", as amended, shall apply to construction on any portion of the Property until such time as the Master Design Guidelines are modified, amended, or restated in accordance with *Chapter 5* of the Master Covenant.

**2.02    Permitted Uses.** Portions of the Property containing Dwelling Units classified as "Row House" pursuant to the Mueller Design Book shall be used solely for private single family residential purposes and there shall not be constructed or maintained on any Unit more than one single family residence. No professional, business, or commercial activity to which the general public is invited shall be conducted on any Unit, except an Owner or occupant of a

Dwelling Unit may conduct business activities within a Dwelling Unit so long as: (i) such activity complies with all the applicable zoning ordinances (if any); (ii) the business activity is conducted without the employment of persons other than the residents of the home constructed in the Unit; (iii) the existence or operation of the business activity is not apparent or detectable by sight, i.e., no sign may be erected advertising the business on any Unit, sound, or smell from outside the Dwelling Unit; (iv) the business activity does not involve door-to-door solicitation of residents within the Community; (v) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Property which is noticeably greater than that which is typical of Dwelling Units in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community as may be determined in the sole discretion of the Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

**2.03 Utility Lines.** Unless otherwise approved in accordance with *Chapter 5* of the Master Covenant, no sewer, drainage or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals including telephone, television, microwave or radio signals, shall be constructed, placed or maintained anywhere in or upon any portion of the Property other than within buildings or structures unless the same shall be contained in conduits or cables constructed, placed or maintained underground or concealed in or under buildings or other structures.

**2.04 Construction of Improvements.** No Improvements of any kind shall hereafter be placed, maintained, erected or constructed upon any portion of the Property unless approved in accordance with *Chapter 5* of the Master Covenant.

**2.05 Condominium Regime.** No condominium regime will be impressed upon all or any portion of the Property unless the declaration establishing the regime has been approved in writing by the Master Declarant during the Development and Sale Period, and thereafter the Board. In the event that a condominium regime is impressed upon all or any portion of the Property, the Master Declarant during the Development and Sale Period, and thereafter the Board, may amend this Supplemental Covenant to the extent necessary to reflect that the provisions otherwise applicable to the Property apply to each condominium unit.

**2.06 Garages.** The Improvements on each Unit within the Property must contain a private, enclosed garage capable at all times of housing at least one (1) automobile. All garages, carports and other open automobile storage units shall be approved in advance of construction

by the New Construction Council. No garage may be permanently enclosed or otherwise used for habitation. The orientation of the opening into a garage must be to the rear alley or side alley (if a side of the Unit is adjacent to an alley), and must be approved in advance by the New Construction Council. The exterior side of each garage that faces the alley must contain two (2) outdoor lights facing the alley. The parking of vehicles in the yard of any Unit is prohibited.

**2.07 Porches.** Unless otherwise approved in advance by the Reviewer, each Dwelling Unit must comply with the porch specifications and requirements set forth in the Mueller Design Book.

**2.08 Fences; Sidewalks.** No fence shall be constructed on the Property without the prior written consent of the Reviewer. All fencing constructed on a Unit must be constructed of a material, design and height and in a location approved in advance of construction by the Reviewer. The Reviewer has the authority to require the construction of rear and side yard fencing on any subdivided lot, common element, or Unit and to require that such fencing be constructed in accordance with specifications promulgated by the Reviewer. The Owner of each Unit or subdivided lot shall construct, at such Owner's sole cost and expense and prior to occupying any Dwelling Unit, a sidewalk on such Owner's Unit or subdivided lot, located and designed in conformance with the Plat and/or specifications promulgated by the Reviewer.

**2.09 Building Materials.** All building materials must be approved in advance by the Reviewer. No highly reflective finishes (other than glass, which may not be mirrored) shall be used on exterior surfaces (other than surfaces of hardware fixtures), including, without limitation, the exterior surfaces of any Improvements.

**2.10 Rentals.** Nothing in this Supplemental Covenant shall prevent the rental of any Unit and the Improvements thereon by the Owner thereof for residential purposes. All leases shall be in writing. The Owner must provide to its lessee copies of the Community Covenants. Notice of any lease, together with such additional information as may be required by the Board, must be remitted to the Master Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease.

**2.11 Driveways.** The design, construction materials, and location of: (i) all driveways, and (ii) culverts incorporated into driveways for ditch or drainage crossings, shall be approved by the Reviewer. The Reviewer may establish design and materials requirements for all driveways and driveway culverts to insure that they are consistent in appearance throughout the Property.

**2.12 Compliance with Setbacks.** Unless otherwise approved in advance by the Reviewer or set forth herein, setbacks on each Unit must comply with the setback requirements set forth in the Mueller Design Book.

**2.13 Impervious Cover Limitation.** Unless otherwise approved in advance by the Reviewer, the impervious cover of any Unit within the Property shall not exceed 95% of the total surface area of the Unit. "Impervious Cover" for the purpose of this section means the

definition set forth in Land Development Code of the City of Austin. Each Owner is advised that exceeding the impervious cover allocated to a particular Unit WITHOUT the advance written approval of the Reviewer may require the removal of the excess impervious cover at the Owner's sole cost and expense. In addition, exceeding the impervious cover allocated to a Unit WITHOUT the advance written approval of the Reviewer will constitute a violation of the terms and provisions of the Governing Documents which, in addition to any other remedy for violation of the Governing Documents, may result in a fine levied against the Owner of the Unit.

**2.14 Address Markers.** The location, design and materials used for address identification markers on each Unit must be approved in advance of installation by the Reviewer.

**2.15 HVAC Location.** No air-conditioning apparatus may be installed on the ground in front of a Dwelling Unit or on the roof of any Dwelling Unit. No window air-conditioning apparatus or evaporative cooler may be attached to any front wall or front window of a Dwelling Unit or at any other location where it would be visible from any street, any other Unit or any Master Community Facilities or Special Common Area. All HVAC units must be screened with either (i) structural screening to match the exterior of the Dwelling Unit or (ii) landscaping, as approved by the Reviewer.

**2.16 Trash Containers.** Trash containers and recycling bins must be stored in one of the following locations:

- (i) inside the garage of the Dwelling Unit; or
- (ii) Behind the Dwelling Unit in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent Unit.

The Reviewer shall have the right to specify additional locations on each Owner's Unit in which trash containers or recycling bins must be stored.

**2.17 Height.** The maximum building height of any Dwelling Unit may be no more than forty feet (40') measured according to the following definition: the vertical distance between the lowest finished ground floor elevation at any point within the conditioned space of the structure and the highest ridge, peak, or gable of a roof, excluding chimneys.

**2.18 Landscaping.** Each Owner shall be required to install landscaping upon such Owner's Unit in accordance with landscaping plans approved in advance of installation by the New Construction Council. Notwithstanding any provision in this Supplemental Covenant to the contrary, such landscaping plans must be approved by the New Construction Council prior to occupancy of the single family residential structure located on the Unit or subdivided lot to which such landscaping plans relate. All landscaping shown on the landscaping plans and specifications approved by the New Construction Council shall be installed, and all such landscaping shall be completed, no later than the date the certificate of occupancy is issued for

the Dwelling Unit on a particular Unit, unless approved in advance by the New Construction Council. The New Construction Council or its assigns shall be entitled to make recommendations with respect to tree disease control, whereupon the Owner or Owners to whom such recommendations are directed shall be obligated to comply with such recommendations, which may include, but not be limited to tree removal and replacement.

Unless approved in advance by the New Construction Council, prior to the date the certificate of occupancy is issued for the Dwelling Unit on a particular Unit, each Owner will be responsible, at such Owner's sole cost and expense, for installing an automatic irrigation system to serve the landscaped areas of a Unit's: (i) front yard, (ii) side yards visible from adjacent streets or alleys, including the landscaped side yards of Units adjacent to a Pedestrian Easement Tract (defined below) but excluding any landscaped area of a Unit enclosed by a private fence creating a private yard space for the Unit, and (iii) alley-landscaped areas (the "**Yard Landscape Area**"). Any dispute as to whether a side yard is visible from an adjacent street or alley or what constitutes a front yard, side yard or alley-landscaped area for purposes of this section shall be determined by the Reviewer, in its sole discretion. The automatic irrigation system must be approved in advance by the Reviewer or must comply with rules and regulations established by the Reviewer with respect to the location and installation of the irrigation system. The automatic irrigation system must also comply with all rules and regulations: (i) set forth in the Texas Water Code; (ii) adopted by the Texas Commission on Environmental Control; and (iii) adopted by the City of Austin.

**2.19 Exterior Material Requirements; Foundation Shielding.** All materials used for the construction of the exterior of a Dwelling Unit must be approved in advance by the Reviewer. In the event portions of the foundation on each front elevation and side elevation are exposed eighteen inches (18") above the finished grade, the Owner must submit a proposed design to be approved in advance by the Reviewer to cover such exposure.

**2.20 Roofing.** The composition, color and style of all roof materials shall be expressly approved by the Reviewer. Any metal roof material that is approved for use shall be similar in finish to Galvalume™ (or approved equal) in a color and style to be expressly approved by the Reviewer. The pitch of the primary roofing surface, excluding accessory porches, must be a minimum of 6:12 and a maximum of 9:12 unless otherwise approved in advance by the Reviewer.

**2.21 Swimming Pools.** Swimming pools are prohibited.

**2.22 Retaining Walls.** Each Owner who acquires a Unit with the intent of constructing a Dwelling Unit thereon for sale to a third-party (i.e., a homebuilder) shall be obligated, at its sole cost and expense, to construct any retaining wall which may be required by the New Construction Council to be constructed on such Owner's Unit. Any retaining wall proposed to be constructed within the Property shall be constructed in accordance with specifications set forth by the New Construction Council, and shall in any case be approved in advance by the New Construction Council.

**2.23 Square Footage.** It is contemplated that each Dwelling Unit constructed on the Property will be a "Row House" as that term is defined in the Mueller Design Book. Notwithstanding any provision in the Governing Documents to the contrary, the minimum square footage of any Dwelling Unit constructed on the Property shall be 1,100 square feet and the maximum square footage, exclusive of open or screened porches, terraces, patios, decks, driveways, and garages, shall be 1,300 square feet. The Master Declarant shall have the right to grant variances or adjustments to the minimum and maximum square footage requirements of any Dwelling Unit set forth herein or in the Mueller Design Book.

**2.24 Concrete Truck Clean-Out Site.** Each Owner who is a homebuilder may designate a Unit owned by such Owner (the "Clean-Out Site") for the cleaning of concrete trucks used by such Owner or its subcontractors during the construction of Improvements on any Unit. Each such Owner or its subcontractors shall restrict its cleaning of concrete trucks to the Clean-Out Site, and shall immediately remove all debris and trash deposited by any concrete truck from property and streets adjacent to the Clean-Out Site. Each Owner shall be obligated to restore any vegetation located within the Clean-Out Site which is removed or damaged as a result of the use of the Clean-Out Site by such Owner or its subcontractors. In the event such Owner fails to comply with the terms of this *Section 2.26*, Master Declarant may, at its option, remove any trash or debris and restore any vegetation removed or damaged, and the Owner shall be responsible for reimbursing Master Declarant for any costs it incurs for such actions. If such Owner fails to pay such costs and expenses upon demand by the Master Declarant, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1-1/2%) per month) will be assessed against and chargeable to the Owner's Unit(s). Any such amounts assessed and chargeable against a Unit hereunder will be secured by the liens reserved in the Master Covenant for Assessments and may be collected by any means provided in the Master Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Unit(s).

**2.25 Flagpoles and Flags.** One flagpole not to exceed two inches (2") in diameter and sixty inches (60") in length may be mounted on the front of a Dwelling Unit. Permanent, standalone flagpoles are not allowed on Units within the Property. Flags visible from the exterior of a Dwelling Unit may be hung only on flagpoles meeting the above criteria. Flags shall not exceed three feet (3') by five feet (5') in size. Only official flags of countries and seasonal decorative flags may be displayed; flags which display trademarks or advertising, and battle flags and similar flags which, in the Board's judgment, are intended to, or tend to, incite, antagonize, or make political statements (other than a statement of citizenship or country of origin of the residents of the Dwelling Unit), shall not be permitted. Flags shall be maintained in good condition and shall not be displayed if mildewed, tattered or faded beyond recognition. Flags or weathervanes shall not be erected on top of any roof unless otherwise approved in advance by the Reviewer.

**2.26 Prohibited Structures.** Accessory buildings and structures, including greenhouses, cabanas, sheds, storage buildings, guest houses, and tents of a permanent nature are prohibited unless approved in advance by the Reviewer.

**2.27 Prohibited Animals.** No Owner may keep a dangerous or exotic animal, pit bull terrier, trained attack dog, or any other animal determined by the Board in its sole discretion to be a potential threat to the well-being of people or other animals.

**2.28 All-Terrain Vehicles.** No all-terrain vehicles will be allowed to operate on any roads or trails within the Community, except for emergency purposes or in areas specifically designated for such purposes by the Master Association. Motorcycles may be used on roads within the Community only for transportation to and from a dwelling and shall be operated in a quiet manner.

**2.29 Mobile Homes, Travel Trailers and Recreational Vehicles.** No mobile homes may be parked or placed on any Unit or used as a Dwelling Unit, either temporary or permanent, at any time, and no motor homes, travel trailers or recreational vehicles may be parked on or near any Unit so as to be visible from adjoining property or from public or private thoroughfares at any time. Notwithstanding the foregoing, sales trailers or other temporary structures expressly approved by the Reviewer shall be permitted.

**2.30 Basketball Goals; Permanent and Portable.** Basketball goals are not permitted.

**2.31 Antennae.** Antennae and satellite dishes may only be installed pursuant to the provisions of *Sections 2.08 and 2.09* of the Mixed-Use Covenant.

**2.32 Sanitation.** Each structure designed for occupancy will connect with sanitation facilities as are made available from time to time by the applicable utility service supplier. No septic tanks or drainfields shall be permitted on any Unit.

**2.33 On Street Parking.** No Owner or resident may park a vehicle on any road or street within the Property unless in the event of an emergency or as otherwise approved in writing by the Board. Guests and/or visitors may not park a vehicle on any road or street within the Property for more than seventy two (72) consecutive hours unless in the event of an emergency or as otherwise approved in writing by the Board. "Emergency" for purpose of this *Section 2.34* means an event which jeopardizes life or property. "Parked" as used herein shall be defined as a vehicle left unattended for more than thirty (30) consecutive minutes.

**2.34 Recreational Facilities.** No tennis court, playscape, "sport court", basketball goals, or other recreational facility may be constructed on any Unit without the advance written approval of the Reviewer. The Reviewer shall have the right to approve in advance the location and materials to be used in the construction of any recreational facility, and may approve or deny the installation of such facility in its sole and absolute discretion. The Reviewer may condition its approval of any recreational facility based upon the erection or installation of

screening. In no circumstance or event, unless otherwise approved by the Reviewer, shall any approved recreational facility be illuminated.

2.35 **Outside Burning.** There will be no exterior fires, except that barbecues, outside fireplaces, braziers and incinerator fires contained within facilities or receptacles and in areas designated and approved by the Reviewer shall be permitted. No Owner will permit any condition upon its portion of the Property which creates a fire hazard or is in violation of fire prevention regulations.

2.36 **Lighting.** All exterior lighting of any Unit and the Improvements constructed thereon will be subject to regulation by the Reviewer.

2.37 **Camping and Picnicking.** No camping will be allowed within the Community. No picnicking will be allowed within the Community except in those areas designated for that purpose. The Board, in its discretion, may ban or permit public assemblies and rallies within the Community.

2.38 **Solar Energy Systems.** No solar energy system may be erected, maintained or placed on a Unit without the prior written approval of the Reviewer.

2.39 **Rain Water Harvesting.** The utilization of rain water harvesting techniques is encouraged for each Unit. The rain water harvesting technology, its facilities, design and location shall be approved in advance by the Reviewer. The maintenance and repair of all rain water harvesting facilities located on any Unit shall be the sole responsibility of the Owner of such Unit.

2.40 **Party Walls.**

(a) **General Rules of Law to Apply.** Each wall built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than non-structural alterations to the interior surfaces of such walls (i.e., the surfaces of such walls facing the interior of a Dwelling Unit); provided, however, that under no circumstance or event will an Owner install or attach in or on a party wall any speaker, alarm, or any other device, item, component, or system designated for the creation or emission of sound. Without limitation on the foregoing, to the extent that the actions of an Owner result in damage to a party wall, the Owner responsible for such damage is obligated to restore and pay any and all costs associated with restoring the wall to its pre-damage condition.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who the wall serves in equal proportions.

(c) Damage and Destruction. If a party wall 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 the wall serves may restore it, and the other Owner or Owners that the wall serves shall thereafter contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule or law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs with Land. The right of any Owner to contribution from any other owner under this Section shall be appurtenant to the land and shall pass to such owner's successors-in-title.

(e) Foundation, Fences. Common foundations which form a part of the Units and common fences between Units, if any, will be dealt with in the same fashion as party walls, as set forth in this section.

(f) Dispute Resolution. In the event of any dispute arising concerning a party wall, or under the provisions of this Section (the "**Dispute**"), the parties shall submit the Dispute to mediation. Should the parties be unable to agree on a mediator within ten (10) days after written request therefore by the Board of Directors, the Board shall appoint a mediator. If the Dispute is not resolved by mediation, the Dispute shall be resolved by binding arbitration. Either party may initiate the arbitration. Should the parties be unable to agree on an arbitrator within ten (10) days after written request therefore by the Board of Directors, the Board shall appoint an arbitrator. The decision of the arbitrator shall be binding upon the parties and shall be in lieu of any right of legal action that either party may have against the other.

**2.41 No Warranty of Enforceability.** Master Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in this Supplemental Covenant. Any Owner acquiring a portion of the Property in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring such portion of the Property, agrees to hold Master Declarant harmless therefrom.

### ARTICLE III GENERAL PROVISIONS

**3.01 Term and Termination.** This Supplemental Covenant will be effective for a minimum of 21 years from the date it is recorded. Notwithstanding any provision in this Supplemental Covenant to the contrary, after 21 years, this Supplemental Covenant will be extended automatically for successive 10-year periods unless at least 75% of the then Owners subject to the Master Covenant sign a document stating that this Supplemental Covenant is terminated and that document is recorded within the year before any extension. In such case, this Supplemental Covenant will terminate on the date specified in the termination document. If any provision of this Supplemental 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 will expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**3.02 Pedestrian Ingress and Egress Easement.** Master Declarant hereby reserves for itself, the Master Association and the public, an easement in, upon, over, through and across the following portions of the Property (each, a “**Pedestrian Easement Tract**”):

(a) five feet (5') on either side of the common boundary line between Lots 30 and 31, Block 32 in the Subdivision;

(b) five feet (5') on either side of the common boundary line between Lots 11 and 12, Block 33 in the Subdivision;

(c) five feet (5') on either side of the common boundary line between Lots 16 and 17, Block 33 in the Subdivision;

(d) five feet (5') on either side of the common boundary line between Lots 21 and 22, Block 33 in the Subdivision; and

(e) five feet (5') on either side of the common boundary line between Lots 23 and 24, Block 40 in the Subdivision.

Each Pedestrian Easement Tract will be used for the construction, installation, operation, maintenance, replacement, relocation, upgrade, and repair of: (a) sidewalks for pedestrian, bicycle and other non-motorized vehicle use only; (b) landscaping, lighting, and irrigation improvements and related facilities and appurtenances; and (c) other improvements approved in advance by the New Construction Council or the Modification Committee, as applicable (collectively, the “**Facilities**”). Each Owner shall be required to install the Facilities upon such the portion of the Pedestrian Easement Tract on such Owner's Unit in accordance with landscaping plans approved in advance of installation by the New Construction Council. Notwithstanding any provision in this Supplemental Covenant to the contrary, such Facilities plans must be approved by the New Construction Council prior to occupancy of the single family residential structure located on the Unit or subdivided lot to which such Facilities plans relate. All Facilities shown on the Facilities plans and specifications approved by the New Construction Council shall be installed, and all such Facilities shall be completed no later than the date the certificate of occupancy is issued for the Dwelling Unit on a particular Unit, unless approved in advance by the New Construction Council. Master Declarant hereby designates the Pedestrian Easement Tracts reserved hereunder as Master Community Facilities. The exercise of the easements reserved hereunder will not extend to permitting entry into any residence, nor will it unreasonably interfere with the use of any Unit or residence or Improvements constructed thereon, other than that the portion of the Unit within the Pedestrian Easement. There will be no obstruction of the Pedestrian Easement Tract, or interference with the free use of the Pedestrian Easement Tract by the public except as may be reasonably

required in connection with repairs prosecuted by the Master Association. Use of the Pedestrian Easement Tract is subject to the rules adopted by the Board from time to time.

**3.03 Notice of Service Area.** This Section creates multiple "Service Areas" (as that term is defined in the Master Covenant) and shall constitute the notice contemplated by *Section 3.3* of the Master Covenant.

(a) Section IV Row House Service Areas. Master Declarant hereby designates the following Service Areas within the Property (each such Unit a "Service Area Lot", and all Service Area Lots collectively, the "**Section IV Row House Service Areas**"):

- (i) Row House Service Area Number 1. Lots 27-34, Block 32 in the Subdivision.
- (ii) Row House Service Area Number 2. Lots 8-25, Block 33 in the Subdivision.
- (iii) Row House Service Area Number 3. Lots 17-30, Block 40 in the Subdivision.

(b) Services in the Section IV Row House Service Areas. The Section IV Row House Service Areas are formed to permit the Units within the Service Area Lots to receive certain benefits and/or services from the Master Association which are not provided to all Units within the Community. Specifically, it is presently anticipated that these services will include the provision of services more particularly described on Exhibit "A". An easement over and across each Service Area Lot is hereby reserved on behalf of the Master Association for the purpose of providing such services. Each Owner of a Service Area Lot acknowledges and agrees that such services will be provided exclusively by the Master Association, unless the Board of the Master Association relinquishes such rights in a written instrument recorded in the Official Public Records of Travis County, Texas. Service Area Assessments will be levied against the Service Area Lots within a Section IV Row House Service Area to fund Service Area Expenses, as more particularly described in the Master Covenant.

(c) Owner's Maintenance or Repair of Service Area. Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Section IV Row House Service Areas by an Owner or occupant that is the responsibility of the Master Association hereunder shall be performed at the sole expense of such Owner or occupant and the Owner and occupant shall not be entitled to reimbursement from the Master Association even if the Master Association accepts the maintenance or repair. This paragraph may not be interpreted to evidence consent to any repair or maintenance by an Owner or occupant of components otherwise the responsibility of the Master Association, it being understood that no repair or maintenance may be done to such portions of the Section IV Row House Service Areas without the advance written consent of the Master Association. This paragraph is only intended to foreclose any claim for reimbursement by an Owner or occupant in the event of any such unauthorized maintenance or repairs.

(d) Service Area Conditions Run with the Land. The obligations and easements set forth herein shall be covenants running with each Service Area Lot and it is hereby declared: (i) that each of the Service Area Lots will be held, sold, conveyed, and occupied subject to the foregoing conditions, easements and restrictions which shall run with each Service Area Lot and shall be binding upon all parties having right, title, or interest in or to a Service Area Lot or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner thereof; and (ii) that each contract or deed which may hereafter be executed with regard to a Service Area Lot, or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the foregoing conditions, easements and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) that this notice shall supplement and be in addition to the covenants, conditions, and restrictions of the Master Covenant, Mixed-Use Covenant and any other applicable covenant.

(e) Owner's Responsibility. Except as provided in *Section 3.03(b)* above, all other maintenance of the Unit shall be the responsibility of the Owner thereof. In addition, in the event the Board of the Master Association relinquishes the right to provide services to all or any of the Section IV Row House Service Areas pursuant to *Section 3.03(b)*, any maintenance or services provided by the Master Association prior to such relinquishment shall automatically become the responsibility of the Owner of the Unit to which such maintenance or services were previously provided by the Master Association. For purposes of the foregoing sentence, maintenance of landscaping, irrigation and other Improvements shall be the responsibility of the applicable Unit Owner, unless otherwise approved in writing by the Board. Such maintenance shall be performed consistent with this Supplemental Covenant and the Master Covenant. In the event that the Board of Directors of the Master Association determines that (a) any Owner has failed or refused to discharge properly his obligations with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Master Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not covered or paid for by insurance, in whole or in part, then, in addition to the enforcement and self help remedies set forth in Chapter 8 of the Master Covenant, the Master Association may turn this matter over to its attorney for further handling and/or the Master Association may perform the repair, replacement or maintenance and shall, except in the event of an emergency situation, give the Owner written notice of the Master Association's intent to provide such necessary maintenance, repair, or replacement, at Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time.

**3.04 Prohibition on Additional Associations.** Unless otherwise agreed by the Master Declarant during the Development and Sale Period, and the Board thereafter, the Mueller Master Community, Inc. and the Mueller Mixed-Use Community, Inc. have jurisdiction over the

Property, and no additional association or property owners association will be created or have jurisdiction over the Property.

### **3.05 Amendment.**

(a) By the Master Declarant. The Master Declarant may unilaterally amend this Supplemental Covenant if such amendment is necessary: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination with which it is in conflict; (b) to enable any reputable title insurance company to issue title insurance coverage on any Unit; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state or federal governmental agency, including, for example, the Department of Housing and Urban Development. In addition, during the Development and Sale Period, the Master Declarant may unilaterally amend this Supplemental Covenant for any other purpose. However, any amendment under this paragraph will not adversely affect the title to any Unit unless the Owner of such Unit consents in writing.

(b) By Owners. Except as otherwise specifically provided above and elsewhere in this Supplemental Covenant, this Supplemental Covenant may be amended only by the affirmative vote or written consent, or any combination thereof, of: (i) the Owners representing 75% of the total votes in the Mixed-Use Association; (ii) a majority of the Board of the Master Association; and (iii) the Master Declarant during the Development and Sale Period.

**3.06 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). If any Owner consents to any amendment to this Supplemental Covenant, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment will become effective upon recordation unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment will be presumed to have been validly adopted. In no event will a change of conditions or circumstances operate to amend any provision of this Supplemental Covenant.

**3.07 Interpretation.** The provisions of this Supplemental Covenant will be liberally construed to effectuate the purpose of creating a uniform plan for the Community and operation of the Community, provided, however, that the provisions of this Supplemental Covenant will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Master Declarant other than the Property. This Supplemental Covenant will be construed and governed under the laws of the State of Texas.

**3.08 Enforcement and Nonwaiver.**

(a) Except as otherwise provided herein, any Owner of a Unit, at such Owner's own expense, Master Declarant, the Master Association, and the Mixed-Use Association will have the right to enforce all of the provisions of this Supplemental Covenant. The Master Association and the Mixed-Use Association may initiate, defend or intervene in any action brought to enforce any provision of this Supplemental Covenant. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof.

(b) Every act or omission whereby any provision of this Supplemental Covenant is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Unit (at such Owner's own expense), Master Declarant, the Master Association, or the Mixed-Use Association.

(c) Any violation of any federal, state, or local law, ordinance, or regulation pertaining to the ownership, occupancy, or use of any portion of the Property is hereby declared to be a violation of this Supplemental Covenant and subject to all of the enforcement procedures set forth herein.

(d) The failure to enforce any provision of this Supplemental Covenant at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Supplemental Covenant.

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

**3.10 Assignment of Master Declarant's Rights.** Notwithstanding any provision in this Supplemental Covenant to the contrary, Master Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Supplemental Covenant to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

***SIGNATURES APPEAR ON FOLLOWING PAGES***

EXECUTED to be effective the 12 day of September, 2007.

**MASTER DECLARANT:**

CATELLUS AUSTIN, LLC, a Delaware limited liability company

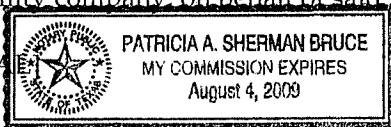
By: [Signature]

John Matthew Whelan III, Senior Vice President

THE STATE OF TEXAS       §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the 11<sup>th</sup> day of September, 2007, by John Matthew Whelan III, Senior Vice President of Catellus Austin, LLC, a Delaware limited liability company, on behalf of said limited liability company.

[SEAL]



[Signature]  
Notary Public Signature

**ACKNOWLEDGED AND AGREED:**

CATELLUS AUSTIN LAND LP, a  
Delaware limited partnership

By: Catellus Austin LLC, a Delaware limited liability company, its general partner

By: [Signature]

John Matthew Whelan III,  
Senior Vice President

THE STATE OF TEXAS       §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the 12 day of September, 2007, by John Matthew Whelan III, Senior Vice President of Catellus Austin, LLC, a Delaware limited liability company, general partner of Catellus Austin Land LP, a Delaware limited partnership, on behalf of said limited liability company and limited partnership.

[SEAL]

Lori Ann Flores  
Notary Public Signature



CONSENT PROVIDED PURSUANT TO SECTION 1.5 OF THE MASTER COVENANT AND  
ACKNOWLEDGMENT THAT THIS SUPPLEMENTAL COVENANT SATISFIES THE TERMS  
OF PARAGRAPH 3 OF THE SPECIAL WARRANTY DEED DATED JULY 31, 2007 FROM THE  
CITY OF AUSTIN TO CATELLUS AUSTIN LAND LP RECORDED AS DOCUMENT NUMBER  
~~2007143880~~ OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS:  
2007143880

THE CITY OF AUSTIN, a Texas home rule  
city and municipal corporation

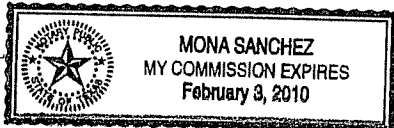
By: Laura J. Huffman  
Printed Name: LAURA J. HUFFMAN  
Title: ASSISTANT CITY MANAGER

Date: 9/12/07

THE STATE OF TEXAS       §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the 13 day of September, 2007, by  
LAURA HUFFMAN ASSISTANT DIRECTOR of the City of Austin, Texas, a Texas home rule city and  
municipal corporation, on behalf of said city.

[SEAL]



Mona Sanchez  
Notary Public Signature

APPROVED AS TO FORM:

By: Tom Nuckols  
Tom Nuckols, Assistant City Attorney

APPROVED AS TO CONTENT:

By: Sue Edwards  
Sue Edwards, Director Economic Growth and  
Redevelopment Services Office

## EXHIBIT "A"

### SERVICES PROVIDED TO SECTION IV ROW HOUSE SERVICE AREAS

The following services will be provided to the Service Area Lots and will commence as to a particular Service Area Lot on the date a residence has been constructed on such lot and has been occupied for single-family residential purposes.

1. The following services will be provided to the "**Maintained Area**" of each Service Area Lot (for purposes herein, "**Maintained Area**" will mean: (i) the portion of each Service Area Lot from the front façade of the residence on each Service Area Lot to the curb or property line of any adjacent public space, right-of-way, or street; (ii) side yards visible from adjacent streets or alleys, including the landscaped side yards of Service Area Lots adjacent to a Pedestrian Easement Tract, but excluding any portion of such Service Area Lot enclosed by a private fence creating a private yard space for the Service Area Lot Owner; and (iii) alley-landscaped areas). In the event of any disagreement of what constitutes the Maintained Area of a Service Area Lot, the determination of the Board of the Master Association or its designee will be final.

- a. Mow and edge all turf areas within the Maintained Area.
- b. Apply fertilizer to the turf areas within the Maintained Area as needed.
- c. Manually and mechanically control weeds within the Maintained Area as required to maintain a manicured appearance. In cases of extraordinary weed problems, spot treat weeds with appropriate herbicide.
- d. Treat fire ants in the turf areas within the Maintained Area with applications of "Logic" or an approved equal.
- e. Maintain, mow, replace, prune, and irrigate the landscaping, including trees, within the Maintained Area in good order and repair and in a safe, clean and attractive condition. Maintenance will include, without limitation, ensuring that the landscaping, including trees, does not cause visual or physical obstructions of adjacent streets or sidewalks. The Master Association or its designated landscape company, from time to time, will provide each Owner with a schedule of dates on which landscaping maintenance within the Maintained Area will be performed. No landscaping, including trees, or any portion of the irrigation system may be removed from or installed within the Maintained Area without the advance written consent of the Reviewer.
- f. Maintain, repair and replace all irrigation lines, controllers, and associated facilities within the Maintained Area (collectively, the "**Irrigation System**"), in good order and repair and in a safe, clean and attractive condition. Maintenance of the Irrigation System will include, without limitation, ensuring that the Irrigation

System does not leak or cause excessive run-off onto adjacent streets or sidewalks. Each Owner acknowledges and agrees that Service Area Lots on the same block may be served by a single Irrigation System. The Master Association shall have exclusive access to the control system of the Irrigation System, and no Owner may interfere with the operation of the Irrigation System without the advance consent of the Master Association.

2. The Master Association shall maintain and keep in good repair all improvements located within the Maintained Area of a Service Area Lot, including but not limited to, any paved or concrete walkways, driveways, parking areas, and patios, if any, which are part of the Maintained Area.

3. The Master Association shall provide exterior maintenance upon Service Area Lot improvements as follows: maintain, repair and replace (i) roof (i.e. shingles and decking) gutters, downspouts, exterior portions of chimneys, trim; (ii) foundation; and (iii) exterior building surfaces, excluding, glass and appurtenant hardware. The garage and entry doors will be repainted on a periodic basis by the Master Association, the timing of such to be in the sole discretion of the Master Association. Except as provided in the preceding sentence, the Master Association shall not be responsible for the maintenance of the windows, doors, garage doors, lighting serving a particular Service Area Lot, and any Improvement not otherwise installed on the exterior of a Row House by the Master Declarant or the Master Association.

4. If a dispute arises regarding the allocation of maintenance responsibilities by this Supplemental Covenant, the determination of the Board of the Master Association will be final. Improvement maintenance responsibilities that are allocated to the Master Association are intended to be interpreted narrowly to limit and confine the scope of Master Association responsibility. It is the intent of this provision that all components and areas not expressly delegated to the Master Association are the responsibility of the individual Owners.

**FILED AND RECORDED**  
OFFICIAL PUBLIC RECORDS  
*Dana DeBeauvoir*  
2007 Sep 13 04:06 PM 2007171400  
MORALESB \$96.00  
DANA DEBEAUVOIR COUNTY CLERK  
TRAVIS COUNTY TEXAS

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2007 Oct 02 03:45 PM 2007182862

MORALESB \$100.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS