11-GF# 072782
RETURN TO: HERITAGE TITLE
901 MOPAC BLDG. V, STE. 100
AUSTIN, TEXAS 78746

~~AFTER RECORDING RETURN TO:~~

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

OTHER 2007168848
18 PGS

MUELLER
SUPPLEMENTAL COVENANT

[Lots 9-15, Block 34; Lot 1-4, Block 37; Lots 1-4, Block 45; Lots 1-4, Block 46; Lots 1-22, Block 47; Lots 1-4, Block 51; Lots 1-22, Block 52; Lots 14-26, Block 54; and Lots 3-4 and 14-15, Block 56, 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

[45' YARD 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 [45' YARD HOUSE]

LOTS 9-15, BLOCK 34; LOT 1-4, BLOCK 37; LOTS 1-4, BLOCK 45; LOTS 1-4, BLOCK 46; LOTS 1-22, BLOCK 47; LOTS 1-4, BLOCK 51; LOTS 1-22, BLOCK 52; LOTS 14-26, BLOCK 54; AND LOTS 3-4 AND 14-15, BLOCK 56, AMENDED PLAT OF MUELLER SECTION IV SUBDIVISION

This Mueller Mixed-Use Community Supplemental Covenant [45' Yard 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, certain real property located in Travis County, Texas, as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "**Property**"), is subject to the terms and provisions of the Mueller Master Community Covenant, recorded as Document No. 2004238007 in the Official Public Records of Travis County, Texas, as amended (the "**Master Covenant**"), and the 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 **Single Family Residential Use**. The Property shall be used solely for private single family residential purposes and there shall not be constructed or maintained on any Unit more than one detached single family residence except in the case where a carriage house is permitted pursuant to *Section 2.25* below or the Mueller Design Book. 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 in 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 Unit and to require that such fencing be constructed in accordance with specifications promulgated by the Reviewer. Unless otherwise agreed between Unit Owners, side and rear yard fences that separate adjacent Units will be owned and maintained by the Owner on whose Unit the fence has been installed, or if the location is indeterminate, such fence will be maintained by the Owners of the adjacent Units with expenses being shared equally. The Owner of each Unit shall construct, at such Owner's sole cost and expense and prior to occupying any Dwelling Unit, a sidewalk on such Owner's Unit, 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 75% 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 thirty feet (30') measured according to the following definition: the vertical distance between the lowest finished ground floor elevation at any point within the conditioned space of structure and the highest ridge, peak, or gable of a roof, excluding chimneys. The second story of any two-story Dwelling Unit shall be set back from the rear property line by a minimum of twenty five feet (25').

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 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.

Each Owner will be responsible, at such Owner's sole cost and expense, for installing and maintaining an automatic irrigation system to serve the landscaped areas of a Unit's front yard, side yards visible from adjacent streets or alleys, and 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. Each Owner shall further ensure that the automatic irrigation system does not cause excessive run-off onto adjacent streets or sidewalks and must maintain in good working order the automatic irrigation system's irrigation pipes, valves, heads, and controller. In the event an Owner fails to properly and on a timely basis (both standards to be determined by the Board in the Board's sole and absolute discretion) mow, replace, prune, and/or irrigate any landscaping, including trees, in such Owner's Yard Landscape Area, such failure will constitute a violation of this Supplemental Covenant and the Board will cause such landscaping, including trees, to be mowed, replaced, pruned and/or irrigated in a manner determined by the Board, in its sole and absolute discretion. If the Board causes such landscaping, including tress, to be mowed, replaced, pruned and irrigated, the Owner otherwise responsible therefor will be personally liable to the Master Association for all costs and expenses incurred by the Master Association for effecting such work. If such Owner fails to pay such costs and expenses upon demand by the Master Association, such costs and expenses (plus interest on such costs and expense 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). EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE MASTER ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS,

DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE MASTER ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 2.18* (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE MASTER ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE MASTER ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

2.19 **Owner's Obligation to Maintain Street Landscape Area.** Each Owner will be responsible, at such Owner's sole cost and expense, for maintaining, mowing, replacing, pruning, and irrigating the landscaping, including trees, in good order and repair and in a safe, clean and attractive condition, and maintaining, repairing and replacing the irrigation system, in good order and repair and in a safe, clean and attractive condition, between the boundary of such Owner's Unit and the curb or property line of any adjacent public space, right-of-way, street or alley (the "**ST Landscape Area**") unless the responsibility for maintaining the ST Landscape Area is undertaken by the Master Association by written resolution executed by a majority of the Board. Maintenance by the Owner will also include, without limitation, ensuring: (i) that the irrigation system does not leak or cause excessive run-off (as determined by the Board) onto adjacent streets or sidewalks; and (ii) that the landscaping, including trees, does not cause visual or physical obstructions (as determined by the Board) of adjacent streets or sidewalks. Failure to maintain the ST Landscape Area as required hereby on a timely basis (as determined by the Board), or as directed from time to time by the Board, will constitute a violation of this Supplemental Covenant. In the event of a violation, the Board may cause the landscaping, including trees, and the irrigation system, to be maintained, modified or replaced in a manner determined by the Board, in its sole and absolute discretion. If the Board maintains, modifies or replaces any landscaping, including trees, or the irrigation system in the ST Landscape Area, the Owner otherwise responsible therefor will be personally liable to the Master Association for all costs and expenses incurred by the Master Association for effecting such work. If such Owner fails to pay such costs and expenses upon demand by the Master Association, 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). No landscaping, including trees, or any portion of the irrigation system may be removed from or installed within the ST Landscape Area without the advance written consent of the Reviewer. Pursuant to Section 3.01(a) of the Master Association Bylaws, the Board may delegate any of its duties hereunder to an agent or management company. 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). EACH SUCH OWNER WILL INDEMNIFY AND HOLD

HARMLESS THE MASTER ASSOCIATION AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE MASTER ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS *SECTION 2.19* (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE MASTER ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE MASTER ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

2.20 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.

2.21 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.

2.22 Swimming Pools. Any swimming pool constructed on a Unit must be approved in advance by the Reviewer and must be enclosed with a fence or other enclosure device completely surrounding the swimming pool which, at a minimum, satisfies all applicable governmental requirements. Unless otherwise approved in advance by the Reviewer, construction of a swimming pool approved by the Reviewer must commence within ninety (90) days of obtaining such approval and be completed within one hundred twenty (120) days of obtaining such approval. Owners are advised that nothing in this *Section 2.22* is intended or shall be construed to limit or affect an Owner's obligation to comply with any applicable governmental regulations concerning swimming pool enclosure requirements. Above-ground or temporary swimming pools are prohibited. No pool can be installed if it will cause the Unit to exceed the impervious cover requirements set forth in this Supplemental Covenant or imposed by the City of Austin.

2.23 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.

2.24 **Square Footage.** It is contemplated that each Dwelling Unit constructed on the Property will be a "Yard 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 2,000 square feet and the maximum square footage, exclusive of open or screened porches, terraces, patios, decks, driveways, garages, and carriage houses, shall be 2,800 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.

2.25 **Carriage Houses**. A carriage house will be permitted, if approved in advance by the Reviewer, on Units classified as "Yard Houses" under the Mueller Design Book, if the Unit is equal to or greater than forty five (45) feet in width. Carriage houses must be located above detached and semi-detached garages. Carriage houses shall be one and one-half (1-1/2) or two (2) stories in height and may be no more than twenty five feet (25') in height measured according to the following definition: the vertical distance between the finished floor elevation at any point within the structure and the highest ridge, peak, or gable of a roof, excluding chimneys. Carriage houses must be separated from the principal Dwelling Unit by a minimum of eight (8) feet and must be constructed of the same materials as the principal Dwelling Unit. Notwithstanding any provision in this *Section 2.25* to the contrary, the Reviewer will be permitted to limit the number of carriage houses constructed within the Property and/or develop rules prohibiting carriage houses on particular portions of the Property. A carriage house may not exceed 510 square feet (exclusive of open or screened porches, terraces, patios, and decks) without Master Declarant's prior written consent, which consent may be withheld in Master Declarant's sole and absolute discretion. The square footage of a carriage house will not count towards the square footage calculation of the Dwelling Unit under *Section 2.24*.

2.26 **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).

2.27 **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.

2.28 **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.

2.29 **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.

2.30 **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.

2.31 **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.

2.32 **Basketball Goals; Permanent and Portable**. Permanent basketball goals are not permitted. Portable basketball goals are only allowed between the alley right-of-way behind the Unit and the back of the Dwelling Unit and must not be placed, at any time on any street or right of way located within the Property. When not in use, portable basketball goals must be stored in a garage or in the rear of the Units (i.e., out of public view). Basketball goals must be

properly maintained and painted, with the net in good repair. The Reviewer reserves the right, but will have no obligation, to approve all basketball goals prior to being placed on any Unit.

2.33 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.

2.34 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.

2.35 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 2.35* 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.

2.36 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.

2.37 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.

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

2.39 Obstructions. There will be no obstruction of any walkways or bike paths or interference with the free use of those walkways and paths except as may be reasonably required in connection with repairs. The Owners, their families, tenants, guests and invitees are granted nonexclusive easements to use the walkways and paths within the Property. That use will be subject to the rules adopted by the Board from time to time.

2.40 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.

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

2.42 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.

2.43 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 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.

3.03 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 (ii) the Master Declarant during the Development and Sale Period.

3.04 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.

3.05 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.

3.06 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.

3.07 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.

3.08 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 7 day of September, 2007.

MASTER DECLARANT:

CATELLUS AUSTIN, LLC, a Delaware limited liability company

By: _____
Printed Name: Gregory J. Weaver
Title: M.D.

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 21 day of Aug, 2007, by Gregory J. Weaver M D of Catellus Austin, LLC, a Delaware limited liability company, on behalf of said limited liability company.

[SEAL]

LORI ANN FLORES
MY COMMISSION EXPIRES
November 15, 2007

Lori Ann Flores
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: _____
Printed Name: Gregory J. Weaver
Title: M.D.

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 21 day of August, 2007, by Gregory J. Weaver M D 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
MY COMMISSION EXPIRES
November 15, 2007

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:

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

By: Lauraine Rizer
Printed Name: _____
Title: _____

Lauraine Rizer, Manager
Real Estate Services
Public Works Department

Date: 8/23/07

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 23 day of Aug, 2007, by Lauraine Rizer, Real Estate Manager of the City of Austin, Texas, a Texas home rule city and municipal corporation, on behalf of said city.

[SEAL]

MELISSA TORRES
MY COMMISSION EXPIRES
July 29, 2011

Melina Torres
Notary Public Signature

APPROVED AS TO FORM:

By: _____
Tom Nuckols, Assistant City Attorney

APPROVED AS TO CONTENT:

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

[END OF SIGNATURES AND ACKNOWLEDGMENTS]

EXHIBIT "A"

DESCRIPTION OF PROPERTY

Lots 9-15, Block 34; Lot 1-4, Block 37; Lots 1-4, Block 45; Lots 1-4, Block 46; Lots 1-22, Block 47; Lots 1-4, Block 51; Lots 1-22, Block 52; Lots 14-26, Block 54; and Lots 3-4 and 14-15, Block 56, 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.

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS
Dana DeBeauvoir
2007 Sep 10 03:08 PM 2007168848
MORALESB $84.00
DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS