



**RCA
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 57
AGENDA DATE: Thu 12/02/2004
PAGE: 1 of 2**

SUBJECT: Approve the form of the Mueller License Agreement for private improvements on public lands for the Mueller Property (formerly the Robert Mueller Municipal Airport); and approve an ordinance authorizing the City Manager to execute the Master License Agreement with CATELLUS AUSTIN, LLC for community improvements on public land; and waiving certain requirements of Chapter 14-11 (*Use of Right-of-Way*) of the City Code.

AMOUNT & SOURCE OF FUNDING: N/A

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING Law
DEPARTMENT:

**DIRECTOR'S
AUTHORIZATION:** Marty Terry

FOR MORE INFORMATION CONTACT: Sue Edwards, Director / 974-7820; Alison Gallaway, Assistant City Attorney / 974-2671

PRIOR COUNCIL ACTION: N/A

BOARD AND COMMISSION ACTION: N/A

PURCHASING: N/A

MBE / WBE: N/A

The process of redeveloping the former Robert Mueller Municipal Airport (now known as Mueller) has taken many years. It began with building consensus of what the project should look like to the neighbors most impacted by both the previous use as an airport and the to be developed use as a dense, urban, mixed-use neighborhood.

The next step was finding the right developer that would be committed to the City's goals. After a long and involved search process, Catellus Development Corporation emerged as the entity that the City was authorized to negotiate with. During the process of negotiations, Catellus Development Corporation created Catellus Austin, LLC ("Catellus") to actualize the development.

After two years of negotiating, we are pleased to announce that a Master Development Agreement ("MDA") has been agreed on. The MDA has many attachments, one of which addresses Catellus' obligation to construct and maintain certain improvements on public land (parks, open space, streets).

Certain improvements, such as trails and ponds (in Open Space), such as sidewalk pavers, landscaping & irrigation (in the streets), such as ponds, trails, sidewalks (in the land to be dedicated as Park), require a license agreement with the City. Since Catellus will add these improvements during many years and will also maintain these improvements once they are installed, we created a specific Master License Agreement, which is attached to this RCA. This Master License Agreement amends the typical license agreement by not requiring a 90 day termination or an indemnification for the City's actions on the Licensed Property. A few of these changes are terms that are required by the City Code, therefore, these



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agreements are being adopted by ordinance, to waive those code provisions with which the Master License Agreement does not comply. The Owners Association will maintain these improvements upon transfer of the Master License Agreement from Catellus.

The MDA also allows private land owners to enter into the Mueller License Agreement, which is also being approved by this item, but which does not waive any of the standard code requirements. The form is being adopted so that future owners will know what the document will say before purchasing or leasing property at Mueller.

ORDINANCE NO.

AN ORDINANCE APPROVING A MASTER LICENSE AGREEMENT WITH CATELLUS AUSTIN, LLC, FOR COMMUNITY IMPROVEMENTS ON PUBLIC LAND; APPROVING THE FORM OF THE MUELLER LICENSE AGREEMENT FOR PRIVATE IMPROVEMENTS ON PUBLIC LAND; and waiving requirements in section 14-11 of the city code.

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

PART 1. The Council finds that:

(A) Catellus Austin, LLC (Catellus) and the City of Austin (City) have negotiated a Master Development Agreement (Agreement) relating to the redevelopment of the Mueller property (Mueller), approximately 700 acres of land generally located east of IH-35 and south of 51st Street.

(B) The Agreement meets many community recommended goals for redevelopment of Mueller developed during extensive community input and includes 30 months of negotiation between the City and Catellus on the Agreement.

(C) The Agreement requires Catellus to install and maintain public improvements (including street trees and other landscaping and related irrigation systems, trails, and amenities in the Open Space as defined in the Agreement) on public land at the expense of Catellus or an Owners Association, assuming the City's financial responsibility for maintaining a public space.

(D) The Agreement also allows Catellus or its assignees to install and maintain private improvements, including balconies and canopies on public land at its expense.

(E) The Agreement provides significant recreational amenities and spaces for the future residents of Mueller, as well as for the neighborhoods surrounding Mueller, furthering the public health, safety, and welfare, and serving the interests of current and future residents of the City.

(F) The waiver of certain provisions of the City Code is necessary to

develop Mueller consistent with the terms of the Agreement.

PART 2. The Council approves the Master License Agreement for Community Improvements attached to and incorporated in this ordinance as Exhibit A.

PART 3. The Council approves the form of the Mueller License Agreement for Private Improvements attached to and incorporated in this ordinance as Exhibit B. The agreement applies to all future private amenities that will be constructed on public land.

PART 4. The Council waives the requirements of Chapter 14-11 (*Use of Right-of-Way*) to the extent the requirements conflict with the terms of the Master License Agreement for Community Improvements.

PART 5. This ordinance takes effect on _____, 2004.

PASSED AND APPROVED

_____, 2004 §

_____ §

Will Wynn
Mayor

APPROVED: _____

ATTEST:

David Allan Smith
City Attorney

Shirley A. Brown
City Clerk

EXHIBIT A

After Recording Return To:

Master License Agreement (Community Improvements)

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS MASTER LICENSE AGREEMENT (this "Agreement") is made to be effective as of _____, 2004, between CATELLUS AUSTIN, LLC, a Delaware limited liability company ("Benefited Party"), and the CITY OF AUSTIN, TEXAS, a Texas home rule city and municipal corporation (the "City"), acting through its duly authorized agent the City Manager or designee, who for purposes of this Agreement is the Manager of Real Estate Services Division of the Public Works Department ("Property Manager"), with reference to the following facts:

- (A) On the date of this Agreement, Benefited Party and the City have executed that certain Master Development Agreement (the "MDA"), pursuant to which Benefited Party is to redevelop and/or sell portions of the property commonly known as the former Robert Mueller Municipal Airport, located in the City of Austin, Travis County, Texas, as more particularly described on Exhibit A attached hereto (the "Property").
- (B) In connection with the execution of the MDA, the City and Benefited Party have prepared certain recorded restrictions such as community covenants and design guidelines (collectively, the "Governance Documents") which will govern the development of the Property and require the construction of certain infrastructure on the Property.
- (C) The City, as the current owner of the Property, has set ambitious social and economic goals for its redevelopment of the Property including the construction and maintenance of publicly accessible open space with a high level of amenities and maintenance responsibility. Traditionally, the City maintains similar publicly accessible open space. Subject to the terms hereof and of the MDA, Benefited Party has accepted responsibility for maintenance of the Property's publicly accessible open space as a benefit to the City. Due to the City's current

ownership of the Property, the ambitious social and economic goals of the City, the nature of this project in revitalizing an urban infill location, Benefited Party constructing regional drainage infrastructure for this infill area, the City's requirement for a high level of amenities in the publicly accessible open space and the City's traditional obligations with respect to maintenance of publicly accessible open space, the City has agreed to provide Benefited Party with the special arrangement evidenced hereby.

- (D) As part of the redevelopment of the Property as required by the City, Benefited Party shall construct infrastructure and other improvements on the Property pursuant to the MDA in current and/or future publicly dedicated areas of the Property over time (the "Construction") for the benefit of the general public.
- (E) From time to time after the execution of this Agreement, the City intends to grant Benefited Party licenses to use and maintain certain Construction improvements in the Perimeter Parks of the Property as designated on Exhibit A (the "Parks") and in specific publicly dedicated areas of the Property to be designated at a later time (such property together with the Parks, the "Licensed Property") as provided herein.
- (F) The redevelopment of the Property will occur over many years. The City and Benefited Party intend that, during such redevelopment, Licensed Property will, from time to time, be continually added to this Agreement.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

1. Grant of License

- (a) The City hereby grants a license to use and maintain the Parks for the benefit of the public.
- (b) Effective upon (i) Benefited Party's compliance with all procedures and requirements necessary to apply for a license agreement with the City (including submittal of an Application for License Agreement), and (ii) execution of an Annexation Notice (herein so called) substantially in the form attached hereto as Exhibit B for each individual parcel of Licensed Property other than the Parks, the City hereby grants a license to use and maintain the Licensed Property other than the Parks for the benefit of the public. Each Licensed Property other than a Park, and the use to be made of such Licensed Property, will be more particularly described in the applicable Annexation Notice.

- (d) The licenses granted in (a) and (b) above are collectively called the "License". The City makes these grants solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties, and subject to all present and future matters of record affecting the Licensed Property.

2. Purpose

- . The License granted hereby to use the Licensed Property is intended to include, without limitation, the installation, repair, maintenance and removal of improvements as reasonably contemplated by the MDA and the Governance Documents such as public buildings or structures, stormwater detention facilities, water quality facilities, furniture, art, railings, signs, trash receptacles, trails, pavers, sidewalks, retaining walls, fences, trees, tree wells and grates, landscaping, irrigation systems, light fixtures, and roof drains (which must be installed completely underground when it reaches ground level except in the Parks where another reasonable discharge area is available) (collectively, "Community Improvements"), as more particularly specified in the applicable Annexation Notice.

3. Successors and Assigns

- . This Agreement, until its termination or expiration, will automatically:
 - (a) inure to the benefit of the City, its successors and/or assigns,
 - (b) run with the land (i.e., burden the Licensed Property through any transfers of the Licensed Property), and
 - (c) inure to the benefit of Benefited Party and its successors and assigns, it being understood that Benefited Party will over time assign all of its rights and obligations under this Agreement (A) to the Mueller Master Community, Inc. (the "Association") not later than the expiration or earlier termination of the MDA, or (B) as required by the MDA.

4. Construction and Maintenance Special Consideration

- . As special consideration for the City's grant of the nonstandard License, the Benefited Party shall maintain all (a) Licensed Property (other than the Parks) in good condition and repair, and (b) the Parks in good condition and repair as a first class recreational facility, park, open space, stormwater detention facility, and scenic area including without limitation providing vegetation and trash management, silt and debris removal, maintaining operational functionality and structural integrity of the stormwater detention and water quality facilities.

5. Term

- . This Agreement begins on the effective date hereof and continues thereafter for so long as any Licensed Property is covered by the terms of this Agreement.

6. Limits on License

- . The existence of this Agreement is expressly subordinate to the present and future right of the City, its successors, assigns, lessees, and grantees, to construct, install, establish, maintain, use, operate, and renew any public utilities facilities, franchised public utilities, rights-of-way, sidewalks, bike paths, public art, roadways, or streets on, beneath, or above the surface of the Licensed Property (collectively, the "Facilities"). If the City's uses of the Licensed Property that are consistent with the foregoing provision substantially interfere with or destroy the Benefited Party's use of the Licensed Property, or any Community Improvements placed thereon or therein, then City or the Benefited Party will have the option to terminate the License as to such specific Licensed Property. the City may remove the affected Community Improvements at its cost and Benefited Party's maintenance obligations as to the specific portion of the Licensed Property will terminate.

7. Conditions

(a) Repair or Relocate Existing Facilities

- . The Benefited Party must pay all costs required to repair damage to any existing Facilities and the Benefited Party's Community Improvements, which are damaged or destroyed or are relocated as a result of activities under this Agreement by, or on behalf of, the Benefited Party.

(b) Modification of Community Improvements

- . No person may materially modify Community Improvements without the consent of the City, except that the City's consent will not be required in the event the Community Improvements are wholly or partially destroyed and the Benefited Party reconstructs such Community Improvements to substantially the condition which existed immediately prior to such destruction, in accordance with all applicable laws. Additionally, so long as the City has the right to approve changes to the Governance Documents, any modifications to the Community Improvements in the Parks must comply with the Governance Documents.

(c) Special Provisions

- (i) Any roof drain Community Improvements must not discharge directly onto a sidewalk area, but must discharge directly into the storm drain system, except in the Parks where another reasonable discharge area is available. Discharging directly to sidewalk area is grounds for immediately terminating this Agreement as to the specific Licensed Property. If the Property Manager determines that roof drain Community Improvements are not functioning as anticipated or are inadequate, in its reasonable discretion, to drain all the roof water, Benefited Party must install additional or larger inlets into the storm drain system within 60 days after Property Manager sends notice to the applicable Benefited Party.
- (ii) Any irrigation system or roof drain Community Improvements must be repaired or replaced within 48 hours of the time any damage is discovered by the applicable Benefited Party.
- (iii) Any paver Community Improvements must be repaired or replaced within 48 hours of the time any damage is or should have been discovered by the applicable Benefited Party.

(d) Recording

The City will file both this Agreement and each Annexation Notice in the Real Property Records of Travis County to inform all future owners of any interest in the Property of the existence of this Agreement and the obligations hereunder. The Benefited Party must file any assignment and assumption of its rights in the Real Property Records of Travis County.

(e) City Removal.

If the Property Manager deems it is necessary: (i) to exercise the City's rights or duties with respect to the Licensed Property, (ii) to protect persons or property, or (iii) for the public health or safety with respect to the Licensed Property, the City may enter the Licensed Property and remove the Community Improvements without giving notice and without incurring any obligation to the Benefited Party.

8. Insurance

During the term of this Agreement, the Benefited Party will provide insurance over the Licensed Property in accordance with (a) so long as the MDA is in effect, the commercial general liability insurance requirements of the MDA and property insurance policy or policies providing all risk coverage for the full replacement

cost value of any above-ground improvements or structures on the Licensed Property in accordance with the general insurance requirements of the MDA and (b) following the expiration or earlier termination of the MDA, the City's procedures and requirements for obtaining a license agreement, as amended from time to time.

9. Indemnification

- . The Benefited Party hereby fully indemnifies, saves, and holds harmless the City, its officers, employees, agents, and licensees (collectively called "Indemnitees") against any and all liability, damage, loss, claims, demands, and actions of any nature whatsoever, on account of personal injury (including without limitation, workers' compensation and death claims), or property loss or damage of any kind whatsoever, which arises, or is claimed to arise, out of or is, or is claimed to be, in any manner connected with any acts or omissions by the Benefited Party (including its contractors, agents, employees, licensees or invitees) concerning the License. The Benefited Party must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based thereon using counsel reasonably satisfactory to Indemnitees' City Attorney, and pay all reasonable attorneys' fees and all other reasonable cost and expenses of any kind arising from any aforesaid liability, damage, loss, claims, demands, or actions.

10. Termination and Default

(a) Termination by the Benefited Party

- . The Benefited Party may terminate this Agreement as it relates to the Licensed Property (or portion thereof) by delivering written notice of termination to the Property Manager not later than 30 days before the effective date of termination and the Benefited Party, following the request of the City, will remove all the Community Improvements from the Licensed Property within the 30-day notice period at its sole cost and expense. Failure to do so constitutes a default of this Agreement and authorizes the Property Manager to notify the Benefited Party of the cost of such removal and disposal and the Benefited Party will pay such costs within 30 days of such notice. Such notice will include evidence reasonably substantiating such costs.

(b) Termination by City

- . Subject to prior written notification to the Benefited Party, this Agreement is revocable by the Property Manager as to a specific Licensed Property if, as applicable to a Licensed Property:
 - (i) the Community Improvements, or a portion of them, interfere with the City's right-of-way,
 - (ii) the use of the right-of-way area in which the Licensed Property is located becomes necessary for a public purpose, or
 - (iii) the Community Improvements, or a portion of them, constitute a danger to the public, which the Property Manager deems not to be remediable by alteration or maintenance of such Community Improvements.

In the event of any such termination, the Benefited Party will have no further obligations under this Agreement, under the MDA or otherwise to maintain any such portion of the Licensed Property, such maintenance being the sole obligation of the City from and after such termination.

(c) Termination by Abandonment

- . If the Benefited Party abandons or fails to maintain the Licensed Property, and the Property Manager receives no substantive response within 30 days following written notification to the Benefited Party, then the City may

remove and/or replace all applicable Community Improvements. Benefited Party covenants to pay the City's reasonable and actual expenses incurred in connection therewith within 30 days after being billed therefor and receiving evidence reasonably substantiating such expenses. All of the Benefited Party's Community Improvements not removed and located on the portion of the Licensed Property which has been removed from the jurisdiction of this Agreement are deemed property of the City when abandoned by the Benefited Party.

(d) Default

. The applicable Benefited Party will be in default under this Agreement if:

- (i) Benefited Party fails to pay within 10 days from the receipt of written demand any monetary payment then due under this Agreement, or
- (ii) Benefited Party fails to comply with the terms or conditions of this Agreement after the expiration of 30 days from the receipt of written notice to the applicable Benefited Party specifying in reasonable detail the terms and conditions not complied with, or
- (iii) the Property Manager reasonably determines that any paver, irrigation system or roof drain Community Improvements are inadequate and the Benefited Party fails to cure or cannot cure, after notice of, and opportunity to cure, the default within the time frames set forth in such notice.

(e) Remedies

. Upon a default by the Benefited Party, the City will have, in addition to any and all other rights, remedies and recourses available at law or in equity, which may be exercised cumulatively, including specifically, the right (i) to terminate this Agreement as to the specific Licensed Property, and/or (ii) to perform or attempt to perform any unperformed covenant or agreement of the Benefited Party herein or in an Annexation Notice. For these purposes, Benefited Party hereby irrevocably authorizes the City to take any and all of the above-described action.

11. Eminent Domain

. If eminent domain is asserted on the Licensed Property by paramount authority, then the City will, to the extent permitted by law, cooperate with the Benefited Party to effect the removal of the Benefited Party's affected Community Improvements thereon. The City may retain all monies paid by the condemning authority for Community

Improvements taken, if any.

12. Venue

Venue for all lawsuits concerning this Agreement must be in the State District Courts of Austin, Travis County, Texas.

13. Waiver of Default

Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

14. Assignment

Notwithstanding anything in the contrary contained herein, Benefited Party cannot assign or transfer its rights herein, except to the Association as provided herein or in accordance with the MDA. Any assignment to the Association may be a partial assignment or a full and complete assignment of Benefited Party's rights and responsibilities hereunder. From and after the date Benefited Party assigns this Agreement to the Association or to any other party in accordance with the MDA, in whole or in part, Benefited Party shall be relieved and released from all obligations and liabilities from that day forward as to all portions of the Licensed Property covered by any such assignment.

15. Notice

Formal notices, demands and communications will be sufficiently given if, and will not be deemed given unless, delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

If to the City:

City of Austin
P.O. Box 1088
Austin, Texas 78767-8839
Attention: Real Estate Services Division

If to Benefited Party:

Catellus Austin, LLC
c/o Catellus Development Corporation
816 Congress Avenue, Suite 1540
Austin, Texas 78701
Attention: Greg Weaver

If to the Association:

To the address provided by the Association, or if no address is provided, to its record address with the Travis Central Appraisal District.

Such written notices, demands, and communications will be effective on the date shown on the delivery record as the date delivered (or the date on which delivery was refused) or in the case of certified mail two (2) business days following deposit of such instrument in the United States Mail.

16. Compliance with Laws

- . The Benefited Party covenants that all construction, installation, repair, maintenance, and removal of the Community Improvements permitted by this Agreement must be done in compliance with all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted.

17. Interpretation

- . Although drafted by the City, this Agreement must, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

18. Governing Law

- . This Agreement will be construed, interpreted and enforced in accordance with the laws of the State of Texas.

19. No Fee Conveyance

- . This Agreement will not be deemed to convey any fee title in or to any property or tracts of land, but merely to grant the licenses, rights and privileges set forth herein.

20. Counterparts

- . This Agreement may be executed in several counterparts, each of which will constitute an original and all of which together will constitute one and the same instrument.

21. No Waiver

- . Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof will constitute a waiver of either party's right to demand exact compliance with the terms hereof.

22. Severability

This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations, and is intended, and for all purposes will be deemed to be, a single, integrated document setting forth all of the agreements and understandings of the parties hereto, and superseding all prior negotiations, understandings and agreements of such parties with respect to the subject matter hereof. If any term or provision of this Agreement or the application thereof to any person or circumstance for any reason and to any extent is held to be invalid or unenforceable, then such term or provision will be ignored, and to the maximum extent possible, this Agreement will continue in full force and effect, but without giving effect to such term or provision.

23. Limitation on Liability. No Affiliate (as defined in the MDA) of Benefited Party and no officer, director, partner, member, official or employee of Benefited Party or any such Affiliate shall be personally liable to the City in the event of any default or breach by Benefited Party, or for any amount which may become due to the City, or on any obligations under the terms of this Agreement.

24. Consents and Approvals by the City. Unless expressly stated otherwise herein to the contrary, any approval, determination, consent, waiver or joinder by the City required hereunder may be given by the City Manager of the City or its designee; provided however, except for minor amendments or modifications, the City Manager does not have the authority to execute any substantial modification or amendment of this Agreement without approval of the Austin City Council.

[END OF TEXT – SIGNATURE AND NOTARY BLOCKS ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement to be effective as of the date first written above.

CITY:

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

By:
Name:

Title:

Approved as to form:

By:
Name:
Title:

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, _____ by _____, as _____ of the City of Austin, Texas, a home rule city and municipal corporation, on behalf of said municipal corporation.

Printed Name:
Notary Public in and for the State of Texas

My Commission Expires: _____

BENEFITED PARTY:

CATELLUS AUSTIN, LLC, a Delaware limited liability company

By:
Name:

Title:

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

 This instrument was acknowledged before me on this the _____ day
of _____, _____ by _____, of Catellus
Austin, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Printed Name:
Notary Public in and for the State of Texas

My Commission Expires: _____

EXHIBIT A
TO MASTER LICENSE AGREEMENT
PROPERTY

EXHIBIT B
TO MASTER LICENSE AGREEMENT

After Recording Return To:

**Master License Agreement
Annexation Notice**
(Community Property)

This Master License Agreement Annexation Notice (the "Annexation") is hereby made as of _____, 20__, between CATELLUS AUSTIN, LLC, a Delaware limited liability company ("Benefited Party"), and the CITY OF AUSTIN, TEXAS, a Texas home rule city and municipal corporation (the "City"), with reference to the following facts:

1. Pursuant to Sections 1 and 2 of the Master License Agreement (Community Property) (the "Agreement") dated _____, 2004, the "Licensed Property" described on the property description attached hereto as Exhibit A and sketch attached hereto as Exhibit B is hereby annexed into the Agreement. The Licensed Property is subject to the terms and conditions of the Agreement.

2. The Licensed Property annexed hereby will be used for the following Community Improvements in accordance with the terms and conditions of the Master License Agreement:

_____.

3. The specifications for these Community Improvements are attached as Exhibit C.

[END OF TEXT – SIGNATURE AND NOTARY BLOCKS ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Annexation to be effective as of the date first written above.

CITY:

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

By:
Name:

Title:

Approved as to form:

By:
Name:
Title:

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, _____ by _____, as _____ of the City of Austin, Texas, a home rule city and municipal corporation, on behalf of said municipal corporation.

Printed Name:
Notary Public in and for the State of Texas

My Commission Expires: _____

CATELLUS:

CATELLUS AUSTIN, LLC, a Delaware limited liability company

By:

Name: _____

Title: _____

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, _____ by _____, of Catellus Austin, LLC, a Delaware limited liability company, on behalf of said limited liability company.

Printed Name:

Notary Public in and for the State of Texas

My Commission Expires: _____

EXHIBIT A
TO ANNEXATION NOTICE
PROPERTY DESCRIPTION

EXHIBIT B
TO ANNEXATION NOTICE
SKETCH

EXHIBIT C
TO ANNEXATION NOTICE
SPECIFICATIONS

After Recording Return To:

Mueller License Agreement
(Private Improvements)

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS MUELLER LICENSE AGREEMENT (this "Agreement") is made to be effective as of _____, 2004, by the CITY OF AUSTIN, TEXAS, a Texas home rule city and municipal corporation (the "City"), acting through its duly authorized agent the City Manager or designee, who for purposes of this Agreement is the Manager of Real Estate Services Division of the Public Works Department ("Property Manager"), with reference to the following facts:

- (A) On the date of this Agreement, Catellus Austin, LLC, a Delaware limited liability company ("Catellus"), and the City have executed that certain Master Development Agreement (the "MDA"), pursuant to which Catellus, in its role as master developer, is to redevelop and/or sell portions of the property commonly known as the former Robert Mueller Municipal Airport, located in the City of Austin, Travis County, Texas, as more particularly described on Exhibit A attached hereto (the "Property").
- (B) As part of the redevelopment of the Property, Catellus intends to construct infrastructure (i.e., common streets and utilities) on the Property pursuant to the MDA.
- (C) Following completion of such infrastructure, tenants or other end-users will occupy certain vertical improvements (i.e., buildings, garages, and other amenities) constructed on individual lots of the Property (the "Construction") for their own private use.
- (D) Portions of the Construction on a lot may take place in adjacent current and/or future publicly dedicated areas (other than park land).
- (E) From time to time after the execution of this Agreement, to facilitate a private owner's use of certain Construction improvements for an adjacent lot (each lot, an "Adjacent Property"), the City intends to grant the Adjacent Lot owner (each such

owner, a "Benefited Party") specific licenses to use and maintain such improvements in the adjacent publicly dedicated area of the Adjacent Property (the "Licensed Property") as provided herein.

- (F) The redevelopment of the Property will occur over many years. The City intends that, during such redevelopment, Licensed Property will, from time to time, be continually added to this Agreement.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

1. Grant

Effective upon (a) Benefited Party's compliance with all procedures and requirements necessary to apply for a license agreement with the City (including submittal of an Application for License Agreement), and (b) execution of an Annexation Notice (herein so called) substantially in the form attached hereto as Exhibit B for each individual parcel of Licensed Property, the City hereby grants a license (the "License") to such Benefited Party to use and maintain the Licensed Property. Each Licensed Property, and the use to be made of each Licensed Property, will be more particularly described in the applicable Annexation Notice. The City makes this grant solely to the extent of its right, title and interest in the Licensed Property, without any express or implied warranties, and subject to all present and future matters of record affecting the Licensed Property.

2. Purpose

The License granted hereby to use the Licensed Property is intended to include, without limitation, the installation, repair, maintenance and removal of improvements such as furniture, art, railings, signs, trash receptacles, trails, pavers, sidewalks, retaining walls, fences, trees, tree wells and grates, landscaping, irrigation systems, balconies, awnings, light fixtures, doors, cornices, and roof drains (which must be installed completely underground when it reaches ground level) (collectively, "Private Improvements"), as more particularly specified in the applicable Annexation Notice.

3. Successors and Assigns; Transfer of Ownership

- (a) This Agreement, until its termination or expiration, will automatically:
- (i) inure to the benefit of the City, its successors and/or assigns,
 - (ii) inure to the benefit of each Benefited Party, their respective successors and/or assigns, and
 - (iii) run with the land (i.e., burden the Licensed Property through any

transfers of the Licensed Property and benefit the Adjacent Property through any transfers of the Adjacent Property).

- (b) Within 30 days following the filing of a deed transferring ownership of an Adjacent Property, the new owner thereof will deliver written notice of such transfer to the City together with its current mailing address and will update any changes to such mailing address in the same manner.

4. Consideration

The applicable Benefited Party covenants to properly and timely maintain the Private Improvements in good condition and repair, subject to reasonable wear, tear and casualty damage. As additional consideration for being granted the License in this Agreement, if the City causes damage to, or destruction of, the Private Improvements, the applicable Benefited Party covenants not to sue the City, or pursue other methods against the City to recover costs of repairing or replacing the Private Improvements, **SPECIFICALLY INCLUDING DAMAGES AND DESTRUCTION WHICH MAY RESULT FROM THE CITY'S STRICT LIABILITY, NEGLIGENCE OR MISCONDUCT.**

5. Term

This Agreement begins on the effective date hereof and continues thereafter for so long as any Licensed Property is covered by the terms of this Agreement.

6. Limits on License

The existence of this Agreement is expressly subordinate to the present and future right of the City, its successors, assigns, lessees, and grantees, to construct, install, establish, maintain, use, operate, and renew any public utilities facilities, franchised public utilities, rights-of-way, sidewalks, bike paths, public art, roadways, or streets on, beneath, or above the surface of the Licensed Property (collectively, the "Facilities"). If the City's uses of the Licensed Property that are consistent with the foregoing provision substantially interfere with or destroy the Benefited Party's use of the Licensed Property, or any Private Improvements placed thereon or therein, then City will have the option to terminate this Agreement as to such specific Licensed Property and the Benefited Party must immediately remove its Private Improvements at its cost.

7. Conditions

(a) Repair or Relocate Existing Facilities

The Benefited Party must pay all costs required to repair damage to any existing Facilities and the Benefited Party's Private Improvements, which are

damaged or destroyed or are relocated as a result of activities under this Agreement by, or on behalf of, the Benefited Party.

(b) Removal or Modification of Private Improvements

The Benefited Party agrees to pay all costs required to remove or modify any Private Improvements now existing or to be replaced if the Property Manager determines that the Private Improvements need to be removed or modified. In the event such Private Improvements are removed and the removal of such Private Improvements cause this Agreement to be unnecessary as to a portion of the Licensed Property, this Agreement will automatically terminate as to such specific Licensed Property. In that event, the Benefited Party will have no further obligations under this Agreement or otherwise to maintain any such portion of the Licensed Property. Without the consent of the owners of the Adjacent Property (if more than one) a Benefited Party may not remove or modify the Private Improvements. No person may materially modify Private Improvements without the consent of the City, except that the City's consent will not be required in the event the Private Improvements are wholly or partially destroyed and the Benefited Party reconstructs such Private Improvements to substantially the condition which existed immediately prior to such destruction, in accordance with all applicable laws.

(c) Maintenance

Each Benefited Party will maintain its Licensed Property by keeping the area free of debris and litter on an ongoing basis. Further, each Benefited Party must timely and properly maintain its Private Improvements.

(d) Special Provisions

- (i) Any roof drain Private Improvements must not discharge directly onto a sidewalk area, but must discharge directly into the storm drain system. Discharging directly to sidewalk area is grounds for immediately terminating this Agreement as to the specific Licensed Property. If the Property Manager determines that roof drain Private Improvements are not functioning as anticipated or are inadequate to drain all the roof water, Benefited Party must install additional or larger inlets into the storm drain system within 60 days after Property Manager sends notice to the applicable Benefited Party.
- (ii) Any paver, irrigation system, or roof drain Private Improvements must be repaired or replaced within 48 hours of the time any damage is or should have been discovered by the applicable

Benefited Party.

(e) Recording

- . The City will file both this Agreement and each Annexation Notice in the Real Property Records of Travis County to inform all future owners of any interest in the Property of the existence of this Agreement and the obligations hereunder. The Benefited Party must file any assignment and assumption of its rights in the Real Property Records of Travis County.

(f) City Removal.

If the Property Manager deems it is necessary: (i) to exercise the City's rights or duties with respect to the Licensed Property, (ii) to protect persons or property, or (iii) for the public health or safety with respect to the Licensed Property, the City may enter the Licensed Property and remove the Community Improvements without giving notice and without incurring any obligation to the Benefited Party.

8. Insurance

- During the term of this Agreement, each Benefited Party will provide insurance over the Licensed Property in accordance with the City's procedures and requirements for obtaining a license agreement, as amended from time to time.

9. Indemnification

- Each Benefited Party as to its Licensed Property and related Private Improvements hereby fully indemnifies, saves, and holds harmless the City, its officers, employees, agents, and licensees (collectively called "Indemnitees") against any and all liability, damage, loss, claims, demands, and actions of any nature whatsoever, on account of personal injury (including without limitation, workers' compensation and death claims), or property loss or damage of any kind whatsoever, which arises, or is claimed to arise, out of or is, or is claimed to be, in any manner connected with, construction, installation, existence, operation, use maintenance, repair, restoration, or removal of the Private Improvements on its Licensed Property pursuant to this Agreement, **INCLUDING ANY INJURY, LOSS, OR DAMAGE CAUSED BY THE SOLE OR CONTRIBUTORY NEGLIGENCE OF THE INDEMNITEES, OR ANY OF THEM.** The Benefited Party must, at its own expense, investigate all those claims and demands, attend to their settlement or other disposition, defend all actions based thereon using counsel reasonably satisfactory to Indemnitees' City Attorney, and pay all reasonable attorneys' fees and all other reasonable cost and expenses of any kind arising from any aforesaid liability, damage, loss, claims, demands, or actions.

10. Termination and Default

(a) Termination by a Benefited Party

- A Benefited Party may terminate this Agreement as it relates to its Licensed Property by delivering written notice of termination to the Property Manager not later than 30 days before the effective date of termination and the Benefited Party, following the request of the City, will remove all its Private Improvements from its Licensed Property within the 30-day notice period at its sole cost and expense. Failure to do so constitutes a default of this Agreement and authorizes the Property Manager to notify the Benefited Party of the cost of such removal and disposal and the Benefited Party will pay such costs within 30 days of such notice.

(b) Termination by City

- Subject to prior written notification to the Benefited Party, this Agreement is revocable by the Property Manager as to a specific Licensed Property if, as

applicable to a Licensed Property:

- (i) the Private Improvements, or a portion of them, interfere with the City's right-of-way,
- (ii) the use of the right-of-way area which the Licensed Property is located becomes necessary for a public purpose, or
- (iii) the Private Improvements, or a portion of them, constitute a danger to the public, which the Property Manager deems not to be remediable by alteration or maintenance of such Private Improvements.

(c) Termination by Abandonment

- . If the Benefited Party abandons or fails to maintain its Licensed Property, and the Property Manager receives no substantive response within 30 days following written notification to such Benefited Party, then the City may remove and/or replace all applicable Private Improvements. Benefited Party covenants to pay the City's reasonable and actual expenses incurred in connection therewith within 30 days after being billed therefor. All of the Benefited Party's Private Improvements not removed and located on the portion of the Licensed Property which has been removed from the jurisdiction of this Agreement are deemed property of the City when abandoned by the Benefited Party.

(d) Default

- . The applicable Benefited Party will be in default under this Agreement if:
 - (i) such Benefited Party fails to pay within 10 days from the receipt of written demand any monetary payment then due under this Agreement, or
 - (ii) such Benefited Party fails to comply with the terms or conditions of this Agreement after the expiration of 30 days from the receipt of written notice to the applicable Benefited Party specifying in reasonable detail the terms and conditions not complied with, or
 - (iii) the Property Manager determines that any paver, irrigation system or roof drain Private Improvements are inadequate and the Benefited Party fails to cure or cannot cure, after notice of, and opportunity to cure, the default within the time frames set forth therein.

(e) Remedies

- . Upon a default by a Benefited Party, the City will have, in addition to any and all other

rights, remedies and recourses available at law or in equity, which may be exercised cumulatively, including specifically, the right (i) to terminate this Agreement as to the specific Licensed Property, and/or (ii) to perform or attempt to perform any unperformed covenant or agreement of a Benefited Party herein or in an Annexation Notice. For these purposes, Benefited Party hereby irrevocably authorizes the City to take any and all of the above-described action. All sums expended by the City for any of the above purposes are due and payable and secured by a lien on that portion of the Property owned by such Benefited Party, which lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages on real property are foreclosed under Texas law, and costs of collection (including attorneys and paralegals fees and expenses). Such lien will be superior to all other liens except for tax liens and all sums secured by a first mortgage lien or first deed of trust lien of record, to the extent such lien secures sums borrowed for the acquisition or improvement of the applicable Property, provided such mortgage or deed of trust lien was recorded in the Official Public Records of Travis County, Texas. In any lien enforcement action, the City may bid for the property at the foreclosure sale and acquire, hold, lease, mortgage, and convey the property.

11. Eminent Domain

. If eminent domain is asserted on the Licensed Property by paramount authority, then the City will, to the extent permitted by law, cooperate with the Benefited Party to effect the removal of the Benefited Party's affected Private Improvements thereon, at the Benefited Party's sole expense. The Benefited Party may retain all monies paid by the condemning authority for Private Improvements taken, if any.

12. Venue

. Venue for all lawsuits concerning this Agreement must be in the State District Courts of Austin, Travis County, Texas.

13. Waiver of Default

. Either party may waive any default of the other at any time, without affecting or impairing any right arising from any subsequent or other default.

14. Notice

. Formal notices, demands and communications will be sufficiently given if, and will not be deemed given unless, delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

If to the City:

City of Austin
P.O. Box 1088
Austin, Texas 78767-8839
Attention: Real Estate Services Division

If to a Benefited Party:

To the address provided by the Benefited Party, or if no address is provided, to the record address for such party with the Travis Central Appraisal District.

Such written notices, demands, and communications will be effective on the date shown on the delivery record as the date delivered (or the date on which delivery was refused) or in the case of certified mail two (2) business days following deposit of such instrument in the United States Mail.

15. Compliance with Laws

- . The Benefited Party covenants that all construction, installation, repair, maintenance, and removal of the Private Improvements permitted by this Agreement must be done in compliance with all applicable City, County, State and/or Federal laws, ordinances, regulations and policies now existing or later adopted.

16. Interpretation

- . Although drafted by the City, this Agreement must, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

17. Governing Law

- . This Agreement will be construed, interpreted and enforced in accordance with the laws of the State of Texas.

18. No Fee Conveyance

- . This Agreement will not be deemed to convey any fee title in or to any property or tracts of land, but merely to grant the licenses, rights and privileges set forth herein.

19. Counterparts

- . This Agreement may be executed in several counterparts, each of which will constitute an original and all of which together will constitute one and the same instrument.

20. No Waiver

- . Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any

custom or practice of the parties at variance with the terms hereof will constitute a waiver of either party's right to demand exact compliance with the terms hereof.

21. Severability

- . This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations, and is intended, and for all purposes will be deemed to be, a single, integrated document setting forth all of the agreements and understandings of the parties hereto, and superseding all prior negotiations, understandings and agreements of such parties with respect to the subject matter hereof. If any term or provision of this Agreement or the application thereof to any person or circumstance for any reason and to any extent is held to be invalid or unenforceable, then such term or provision will be ignored, and to the maximum extent possible; this Agreement will continue in full force and effect, but without giving effect to such term or provision.

[END OF TEXT – SIGNATURE AND NOTARY BLOCKS ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement to be effective as of the date first written above.

CITY:

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

By:
Name:

Title:

Approved as to form:

By:
Name:
Title:

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, _____ by
_____, as _____ of the City of Austin, Texas, a home rule city and
municipal corporation, on behalf of said municipal corporation.

Printed Name:
Notary Public in and for the State of Texas

My Commission Expires: _____

EXHIBIT A
TO MUELLER LICENSE AGREEMENT
PROPERTY

EXHIBIT B
TO MUELLER LICENSE AGREEMENT

After Recording Return To:

**Mueller License Agreement
Annexation Notice**
(Private Improvements)

This Mueller License Agreement Annexation Notice (the "Annexation") is hereby made as of _____, 20__, between _____ ("Benefited Party"), and the CITY OF AUSTIN, TEXAS, a Texas home rule city and municipal corporation (the "City"), with reference to the following facts:

1. Pursuant to Sections 1 and 2 of the Mueller License Agreement (Private Improvements) (the "Agreement") dated _____, 2004, the "Licensed Property" described on the property description attached hereto as Exhibit A and sketch attached hereto as Exhibit B is hereby annexed into the Agreement. The Licensed Property is subject to the terms and conditions of the Agreement.

2. The Licensed Property annexed hereby will be used for the following Private Improvements in accordance with the terms and conditions of the Mueller License Agreement:

_____.

3. The specifications for these Private Improvements are attached as Exhibit C.

4. The property attached hereto as Exhibit D is deemed an "Adjacent Property" under the Agreement. The Benefited Party agrees to be bound by the terms and conditions of the Agreement.

[END OF TEXT – SIGNATURE AND NOTARY BLOCKS ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Annexation to be effective as of the date first written above.

CITY:

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

By:
Name:

Title:

Approved as to form:

By:
Name:
Title:

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, _____ by _____, as _____ of the City of Austin, Texas, a home rule city and municipal corporation, on behalf of said municipal corporation.

Printed Name:
Notary Public in and for the State of Texas

My Commission Expires: _____

BENEFITED PARTY:

By:
Name:

Title:

[INSERT APPROPRIATE ACKNOWLEDGEMENT FORM BASED ON ENTITY TYPE]

ANNEXATION NOTICE
ADJACENT PROPERTY OWNER'S CONSENT

The undersigned ("Adjacent Property Owner") as the owner of the Adjacent Property referenced in this Annexation hereby consents to the Mueller License Agreement (Private Improvements) dated _____, 2004 (as amended, modified and supplemented, from time to time) and this Mueller License Agreement Annexation Notice (Private Improvements) and agrees to be bound by the terms thereof.

Notice Address of Adjacent Property Owner	ADJACENT PROPERTY OWNER:
Attention:	By: Name: Title:

STATE OF _____ §

COUNTY OF _____

This instrument was acknowledged before me on this the _____ day of _____, _____ by _____, _____ a _____, on behalf of said _____.

Printed Name: _____
Notary Public in and for the State of Texas

My Commission Expires:

ANNEXATION NOTICE ADJACENT PROPERTY LIENHOLDER CONSENT

The undersigned ("Lienholder"), which holds lien(s) on the Adjacent Property, including, without limitation, the following lien:

deed of trust/mortgage _____ dated _____ executed by
_____ to _____ and recorded on
_____ under Document Number _____ in the Real Property
Records of Travis County, Texas;

hereby consents to the Mueller License Agreement (Private Improvements) dated _____, 2004 (as amended, modified and supplemented, from time to time) and this Mueller License Agreement Annexation Notice (Private Improvements) and agrees that its liens are subject and subordinate to the Agreement, and that the undersigned has the authority to bind the Lender, and that all acts necessary to bind the Lender have been taken.

Notice Address of Lienholder	LIENHOLDER:
Attention:	By: Name: Title:

STATE OF _____ §
COUNTY OF _____ §

This instrument was acknowledged before me on this the ____ day of _____, _____ by _____, _____, a _____, on behalf of said _____.

Printed Name: _____
Notary Public in and for the State of Texas

My Commission Expires:

EXHIBIT A
TO ANNEXATION NOTICE
PROPERTY DESCRIPTION

EXHIBIT B
TO ANNEXATION NOTICE
SKETCH

EXHIBIT C
TO ANNEXATION NOTICE
SPECIFICATIONS

EXHIBIT D
TO ANNEXATION NOTICE
ADJACENT PROPERTY