

**AN ORDINANCE APPROVING THE NEGOTIATION AND EXECUTION OF A  
MANAGED GROWTH AGREEMENT FOR DEVELOPMENT OF THE EAST  
AVENUE PARCEL 1 AND 2 SITE PLAN.**


**PART 1.** The Council finds that the East Avenue Parcel 1 and 2 site plan described in SP-2008-0106C(XT2).MGA is a large, long-term project under Section 25-1-540 (*Managed Growth Agreements*).

**PART 3.** This ordinance takes effect on August 13, 2012.

August 2, 2012

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Lee Leffingwell  
Mayor

**APPROVED:**   
Karen M. Kennard  
City Attorney

ATTEST: Shirley A. Gentry  
Shirley A. Gentry  
City Clerk

**MANAGED GROWTH AGREEMENT**  
**BETWEEN THE CITY OF AUSTIN AND**  
**CENTRAL AUSTIN APARTMENTS LLC**

This Managed Growth Agreement ("Agreement") Between the City of Austin, Texas ("City") and Central Austin Apartments LLC ("Central Austin Apartments") is made and entered into by the City, a home rule municipal corporation acting by and through its duly authorized City Manager and Central Texas Apartments. Central Austin Apartments and the City may be referred to jointly as "Parties" or singly as "Party" in this Agreement.

**RECITALS**

1. On February 27, 2008, East Avenue IG, LP, the prior property owner, filed an application for a consolidated site plan for the construction of a mixed use building on property described in Exhibit A, which is attached hereto and incorporated herein ("the Property").
2. On September 26, 2008 the City approved Site Plan No SP-2008-0106C, authorizing the construction of a mixed use building, which will include multi-family residential, a movie theater, general retail, office, restaurant, drives, water quality, and drainage ponds, and infrastructure on 3.915 acres, "the Project". Portions of the Project, including some infrastructure improvements, have been completed.
3. Central Austin Apartments desires to obtain building permits for the project, realizing that due to the current economical conditions, it could take 10 years obtain building permits and construct buildings.

NOW, THEREFORE, for and in consideration of the mutual covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and Central Austin Apartments agree as follows:

**A R T I C L E   I**  
**PURPOSE & LEGAL AUTHORITY**

**Section 1.01            Purpose.**

The purpose of this Agreement is to provide certainty that the Project will not be required to undergo design changes as a result of changes to City regulations over a long period of time required for Central Austin Apartments to obtain building permits and complete the Project.

**Section 1.02            Legal Authority.**

Section 25-1-540 of the City Code authorizes the execution of managed growth agreements for planning and developing large projects, long term projects, or any project having special benefits that are in the public interest. The Project is a long-term project because it is a mixed-use project and the design and construction will exceed five years.

### **Section 1.03            Expiration Date**

Section 25-1-540 provides that a managed growth agreement may specify the time period during which a project may comply with the regulations in effect when the first application for the project is filed and establish an expiration date for each application necessary to complete the project. By Resolution No. \_\_\_\_\_, the City Council directed that the expiration date is to be September 26, 2022.

## **ARTICLE II** **TERMS**

### **Section 2.01            Original Regulations; Expiration Date**

Subject to Section 2.03 below, Central Austin Apartments may construct the Project to comply with City regulations in effect on February 27, 2008. The expiration date of Site Plan No. SP-2008-0106C for purposes of Chapter 25-5 of the City Code and the expiration date of the Project for purposes of Article 12 of Chapter 25-1 of the City Code shall be September 26, 2022.

### **Section 2.02            Revisions to the Site Plan; Change in Ownership**

Minor revisions to the Project shall be permitted in accordance with the City Code and City regulations. However, Central Austin Apartments may not construct any *improvements on the Property that the City Manager determines to vary substantially* from the Project as defined by Site Plan No. SP-2008-0106C without forfeiting the rights granted under this Agreement to develop the Project under Original Regulations. This Agreement does not abridge the rights of Central Austin Apartments or its successors (*including homebuilders who acquire one or more condominium units for resale to third parties*) to sell and convey condominium units within the Project. However, if, without the City's written consent, title to the remaining unsold inventory of condominium units within the Project is conveyed or assumed by an entity other than Central Austin Apartments, or an entity that directly or indirectly controls, is controlled by, or is under common control with Central Austin Apartments, the City Manager may terminate the rights granted under this Agreement to develop the Project under Original Regulations, in which case the Project and Site Plan No. SP-2008-0106C will expire on its original expiration date of September 26, 2012.

**Section 2.03            Exceptions from Right to Develop Under Original Regulations**

In this section, Central Texas Apartments agrees to comply with City regulations adopted after February 27, 2008, as they pertain to:

- a. erosion and sedimentation controls;
- b. uniform building, fire, electrical, plumbing, or mechanical codes adopted by recognized national code organizations or local amendments to those codes enacted to address imminent threats of destruction of property or injury to persons; and
- c. regulations to prevent the imminent destruction of property or injury to persons that do not affect landscaping, tree preservation, open space, or park dedication, lot size or dimensions, lot coverage, building size, residential or commercial density, or timing of the project, or that change development permitted by a restrictive covenant required by the City.

**ARTICLE III**  
**MISCELLANEOUS PROVISIONS**

**Section 3.01            Notice.**

It is contemplated that the Parties will contact each other concerning the subject matter of this Agreement. However, any formal notice or communication required to be given by one Party to another by this Agreement ("Notice ") shall be given at the addresses below for the Parties.

Notice may be given by: (1) delivering the Notice to the Party to be notified; (2) by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or (3) by sending the Notice by telefax with confirming copy sent by mail to the Party to be notified.

Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective after the earlier of the date of actual receipt or three days after the date of the deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified or purposes of Notice, the addresses of the Parties shall, until changed as provided in this section, be as follows:

City of Austin:	City Manager P.O. Box 1088 Austin, Texas 78767
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with required copy to:      City Attorney  
   P.O. Box 1088  
   Austin, Texas 78767

Owner                              Central Austin Apartments LLC  
   301 Congress Ave. Suite 500  
   Austin, TX 78701  
   Attention: M Timothy Clark

The Parties may change their addresses for Notice purposes by providing five days written notice of the changed address to the other Party.

If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

**Section 3.02              Severability.**

The provisions of this Agreement are not severable. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to *any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason*, the Parties agree and understand that the omission of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement would frustrate the purpose of this Agreement, and, therefore, in that event, this Agreement shall terminate.

**Section 3.03              Waiver.**

Any failure by a Party to the Agreement to insist on strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver of the provision or of any other provision of the Agreement. A Party has the right at any time to insist on strict performance of any of the provisions of this Agreement.

**Section 3.04              Applicable Law and Venue.**

The construction and validity of this Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles). Venue shall be in Travis County, Texas.

**Section 3.05              Incorporation of Exhibits.**

All Exhibits attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes set forth in this Agreement.

**Section 3.06            Assignability, Successors, and Assigns.**

This Agreement is not assignable by Central Austin Apartments or the City without the prior written consent of the City Council or Central Austin Apartments.

The Agreement shall be binding on and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

**Section 3.07            Amendment.**

This Agreement may be amended only in writing on the approval of the City Council and Central Austin Apartments.

**ARTICLE IV**  
**DEFAULT AND REMEDIES FOR DEFAULT**

**Section 4.01            Default.**

On the occurrence, or alleged occurrence, of an event of default, the non-defaulting Party shall send the defaulting Party notice of its default or alleged default. Except as otherwise specifically provided in this Agreement, the defaulting Party must cure its default within 30 days following the receipt of the notice of the default, or, must begin to cure the default within 14 days following receipt of the notice of default and diligently pursue the cure to completion within 50 days of receipt of the notice of default. If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this Agreement. All of these rights and remedies shall be cumulative.

This Agreement shall be effective on the date it has been signed by both Parties.

By: Central Austin Apartments LLC

By: \_\_\_\_\_

Name: M. Timothy Clark

Title: President

Date: \_\_\_\_\_

Approved as to form:

City of Austin

Brent Lloyd  
Assistant City Attorney

Sue Edwards  
Assistant City Manager  
Date:\_\_\_\_\_

**EXHIBIT A**

**"The Property"**

Lot 1 & 2, Block A of East Avenue Subdivision, Doc. No.: 200800152