

Late Backup

RESOLUTION NO.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

Council authorizes the negotiation and execution of an Estoppel Certificate and Agreement pertaining to the development of Block 21 of the Original City of Austin, bounded by Guadalupe Street, 2nd Street, Lavaca Street, and 3rd Street, in accordance with the terms contained in the Estoppel Certificate attached as Exhibit A.

ADOPTED: _____, 2008 ATTEST: _____
Shirley A. Gentry
City Clerk

ESTOPPEL CERTIFICATE AND AGREEMENT

Property The real property described on Exhibit "A" attached hereto and made part hereof (the "**Property**").

Documents. Declaration of Restrictive Covenants (the "**Declaration**") dated as of December 15, 2006, by the City of Austin, a Texas home rule city and municipal corporation ("**City**"), recorded in the official public records of Travis County, Texas (the "**Records**") as Instrument No. 200624087 and

Special Warranty Deed (the "**Deed**"; collectively with the Declaration and the "**Documents**") dated as of December 15, 2006, by the City, in favor of Stratus Block 21 Investments, L.P., a Texas limited partnership ("**Stratus**"), recorded in the Records as Instrument No. 2006240878.

City acknowledges that **Corus Bank, N.A.** (collectively with its successors and assigns, "**Lender**") has agreed, subject to the satisfaction of certain terms and conditions, to make a loan ("**Loan**") in the original stated amount of \$165,000,000 to CJUF II Stratus Block 21 Investments, LLC, a Delaware limited liability company ("**Borrower**"), to be secured by, among other things, a first deed of trust upon the Property (the "**Deed of Trust**") Borrower is the successor to Stratus as owner of the Property. Lender is requiring receipt of this Estoppel Certificate and Agreement (this "**Certificate**") as a condition to making the Loan. This Certificate supplements that certain Estoppel Certificate and Agreement dated April 28, 2008 from the City to the Lender ("Original Estoppel"). Therefore, City hereby agrees, represents, and warrants that:

A. Deed.

With respect to the Deed

- 1 Notwithstanding anything to the contrary set forth in the Deed, Section 6 of the Deed is hereby amended to provide that in no event will the Repurchase Price be less than sixty percent (60%) of all Project Costs actually incurred by Owner

Any capitalized terms in the above provision that are not otherwise defined herein shall have the meanings ascribed to them in the Deed or in the Original Estoppel

B. General Statements.

1. The statements and agreements contained herein shall be binding upon, and shall inure to the benefit of, Lender, City, Borrower, and the successors and assigns of all of the foregoing. All references herein to the Loan or any of Lender's loan documents shall be deemed to refer to same as maturity is extended or refinanced from time to time.
2. Lender will rely on the representations and agreements made by City herein in connection with Lender's agreement to make the Loan, and City agrees that Lender may rely on such representations and agreements. To the extent of any conflict between the provisions of this Certificate and the provisions of the Documents, the applicable provisions of this Certificate shall govern.

[EXECUTION ON FOLLOWING PAGE]

