ORDINANCE NO. 041202-56

AN ORDINANCE APPROVING AN ANCILLARY AGREEMENT WITH CATELLUS AUSTIN, LLC, REGARDING REDEVELOPMENT OF THE MUELLER PROPERTY; AND WAIVING REQUIREMENTS OF CHAPTER 5-1 AND SECTION 25-1-112 OF THE CITY CODE.

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

PART 1. The Councils finds that:

(A) Catellus Austin, LLC, ("Catellus") and the City of Austin ("City") have negotiated a Master Development Agreement (Agreement) relating to 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 the following 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:

(1) use of a dense, urban mixed-use neighborhood that follows traditional neighborhood district guidelines;

(2) use of S.M.A.R.T. Housing™ that results in a sustainable, energy-efficient, accessible, affordable, and transit-oriented community;

(3) allocation of 25 percent of all residential units as affordable housing, generally spread throughout Mueller, at or below 80 percent of Median Family Income for ownership units and at or below approximately 60 percent of Median Family Income for rental units.

(C) The Agreement provides significant social and economic benefits for the neighborhoods surrounding Mueller, furthers the public health, safety, and welfare, and serves the interests of current and future residents of Austin.

(D) 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 Ancillary Agreement attached to and incorporated in this ordinance as Exhibit A.

PART 3. Council waives the requirements of Article 3 of Chapter 5-1 (*Accessibility in Housing Constructed with Public Funds*) of the Code to the extent that the requirements conflict with the terms of the Ancillary Agreement.

PART 4. The Council waives the fiscal posting requirements of Section 25-1-112 (*Fiscal Security*) of the Code and adopts the methodology set out in the Ancillary Agreement for the purposes specifically stated in the Ancillary Agreement.

PART 5. This ordinance takes effect on December 13, 2004.

PASSED AND APPROVED

December 2, 2004 §
§
§

Will Wynn
Mayor

APPROVED: David Allan Smith
City Attorney

ATTEST: Shirley A. Brown
City Clerk

EXHIBIT A

EXHIBIT A

ANCILLARY AGREEMENT

This Ancillary Agreement (this "Agreement") is entered into to be effective as of the ____ day of _____, 2004, among **THE CITY OF AUSTIN**, a Texas home rule city and municipal corporation ("City") and **CATELLUS AUSTIN, LLC**, a Delaware limited liability company ("Catellus").

RECITALS:

A. City and Catellus entered into that certain Master Development Agreement ("MDA") dated of even date herewith concerning the redevelopment of certain City property commonly known as Robert Mueller Municipal Airport and more particularly described therein (the "Property").

B. Certain terms of the MDA conflict with City ordinances.

C. The parties wish to separately evidence the terms of the MDA which conflict with City ordinances in this Agreement and adopt this Agreement by ordinance of the City to amend the ordinances to waive the conflict.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. Capitalized Terms. Capitalized terms used herein but not defined have the meanings assigned to such terms in the MDA.

2. Visitability Ordinance. The Design Guidelines require that the front door entry of all residential homes be 18-36 inches above the surface of the adjacent street and that all yard houses and row houses have an alley vehicle entrance. Additionally, the Design Guidelines mandate lot sizes which are smaller than otherwise available in the City of Austin. Sections 5-1-131 through 5-1-145 of the Code, commonly called the "Visitability Ordinance", requires all residential units containing 3 or fewer units on one lot to have a ramp or a no step entry, 36"-wide doors and halls, and an accessible bathroom on the ground floor. Because the terrain of the Property which will be developed is not level, because of the small size of the lots and because the alley connection to the adjacent streets must have a gradual slope (to allow safe and unimpaired access to garbage/recycling trucks, fire trucks, and emergency vehicles), certain units, primarily on corner lots, will not be able to comply with both the Design Guidelines and the Visitability Ordinance. Catellus will make every reasonable effort to comply with the Visitability Ordinance, however, a maximum of 5-10% of the residential units on the Property will not comply. The City building official is authorized to grant an automatic exemption of the no-step entry requirement to 5% of the affected residential units, upon being presented with empirical information that: (i) the area of the lot is no greater than

the minimum square footage required for an SF-4 lot, plus up to a 10% tolerance on square footage, (ii) the lot is either a corner lot, next to a corner lot, or a lot that is otherwise impacted by the unique location and topography of the lot, and (iii) health or public safety alley access will be impaired if the affected residential units must comply with the Visitability Ordinance. Catellus may request an additional 5% exemption from City Council.

3. Fiscal Posting Credit Bank. The City grants to Catellus an account of credits in an amount not to exceed $25,000,000 (the "Fiscal Posting Credit Bank"); provided, however, in the sole discretion of the City as necessary for the continued development of the Property as contemplated herein, such amount may be increased in such amounts as the City determines for the posting of fiscal deposits with the City concerning Catellus' redevelopment of the Property (including any offsite traffic improvements for the benefit of the Property but not any vertical non-Open Space improvement on the Property) but not the Pre-MDA Phase. In the event the Fiscal Posting Credit Bank has been utilized and is unavailable as provided below, the City and Catellus shall work together in good faith to determine if any portion of the Fiscal Posting Credit Bank which is unavailable may be released and reutilized because the applicable portions of development have been substantially completed. To utilize the Fiscal Posting Credit Bank, Catellus will deliver a written notice to the City specifying in reasonable detail the fiscal posting for which such credits are to be used (each such notice, an "FPCB Request"). Upon approval of an FPCB Request, such designated portion of the Fiscal Posting Credit Bank, to the extent available, will serve as the fiscal deposit which would otherwise be required by Applicable Laws (such portion, an "FPCB Deposit"). During the time an FPCB Deposit is outstanding, such amount will be unavailable under the Fiscal Posting Credit Bank until such time as the City releases such FPCB Deposit in accordance with Applicable Laws that would otherwise be applicable to a posting of fiscal security. When an FPCB Deposit, or portion thereof, is so released by the City, the associated portion of the Fiscal Posting Credit Bank will again be available. The Fiscal Posting Credit Bank is personal to Catellus and will not run with the Property, but will be available to a Qualified Transferee or any other transferee approved by the City under Section 11.15 of the MDA. Any interest on the Fiscal Posting Credit Bank will accrue to the benefit of the City. Any remaining balance in the Fiscal Posting Credit Bank on the termination date or expiration hereof will be released to the City and will not be available hereunder. The City will maintain the records reflecting the balance of the Fiscal Posting Credit Bank. Upon written request, the City shall provide Catellus with the balance and available credits of the Fiscal Posting Credit Bank. In no event may any portion of the Fiscal Posting Credit Bank be utilized to deconstruct or construct improvements on the Hospital Property.

4. Miscellaneous. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid, such illegal or invalid term or provision does not affect the balance of the terms and provisions hereof. In the event any action or suit is brought by reason of any breach of this Agreement or any other dispute between the parties concerning this Agreement, then the prevailing party shall be entitled to have and recover from the other party all costs and expenses of suit, including reasonable attorneys' fees. This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Texas. This Agreement is to be deemed to have

been prepared jointly by the parties hereto, and if any inconsistencies or ambiguities exist herein, they will not be interpreted or construed against either party as the drafter. The parties shall take such actions and execute such documents as each may reasonably request to carry out the purposes of this Agreement. All paragraph headings are inserted for convenience only and shall not be used in any way to modify, limit, construe or otherwise affect this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which, together, shall constitute one and the same instrument.

5. Assignment. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted heirs, successors, legal representatives and assigns. This Agreement will automatically be assigned with any permitted assignment of the MDA.

6. Consents and Approvals. Unless expressly stated otherwise herein to the contrary, any approval, agreement, 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, 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.

7. Correction of Technical Errors. If, by reason of inadvertence, and contrary to the intention of the City and Catellus, errors are made in this Agreement in the typing of this Agreement or any other similar matters, the parties by mutual agreement may correct such error by memorandum executed by them without the necessity of amendment of this Agreement.

8. Austin City Code Amendment. This Agreement is approved by ordinance of the Austin City Council and the ordinance adopting this Agreement is an amendment to the Austin City Code to the extent necessary to give effect to this Agreement. It is specifically acknowledged that all procedures required for the enactment of such ordinances have been duly observed.

[END OF TEXT - SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, this Agreement is executed by the parties to be effective as of the date first above written.

CATELLUS:

CATELLUS AUSTIN, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

[SIGNATURE BLOCKS CONTINUE ON FOLLOWING PAGE]

CITY:

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

By: _____
Name: _____
Title: _____