

FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS



*Dana DeBeauvoir*

Dana DeBeauvoir, County Clerk  
Travis County, Texas

Aug 21, 2019 08:32 AM Fee: \$58.00

**2019127088**

\*Electronically Recorded\*



**AFTER RECORDING RETURN TO:**

Robert D. Burton  
Winstead PC  
401 Congress Ave., Suite 2100  
Austin, Texas 78701  
[rburton@winstaed.com](mailto:rburton@winstaed.com)

**FIRST AMENDMENT  
TO SUPPLEMENTAL COVENANT  
MUELLER EC/TC COMMUNITY**

*Travis County, Texas*

**[LOT 3, BLOCK 27, MUELLER SECTION IIB SUBDIVISION]**

**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 EC/TC Community Covenant, recorded as Document No. 2004238008, Official Public Records of Travis County, Texas, as amended, Mueller Design Book, recorded as Document No. 2005193821 in the Official Public Records of Travis County, Texas, as amended, and Mueller EC/TC Community Supplemental Covenant [Lot 3, Block 27, Section IIB], recorded as Document No. 2014130193, Official Public Records of Travis County, Texas. The terms and provisions of the aforementioned documents will also apply to the property made subject to this amendment to supplemental covenant.

**FIRST AMENDMENT TO MUELLER EC/TC COMMUNITY – SUPPLEMENTAL COVENANT**  
**[LOT 3, BLOCK 27, SECTION IIB]**

This First Amendment to Mueller EC/TC Community Supplemental Covenant [Lot 3, Block 27, Section IIB] (the “**Amendment**”) is made by CATELLUS AUSTIN, LLC, a Delaware limited liability company (“**Master Declarant**”), and is as follows:

**RECITALS**

A. Master Declarant previously executed and recorded that certain Mueller EC/TC Community Supplemental Covenant [Lot 3, Block 27, Section IIB], recorded as Document No. 2014130193, Official Public Records of Travis County, Texas (the “**Supplemental Covenant**”) encumbering Lot 3, Block 27, Mueller Section IIB Subdivision, a subdivision located in Travis County, Texas, according to the map or plat recorded as Document No. 201200063 in the Official Public Records of Travis County, Texas.

B. Pursuant to *Section 3.02(a)* of the Supplemental Covenant, during the Development and Sale Period, the Master Declarant may unilaterally amend the Supplemental Covenant. The Development and Sale Period is presently in effect.

C. Pursuant to *Section 2.02* of the Supplemental Covenant, the Owner of the Property must consent to any amendment of *Section 2.02* of the Supplemental Covenant. Mueller Austin Town Center, LLC, a Delaware limited liability company, is the owner of the Property and consents to this Supplemental Covenant by its execution of this instrument in the space provided below.

D. Master Declarant desires to amend the Supplemental Covenant as set forth hereinbelow.

**NOW, THEREFORE**, Master Declarant hereby amends and modifies the Supplemental Covenant as follows:

1. **Use Prohibitions.** Section 2.02 of the Supplemental Covenant is hereby deleted in its entirety and replaced with the following:

**2.02 Use Prohibitions.** The Property must be used solely for activities that conform to all zoning requirements (if any) applicable to the Property. Without limiting the generality of the foregoing, no portion of the Property may be used for: (a) an auction house, flea market, or pawn shop (with the exception of (i) a store which sells antiques, i.e., works of art, collections in illustration of the progress of the arts, works in bronze, marble, terra cotta, ~~parian~~, pottery or porcelain, artistic antiquities and objects of ornamental character or educational value and (ii) a store which sells second-hand clothing); (b) a used car lot; (c) an adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation, magazines, books, movies, videos, photographs or so called “sexual toys”) or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts); (d) a sexually oriented massage parlor; (e) a gambling establishment or betting parlor; (f) a mortuary, crematorium or funeral home; (g) a dry cleaning plant or

central laundry facility; (h) a storage or mini warehouse facility; or (i) any use which is illegal or which, in the reasonable opinion of the Master Declarant during the Development and Sale Period, and thereafter the Master Board, is offensive by reason of odor, fumes, dust, smoke, noise or pollution, or hazardous by reason of excess danger of fire or explosion. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

2. **Use of Special Common Area.** Section 2.09 of the Supplemental Covenant is hereby deleted in its entirety and replaced with the following:

**2.09 Use of Special Common Area.** Certain property and/or facilities located within the Community may be designated as "Special Common Area" pursuant to the terms and provisions of the Master Covenant. For example, the swimming pool on the property located within Ella Wooten Park, has been designated as Special Common Area pursuant to that certain Mueller Notice of Designation of Special Common Area [Owners of Mixed-Use Property] recorded as Document No. 2009206470 in the Official Public Records of Travis County, Texas. The Property has not been designated as a beneficiary of such Special Common Area. Accordingly, and unless the Property is so designated or otherwise access is available to the general public, the Owner of the Property, its employees, tenants, guests, or invitees will not have access thereto.

3. **Town Center.** Section 2.11 of the Supplemental Covenant is hereby deleted in its entirety and replaced with the following:

**2.11 Town Center.** Master Declarant may elect to record additional covenants, conditions, and/or restrictions (the "**Town Center Covenants**") or to modify the Master Covenant, EC/TC Covenant, and/or the Mixed-Use Community Covenant for the purpose of, *inter alia*: (i) designating certain Master Community Facilities, EC/TC Common Area or Mixed-Use Common Area or other land as common area which exclusively serves all or a portion of the Mueller Town Center (the "**Town Center Common Area**"), meaning certain Owners, tenants, and/or their guests have exclusive or preferential rights to use such areas; (ii) establishing standards for the maintenance of Town Center Common Areas; and (iii) forming a committee, community or management association (the "**Town Center Association**") with periodic assessments levied against members to discharge expenses incurred, or estimated to be incurred, by the Town Center Association. Master Declarant may also record or otherwise adopt organizational documents for the Town Center Association (the "**Town Center Association Formation Documents**") which may include requirements for membership and rules and regulations associated with operation of the Town Center Association and the payment of assessments. The Town Center Covenants and Town Center Association Formation Documents may be filed or recorded, as applicable, by the Master Declarant, unilaterally and without the consent of any other party.

4. **Condominium Regime.** The following provision is hereby added as Section 2.14 to the Supplemental Covenant:

**2.14 Condominium Regime.** Any condominium regime filed or proposed to be filed for the Property must be approved in writing by the Master Declarant and comply with the Governing Documents and all applicable governmental requirements, including but not limited to Chapter 82 of the Texas Property Code, commonly known as the "Texas Uniform Condominium Act."

5. **On Street Parking.** The following provision is hereby added as Section 2.15 to the Supplemental Covenant:

**2.15 On Street Parking.** On-street parking is subject to rules and regulations adopted from time to time. Such rules may include the adoption of a parking permit system and/or parking meters (the "Parking System"). In the event a Parking System is adopted, to the extent of any conflict between the terms and provisions of the Parking System and any rules previously adopted by the Master Declarant or the Master Board, as applicable, regarding parking, the terms and provisions of the Parking System will control.

6. **Owner's or Condominium Association's Obligation for Street Tree Lighting.** The following provision is hereby added as Section 2.16 to the Supplemental Covenant:

**2.16 Owner's or Condominium Association's Obligation for Street Tree Lighting.** Each Owner acknowledges that Master Declarant has or will obtain a license agreement from the City of Austin to permit the installation of certain improvements including electric facilities for street tree lighting within the right-of-way. Each Owner or condominium association, will be responsible, at such Owner's or condominium association's sole cost and expense, for the installation of electric improvements (including a dry outlet) approved in advance by the Master Declarant (the "ST Electrical Facilities") which are necessary and required to provide electricity from such Owner's Unit or the condominium regime imposed on a subdivided lot to the street trees located in the right-of-way adjacent to such Owner's Unit or the condominium regime imposed on a subdivided lot, as specified by the Master Declarant (the "ST Lighting Area"). The ST Electrical Facilities must be connected by the Unit Owner or condominium association to the electric meter serving such Owner's Unit or the condominium regime imposed on a subdivided lot, and each Owner is advised that such Owner or condominium association will further be required to pay all electricity consumption charges and fees associated with providing electricity to the ST Lighting Area. Each Owner or condominium association, at such Owner's or condominium association's sole cost and expense, will be responsible for maintaining the ST Electrical Facilities in continuous operation and in good condition and repair. The Master Board or its designee may adopt, from time to time, rules and requirements associated with activation of lighting of the ST Lighting Area, including hours during which the street tree lights must remain illuminated. Any necessary maintenance or repair of the ST Electrical Facilities performed by the Owner or condominium association must first be approved in advance and in writing by the Master Board or its designee and must be performed in accordance with plans submitted to and approved by the Master Board or its designee. In conjunction with any such maintenance or repair: (i) all such maintenance or repair shall be performed in a good and workmanlike manner and in accordance with the

requirements of Applicable Law; (ii) the Unit Owner or condominium association causing such maintenance or repair to be performed shall ensure that adequate construction barricades or other protective device are installed and maintained until the maintenance or repair is complete; (iii) the Unit Owner or condominium association causing such maintenance or repair to be performed shall indemnify, hold harmless and defend the Master Declarant, the Master Association, the City of Austin and the Owners of the other Units from and against all claims, demands, suits, costs, expenses and liabilities arising from or in respect to the death, accidental injury, loss or damage cause to any natural person or the property of any person as shall occur by virtue of the maintenance or repair; and (iv) the Unit Owner or condominium association causing such maintenance or repair to be performed shall indemnify and hold the Master Declarant, the Master Association, the City of Austin and the Owners of the other Units harmless from and against mechanics, material men's and/or laborer's liens and all costs, expenses and liabilities arising from such maintenance or repair.

Failure to maintain and repair the ST Electrical Facilities as required in this Section 2.16 (as determined by the Master Board or its designee), or as directed from time to time by the Master Board or its designee, will constitute a violation of this Supplemental Covenant. In the event of a violation, the Master Board or its designee may cause the ST Electrical Facilities to be maintained or repaired in a manner determined by the Master Board or its designee, in its sole and absolute discretion. If the Master Board or its designee performs, or causes to be performed, maintenance or repairs to the ST Electrical Facilities, the Owner or condominium association otherwise responsible therefor will be personally liable to the Master Association for all costs and expenses incurred by the Master Association for performing such work. If such Owner or condominium association 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). Pursuant to Section 3.01(a) of the Master Association Bylaws, the Master Board may delegate any of its duties hereunder to an agent or management company. Any such amounts assessed and chargeable against a Unit or subdivided lot within the Property 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 OR CONDOMINIUM ASSOCIATION 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 2.16 (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.


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

[SIGNATURE PAGES FOLLOW]

EXECUTED to be effective on the date this instrument is recorded in the Official Public Records of Travis County, Texas.

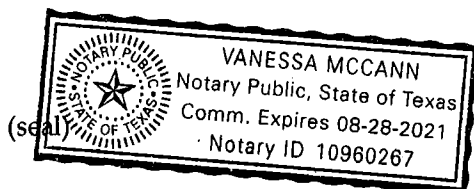
**MASTER DECLARANT:**

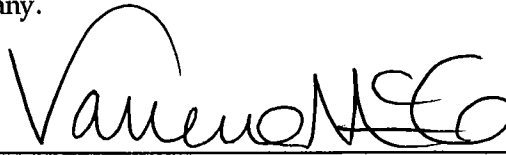
CATELLUS AUSTIN, LLC, a Delaware limited liability company

By:   
 Printed Name: Gregory J. Weaver  
 Title: Executive Vice President

THE STATE OF TEXAS §  
 COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 19 day of August, 2019 by Gregory J. Weaver, Executive Vice President of Catellus Austin, LLC, a Delaware limited liability company, on behalf of said limited liability company.



  
 Notary Public Signature

**CONSENT PROVIDED PURSUANT TO  
SECTION 1.5 OF THE MASTER COVENANT:**

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

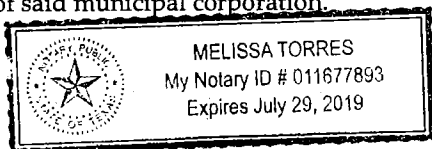
By: Alex Gale  
Alex Gale, Interim Officer, Office of Real Estate Services

Date: August 15, 2019

THE STATE OF TEXAS       §  
COUNTY OF TRAVIS       §

This instrument was acknowledged before me on the 15 day of August, 2019, by Alex Gale, Interim Officer, Office of Real Estate Services of the City of Austin, a municipal corporation, on behalf of said municipal corporation.

[SEAL]



Melissa Torres  
Notary Public Signature

Approved as to content:

By:

Sylvia Holt-Rabb  
Sylvia Holt-Rabb  
Interim Deputy Director, Economic  
Development Department

Approved as to form:

By:

Kent Smith  
Kent Smith  
Assistant City Attorney



MUELLER AUSTIN TOWN CENTER, LLC, a  
Delaware limited liability company

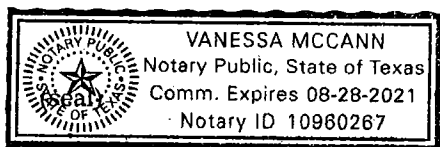
By: [Signature]

Printed Name: GREGORY J. WEAVER

Title: E.V.P.

THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 19 day of August 2019 by  
Gregory J. Weaver E.V.P. of Mueller Austin Town Center, LLC, a Delaware limited  
liability company, on behalf of said limited liability company.



[Signature]

Notary Public Signature

11-GF# 201801533 ALF  
RETURN TO: HERITAGE TITLE  
401 CONGRESS AVE., STE.1500  
AUSTIN, TEXAS 78701