

F# 51861 KSN
RN TO: HERITAGE TITLE
100 CONGRESS, SUITE 1500
AUSTIN, TEXAS 78701

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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SUPPLEMENTAL COVENANT

[LOT 1, BLOCK "B", MUELLER SECTION 1 PHASE A SUBDIVISION]

MUELLER EC/TC COMMUNITY

Travis County, Texas

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

Pertaining to: Lot 1, Block "B", Mueller Section 1 Phase A Subdivision, a subdivision located in Travis County, Texas, according to the map or plat recorded as Document No. 200400079 in the Official Public Records of Travis County, Texas, as affected by Scrivener's Affidavit recorded under Document No. 2006050044 in the Official Public Records of Travis County, Texas

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, 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 EC/TC COMMUNITY – SUPPLEMENTAL COVENANT

LOT 1, BLOCK "B", MUELLER SECTION 1 PHASE A SUBDIVISION

This Mueller EC/TC Community Supplemental Covenant (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 – Lot 1, Block "B", Mueller Section 1 Phase A Subdivision, recorded as Document No. 2006050357, Official Public Records of Travis County, Texas, Lot 1, Block "B", Mueller Section 1 Phase A Subdivision, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded as Document No. 200400079 in the Official Public Records of Travis County, Texas, as affected by Scrivener's Affidavit recorded under Document No. 2006050044 in the Official Public Records of Travis County, Texas (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 EC/TC Community Covenant, recorded as Document No. 2004238008 in the Official Public Records of Travis County, Texas, as amended (the "**EC/TC Covenant**").

B. Catellus Austin Retail LP, a Delaware limited partnership, is the owner of the Property and executes this Supplemental Covenant for the purposes of evidencing its consent to the terms and provisions set forth herein.

C. Pursuant to *Section 7.02* of the EC/TC 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 EC/TC 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.

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 EC/TC 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 EC/TC 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.

ARTICLE II GENERAL ASSOCIATION 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", 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 Commercial Use; Prohibitions. The Property must be used solely for professional, business, or commercial activity that conforms to all zoning requirements (if any) applicable to the Property. No portion of the Property may be used for residential purposes. Without limiting the generality of the foregoing, no portion of the Property may be used for: (a) a business that specializes in bankruptcy or liquidation sales or the selling of fire damaged items; (b) an auction house, flea market, pawn shop, thrift store or other store which sells used or "second-hand" merchandise; (c) a kennel or other business involving the boarding or care of animals; (d) an establishment for sale of automobiles, trucks, mobile homes, or recreational motor vehicles; (e) a night club, bar, lounge, or tavern; (f) a dance hall (except a professional dance instruction studio), ballroom, discotheque or game parlor; (g) 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); (h) a sexually oriented massage parlor; (i) a gambling establishment or betting parlor; (j) a mortuary, crematorium or funeral home; (k) a dry cleaning plant, central laundry or laundromat; (l) a storage or mini warehouse facility; (m) any use which is illegal or which, in the reasonable opinion of the New Construction Council, is offensive by reason of odor, fumes, dust, smoke, noise or pollution, or hazardous by reason of excess danger of fire or explosion; or (n) any use which, in the reasonable opinion of the New Construction Council, is obnoxious to or incompatible with the overall character of the Property. No portion of the Property may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies, or for a carport or other automobile storage open on more than one side. No portion of the Property may be used as a hotel, bed and breakfast lodge, or any similar purpose.

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 Storage and Loading Areas. Unless approved in accordance with *Chapter 5* of the Master Covenant, no materials, supplies or equipment, including trucks or other motor vehicles, shall be stored upon any portion of the Property except inside a closed building or behind a visual barrier screening such materials, supplies or vehicles so as not to be visible from neighboring property and streets. The location of each storage area must be approved in accordance with *Chapter 5* of the Master Covenant.

2.06 Screening. Unless otherwise approved in accordance with *Chapter 5* of the Master Covenant, exterior components of plumbing, processing and ventilating systems (including but not limited to piping, stacks, collectors and ventilating equipment, blowers, ductwork, louvers, meters, compressors, motors, ovens, etc.), storage areas, air conditioning and heating equipment, incinerators, storage tanks, trucks, roof objects (including fans, vents, cooling towers, solar panels, antennas, and all roof-mounted equipment which rises above the roof line), trash containers and maintenance facilities, shall either be housed in closed buildings, or otherwise completely screened from view of adjoining streets, buildings, arrival zones and adjacent property. Unless otherwise approved in accordance with *Chapter 5* of the Master Covenant, no lumber, metals, bulk materials or scrap, refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Property except within enclosed structures, or

appropriately screened from public view. Unless otherwise approved in accordance with *Chapter 5* of the Master Covenant, liquid propane gas, oil and other exterior tanks shall be kept within enclosed structures, or permanently screened from public view. The construction materials, location, and size of all screening must be approved in accordance with *Chapter 5* of the Master Covenant.

2.07 Use of Special Common Area. Each Owner, their tenants, and the Owner's and tenant's guests and invitees will not have access to certain facilities designated as "Special Common Area" pursuant to the terms and provisions of the Master Covenant unless the Owner, or their tenants, and the Owner's or tenant's guests and invitees are designated as beneficiaries of such Special Common Area in a notice filed pursuant to *Section 16.1* of the Master Covenant and *Section 7.01* of the EC/TC Covenant or in a written instrument recorded by the Master Declarant in the Official Public Records of Travis County, Texas. It is anticipated that Master Declarant will designate, for example, swimming pools, tennis courts, community buildings, and other similar improvements located in the Community, as Special Common Area and the Owner, their tenants, and the Owner's and tenant's guests and invitees **WILL NOT** be designated as beneficiaries of such Special Common Area. Use of Special Common Areas by individuals or Owners who have not been designated as beneficiaries thereof is **EXPRESSLY PROHIBITED** and any use will constitute a violation of the terms and provisions of the Governing Documents. Upon the request of Master Declarant or the Board, each Owner will be required to provide notice to each of its tenants identifying the Special Common Area located in the Community in which access by the tenants and their guests and invitees is prohibited. Each Owner will promptly provide a copy of any notice required hereunder to the Master Declarant and the Board.

2.08 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 Amendment.

(a) By the Master Declarant. The Master Declarant may unilaterally amend this Supplemental Covenant if such amendment is necessary: (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination with which it is in conflict; (ii) to enable any reputable title insurance company to issue title insurance coverage on any portion of the EC/TC Community; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state, or federal governmental agency. In addition, during the Development and Sale Period, the 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 EC/TC Association; and (ii) the Master Declarant during the Development and Sale Period.

3.03 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.

3.04 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.

3.05 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 EC/TC Association will have the right to enforce all of the provisions of this Supplemental Covenant. The Master Association and the EC/TC 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 EC/TC 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.

3.06 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.

3.07 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.

EXECUTED to be effective the 17 day of March, 2006.

MASTER DECLARANT:

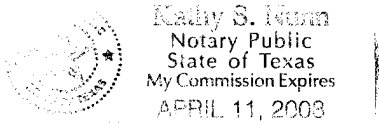
CATELLUS AUSTIN, LLC, a Delaware limited liability company

By: [Signature]
Printed Name: Gregory J. Weaver
Title: Senior Vice President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 17 day of March, 2006, by Gregory J. Weaver Senior Vice President of Catellus Austin, LLC, a Delaware limited liability company, on behalf of said limited liability company.

[SEAL]



[Signature]
Notary Public Signature

ACKNOWLEDGED AND AGREED:

CATELLUS AUSTIN RETAIL LP, a Delaware limited partnership

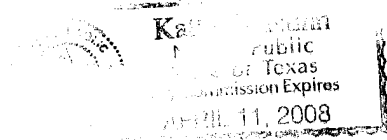
By: Catellus Austin Retail GP LLC, a Delaware limited liability company, its general partner

By: [Signature]
Printed Name: Gregory J. Weaver
Title: Senior Vice President

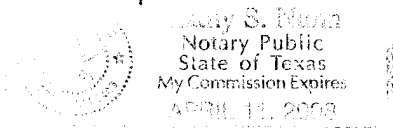
THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 17 day of March, 2006, by Cory J. Weaver, Senior Vice President of Catellus Austin Retail GP LLC, a Delaware limited liability company, general partner of Catellus Austin Retail LP, a Delaware limited partnership, on behalf of said limited liability company and limited partnership.

[SEAL]



Katy S. Nunn
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

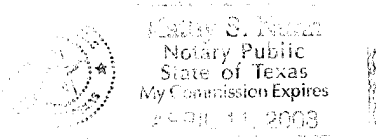
By: Lauraine Rizer
Printed Name: Lauraine Rizer
Title: Manager Real Estate Division

Date: March 17, 2006

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 17 day of March, 2006, by Lauraine Rizer, manager real estate division of the City of Austin, Texas, a Texas home rule city and municipal corporation, on behalf of said city.

[SEAL]



Katy S. Nunn
Notary Public Signature

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2006 Mar 21 04:17 PM 2006050845

KNOWLESR \$48.00

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS