ORDINANCE NO. 20101014-013

AN ORDINANCE AUTHORIZING EXECUTION OF A MASTER DEVELOPMENT AGREEMENT WITH CONSTRUCTIVE VENTURES, INC. AND TC AUSTIN DEVELOPMENT, INC. FOR DEVELOPMENT OF THE AUSTIN ENERGY CONTROL CENTER PROPERTY; ADOPTING BUILDING ACCESS AND AREA OF REFUGE REQUIREMENTS; AND APPROVING A MANAGED GROWTH AGREEMENT.

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

PART 1. FINDINGS. The city council finds that:

A. On February 14, 2008, the City of Austin initiated a Request for Proposal ("RFP") for the sale and redevelopment of the Thomas C. Green Water Treatment Plant and Austin Energy Control Center properties. The RFP required proposals to include both properties, but included different standards and criteria for development of each site.

B. Of the five proposals submitted in response to the RFP, the proposal by TC Austin Development, Inc. ("Trammell Crow") was selected as the successful proposal in satisfaction of Texas law requiring competitive bidding. Trammell Crow's proposal identified Constructive Ventures, Inc. ("CVI") as a member of its development team and as the lead developer for the for-sale residential portion of the proposed development.

C. The City entered into an Exclusive Negotiating Agreement with Trammell Crow on August 11, 2008.

D. Trammell Crow and CVI have represented that they are duly organized and legally existing under the laws of their state of organization. Trammell Crow and CVI are qualified to do business in the State of Texas.

PART 2. AUTHORIZATION TO EXECUTE. The City Manager is authorized to execute the ECC Master Development Agreement ("MDA") attached as Exhibit A to this ordinance and incorporated herein by reference, as well as all ancillary documents attached thereto as exhibits or as otherwise necessary to implement the Agreement. The agreement shall be between the City of Austin and CVI and shall be consented to by Trammell Crow.

PART 3. ALTERNATE ACCESS AND AREA OF REFUGE REQUIREMENTS.

A. <u>Authorization for use of interlocking stairs</u>.

1. As used in Part 3.A of this ordinance, the term "interlocking stairs" means a stairway in which two stairwells are run in the same shaft such that the stairwells cross at alternating floors.

2. Notwithstanding any City of Austin code requirement, policy, or rule, including but not limited to requirements of the Land Development Code, the Building Code, the Fire Code, or any administrative rule or policy, development within the boundaries shown on Exhibit A to the MDA approved in Part 2 of this ordinance may utilize interlocking stairs to satisfy applicable building ingress and egress requirements, subject to the following provisions:

   (a) The design must demonstrate to the Building Official and the Fire Code Official a level of safety for fire access and ingress that is equivalent to, or better than, the level of safety that would be provided by compliance with the minimum requirements of the 2003 International Building Code (IBC) and 2003 International Fire Code (IFC). Subject to these standards, IBC Sections 104.11 (*Alternate materials, design and method of construction and equipment*) and IFC Section 104.9 (*Alternate materials and methods*) may be employed with respect to each of the following:

      (i) remoteness of exits;

      (ii) egress capacity;

      (iii) fire resistance;

      (iv) resistance to compromise by a single accidental or intentional act;

      (v) smoke management or control;

      (vi) areas of refuge or rescue assistance;

      (vii) emergency communications; and

      (viii) installed fire protection and suppression systems.

3. Solely by way of illustration, and without limiting alternate building designs or configurations, the following approved developments are examples of projects that utilize interlocking stairs which satisfy the requirements in Part 3.A of this ordinance:

(a) Spring Condominiums
300 Bowie Street
Austin, TX 78703

(b) 7 Rio
615 West Seventh Street
Austin, TX 78701

(c) Tara Condominiums
Sacramento, CA

B. Compliance with area of refuge requirements.

Compliance with the area of refuge requirements for development within the boundaries shown on Exhibit A to the MDA approved in Part 2 of this ordinance shall be determined in a manner consistent with the area of refuge approved by the City of Austin for the Spring Condominiums at 300 Bowie Street, Austin TX 78703.

PART 4. MANAGED GROWTH AGREEMENT.

A. Finding. The city council finds that development of the ECC site in accordance with the ECC Master Development Agreement approved in Part 2 of this ordinance constitutes a large, long-term project under City Code Section 25-1-540 (*Managed Growth Agreement*).

B. Approval of Managed Growth Agreement. The city council approves the Managed Growth Agreement ("MGA") included in Part 3.3(j) of the MDA approved in Part 2 of this ordinance. To the extent the MGA conflicts with City Code, the MGA controls.

PART 5. ADDITIONAL FINDINGS. The city council finds that, at the time ECC property is available for redevelopment under the terms of the MDA:

1. sale of the ECC property will not impede or disrupt operations of Austin Energy;
2. the property will be surplus to the operations of Austin Energy and will not constitute a substantial part of its facilities, which total approximately $3.5 billion compared to the approximately $14.5 million value of the ECC; and
3. an adequate replacement will be in place to create sufficient revenues and to pay debt of the Austin Energy electric utility.

PART 6. This ordinance takes effect on October 25, 2010.

PASSED AND APPROVED

October 14, 2010 § Lee Leffingwell
§ Mayor
§

APPROVED: Karen M. Kennard
Acting City Attorney

ATTEST: Shirley A. Gentry
City Clerk

Exhibit A

ECC MASTER DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF AUSTIN

AND

CONSTRUCTIVE VENTURES, INC.

CONCERNING THE DEVELOPMENT OF THE ENERGY CONTROL CENTER

AUSTIN, TEXAS

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ECC MASTER DEVELOPMENT AGREEMENT

This ECC Master Development Agreement (this "**Agreement**") is made to be effective as of the ___ day of _____, 2010 (the "**Effective Date**"), between THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the "**City**") and CONSTRUCTIVE VENTURES, INC., a Texas corporation ("**Developer**").

RECITALS

A. On March 4, 2008, the City issued a Request for Proposal ("**RFP**") to develop the property currently known as the Energy Control Center (as more particularly defined below, the "**Property**") and the Green Water Treatment Plant (the "**GWTP**"), both located in downtown Austin, Texas.

B. On April 30, 2008, a strategic alliance of Trammell Crow Company, Constructive Ventures Inc. and USAA (the "**TCC/CVI Development Group**") submitted a response (the "**RFP Response**") to the RFP for the development of the Property and GWTP.

C. On June 18, 2008, the RFP Response was selected by the City Council of the City of Austin as the winning proposal for the development of the Property and the GWTP in satisfaction of Texas law requiring competitive bidding for certain sales or conveyances of public property.

D. The RFP Response designated TC Austin Development, Inc., a Delaware corporation (a wholly owned subsidiary of Trammell Crow Company) ("**TC Austin**") as the point of contact for the TCC/CVI Development Group. Within the TCC/CVI Development Group, the RFP Response designates the Developer as the lead developer of the Property.

E. The City and TC Austin entered into an Exclusive Negotiating Agreement (as extended, the "**ENA**") dated effective August 11, 2008, concerning certain rights to negotiate the terms of this Agreement for the initial development of the Property and a master development agreement for the initial development of the GWTP.

F. As the parties are currently negotiating certain development issues which are specific to the GWTP, the parties desire to evidence their agreement with respect to the terms and conditions of the purchase, sale and redevelopment of the Property.

G. NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the City and Developer agree as follows:

ARTICLE I
DEFINED TERMS

1.1 Defined Terms. As used in this Agreement, terms used, but not defined in the body of this Agreement will have the meanings indicated:

"**Affiliate**" means any Person controlling, controlled by or under common control with any other Person. For the purposes of this definition, the term "control" when used

with respect to any Person means the power to direct the management or policies of such Person, directly or indirectly, whether through the ownership of voting securities, by law, regulation, contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Applicable Bankruptcy Law**" as defined in 8.1(g) hereof.

"**Bankruptcy Event**" means a petition for relief under the applicable bankruptcy law or an involuntary petition for relief is filed against Developer under any applicable bankruptcy law and such petition is not dismissed within sixty (60) days after the filing thereof, or an order for relief naming Developer is entered under any applicable bankruptcy law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Developer. A Bankruptcy Event may exist even if an Event of Default cannot be declared because of a Bankruptcy Event.

"**Business Day**" means any day other than a Saturday, Sunday, federally-mandated bank holiday, or the day after Thanksgiving. If the last day for performance of an act falls upon a day that is not a Business Day, then the last day for performance will automatically be extended until the next-following regular Business Day.

"**Certificate of Occupancy**" means (a) a Certificate of Occupancy of a shell building (or its equivalent), or (b) so long as Developer is diligently pursuing the certificate in (a) above, a temporary Certificate of Occupancy of a shell building (or its equivalent) which permits the occupancy of the Improvements covered thereby, each from all applicable Governmental Authorities.

"**City Security Instrument**" means a deed of trust delivered at the Takedown of the Property which secures payment of certain amounts hereunder in form and content attached hereto as Exhibit B.

"**City's Actual Knowledge**" and "**Actual Knowledge**", or similar language, means the actual, current, conscious knowledge of (a) the current or any future Director of the City's Economic Growth & Redevelopment Services Office as to knowledge of that person while he/she serves as Director, and (b) the current or any future internal legal counsel specifically assigned to the Property as to knowledge of that person while he/she serves as such counsel, without any duty of inquiry or investigation, and does not include constructive, imputed or inquiry knowledge.

"**Claim**" as defined in Section 7.2(a) hereof.

"**Commence Construction**" and "**Commencement of Construction**" mean the commencement of bona-fide excavation on the Property in preparation for the proposed "build out" of the improvements on the Property.

"**Complete Construction**" and "**Completion of Construction**" mean the day on which all of the following have been satisfied:

(a) the Improvements have been substantially completed in accordance with the plans and specifications therefor as evidenced by a certificate of substantial completion from Developer's architect as to the Improvements or engineer as to the Public Improvements, as applicable,

(b) all Governmental Authorities having jurisdiction have issued certificates of completion, certificates of occupancy or their equivalent, as applicable, for the Improvements, and

(c) all bills for such Improvements have been paid, are not yet due and payable or are being contested in good faith through appropriate proceedings.

"**Cure Period**" as defined in Section 4.4(c) hereof.

"**CWMOU**" means a Chilled Water Memorandum of Understanding between Developer and Austin Energy concerning the delivery of chilled water to the Property.

"**CWSA**" means a Chilled Water Service Agreement between Developer and Austin Energy concerning delivery of chilled water to the Property.

"**CWSA Holdback Escrow Agreement**" means the CWSA Holdback Agreement substantially in the form attached hereto as Exhibit I.

"**Declaration**" means the Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit C. While the intent of the term of this Agreement is to cover the initial development of the Property, the intent of the term of the Declaration is to cover a much longer period of time to ensure that the Property is maintained, reconstructed (if applicable) and redeveloped (if applicable) in accordance with the intent of this Agreement.

"**Deed**" means the Special Warranty Deed substantially in the form attached hereto as Exhibit D.

"**Disclosure Notice**" as defined in Section 2.3 hereof.

"**dollars**" or "**$**" means lawful money of the United States of America.

"**Environmental Site Assessments**" mean final written reports of the environmental condition of the Property and any response action (including removal and remediation) in the City's possession or control and prepared for the City by the City's environmental consultants.

"**Event of Default**" means any happening or occurrence described in Sections 8.1 or 8.3 hereof following the expiration of any applicable grace, notice or cure period.

"**Force Majeure**" means acts of God, strikes, lockouts or other industrial disturbances, shortages of labor or materials, war, acts of public enemies, terrorism, orders of any kind of the government of the United States, the State of Texas, Travis

County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, a party not receiving a governmental permit, license, approval or inspection in time to meet a contractual time period imposed hereunder provided that party, in good faith, was diligent in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, restraint of government and people, civil disturbances, explosions, acts or omissions of either party (or a subdivision thereof) to this Agreement or other causes not reasonably within the control of the party claiming such inability (except that in no event shall Force Majeure include (a) financial inability to perform unless such event, act or cause results primarily from the occurrence of a Force Majeure event described above, or (b) acts of the party claiming such inability, or a subdivision thereof, including without limitation any ordinances, regulations, orders or similar action by such party or a subdivision thereof).

"**Governmental Authority**" means any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

"**Hazardous Materials**" mean any substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Legal Requirements or common law, as "hazardous substance," "hazardous material," "hazardous waste," "acutely hazardous", "extremely hazardous waste," infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity, including any petroleum, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas) or derivatives thereof. "**Hazardous Materials**" also include, without limitation, those substances listed in the United States Department of Transportation Table (49 CFR 172.101, as amended).

"**Improvements**" means core and shell improvements (as opposed to tenant improvements completed by the end user of a space) of the Property constructed in accordance with this Agreement and the Declaration.

"**Infrastructure Payment**" means a payment in the amount of $1,000,000 to partially reimburse the City for the infrastructure costs associated with the sale of the Property to Developer. The Infrastructure Payment shall be paid pursuant to the terms of Section 6.1 hereof.

"**Inspection Right**" as defined in Section 3.3(g).

"**Legal Requirements**" mean applicable restrictive covenants (including the Declaration), service extension requests, zoning ordinances, and building codes; access, health, safety, environmental, and natural resource protection laws and regulations and all other applicable federal, state, and local laws, statutes, ordinances, rules, design criteria, regulations, orders, determinations and court decisions.

"**M/WBE**" as defined in Section 3.2(c).

"**M/WBE Ordinance**" means Chapter 2-9A, 2-9B, 2-9C, and 2-9D of the Austin City Code.

"**M/WBE Resolution**" means City Council Resolution No. 20071108-127 concerning M/WBE a copy of which is attached hereto as Exhibit E.

"**Objection Period**" as defined in Section 4.4(c) hereof.

"**Outside Takedown Date**" as defined in Section 4.1 hereof.

"**Permitted Encumbrances**" mean (a) general real estate taxes on the Property for the year of Takedown, if any, (b) the Declaration, (c) all exceptions to title coverage set forth in the Title Binder and any update thereto provided that no exception that first appears on any update to the Title Binder will be a Permitted Encumbrance unless it also qualifies under (d) or (e) immediately below, (d) all matters shown on the subdivision plat for the Property approved by Developer, which approval will not be unreasonably withheld, conditioned or delayed, (e) any other encumbrances approved, or caused, by Developer, and (f) any matter which is accepted by Developer or deemed a Permitted Encumbrance under Section 4.4(c) hereof.

"**Person**" means an individual, corporation, partnership, limited liability company, unincorporated organization, association, joint stock company, joint venture, trust, estate, real estate investment trust, government, agency or political subdivision thereof or other entity, whether acting in an individual, fiduciary or other capacity.

"**Potential Event of Default**" means any condition or event which after notice and/or the lapse of time would constitute an Event of Default.

"Property" means certain real property located in the City of Austin, Travis County, Texas, commonly known as the Austin Energy Control Center, as more particularly described on Exhibit A-1 attached hereto. Generally, the Property is the original "Block 24" (described on Exhibit A-1) and includes the areas which are located within Shoal Creek and the Shoal Creek trail system (described on Exhibit A-2).

"**Public Improvements**" means the 3rd Street extension (which may be in the form of a public street or public plaza) from West Avenue east to Shoal Creek (excluding (a) any rail line improvements, and (b) any utility extensions for the general public, but including utility extensions which are intended to, or to the extent they, only serve the Property).

"**Retail Space**" means least 15,000 gross square feet of retail space on the ground level of the Improvements.

"Subordination Agreement" means an agreement between the City and each secured lender of Developer which (a) subordinates the City Security Instrument to the security instrument of such secured lender (but consents to the lien and payment rights of

the City Security Instrument such that a foreclosure of the senior security instrument does not terminate the City Security Instrument), and (b) recognizes the City's rights under the City Security Instrument and permits the City's exercise of rights thereunder without causing an independent default under such secured lender's loan documents.

"Survey" means any survey of the Property prepared by a civil engineer for the Developer.

"**Takedown**" means the transfer by the City of the Property to Developer and Developer's acceptance of such transfer from the City for redevelopment of the Property in accordance with this Agreement.

"**Takedown Date**" means the Business Day on which the Takedown occurs, but in no event later than the Outside Takedown Date.

"**TCEQ**" means the Texas Commission on Environmental Quality, including its successors.

"**Title Binder**" means the Commitment For Title Insurance prepared by Heritage Title Company of Austin, Inc. with an effective date of June 2, 2009 as GF No. 80614 and all exceptions to title coverage set forth therein as provided in Section 4.5.

"**Title Company**" means Heritage Title Company of Austin, Inc., its successors and assigns, or any other title company approved by the City and Developer.

"**Transfer**" as defined in Section 9.15(c).

"**Transfer Price**" means the amount of $14,500,000.

"**VCP**" means the Texas Commission on Environmental Quality's (or successor entity) Voluntary Cleanup Program (or successor program).

"**VCP Certificate**" means one or more unconditional (or its equivalent) VCP "Final Certificates of Completion" (or its equivalent) from the TCEQ stating or indicating (to the extent available) that no further action is required to address environmental conditions on the Property concerning an unrestricted "residential land use" standard for the Property. If the VCP Certificate contains ongoing restrictions which adversely impact the Developer's anticipated use of the Property, then such VCP Certificate will be subject to Developers approval, which will not be unreasonably withheld, conditioned or delayed.

1.2 Modification of Defined Terms. Unless the context clearly otherwise requires or unless otherwise expressly provided herein, the terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, supplements, modifications, amendments and restatements of such agreement, instrument or document; provided that nothing contained in this Section shall be construed to authorize any such renewal, extension, supplement, modification, amendment or restatement.

1.3 References and Titles. All references in this Agreement to exhibits, schedules, addenda, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions refer to the exhibits, schedules, addenda, articles, paragraphs, subparagraphs, sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any subdivisions are for convenience only and do not constitute any part of such subdivisions and shall be disregarded in construing the language contained in such subdivisions. The words "this Agreement", "herein", "hereof", "hereby", "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The phrases "this paragraph" and "this subparagraph" and similar phrases refer only to the paragraphs or subparagraphs hereof in which such phrases occur. The word "or" is not exclusive, and the word "including" (in its various forms) means "including without limitation." Pronouns in masculine, feminine and neuter genders shall be construed to include any other gender, and words in the singular form shall be construed to include the plural and vice versa, unless the context clearly otherwise requires. Except as specifically provided in Sections 3.3(e), 3.3(h) and 3.3(i), references to any constitutional, statutory or regulatory provision means such provision as it exists on the Effective Date and any future amendments thereto or successor provisions thereof.

1.4 Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue until the earliest to occur of: (a) the release of the City Security Instrument and (b) the date this Agreement is earlier terminated pursuant to the terms hereof.

1.5 ENA. The ENA is terminated solely as it relates to the Property. During the negotiations under the ENA for the development of the Property and the GWTP, the City and the Developer discovered more detailed issue analysis and negotiations must take place with respect to GWTP, but not the Property. Thus, as the City anticipated that the Property and GWTP would not commence development at the same time, the City and the Developer elected to execute this Agreement to move forward with the development of the Property while the issues concerning GWTP are being analyzed and negotiated. The execution of this Agreement does not modify or amend any terms of the ENA as they relate to GWTP. The parties acknowledge that notwithstanding their agreements under this Agreement, the parties may not be able to reach an agreement under the ENA regarding the development of the GWTP.

ARTICLE II
REPRESENTATIONS

2.1 Representations of the City. The City represents to Developer as follows:

(a) Title. The City presently has good and indefeasible title to the Property, subject to the Permitted Encumbrances.

(b) Parties in Possession. As of the Effective Date, there is no party in possession of the Property (other than the City and its departments), and on the Takedown Date, there will not be any party in possession of the Property. As of the Effective Date, no party has a present right or any future right to occupy or acquire any portion of a structure or improvement on the Property (other the City and its departments), and on the Takedown Date, no party will have a then current right or any

future right to occupy any portion of a structure or improvement on the Property. Developer understands and acknowledges that the City may utilize (i.e., occupy or store nonHazardous Materials in) all or any portion of the Property prior to the Takedown Date.

(c) Proceeding by Governmental Authority. There is no pending or, to the City's Actual Knowledge, threatened condemnation or similar proceeding or special assessment affecting the Property or any part thereof (except with respect to this representation made as of the Takedown Date, any condemnation legislation filed in the Legislature of the State of Texas).

(d) Litigation or Administrative Proceeding. To the City's Actual Knowledge, the City has received no service of process or other written notification of any litigation or administrative proceedings which would materially and adversely affect title to the Property or the ability of the City to perform any of its obligations hereunder.

(e) Performance Will Not Result in Breach. Performance of this Agreement, the Declaration and the Deed pursuant to the terms hereof and thereof will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance upon the Property under, any agreement or other instrument to which the City is a party or by which the City or the Property might be bound.

(f) Execution. The execution and delivery of, and the City's performance under, this Agreement, the Declaration and the Deed are within the City's powers and have been duly authorized by all requisite municipal action. The Person executing this Agreement, the Declaration and the Deed on behalf of the City has, or will have when executed, the authority to do so. This Agreement, the Declaration and the Deed constitute the legal, valid and binding obligation of the City enforceable in accordance with their respective terms, subject to the principles of equity.

(g) Not a Foreign Person. The City is not a "foreign person" within the meaning of the Internal Revenue Code, as amended, Sections 1445 and 7701 or the regulations promulgated thereunder. City understands that this representation may be disclosed to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment, or both.

(h) Broker. The City has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. To the extent allowed by Legal Requirements, the City agrees to indemnify and hold harmless Developer from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section will survive the Takedown and any expiration or termination of this Agreement.

(i) Environmental. To the City's Actual Knowledge, the City has delivered copies, or otherwise made available, to Developer all Environmental Site Assessments in City's possession as of the date hereof.

2.2 Representations of Developer. Developer represents to the City as follows:

(a) Authorization. Developer is duly organized and legally existing under the laws of its state of organization. Developer is duly qualified to do business in the State of Texas.

(b) Performance. Performance of this Agreement, the Deed, the Declaration and the City Security Instrument will not result in any breach of, or constitute any default under, any agreement or other instrument to which Developer is a party or by which Developer might be bound.

(c) Execution. The execution and delivery by Developer of, and Developer's performance under, this Agreement the Deed, the Declaration and the City Security Instrument are within Developer's powers and have been duly authorized by all requisite organizational action. The Person executing this Agreement, the Deed, the Declaration and the City Security Instrument on behalf of Developer has, or will have when executed, the authority to do so. This Agreement, the Deed, the Declaration and the City Security Instrument constitute the legal, valid and binding obligation of Developer enforceable in accordance with its terms, subject to the principles of equity.

(d) Broker. Developer has not authorized any broker or finder to act on its behalf in connection with the transactions contemplated herein and it has not dealt with any broker or finder purporting to act on behalf of any other party. Developer agrees to indemnify and hold harmless the City from and against any and all claims, losses, damages, costs or expenses of any kind or character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, this Section will survive the Takedown and any expiration or termination of this Agreement.

(e) Not a Foreign Person. Developer is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended (the "Code"), Sections 1445 and 7701 (i.e. Developer is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder). Developer is not subject to backup withholding because: (a) Developer is exempt from backup withholding, (b) Developer has not been notified by the Internal Revenue Service that Developer is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the Internal Revenue Service has notified Developer that Developer is no longer subject to backup withholding. Developer understands that this representation may be disclosed to the Internal Revenue Service by Obligee and that any false statement contained herein could be punished by fine, imprisonment, or both.

(f) Executive Order 13224. Developer and all persons or entities holding any legal or beneficial interest whatsoever in Developer are not included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to or otherwise associated with, any of the persons or entities referred to or described in Executive Order 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, as amended).

2.3 Change in Representations. If, after the Effective Date and prior to the Takedown, either party obtains actual knowledge of any fact, matter or circumstance which causes any of its representations made in Sections 2.1 or 2.2 to be inaccurate or untrue in any material respect, such party shall submit written notice thereof to the other party (a "**Disclosure Notice**") specifying in reasonable detail such fact, matter or circumstance. The disclosure of such fact, matter or circumstance by Disclosure Notice will not be an Event of Default under this Agreement. If, in the Disclosure Notice, the sending party agrees to take such action as is necessary to remedy the fact, matter or circumstance disclosed in the Disclosure Notice and otherwise cause the subject representation to be true and correct, then such party shall be obligated to cause the representation to be true as of the Takedown, and the other party has no right to exercise its remedy set forth in this Section. If the sending party does not advise the other party in the Disclosure Notice that it agrees to take such action as is necessary to remedy the fact, matter or circumstance disclosed in the Disclosure Notice and otherwise cause the subject representation to be true and correct as of the Takedown, then such other party has until the date which is five Business Days after the date of the Disclosure Notice, at its option, to elect, in writing, not to consummate the sale at the Takedown. The failure to elect not to close within the period described in the preceding sentence will be deemed to be a waiver of the fact, matter or circumstance disclosed by the Disclosure Notice, in which case the subject representation will be deemed amended to include the information contained in the Disclosure Notice without an obligation to effect any cure or remedy with respect thereto. The timely and proper election not to close under this section shall terminate this Agreement in which event neither party shall have any right or obligation under this Agreement, except those which expressly survive such termination.

2.4 NO OTHER REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO TO THE CONTRARY, IT IS UNDERSTOOD AND AGREED THAT THE PROPERTY IS BEING SOLD AND CONVEYED HEREUNDER "AS IS" WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY BY CITY. CITY HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OTHER THAN CITY'S SPECIAL WARRANTY OF TITLE CONTAINED IN ANY DEED), ITS CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ITS COMPLIANCE WITH ENVIRONMENTAL LAWS OR OTHER LAWS, OR ANY OTHER MATTER OR THING RELATING TO

OR AFFECTING THE PROPERTY, AND CITY HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY. DEVELOPER ACKNOWLEDGES AND AGREES THAT IT IS ENTERING INTO THIS AGREEMENT WITHOUT RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO) UPON ANY SUCH REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION, ORAL OR WRITTEN, MADE BY CITY OR ANY REPRESENTATIVE OF CITY OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF CITY WITH RESPECT TO THE PROPERTY BUT RATHER IS RELYING UPON ITS OWN EXAMINATION AND INSPECTION OF THE PROPERTY. DEVELOPER REPRESENTS THAT IT IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY EXHIBIT ATTACHED HERETO, IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS IN PURCHASING THE PROPERTY. THE TERMS AND CONDITIONS OF THIS SECTION WILL EXPRESSLY SURVIVE THE TAKEDOWN, NOT MERGE WITH THE PROVISIONS OF ANY TAKEDOWN DOCUMENT AND BE INCORPORATED INTO ANY DEED. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION WERE A MATERIAL FACTOR IN CITY'S DETERMINATION OF THE CONSIDERATION FOR THE TRANSFER OF THE PROPERTY TO DEVELOPER.

ARTICLE III
COVENANTS AND AGREEMENTS

3.1 Developer's Development Related Covenants and Agreements.

(a) Improvements Design and Performance. Developer shall design and construct the Improvements in accordance with Legal Requirements, the Declaration and this Agreement.

(b) Subdivision Plat. Developer, at its sole cost and expense, shall be responsible for subdividing and platting the Property in accordance with Legal Requirements, except that the City shall execute (solely in its capacity as a landowner) all preliminary plans, subdivision plats and related documents (including applications therefor) reasonably approved by the City in its capacity as a landowner. In furtherance of this subdivision requirement, Developer shall cause its civil engineer to prepare the preliminary plans, the subdivision plats and related documents (including applications therefor) for the Property and all other civil engineering information and/or documentation necessary to finalize such subdivision plats. The City will be the applicant with respect to such subdivision plat(s). Developer acknowledges the City staff will require all subdivision plats to contain utility easements necessary to service the proposed improvements on the Property.

(c) Design and Construction of the Improvements. Subject to Force Majeure, Developer shall Commence Construction of the Improvements in a timely manner following the Takedown. Following Commencement of Construction, Developer shall, subject to Force Majeure, diligently and in good faith continue construction of the

Improvements to Completion of Construction. Developer will cause the design and construction of the Improvements to comply with Section 1 of the Declaration relating to the City's design approval rights. The design, construction and development of the Improvements will be at the sole cost of the Developer, without contribution or reimbursement from the City.

(d) Design and Construction of Public Improvements.

(i) Contemporaneously with Developer's design of the Improvements, Developer shall design the Public Improvements. The design of the Public Improvements shall be subject to the prior written approval of the City both in its regulatory capacity and its landowner capacity. Each request for approval under this paragraph relating to the City's landowner capacity will be made in the same manner a design approval request is made under Section 1 of the Declaration (except that the required "plans" shall mean all the construction drawings of the Public Improvements). Developer shall cause the design of the Public Improvements to comply with the Urban Design Guidelines for Austin (f/k/a the Downtown Austin Design Guidelines), Great Streets, building, environmental and zoning laws of the state, county, municipality or other subdivision in which the Property is situated, and all laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments and the appropriate departments, commissions, agencies, boards and officers thereof. A demonstrative illustration of a cross section of a portion of the Public Improvements is attached hereto as Exhibit G.

(ii) Subject to Force Majeure, Developer shall commence construction of the Public Improvements at the appropriate time following Commencement of Construction of the Improvements (i.e., commencement will begin in sufficient time to allow completion according to the following sentence). Following such commencement, Developer shall, subject to Force Majeure, diligently and in good faith continue construction of the Public Improvements to Completion of Construction on or before Completion of Construction of the Improvements. Developer shall cause the construction of the Public Improvements to comply with all applicable City of Austin ordinances, manuals, and rules relating to street and bridge construction excluding any utility extensions for the general public, but including utility extensions which are intended to, or to the extent they, only serve the Property.

(iii) Contemporaneously with the City's acceptance of the Public Improvements for maintenance Developer shall:

A. assign to the City all warranties, guarantees, maintenance bonds, or like assurances of performance applicable to the Public Improvements,

B. execute such bills of sale, assignments, or other instruments of transfer as may be deemed reasonably necessary by the City to evidence

the City's ownership of the Public Improvements, without representation or warranty, except an obligation of Developer to cause its contractor to provide a maintenance bond for a period of one year, and

C. provide to the City such other instruments or documentation reasonably requested by the City to evidence the transfer of ownership of the Public Improvements under this Agreement.

(iv) The Public Improvements will be designed and constructed at the sole cost and expense of the Developer, without contribution or reimbursement from the City.

(e) Licensing and Leasing. Developer will not license, lease or otherwise similarly transfer possessory rights to any portion of the Property prior to the Takedown without the prior written consent of the City (which may be withheld in the City's sole and absolute discretion).

(f) Chilled Water Agreement. Contemporaneously with the execution hereof, Developer shall negotiate with Austin Energy to obtain a CWMOU and CWSA.

3.2 Developer's General Covenants and Agreements.

(a) Single Asset Entity. During the term of this Agreement, Developer shall not (i) acquire any real or personal property other than real property within the Property and personal property related to the redevelopment, operation and maintenance of the Property, (ii) operate any business other than the redevelopment, management and operation of the Property, or (iii) maintain its assets in a way that would make them difficult to segregate and identify.

(b) Downtown Austin Alliance. Within 90 days following the Effective Date, Developer shall petition to join the Downtown Austin Public Improvement District and diligently pursue and maintain its membership therein.

(c) Reporting. Developer shall provide monthly reports to allow the City's Department of Small and Minority Business Resources to track (A) the utilization on a percentage basis of minority-owned and women-owned business enterprises ("M/WBE") firms in the design and construction of the Improvements, and (B) a summary of Developer's efforts to implement the M/WBE Resolution. The City shall provide the forms to be used by Developer in submitting such reports.

(d) M/WBE.

(i) Developer shall meet the M/WBE Participation Goals set forth herein. If Developer does not meet each of the M/WBE Participation Goals it must document its good faith efforts to meet the goals that were not met. Good faith efforts are those efforts described in section 21 of the M/WBE Ordinance.

(ii) With respect to the design and construction of the Improvements, Developer, its architect and its general contractor will meet the following, ethnic-specific participation goals or submit documentation demonstrating its good faith efforts to meet the goals:

	Professional Services Participation Goals	Construction Participation Goals
African-American-owned Business Enterprises	2.9%	2.7%
Hispanic-owned Business Enterprises	9.0%	9.7%
Asian-American and Native American-owned Business Enterprises	4.9%	2.3%
Women-owned Business Enterprises	15.8%	13.8%

The City will provide a list of certified firms to Developer from which Developer shall solicit participation in the design and construction of the Improvements. The City will assist Developer to identify potential scopes of work, establish the bid packages available, schedule and host outreach meetings, and assist Developer in soliciting M/WBE firms to provide bids. The foregoing covenant does not require Developer to solicit participation during a period in which Developer is not designing and/or constructing the Improvements, but rather, requires Developer to incorporate the standards and principles of the M/WBE Ordinance including the foregoing M/WBE Participation goals into its development process as and when such process exists. Additionally, the foregoing covenant does not require Developer to modify or amend any contract or agreement that Developer has entered into prior to the Effective Date.

(iii) The Developer shall diligently and in good faith endeavor to sell or lease 25% of the gross square feet of the Retail Space (as defined in the Declaration) to M/WBEs.

(e) Prevailing Wage. Developer shall, or use demonstrated good faith efforts to, require construction contractors and subcontractors engaged by the Developer to construct the Public Improvements and the shell building Improvements to pay the prevailing wage as defined in the City of Austin Ordinance No. 20030508-031 a copy of which is attached hereto as Exhibit F.

(f) Local Businesses. The Developer shall use diligent, good faith efforts to sell or lease 100% of the Retail Space to "local businesses", defined as a Person:

(i) which is controlled and at least 51% owned by a person or entity residing or having its principal place of business in the Austin – San Marcos, Texas Metropolitan Statistical Area (the "**MSA**"); or

(ii) whose business headquarters or first retail location is located in the MSA.

The term "local businesses" also includes any business that the City agrees, in writing, constitutes a local business even if it does not qualify as a local business under the definitions found in the immediately preceding sentence. The City encourages the Developer to include businesses that reflect the nature and character of Austin in their décor, merchandise, and cuisine.

3.3 City's Covenants and Agreements.

(a) Litigation. Prior to the Takedown, the City will notify Developer of any administrative proceeding, litigation or written, threatened and reasonably meritorious claim against the City, which if adversely determined, would substantially impair the redevelopment of the Property, each of which the City has Actual Knowledge.

(b) No Further Sales. Prior to the Takedown, the City will not voluntarily sell or otherwise transfer all or any portion of the Property to a party other than Developer, without the prior written consent of Developer which Developer may grant or deny in its sole and absolute discretion.

(c) No Further Leases. Without the prior written consent of Developer (which Developer may grant or deny in its sole and absolute discretion) prior to the Takedown, the City will not enter into a lease or otherwise grant a possessory interest to third parties concerning all or any portion of the Property which (i) cannot be terminated on up to 30 days prior notice (and in any event not later than the Takedown), and (ii) materially and adversely interferes with Developer's obligation to redevelop the Property under this Agreement.

(d) Dedicated Team. Prior to the date which is 3 years following the Effective Date, the City will dedicate and maintain resources to review public infrastructure and shell building applications.

(e) Controlling Ordinances, Manuals, and Rules. As provided in Section 3 of the Declaration, the Improvements must be constructed in accordance with all "Legal Requirements" (as defined in the Declaration). Solely for the benefit of the Developer (as opposed to any other owner, tenant, licensee or occupant of the Improvements), commencing on the Effective Date and ending on the date of Commencement of Construction, the application of all City of Austin ordinances, manuals, and rules regarding land development, including the Land Development Code, to the development of the Improvements for which a building permit has been issued by such date will be "locked-in" by limiting them to the forms as they exist on the Effective Date; except the following applicable City of Austin ordinances, manuals and rules shall not be "locked-in" and may be enforced as enacted or amended:

(i) except with respect to a prohibition of interlocking, fire-separated stairs in a high-rise building, measures regulating conduct or activity relating to health and safety including City Code Chapter 25-7 (Drainage) and Chapter 25-12 (Technical Codes), in addition to the City's Drainage and Utility Criteria Manuals;

(ii) measures which the City must enact or enforce pursuant to state or federal mandates, or by court order; and

(iii) measures regulating signs, including but not limited to City Code Chapter 25-10 (Sign Regulations).

(f) Environmental.

(i) City shall, at its sole cost and expense, conduct a sampling investigation on the Property (the "**Sampling Investigation**") to determine if soil or groundwater under the Property has been impacted by contaminants at levels greater than the applicable TCEQ standards for residential use and provide full and complete copies of the Sampling Investigation to Developer. In connection with determining the scope of the Sampling Investigation, City shall cause its environmental consultants to meet with the Developer's environmental consultants to determine a mutually agreeable scope of the Sampling Investigation, provided however, in no event may the Developer's environmental consultants request that the City perform work resulting in an increase of more than 10% of the work recommended by the City's environmental consultants (and in the case of drilling samples, rounded up to the next whole drilling sample). City shall use commercially reasonable efforts to cause its environmental consultants to provide reliance letters covering such Sampling Investigation if requested by Developer and City shall consent to same if required by such consultants. The Sampling Investigation will be prepared by environmental consultants who are qualified to conduct and prepare environmental reports and will be designed and conducted in accordance with guidance provided in the TCEQ's Texas Risk Reduction Program ("**TRRP**") (30 TAC 350). Pursuant to Section 3.3(g) below, Developer may perform additional environmental testing at its expense.

(ii) If the Sampling Investigation reveals contaminants on the Property are present at levels above TCEQ residential standards, then the contaminants will be delineated according to TRRP requirements and the City will enter the Property in the Voluntary Cleanup Program to achieve closure to TCEQ residential standards.

(iii) If the Property is entered into the Voluntary Cleanup Program, the City will keep Developer generally informed as to the progress on the City's efforts to seek and obtain VCP Certificates and will make available, or cause its environmental consultants to make available, to Developer all files in its possession related to the environmental condition of, or VCP Certificates for, the

Property (other than attorney/client privileged information). City shall, at its sole cost and expense, diligently perform all remedial work and any other response action required by the TCEQ (including its regulations and staff directives) under any future VCP action commenced by the City as a result of the Sampling Investigation.

(g) Inspection Prior to Takedown Date.

(i) Following the vacation of the Property for regular business operations by the City, Developer may enter upon the Property, and to cause authorized representatives of Developer to enter upon the Property to conduct general or special physical investigations and inspections of the Property on behalf of Developer in furtherance of the purpose of assessing and causing the development of the Property (the "**Inspection Right**"). In no event may Developer conduct general or specialized tours through the Property or hold any event on the Property. All inspections performed by Developer shall be at Developer's sole expense. Developer shall make such inspections in good faith and with due diligence and in compliance with all Legal Requirements. City reserves the right to have a representative present at the time of making any such inspection. Developer shall notify City not less than two business days in advance of exercising the Inspection Right.

(ii) If, for any reason, this Agreement expires or terminates, Developer shall repair any damage to the Property caused by Developer, or its agents, contractors or employees, arising out of or concerning the Inspection Right, and restore the Property to substantially the same condition it was in prior to the occurrence of damage. If Developer fails to commence to repair such damage within a reasonable time after written notice from the City and diligently pursue the restoration to completion, the City may perform such repair and restoration work, and Developer agrees to compensate the City for the actual cost thereof plus a 10% charge for overhead expenses within 10 days after receipt of an invoice reasonably detailing such work and the cost thereof. Developer shall cause its agents and contractors to execute and deliver to the City waivers of liability as reasonably promulgated by the City concerning the Property as a condition to entry upon the Property. In making any inspection hereunder, Developer will, and will cause any representative of Developer to, use discretion so as not to unreasonably disturb the occupants or personal property of the Property. The provisions of this subsection will survive the expiration or earlier termination of this Agreement.

(iii) DEVELOPER ACKNOWLEDGES THAT THE INSPECTION RIGHT IS GRANTED TO THE PROPERTY AS IS, WITH ALL FAULTS, IN ITS EXISTING CONDITION AND STATE. THE CITY EXPRESSLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE CONDITION OF THE PROPERTY, SPECIFICALLY INCLUDING THE PROPERTY'S GENERAL STATE OF SAFETY FOR INDIVIDUALS. DEVELOPER PARTICULARLY

UNDERSTANDS AND IS AWARE THAT THE PROPERTY IS A PART OF A FORMERLY OPERATIONAL UTILITY FACILITY, WITH DANGEROUS MACHINERY, HAZARDOUS CONDITIONS, AND HAZARDOUS OR POTENTIALLY HAZARDOUS CHEMICALS, SUBSTANCES AND OPERATIONS. DEVELOPER UNDERSTANDS SUCH HAZARDS ARE ENCOMPASSED WITHIN THE PROPERTY.

(h) Interlocking Stairs; Area of Refuge.

(i) As used in this subsection (h), the term "interlocking stairs" means a stairway in which two stairwells are run in the same shaft such that the stairwells cross at alternating floors.

(ii) Notwithstanding any City code requirement, policy, or rule, including but not limited to requirements of the Land Development Code, the Building Code, the Fire Code, or any administrative rule or policy, development within the Property may utilize interlocking stairs to satisfy applicable building ingress and egress requirements, subject to the following provisions:

A. The design must demonstrate to the City Building Official and the City Fire Code Official a level of safety for fire access and ingress that is equivalent to, or better than, the level of safety that would be provided by compliance with the minimum requirements of the 2003 International Building Code (IBC) and 2003 International Fire Code (IFC). Subject to these standards, IBC Sections 104.11 (Alternate materials, design and method of construction and equipment) and IFC Section 104.9 (Alternate materials and methods) may be employed with respect to each of the following:

1. remoteness of exits;
2. egress capacity;
3. fire resistance;
4. resistance to compromise by a single accidental or intentional act;
5. smoke management or control;
6. areas of refuge or rescue assistance;
7. emergency communications; and
8. installed fire protection and suppression systems.

(iii) Solely by way of illustration, and without limiting alternate building designs or configurations, the following approved developments are examples of projects that utilize interlocking stairs which satisfy the requirements in subsection 3.3(h)(ii) hereof:

A. Spring Condominiums
300 Bowie Street
Austin, TX 78703

B. 7 Rio
615 West Seventh Street
Austin, TX 78701

C. Tara Condominiums
Sacramento, CA

(iv) Compliance with the area of refuge requirements for development of the Property approved in subsection 3.3(h)(ii) hereof shall be determined in a manner consistent with the area of refuge approved by the City of Austin for the Spring Condominiums at 300 Bowie Street, Austin TX 78703.

(i) Managed Growth Agreement – Site Plan Expiration. Because of the anticipated timing of the Takedown and the significant planning challenges associated with the Improvements, Developer does not anticipate filing a site plan application for the construction of the Improvements for several years. Chapter 25-5-81 of the City Code provides that an approved site plan expires three years from the date of its approval. As a result of the significant challenges and delicate market conditions associated with marketing, developing, and financing the Improvements, the Developer has requested an extension of the site plan expiration date for the Improvements' approved site plan. Thus, the expiration date of the approved site plan for the Improvements under Chapter 25-5-81 of the City Code will be five years from the date of its approval, subject to the exceptions set forth in Chapter 25-5-81 of the City Code. All other terms of Chapter 25 of the City Code will remain in effect as provided therein, subject to Section 3.3(e) hereof. This section is deemed a "managed growth agreement" pursuant to Chapter 25-1-540 of the City Code.

ARTICLE IV
PROPERTY TAKEDOWN AGREEMENTS

4.1 Takedown Agreement and Timing.

(a) Takedown Date. The Takedown of the Property will occur in one closing at the offices of the Title Company on the date which is 30 days following the latter of (i) issuance of a VCP for the Property (or the date of determination by the City's environmental consultant that a VCP is not necessary) (the parties anticipate that a VCP will be issued for the Property in March 2014) and (ii) the date the City vacates the Property;

(i) provided however, if:

(A) the unsold inventory of new, completed for-sale high rise condominium units in the City of Austin Central Business District

represents 10% of the total number of high rise condominium units in the City of Austin Central Business District as evidenced by a mutually acceptable research publication or commissioned study; or

(B) a loan for the construction of the Improvements is not available to Developer in the then current debt market, based on the following terms (and such other terms as are customary for similar projects):

(1) loan amount not greater than 80% "loan to cost";

(2) guaranteed (by a guarantor of appropriate financial strength) to the extent required by then applicable debt markets;

(3) an interest rate of not more than 8%; and

(4) a commitment fee not more than 75 basis points,

then the Takedown Date will be extended for so long as one or both of the conditions in Section 4.1(a)(i)(A)-(B) exist, and

(ii) provided further however, if no Event of Default or any condition or event which after notice and/or the lapse of time would constitute an Event of Default exists, the Takedown Date may be extended by Developer on a month to month basis (for up to 6 total months) upon written notice from the Developer to the City if the Developer has not obtained a CWMOU on or before the Takedown Date (or extended Takedown Date, as applicable).

(b) Outside Takedown Date. Notwithstanding the foregoing, in no event will the Takedown occur later than:

(i) if the Property IS NOT entered into the VCP, 36 months following the date on which the Sampling Investigation commences on the Property, or

(ii) if the Property IS entered into the VCP, 24 months following the issuance of a VCP Certificate

(such date, the "**Outside Takedown Date**") and if such Outside Takedown Date occurs prior to the Takedown, this Agreement will automatically terminate in which event neither party shall have any obligations hereunder, except for those obligations which expressly survive a termination hereof. Even though the Outside Takedown Date exists, Developer must close the Takedown prior to the Outside Takedown Date if the conditions in Section 4.1(a)(i)(A)-(B) do not exist.

(c) Outside Takedown Date Extension. The Outside Takedown Date may be extended on a one-time basis for a period of up to 12 months, subject to the following conditions:

(i) Developer has given City not less than 30 days' prior written notice of Developer's intention to extend the Outside Takedown Date;

(ii) no Event of Default or any condition or event which after notice and/or the lapse of time would constitute an Event of Default exists as of the date of City's receipt of notice of Developer's intention to extend the Outside Takedown Date and as of the effective date of such extension; and

(iii) Developer shall pay to City, contemporaneously with the written notice of the extension of the Outside Takedown Date, an extension fee in the amount of $350,000, which extension fee will be deemed due, payable, earned and nonrefundable, but will apply as a credit against Developer's obligation to pay the Transfer Price at the Takedown.

4.2 Property Condition at Takedown. The condition of the Property at Takedown will be the condition set forth in the RFP, which does not include demolition of the existing ECC structures.

4.3 Takedown Conditions.

(a) The City's Takedown Conditions. The City's Takedown obligations are subject to the fulfillment of each of the following conditions, which may be waived in the City's sole discretion:

(i) Representations, Warranties and Agreements. The material representations and warranties of Developer contained herein shall be materially true, accurate and correct as of the Takedown Date and Developer must have performed all the material agreements to be performed by Developer as of the Takedown Date.

(ii) No Event of Default. No Developer Bankruptcy Event, Event of Default or Potential Event of Default exists.

(iii) Subdivision. A subdivision plat acceptable to the City (in its regulatory capacity) has been approved and recorded for the Property. A subdivision plat acceptable to the City (in its landowner capacity, which will not be unreasonably withheld) has been approved and recorded for the Property.

(iv) Declaration. The Declaration must be executed, notarized and recorded in the Real Property Records of Travis County, Texas prior to the execution of the Deed.

(v) Shoal Creek Public Access Easement. Developer shall cause its affiliate to grant to the City a public access easement in a form reasonably acceptable to the City to enable the extension of the Shoal Creek Trail between 4th Street and 5th Street, which easement will be recorded at the Takedown.

(vi) Arts in Public Places. Developer must make the contribution set forth in Section 6.3 hereof.

(b) Developer's Takedown Conditions. Developer's Takedown obligations are subject to the fulfillment of each of the following conditions, which may be waived in Developer's sole discretion:

(i) Representations, Warranties and Agreements. The material representations and warranties of the City contained herein shall be materially true, accurate and correct as of the Takedown Date. The City has performed all the material agreements to be performed by the City as of the Takedown Date.

(ii) No Event of Default. No City Event of Default or Potential Event of Default exists.

(iii) Subdivision. A subdivision plat acceptable to Developer has been approved and recorded for the Property.

(iv) TCEQ VCP Certificates. If applicable, the City has obtained VCP Certificate(s) from the TCEQ for the Property and, if required by Legal Requirements, has filed the VCP Certificate(s) in the Official Public Records of Travis County, Texas, and delivered to Developer a copy of the VCP Certificate(s) for the Property.

4.4 Title Binder and Survey.

(a) Title Binder. Developer has received and approved the Title Binder.

(b) Updating Title Binder; Survey. Not less than 30 days' prior to the proposed Takedown Date, Developer may obtain an update of the Survey and an update of the Title Binder covering the Property. Not less than 30 days' prior to the proposed Takedown Date, Developer may obtain a Survey covering the Property.

(c) Review of Updated Title Binder and Survey. If such (i) Survey shows any easement, right-of-way, or other encumbrance that was not created by, through or under Developer affecting the Property, other than the Permitted Encumbrances, or (ii) updated Title Binder shows any additional exceptions to title coverage that were not created by, through or under Developer, other than the Permitted Encumbrances and the standard printed exceptions, and such new easement, right-of-way, other encumbrance or additional exceptions has an adverse effect on the title to the Property, Developer shall, within 10 days after receipt of both the updated Title Binder and the Survey, notify the City in writing of such fact and the objections thereto (each such period, an "**Objection Period**"), in which event the City will have 10 days after the expiration of such Objection Period to cure such objections (the "**Cure Period**"). Upon the expiration of the Objection Period, Developer shall be deemed to have accepted the updated Title Binder and the Survey and all matters shown or listed thereon (except for the matters which are the subject of a notification permitted under the preceding sentence), and such matters will be included in the term "**Permitted Encumbrances**" as used herein.

Notwithstanding anything to the contrary contained herein, the City shall have no obligation to bring any action or proceeding or otherwise to incur any expense to eliminate or modify such unacceptable exceptions except monetary liens, security interests and other collateral financing interests granted by the City against the Property, mechanic's liens arising out of any work performed by or under a contract with the City; judgment liens against the City and any exceptions and encumbrances created by the City after the Effective Date without Developer's consent. If the City is unable or unwilling to eliminate or modify such objectionable matters to the reasonable satisfaction of Developer within the Cure Period, Developer may, on or before the date which is 10 days following the expiration of the Cure Period (as its sole and exclusive remedies), either (y) terminate this Agreement by delivering written notice of termination to the City, in which event neither party shall have any right or obligation under this Agreement, except those which expressly survive such termination, or (z) accept such title to the Property as the City can deliver and such objectionable matters will be deemed approved by Developer as Permitted Encumbrances.

(d) Developer's Option to Waive Updating Title Binder and Survey. Developer may waive its right to obtain the Title Binder and the Survey with respect to the Property. If Developer waives its right to obtain the updated Title Binder and the Survey, the "Permitted Encumbrances" for the Property will be "subject to general real estate taxes on the Property for the current year, zoning laws, regulations and ordinances of municipal and other governmental authorities, if any, affecting the Property and any and all valid restrictions, easements and other encumbrances, affecting the Property as the same appear of record, and all matters that would be disclosed in a current, accurate ALTA/ACSM Land Title Survey of the Property."

4.5 Condemnation.

(a) Knowledge. Prior to the Takedown, upon the City obtaining written knowledge of the institution of any actual or threatened proceedings for the stated purchase or condemnation of the Property or any portion thereof, the City will send Developer written notice of the pendency or threat of such proceedings; provided, however, the City's obligations to deliver such notice with respect to threatened legislation will not apply to threatened legislation which the City does not deem (in its reasonable discretion) a threat which could realistically result in the condemnation of the Property or a portion thereof.

(b) Developer's Role. Provided no Developer Event of Default exists, Developer may intervene in good faith by appropriate proceedings in any such proceedings for the sole purpose of protecting its interests under this Agreement, and, upon request from Developer, the City shall from time to time deliver to Developer written consent to such intervention. In any such condemnation event, this Agreement will remain in full force and effect until completion of such proceedings or as otherwise provided in this Section 4.5.

(c) Legal Requirements. The parties have the rights and duties set forth in this Section rather than as prescribed by the Uniform Vendor and Purchaser Risk Act (Texas Property Code, Section 5.007).

ARTICLE V
PROPERTY TAKEDOWN AND TRANSFER PRICE PAYMENT

5.1 The Takedown. The Takedown will take place at the offices of the Title Company on or before the Outside Takedown Date or such other time and place mutually agreed upon by the parties. At the Takedown the following will occur, each of which will be a concurrent condition to the Takedown:

(a) The City's Takedown Obligations. At the Takedown, the City shall:

(i) Deliver to the Title Company a duly executed and acknowledged Deed in favor of Developer covering the Property, subject to the Permitted Encumbrances.

(ii) Deliver to the Title Company a duly executed and acknowledged Subordination Agreement.

(iii) Deliver possession of the Property to Developer, subject to the Permitted Encumbrances.

(iv) Deliver to the Title Company a duly executed and acknowledged Release of Public Utility Easement in the form attached hereto as Exhibit H.

(v) Deliver to the Title Company a duly executed CWSA Holdback Escrow Agreement.

(vi) Deliver such other documentation or instruments as reasonably required by the Title Company for the Takedown to occur in accordance with this Agreement.

(b) Developer's Takedown Obligations. At the Takedown, Developer shall:

(i) Pay to the City the Transfer Price.

(ii) Deliver to the Title Company a duly executed and acknowledged counterpart of the Deed.

(iii) Deliver to the Title Company a duly executed and acknowledged City Security Instrument.

(iv) Deliver to the City the contribution set forth in Section 6.3 hereof.

(v) Deliver to the Title Company a duly executed CWSA Holdback Escrow Agreement.

(vi) Deliver such other documentation or instruments as reasonably required by the Title Company for the Takedown to occur in accordance with this Agreement.

(vii) Cause any secured lender of Developer to deliver to the Title Company a duly executed and acknowledged Subordination Agreement.

(c) Taxes and Assessments. Real estate taxes and assessments, if any, concerning the Property for the calendar year of Takedown, to the extent the City is obligated to pay such items, will be apportioned between the City and Developer at the Takedown as of midnight of the day preceding the Takedown Date.

(d) Closing Costs. Developer will pay all closing costs (e.g., title insurance, survey, inspection fees, Developer's attorney fees, financing fees, recording fees and escrow fees) in connection with the Takedown, except the City's legal fees and financial obligations of any lien the City granted on the Takedown Property, security interests and other collateral financing interests for which the City is responsible under Section 4.4(c) and any encumbrances created by the City after the Effective Date without Developer's consent. Section 3.1(b) of the ENA provides that Developer will receive a credit against the Transfer Price for certain Developer deposits. As the Improvements are approximately 25% of the overall improvements contemplated in the RFP response and the ENA, at the Takedown, Developer will receive a credit against the Transfer Price for 25% of the deposits referenced in Section 3.1 of the ENA (i.e., 25% of $50,000 + 3% interest accruing from April 30, 2008 [RFP response submission date] *plus* 25% of $100,000 + 3% interest accruing from August 11, 2008 [ENA effective date]).

(e) CWSA Holdback.

(i) The parties anticipate that a CWMOU will be executed prior to the Takedown. During the development of the Property, Developer and Austin Energy will work together to execute a CWSA.

(ii) At the Takedown, $100,000 (the "CWSA Holdback") of the Transfer Price will be deposited by the Title Company into an interest-bearing escrow account (which interest-bearing component will be applicable to the extent allowable to obtain FDIC insurance on the entire CWSA Holdback) with a federally insured financial institution reasonably approved by the City. Any interest earned on the CWSA Holdback will accrue to the CWSA Holdback and be utilized in the same manner. The Title Company shall not commingle the CWSA Holdback with other funds held by it. If at any time the financial institution that actually holds the CWSA Holdback or its parent entity (A) is the subject of a bankruptcy, insolvency, conservatorship, receivership, custodianship or similar proceeding; (B) is otherwise adjudicated as, or determined by any governmental authority to be, insolvent or bankrupt; (C) is the subject of a cease and desist order by any governmental authority and such cease and desist order is not resolved within 20 days after the issuance of such order, or (D) admits in any filing that it is not able to continue as a going concern, Title Company shall

promptly move the CWSA Holdback to another financial institution reasonably approved by the City.

(iii) If a CWSA (A) is not executed because of an act or omission of Austin Energy, or (B) is executed but a default occurs thereunder by Austin Energy (following the expiration of all grace, notice and/or cure periods) as a result of Austin Energy's failure to complete the chilled water delivery system and deliver chilled water to the Property in accordance with the CWSA, Developer may, within 60 days following such default, deliver written notice to the Title Company of such event in which case the Title Company shall deliver the CWSA Holdback to Developer. The obligations of Austin Energy as set forth herein are informative only and no expectations should be derived therefrom, it being the intent of the parties that the obligations of Austin Energy with respect to the chilled water delivery to the Property be set forth solely in the CWMOU and CWSA.

(iv) If a CWSA is executed and chilled water is delivered to the Property, Developer or the City shall deliver written notice to the Title Company of such event and the Title Company must immediately disburse the CWSA Holdback to the City.

(v) At the Takedown, City, Developer and the Title Company must execute a CWSA Holdback Escrow Agreement which reflects the agreements of this subsection.

(vi) If Austin Energy incurs reasonable cost to design the chilled water piping and related infrastructure to serve the Property and Developer does not execute a CWSA, then Developer shall be obligated to reimburse Austin Energy for all such reasonable incurred costs at an interest rate equal to Austin Energy's cost of capital, expressly including costs of engineering, but in no event in excess of $100,000; provided that Developer has no obligation under this subsection (vi) unless and until Takedown occurs. Austin Energy will not install any capital infrastructure unless a CWSA is executed. If a CWSA is executed and the Developer commits a default thereunder, the remedies for such default will be set forth in the CWSA (including the remedy for reimbursement of design costs as set forth in this subsection).

ARTICLE VI
DEVELOPER'S PAYMENTS AND CONTRIBUTIONS

6.1 Infrastructure Payment. Developer shall pay to the City the Infrastructure Payment (a) with respect to any part of the Property which is intended to be marketed by the developer of the Property as "for rent" to end users, upon issuance of a Certificate of Occupancy (or its equivalent) for the Improvements, and (b) with respect to any part of the Property which is intended to be marketed by the developer of the Property as "for sale" to end users upon the closing of the sale of 50% of the units in the Improvements. If the Improvements are both "for rent" and "for sale", the Infrastructure Payment shall be prorated between the two product types

and payable as provided above (e.g., if the Improvements are 30% for sale and 70% for rent, 30% of the Infrastructure Payment will be payable when 50% of such portion of the Improvements are sold and the remaining 70% of the Infrastructure Payment will be payable upon issuance of a Certificate of Occupancy [or its equivalent] for such portion of the Improvements).

6.2 Public Art Contribution. Developer shall contribute $250,000 cash to a City special public art fund or program facilities for public art on, or adjacent to, the Property on or before the earlier of (a) if the public art will be commenced during the construction of the Property, the date of such commencement, or (b) if the public art will be commenced following the construction of the Property, the date on which a certificate of occupancy is issued for any portion of the Property, provided however, this requirement is subject to a dollar for dollar match of City art funds in the area of the Property. With respect to the exact location and selection of such public art under this section (a) Developer shall advise City during the process of artist selection as to Developer's plans as a guiding principle in artist selection, (b) City will provide written notice of the proposed design concept to Developer, together with drawings and descriptions of the public art supplied by the proposed artist, and (c) City will provide advance notice and the opportunity for a representative of Developer to attend all planning/design meetings, with the intent that City exercise due regard and consideration for design issues that may impact Developer's planned design and use of the Property.

6.3 Arts in Public Places. Contemporaneously with the Takedown of the Property, Developer shall contribute $100,000 to the Arts In Public Places program. Such contribution will be used to pay for public art, and for the installation of public art, along the screen wall around the Austin Energy substation. With respect to the exact location and selection of such public art under this section (a) Developer shall advise City during the process of artist selection as to Developer's plans as a guiding principle in artist selection, (b) City will provide written notice of the proposed design concept to Developer, together with drawings and descriptions of the public art supplied by the proposed artist, and (c) City will provide advance notice and the opportunity for a representative of Developer to attend all planning/design meetings, with the intent that City exercise due regard and consideration for design issues that may impact Developer's planned design and use of the Property.

6.4 Affordable Housing – Density Bonus. Developer shall pay to a City of Austin sponsored affordable housing fund designated by the City a one-time payment equal to $5 per net square foot (sellable or leasable, as the case may be) in the Improvements (excluding common and parking areas) (a) with respect to any part of the Property which is intended to be marketed by the developer of the Property as "for rent" to end users, upon issuance of a Certificate of Occupancy (or its equivalent allowing the occupancy of such premises) therefor, and (b) with respect to any part of the Property which is intended to be marketed by the developer of the Property as "for sale" to end users, upon the sale of each such portion of the Property (the amount of which is calculated upon the portion of the Property sold). It is the intent of the City and the Developer that the payment(s) described herein will be paid on a one time basis with respect to each portion of the Property and the obligation to deliver such payments shall automatically expire upon the payment (in the aggregate) of such amount on the entire Property.

ARTICLE VII
INSURANCE AND INDEMNITY

7.1 Insurance.

(a) General. Developer shall carry and maintain throughout the term of this Agreement (except as specifically noted below) the following insurance policies:

(i) Workers' Compensation and Employers' Liability Insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Art. 401) and minimum policy limits for employers liability of $1,000,000 bodily injury for each accident, $1,000,000 bodily injury by disease policy limit and $1,000,000 bodily injury by disease each employee. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements or the Public Improvements.

(ii) Automobile Liability Insurance for all owned, non-owned, and hired motor vehicles, which Developer, or its agents or contractors on Developer's behalf, will utilize with respect to the Property in a minimum amount of $1,000,000, combined single limit.

(iii) Commercial General Liability policy with a minimum limit of $1,000,000 per occurrence for bodily injury and/or property damage, products and completed operations with a minimum aggregate of $1,000,000 and blanket contractual coverage, independent contractors' coverage and explosion, collapse and underground (X, C & U) coverage.

(iv) Intentionally Omitted.

(v) For contractors/subcontractors providing professional services under this Agreement, Engineers' Professional Liability Insurance with a minimum limit of $1,000,000 per claim and in the aggregate to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission committed or alleged to have been committed with respect to plans, maps, drawings, analyses, reports, surveys, change orders, designs or specifications prepared or alleged to have been prepared by the assured. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements or the Public Improvements.

(vi) For work that involves asbestos or any Hazardous Materials or pollution, the following will be in addition to the other insurance required hereunder:

A. Asbestos abatement endorsement or pollution coverage to the Commercial General Liability policy with minimum bodily injury and property damage limits of $1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of $1,000,000. This policy cannot exclude asbestos or any Hazardous Materials or pollution and shall provide "occurrence" coverage without a sunset clause.

B. Pollution coverage in accordance with Title 49 CFR 171.8 requiring an MCS 90 endorsement with a $5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of $1,000,000 or an endorsement to their Commercial General Liability Insurance policy that provides coverage for bodily injury and property damage arising out of the transportation of asbestos or other Hazardous Materials. The endorsement must, at a minimum, provide a $1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

The insurance required under this subsection will only be required concerning the entity which is actually performing such work. For example, if Developer's contractor (instead of Developer) is performing such work, the contractor, not Developer, will be required to carry such insurance. The insurance required by this subsection shall be in effect commencing not later than the Commencement of Construction of any portion of the Improvements or the Public Improvements.

(b) Special Requirements. Developer will not cause any insurance required hereunder to be canceled or lapse during the term of this Agreement. With respect to Sections 7.1(a)(i), (ii) and (iii), insurance coverage is to be written by companies duly authorized to do business in the State of Texas at the time the policies are issued and will be written by companies with an A.M. Best rating of AVII or better or otherwise acceptable to the City. Additionally with respect to Sections 7.1(a)(i), (ii) and (v), all policies will contain a provision in favor of the City waiving subrogation or other rights of recovery against the City, to the extent available under Legal Requirements, and will be endorsed to provide the City with a 30-day notice of cancellation. The City will be an additional insured as its interests may appear on the Commercial General and Automobile Liability policies. All policies will provide primary coverage as applicable, with any insurance maintained by the City being excess and non-contributing. Developer will submit a certificate of insurance to the City providing evidence of insurance coverage required by this Agreement. Developer will be responsible for (i) overseeing its contractors with respect to such contactors' obtaining and maintaining the insurance required hereunder and (ii) obtaining and keeping copies of such contractors' insurance certificates evidencing the insurance coverages required hereunder.

(c) Additional Insured. All endorsements, waivers, and notices of cancellation as well as the certificate of insurance shall indicate the City as an additional insured and be delivered to: City of Austin, Economic Growth and Redevelopment Services Office, Attn: Director, P.O. Box 1088, Austin, Texas 78767, or such other address as the City may notify Developer in writing.

(d) Cost. Developer shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in the insurance policies to be carried hereunder by Developer (not by its contractors and any subcontractors). All deductibles or self-insured retentions shall be disclosed on the certificate of insurance. The insurance coverages required under this Agreement are required minimums and are not intended to limit or otherwise establish the responsibility or liability of Developer or the City under this Agreement.

7.2 Indemnity and Release.

(a) Indemnity. Developer will indemnify and hold the City and its respective officers, directors, employees and agents harmless from, and reimburse the City and its respective officers, directors, contractors, employees and agents for and with respect to, all claims, demands, actions, damages, losses, liabilities, judgments, costs and expenses, including, without limitation, reasonable legal fees and court costs (each a "**Claim**") which are suffered by, recovered from or asserted against the City or its respective officers, directors, employees and agents to the extent any such Claim arises from or in connection with (i) any Developer Event of Default, (ii) the consequences of any alleged, established or admitted act or omission of Developer or any agents, contractors, representatives or employees of Developer, and (iii) any alleged, established or admitted act or omission of the City or any agents, contractors, representatives or employees of the City, **INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE CITY**, but excluding Claims to the extent caused by the gross negligence or willful misconduct of the City.

(b) Claims. If the City notifies Developer of any Claim, Developer shall assume on behalf of the City and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel selected by Developer but reasonably satisfactory to the City; provided, that the City has the right to be represented by advisory counsel of its own selection and at its own expense; and provided further, that if any such Claim involves Developer and the City, and the City has been advised in writing by counsel that there may be legal defenses available to it which are inconsistent with those available to Developer, then the City has the right to select separate counsel to participate in the investigation and defense of and response to such Claim on its own behalf, and Developer shall pay or reimburse the City for all reasonable legal fees and costs incurred by the City because of the selection of such separate counsel. If any Claim arises as to which the indemnity provided for in this Section applies, and Developer fails to assume within 20 days after being notified of the Claim the defense of the City, then the City may contest (or settle, with the prior written consent of Developer, which consent will not be unreasonably withheld, conditioned or delayed) the Claim at Developer's expense using counsel selected by the City; provided,

that if any such failure by Developer continues for 30 days or more after Developer is notified thereof, no such contest need be made by the City and settlement or full payment of any Claim may be made by the City without Developer's consent and without releasing Developer from any obligations to the City under this Section so long as, in the written opinion of reputable counsel to the City, the settlement or payment in full is clearly advisable. So long as Developer does not admit liability or agree to affirmative obligations on behalf of the City, Developer is authorized to settle a Claim for itself and the City.

(c) Release. Other than to the extent caused by a City Event of Default, Developer hereby releases the City with respect to all Claims regarding any alleged, established or admitted negligent or wrongful act or omission of the City or any agents, contractors, representatives or employees of the City, **INCLUDING ALL CLAIMS CAUSED BY THE NEGLIGENCE OR STRICT LIABILITY OF THE CITY**, but excluding Claims to the extent caused by the gross negligence or willful misconduct of the City.

The provisions of this Section will survive the expiration or earlier termination of this Agreement.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.1 Events of Default – Developer. The following constitute Events of Default by Developer:

(a) Failure to Pay. Developer fails to pay any amount required to be paid hereunder when due and such failure continues for a period of 15 days from the date of written notice thereof from the City.

(b) Abandonment or Suspension. Following Commencement of Construction, Developer voluntarily abandons or substantially suspends such construction for more than 60 consecutive days, subject to Force Majeure.

(c) Failure to Perform Obligations. Without limiting any other provision of this Section, Developer fails to perform any other obligations or duties provided in this Agreement, subject to Force Majeure, after the time for any cure or the expiration of any grace period specified therefor, or if no such time is specified, within 30 days after the date of written demand by the City to Developer to perform such obligation and duty, or in the case of a default not susceptible of cure within 30 days, Developer fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time, but in no event longer than 120 days after the date of the written demand.

(d) Insurance. Developer fails to maintain the insurance required under Section 7.1 hereof.

(e) Assignment. Developer violates the terms of Section 9.15 hereof.

(f) Other Agreement Events of Default. Developer commits an event of default under the City Security Instrument, the Declaration or the Deed which continues past any applicable grace, notice or cure period(s).

(g) Receiver and Bankruptcy. A receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of Developer, either in a proceeding brought by Developer or in a proceeding brought against Developer, and such appointment is not discharged or such possession is not terminated within 90 days after the effective date thereof or Developer consents to or acquiesces in such appointment or possession. Developer files a petition for relief under the Federal Bankruptcy Code or any other present or future federal or state insolvency, bankruptcy or similar law (all of the foregoing collectively, "**Applicable Bankruptcy Law**") or an involuntary petition for relief is filed against Developer under any Applicable Bankruptcy Law and such petition is not dismissed within 90 days after the filing thereof, or an order for relief naming Developer is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by Developer.

(h) Litigation. Any reasonably meritorious third party suit shall be filed against Developer, which if adversely determined, would substantially impair the ability of Developer to perform in any material respect each and every one of its material obligations under and by virtue of this Agreement, and pursuant to which a permanent injunction is issued by a court of competent jurisdiction enjoining Developer from performing its obligations hereunder and such injunction is not released or bonded around within 90 days of its issuance, unless such claim arises out of or is related to the City entering into this Agreement with Developer.

8.2 Remedies of the City. Upon the occurrence and during the continuance of an Event of Default by Developer, the City has, as the City's sole and exclusive remedies, the remedies set forth below:

(a) Specific Performance. The City may institute an action for specific performance, to the extent permitted by Legal Requirements.

(b) Damages. The City may pursue a claim against Developer for actual, but not punitive or consequential, damages.

(c) Liquidated Damages. Developer will pay to the City as liquidated damages the sum of $1,000 per day for each day a Developer Event of Default exists (without duplication), which sum has been agreed because of the difficulty and uncertainty of determining actual damages for each individual Event of Default.

(d) Tolling of Obligations under CWSA. The City may authorize Austin Energy to toll the performance of Austin Energy's obligations under the CWSA and any required time for performance thereof will be extended by the number of days the Developer Event of Default existed.

(c) Tolling of Other Obligations. The City may toll performance of its obligations under this Agreement and any required time for performance thereof will be extended by the number of days the Developer Event of Default existed.

(f) Remedies Under Other Agreements. The City may exercise any remedy provided to the City under the City Security Instrument (including without limitation, foreclosure thereunder), Deed and/or the Declaration.

EXCEPT AS SET FORTH ABOVE, THE CITY WAIVES ANY OTHER RIGHT OR CLAIM OF MONETARY DAMAGES OR EQUITABLE RELIEF AGAINST DEVELOPER FOR DEVELOPER'S EVENT OF DEFAULT.

8.3 Events of Default – City. The following constitute Events of Default by the City:

(a) Failure to Pay. The City fails to pay any amount required to be paid hereunder when due and such failure continues for a period of 15 days from the date of written notice thereof from Developer.

(b) Failure to Perform Obligations. Without limiting any other provision of this Section, the City fails to perform any other obligations and duties provided in this Agreement after the time for any cure or the expiration of any grace period specified therefor, or if no such time is specified, within 30 days after the date of written demand by Developer to the City to perform such obligation and duty, or, in the case of a default not susceptible of cure within 30 days, the City fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time, but in no event longer than 120 days after the date of the written demand.

(c) Assignment. City violates the terms of Section 9.15 hereof.

(d) Receiver and Bankruptcy. A receiver, trustee or custodian is appointed for, or takes possession of, all or substantially all of the assets of the City, either in a proceeding brought by the City, or in a proceeding brought against the City and such appointment is not discharged or such possession is not terminated within 90 days after the effective date thereof or the City consents to or acquiesces in such appointment or possession. The City files a petition for relief under Applicable Bankruptcy Law or an involuntary petition for relief is filed against the City under any Applicable Bankruptcy Law and such petition is not dismissed within 90 days after the filing thereof, or an order for relief naming the City is entered under any Applicable Bankruptcy Law, or any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing is requested or consented to by the City.

(e) Litigation. Any reasonably meritorious suit shall be filed against the City, which if adversely determined, would substantially impair the ability of the City to perform each and every one of its obligations under and by virtue of this Agreement, which is not dismissed within 90 days of filing.

8.4 Remedies of Developer. Upon the occurrence of an Event of Default by the City, Developer has, as Developer's sole and exclusive remedies, the remedies set forth below:

(a) Termination of the Development. Developer may terminate its obligations under this Agreement to Takedown the Property.

(b) Specific Performance. Developer may institute an action against the City for specific performance, to the extent permitted by Legal Requirements.

(c) Damages. Developer may pursue a claim against the City for actual, but not punitive or consequential, damages.

(d) Tolling of Other Obligations. Developer may toll performance of its obligations under this Agreement and any required time for performance thereof will be extended by the number of days the City Event of Default existed.

EXCEPT AS SET FORTH ABOVE, DEVELOPER WAIVES ANY OTHER RIGHT OR CLAIM OF MONETARY DAMAGES OR EQUITABLE RELIEF AGAINST THE CITY FOR ANY CITY EVENT OF DEFAULT.

8.5 Rights and Remedies Are Cumulative. The rights and remedies of the parties to this Agreement are cumulative and the exercise by either party of any one (1) or more of such remedies will not preclude the exercise by it, at the same or a different time, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

8.6 LIMITED WAIVER OF SOVEREIGN IMMUNITY. **TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE CITY VOLUNTARILY WAIVES ITS RIGHT TO ASSERT SOVEREIGN IMMUNITY FROM SUIT OR LIABILITY IN RESPONSE TO AN ACTION BY DEVELOPER SEEKING ONLY THE REMEDIES SPECIFIED IN SECTION 8.4 HEREOF AND THE SPECIFIC REMEDIES GRANTED IN AN ANY EXHIBIT HERETO. THE CITY DOES NOT OTHERWISE WAIVE IMMUNITIES EXISTING UNDER APPLICABLE LAWS, AND IT IS EXPRESSLY UNDERSTOOD THAT THE WAIVER HERE GRANTED IS A LIMITED AND NOT A GENERAL WAIVER, AND THAT ITS EFFECT IS LIMITED TO SPECIFIC CLAIMS UNDER THIS AGREEMENT AND ANY EXHIBIT HERETO.**

ARTICLE IX
MISCELLANEOUS PROVISIONS

9.1 Notices. Formal notices, demands and communications between the parties shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

Developer:	Constructive Ventures, Inc. 1000 East 8th Street Austin, TX 78702 Attention: Larry Warshaw
with a copy to:	Constructive Ventures, Inc. 1311A East 6th Street Austin, Texas 78702 Attention: Perry Lorenz
with a copy to:	TC Austin Development, Inc. 100 Congress Avenue, Ste. 225 Austin, TX 78701 Attention: Timothy McCabe
with a copy to:	DuBois, Bryant & Campbell, LLP 700 Lavaca, Suite 1300 Austin, Texas 78701 Attention: Rick Reed
City:	City of Austin City Manager's Office 301 West 2nd Street Austin, Texas 78701 Attention: City Manager
with a copy to:	City of Austin Economic Growth and Redevelopment Services Office 301 West 2nd Street Austin, Texas 78701 Attention: Director
and:	City of Austin Law Department 301 West 2nd Street Austin, Texas 78701 Attention: City Attorney
and:	Thompson & Knight L.L.P. 98 San Jacinto, Suite 1900 Austin, Texas 78701 Attention: James E. Cousar and Andrew Ingrum

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery or, in the

case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

9.2 Limitation on Liability. No member, official or employee of the City shall be personally liable to Developer for any default or breach by the City, or for any amount which may become due to Developer, or on any obligations under the terms of this Agreement. No Affiliate of Developer, and no officer, manager, director, partner, shareholder, member, official or employee of Developer or any Affiliate of Developer shall be personally liable to the City for any default or breach by Developer, or for any amount which may become due to the City, or on any obligations under the terms of this Agreement.

9.3 Independent Contractor. Developer is an independent contractor with respect to the Improvements and the Public Improvements and is not serving as the employee or agent of the City. Nothing contained in this Agreement shall be construed as creating or constituting any partnership, joint venture, employment or agency between the parties. Each of Developer and the City has sole authority and responsibility to employ, discharge and otherwise control its own employees, and the respective employees of Developer and the City are not, and shall not be deemed to be, employees of the other. Neither party has the right or power to bind or obligate the other party for any liabilities or obligations without the prior written consent of the other party.

9.4 Severability. If any term(s) or provision(s) of this Agreement or the application of any term(s) or provision(s) of this Agreement to a particular situation, is (are) held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement or the application of such term(s) or provision(s) of this Agreement to other situations, shall remain in full force and effect unless amended or modified by mutual consent of the parties; provided that, if the invalidation, voiding or unenforceability would deprive either the City or Developer of material benefits derived from this Agreement, or make performance under this Agreement unreasonably difficult, then the City and Developer shall meet and confer and shall make good faith efforts to amend or modify this Agreement in a manner that is mutually acceptable to the City and Developer.

9.5 Construction of Agreement. This Agreement has been reviewed and revised by legal counsel for both Developer and the City, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

9.6 Entire Agreement. This Agreement and all the documents, agreements, exhibits and schedules referenced herein constitute the entire understanding and agreement of the parties and supersede all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

9.7 No Waiver. No delay or omission by either party in exercising any right or power accruing upon non-compliance or failure to perform by the other party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants or conditions to be performed by the other party shall be in writing and signed by a duly authorized representative of the party against

whom enforcement of a waiver is sought, and any such waiver shall not be construed as a waiver of any succeeding breach or non-performance of the same or other covenants and conditions hereof.

9.8 Time Is of the Essence. Time is of the essence for each provision of this Agreement for which time is an element.

9.9 Governing Laws. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

9.10 Attorney's Fees and Interest. Should any legal action be brought by either party because of a breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and such other costs as may be found by the court or arbitrator. If any party hereto fails to pay any amount under this Agreement when it is due, that amount will bear interest from the date it is due until the date it is paid at the lesser of 18% per annum or the maximum rate of interest permitted under Legal Requirements.

9.11 No Third Party Beneficiaries. Except with respect to any permitted assignees of Developer and the City as contemplated in Section 9.15, the City and Developer hereby renounce the existence of any third party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third party beneficiary status.

9.12 Counterparts. This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined, shall constitute one (1) single instrument.

9.13 Time of Performance. All performance dates (including without limitation cure dates) expire at 5:00 p.m. Central Standard Time, on the performance or cure date. A performance or cure date which falls on a day other than a Business Day is deemed extended to the next Business Day.

9.14 Estoppel Certificates. Upon 30 days' prior written notice and not more than twice in any 12-month period, the City and Developer each agree to sign and deliver to the other party a statement certifying (a) that this Agreement is unmodified and in full force and effect (or, if that is not the case, so stating and setting forth any modifications), (b) that, to the responding party's knowledge, the requesting party is not in breach of this Agreement (or, if that is not the case, so stating and setting forth any alleged breaches), and (c) any other information reasonably related to the status of this Agreement. This certificate may only be relied upon by the party requesting the certificate and any parties specifically identified by name in the request, may only be used to estop the responding party from claiming that the facts are other than as set forth in the certificate, and may not be relied upon by any person or entity, even if named in such estoppel certificate, who knows or should know that the facts are other than as set forth in such certificate.

9.15 Successors and Assigns.

(a) General. Except as provided in this Section, this Agreement will be binding upon and inure to the benefit of the permitted successors and assigns of the City and Developer, and where the terms "**Developer**" or "the **City**" are used in this Agreement, they mean and include their respective permitted successors and assigns. If any party hereto assigns its interest herein as permitted hereby, the assigning party will not be released from its obligations hereunder, except to the extent it obtains a written release from the beneficiary party to such obligations, which such beneficiary party may give or withhold in its sole and absolute discretion.

(b) City Assignment. Without Developer's prior consent, the City may only assign its interest in the Property to a special entity to facilitate the redevelopment of the Property, provided the City remains liable for the City's obligations to Developer in this Agreement. If the City assigns its interest hereunder, the City's assignee shall execute an assumption agreement unconditionally assuming the City's obligations hereunder, a copy of which shall be provided to Developer.

(c) Developer Assignment. Prior to Commencement of Construction of the Improvements, Developer shall not assign (including without limitation, by transfer or pledge of a majority of [or controlling] ownership interests, merger, or dissolution, which transfer or pledge of majority interest of [or controlling] ownership interests, merger, or dissolution shall be deemed an assignment), transfer or hypothecate all or any interest in this Agreement (other than a mortgage or pledge in connection with the financing of the Property's acquisition and/or development) (a "**Transfer**"), without the City's prior written consent, provided however, without the City's prior consent (but with prior written notice to the City) Developer may Transfer its interest in this Agreement to TC Austin, another wholly owned Affiliate of Trammell Crow Company, or an Affiliate of Developer provided that such Affiliate is owned and controlled by the people or entities that own and control Developer as of the Effective Date. Following Commencement of Construction of the Improvements, Developer may effectuate a Transfer without the City's consent.

(d) Bankruptcy. If, pursuant to Applicable Bankruptcy Law, Developer (or its successor in interest hereunder) is permitted to assign this Agreement in disregard of the restrictions contained in this Article (or if this Agreement shall be assumed by a trustee for such person), the trustee or assignee shall cure any Event of Default under this Agreement and shall provide adequate assurance of future performance by the trustee or assignee, including (i) the source of performance of Developer's obligations under this Agreement for which adequate assurance shall mean the deposit of cash or equivalent security with the City in an amount equal to the sum of 20% of Developer's estimated remaining monetary obligations under this Agreement, which deposit shall be held by City, without interest, as security for the full and faithful performance of all of the obligations under this Agreement on the part of Developer yet to be performed; (ii) that the trustee's or assignee's development expertise with respect to mixed use urban developments is at least equal to that of Developer as of the Effective Date, and (iii) that the use of the Property shall be in accordance with the terms hereof and, further, shall in no way diminish the reputation of the Property as a "Class A" mixed use urban development or impose any additional burden upon the Property or increase the services

to be provided by City. If all Events of Defaults are not cured and such adequate assurance is not provided within ninety (90) days after there has been an order for relief under Applicable Bankruptcy Law, then this Agreement shall be deemed rejected, Developer or any other person in possession shall immediately vacate the Property and the City shall have no further liability to Developer or any person claiming through Developer or any trustee under this Agreement.

9.16 No Recording/Filing. Neither party will record or file this Agreement or any memorandum thereof in any public recording office.

9.17 Effect of Force Majeure. If the City or Developer is delayed, hindered, or prevented from performance of any of its respective obligations under this Agreement by reason of Force Majeure and if such party has not otherwise committed an Event of Default hereunder which is continuing, the time for performance of such obligation is automatically extended for the period of such delay, provided that the following requirements are complied with by the affected party:

(a) The affected party shall give prompt written notice of such occurrence to the other party; and

(b) The affected party shall diligently attempt to remove, resolve, or otherwise eliminate any such event within the reasonable control of such affected party, keep the other party advised with respect thereto, and commence performance of its affected obligations hereunder immediately upon such removal, resolution, or elimination.

9.18 Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered by the parties, the City and Developer agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at the Takedown or at such other time or times as may be necessary or appropriate under this Agreement any and all further lawful acts, deeds, and assurances as are reasonably necessary or appropriate to consummate and implement the transactions and agreements reasonably contemplated hereby.

9.19 Consents and Approvals. Unless expressly stated otherwise herein to the contrary, any approval, agreement, clarification, determination, consent, waiver, estoppel certificate, estimate or joinder by the City required hereunder may be given by the City Manager of the City of Austin or its designee; provided however, except for clarifications, minor amendments and minor 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.

9.20 Correction of Technical Errors. If, by reason of inadvertence, and contrary to the intention of the City and Developer, errors are made in this Agreement in the legal descriptions or the references thereto or within any exhibit with respect to the legal descriptions, in the boundaries of any parcel in any map or drawing which is an exhibit, or in the typing of this Agreement or any of its exhibits 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.

9.21 Interstate Land Sales Full Disclosure. The City and Developer acknowledge and agree that the sale of the Property in accordance with this Agreement will be exempt from the provisions of the Interstate Land Sales Full Disclosure Act in accordance with the exemption applicable to the sale of property to any person who acquires such property for the purpose of engaging in the business of constructing residential, commercial or industrial buildings or for the purpose of resale of such property to persons engaged in such business.

[END OF TEXT-SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

CITY:

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

By:_____
Marc A. Ott, City Manager

Approved as to form and content for the City by the City's external legal counsel:

THOMPSON & KNIGHT L.L.P.

_____

DEVELOPER:

CONSTRUCTIVE VENTURES, INC., a Texas corporation

By:_____
Name:_____
Title:_____

TC AUSTIN:

TC Austin consents to the terms and conditions of this Agreement.

TC AUSTIN DEVELOPMENT, INC., a Delaware corporation

By:_____
Name:_____
Title:_____

EXHIBIT A-1
TO ECC MASTER DEVELOPMENT AGREEMENT

Property

(Entire Block 24 – Original City of Austin)

LEGAL DESCRIPTION

LEGAL DESCRIPTION FOR 76,744 SQUARE FEET (1.7618 ACRES) OF LAND SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, AND BEING ALL OF BLOCK 24 (LOTS 1 - 8 AND ALL OF THAT CERTAIN TWENTY FOOT (20.00') WIDE ALLEY LYING WITHIN BLOCK 24 HAVING BEEN VACATED BY CITY COUNCIL RESOLUTION DATED FEBRUARY 4th, 1932) OF THE ORIGINAL CITY OF AUSTIN; SAID MAP OR PLAN OF THE ORIGINAL CITY OF AUSTIN ON FILE AT THE GENERAL LAND OFFICE OF THE STATE OF TEXAS; SAID BLOCK 24 HAVING BEEN CONVEYED TO THE CITY OF AUSTIN BY WARRANTY DEED DATED JUNE 14th 1961 AND RECORDED IN VOLUME 2314 AT PAGE 417 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID BLOCK 24 CONTAINING 76,744 SQUARE FEET OF LAND AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a MAG NAIL w/WASHER stamped "COA PUBLIC WORKS" set in the concrete footer of a metal ornamental fence at the intersection of the northerly right-of-way line of West 3rd Street (80' ROW) and the easterly right-of-way line of West Avenue (80' ROW), same being the southwest corner of Lot 1, Block 24, for the southwest corner of the herein described tract, from which a City of Austin centerline monument found at the intersection of the centerline of West Avenue (80' ROW) and the westerly prolongation of the southerly line of said Block 24 and the northerly right-of-way line of West 3rd Street (80' ROW) bears N 73°25'53" W a distance of 40.00 feet, also from which a cross found cut on the top of the northerly curb line of West Cesar Chavez Street previously set by City of Austin survey crews and referenced as being on the centerline of West Avenue bears N 73°25'53" W a distance of 40.00 feet and S 16°37'53" W a distance of 707.55 feet;

THENCE, N 16°36'55" E along the easterly right-of-way line of West Avenue (80' ROW) and the westerly line of said Block 24, passing at a distance of 265.15 feet a 60D NAIL w/WASHER stamped "COA PUBLIC WORKS" set in concrete in northerly line of an existing chain link security fence, continuing along said common line for a total distance of 276.70 feet to a MAG NAIL w/WASHER stamped "COA PUBLIC WORKS" set in a concrete Hike & Bike trail at the intersection of the easterly right-of-way line of West Avenue (80' ROW) and the southerly right-of-way line of West 4th Street (80' ROW), same being the northwest corner of Lot 8, Block 24, for the northwest corner of the herein described tract, from which a City of Austin centerline monument previously found at the intersection of the centerline of West Avenue (80' ROW) and the centerline of West 5th Street (80' ROW) bears N 73°25'05" W a distance of 40.00 feet and N 16°36'55" E a distance of 397.71 feet;

THENCE, S 73°25'50" E along the southerly right-of-way line of West 4th Street (80' ROW) and northerly line of Lots 5-8, Block 24 a distance of 277.34 feet to a calculated point currently inundated by the waters of Shoal Creek at the intersection of the southerly right-of-way line of West 4th Street

(80' ROW) and the westerly right-of-way line of Rio Grande Street (80' ROW), same being the northeast corner of Lot 5, Block 24, for the northeast corner of the herein described tract, from which a City of Austin centerline monument previously found at the intersection of the centerline of Rio Grande Street (80' ROW) and the centerline of West 5th Street (80' ROW) bears S 73°23'26" E a distance of 40.00 feet and N 16°36'34" E a distance of 397.53 feet, also from which a City of Austin centerline monument previously found at the intersection of the centerline of Nueces Street (80' ROW) and a line twenty-eight (28.00') feet north of the centerline of West 4th Street (80' ROW) bears N 16°34'10" E a distance of 40.00 feet, S 73°25'50" E a distance of 397.08 feet, and N 16°40'08" E a distance of 28.00 feet ;

THENCE, S 16°36'34" W along the westerly right-of-way line of Rio Grande Street (80' ROW) and the easterly line of said Block 24, passing at a distance of 131.33 feet a ½" IRON ROD w/CAP stamped "COA PUBLIC WORKS" set for reference in the easterly line of a chain link security fence, continuing along said common line and passing at a distance of 268.78 feet a ½" IRON ROD w/CAP stamped "COA PUBLIC WORKS" set for reference in the southerly line of said chain link security fence, and continuing along said common line for a total distance of 276.70 feet to a MAG NAIL w/WASHER stamped "COA PUBLIC WORKS" set in a concrete Hike & Bike trail at the intersection of the westerly right-of-way line of Rio Grande Street (80 ROW) and the northerly right-of-way line of West 3rd Street (80 ROW), same being the southeast corner of Lot 4, Block 24, for the southeast corner of the herein described tract, from which a City of Austin centerline monument previously found at the intersection of the centerline of Nueces Street (80' ROW) and the northerly right-of-way line of West 3rd Street (80' ROW) bears S 73°25'53" E a distance of 396.73 feet;

THENCE, N 73°25'53" W along the present north right-of-way line of West 3rd Street (80' ROW), same being the southerly line of Lots 1-4, Block 24, passing at a distance of 26.04 feet a ½" IRON ROD w/CAP stamped "COA PUBLIC WORKS" set for reference in the southerly line of said chain link security fence, and continuing along said common line for a total distance of 277.37 feet to the POINT OF BEGINNING and containing 76,744 Square Feet of land more or less.

"This legal description was prepared by John E. Moore, R.P.L.S. No. 4520 from surveys made on the ground in February 1996 and March 2008. The bearing basis of this description is the Texas State Plane Coordinate System of 1983, Central Zone (Grid).

John E. Moore, R.P.L.S. No. 4520
Engineering Services Division
Department of Public Works
City of Austin

REFERENCES
TCAD Parcel No. 01-0700-1601
Austin Grid H-22

EXHIBIT A-2
TO ECC MASTER DEVELOPMENT AGREEMENT

(Reserve Area Portions of Block 24 – Original City of Austin)

LEGAL DESCRIPTION

LEGAL DESCRIPTION FOR TWO TRACTS OF LAND CONTAINING APPROXIMATELY 5,685 SQUARE FEET OF LAND SITUATED IN BLOCK 24 OF THE ORIGINAL CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; THE MAP OR PLAN OF THE ORIGINAL CITY OF AUSTIN ON FILE AT THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, SAID BLOCK 24 OF THE ORIGINAL CITY OF AUSTIN HAVING BEEN CONVEYED TO THE CITY OF AUSTIN BY WARRANTY DEED DATED JUNE 14th 1961 AND RECORDED IN VOLUME 2314 AT PAGE 417 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; TRACT 1 CONTAINING 5,624 SQUARE FEET OF LAND AND BEING A PORTION OF LOTS 5, 6, 7 & 8 OF SAID BLOCK 24 AND TRACT 2 CONTAINING 61 SQUARE FEET OF LAND AND BEING A PORTION OF LOT 4 OF SAID BLOCK 24; SAID TWO TRACTS OF LAND CONTAINING 5,685 SQUARE FEET OF LAND AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

TRACT 1 – (5,624 SF)

BEGINNING at a MAG NAIL w/WASHER stamped "COA PUBLIC WORKS" set in a concrete Hike & Bike trail at the intersection of the southerly right-of-way line of West 4th Street (80' ROW) and the easterly right-of-way line of West Avenue (80' ROW), same being the northwest corner of Lot 8, Block 24 and northwest corner of the herein described tract, from which a City of Austin centerline monument previously found at the intersection of the centerline of West Avenue and the centerline of West 5th Street bears N 73°25'05" W a distance of 40.00 feet and N 16°36'55" E a distance of 409.22 feet, also from which a City of Austin centerline monument found at the intersection of the centerline of West Avenue and the westerly prolongation of the southerly line of said Block 24 common with the northerly right-of-way West 3rd Street bears N 73°23'05" W a distance of 40.00 feet and S 16°36'55" W a distance of 397.71 feet;

THENCE, S 73°25'50" E along the southerly right-of-way line of West 4th Street, being the northerly line of said Lots 4-8, Block 24 a distance of 277.34 feet to a calculated point currently inundated by the waters of Shoal Creek at the intersection of the southerly right-of-way line of West 4th Street (80 ROW) and the westerly right-of-way line of Rio Grande Street (80 ROW), same being the northeast corner of said Lot 5, Block 24, for the northeast corner of the herein described tract, from which a City of Austin centerline monument previously found at the intersection of the centerline of Rio Grande Street and the centerline of West 5th Street bears S 73°23'26" E a distance of 40.00 feet and N 16°36'34" E a distance of 397.53 feet, also from which a City of Austin centerline monument previously found at the intersection of the centerline of Nueces Street and a line twenty-eight (28.00') feet north of and parallel to the centerline of West 4th Street bears N 16°34'10" E a distance of 40.00 feet, S 73°25'50" E a distance of 357.08 feet and N 16°40'08" E a distance of 28.00 feet;

THENCE, S 16°36'34" W along the westerly right-of-way line of Rio Grande Street, same being the easterly line of said Lot 5, Block 24 a distance of 126.67 feet to a calculated point in the southwesterly edge of an existing concrete Hike & Bike trail, for the southeast corner of the herein described tract, from which a ½" IRON ROD w/CAP stamped "COA PUBLIC WORKS" set for reference at the intersection of the easterly line of a chain link security fence and the westerly right-of-way line of Rio Grande Street (80' ROW) Street bears S 16°36'55" W a distance of 4.66 feet, also from which a ½" IRON ROD w/CAP stamped "COA PUBLIC WORKS" set for reference at the intersection of the southerly line of a chain link security fence and the westerly right-of-way line of Rio Grande Street (80' ROW) Street bears S 16°36'55" W a distance of 142.11 feet, and also from which a MAG NAIL w/WASHER stamped "COA PUBLIC WORKS" set in a concrete Hike & Bike trail at the intersection of the westerly right-of-way line of Rio Grande Street (80' ROW) and the northerly right-of-way line of West 3rd Street (80' ROW) and the westerly right-of-way line of Rio Grande Street (80' ROW), same being the southeast corner of said Lot 4, Block 24 bears S 16°36'34" W a distance of 150.03 feet;

THENCE, leaving the westerly right-of-way line of Rio Grande Street (80' ROW) and the east line of said Lot 5, Block 24 along the westerly and southerly edge of the existing concrete Hike & Bike trail, through the interior of said Lots 5-8, Block 24 the following twenty-two (22) courses:

1) N 02°08'55" E a distance of 0.85 feet to a calculated point, for an angle point of the herein described tract;

2) N 02°34'33" E a distance of 22.31 feet to a calculated point, for a point of curvature of a non-tangent curve to the left;

3) a distance of 37.87 feet along the arc of said curve to the left, having a central angle of 17°07'24", a radius of 126.72 feet and a chord which bears N 02°23'01" E a distance of 37.73 feet to a calculated point at the end of said curve;

4) N 06°58'22" W a distance of 14.88 feet to a calculated point, for a point of curvature of a non-tangent curve to the left;

5) a distance of 10.10 feet along the arc of said curve to the left, having a central angle of 7°48'25", a radius of 74.15 feet and a chord which bears N 11°59'01" W a distance of 10.10 feet to a calculated point at the end of said curve, for a point of curvature of a non-tangent curve to the left;

6) a distance of 19.95 feet along the arc of said curve to the left, having a central angle of 18°00'47", a radius of 63.47 feet and a chord which bears N 29°37'18" W a distance of 19.87 feet to a calculated point at the end of said curve, for a point of curvature of a non-tangent curve to the left;

7) a distance of 21.56 feet along the arc of said curve to the left, having a central angle of 17°25'11", a radius of 70.91 feet and a chord which bears N 47°01'49" W a distance of 21.48 feet to a calculated point at the end of said curve, for an angle point of said concrete Hike & Bike trail, for an inside ell corner of the herein described tract;

8) S 16°33'07" W a distance of 0.40 feet to a calculated point at the northeast corner of an existing concrete wall, for an outside ell corner of the herein described tract;

9) N 73°26'53" W along the northerly edge of said concrete wall a distance of 15.87 feet to a calculated point at the northwesterly corner of said concrete wall, for an outside ell corner of the herein described tract;

10) N 45°20'30" W a distance of 4.35 feet to a calculated point, for an angle point of the herein described tract;

11) N 69°47'18" W a distance of 11.63 feet to a calculated point, for an angle point of the herein described tract;

12) N 73°01'35" W a distance of 2.06 feet to a calculated point, for a point of curvature of non-tangent curve to the right;

13) a distance of 26.51 feet along the arc of said curve to the right, having a central angle of 1°55'19", a radius of 790.37 feet and a chord which bears N 72°16'06" W a distance of 26.51 feet to a calculated point at the end of said curve;

14) N 71°27'00" W a distance of 23.70 feet to a calculated point, for a point of curvature of a non-tangent curve to the right;

15) a distance of 18.47 feet along the arc of said curve to the right, having a central angle of 18°56'37", a radius of 55.85 feet and a chord which bears N 57°58'21" W a distance of 18.38 feet to a calculated point at the end of said curve, for a point of curvature of non-tangent curve to the left;

16) a distance of 20.43 feet along the arc of said curve to the left, having a central angle of 17°20'50", a radius of 67.48 feet and a chord which bears N 58°33'20" W a distance of 20.35 feet to the end of said curve;

17) N 65°28'42" W a distance of 28.85 feet to a calculated point, for a point of curvature of a non-tangent curve to the left;

18) a distance of 33.33 feet along the arc of said curve to the left, having a central angle of 10°22'29", a radius of 184.07 feet and a chord which bears N 70°41'07" W a distance of 33.29 feet to a calculated point at the end of said curve, for a point of curvature of another non-tangent curve to the left

19) a distance of 28.70 feet along the arc of said curve to the left, having a central angle of 15°39'17", a radius of 105.04 feet and a chord which bears N 84°05'37" W a distance of 28.61 feet to a calculated point at the end of said curve;

20) S 88°39'22" W a distance of 7.05 feet to a calculated point, for an inside ell corner of the herein described tract;

21) S 14°05'36" E a distance of 2.04 feet to a calculated point at the intersection of said edge of concrete and northerly line of said chain link security fence, for an outside ell corner of the herein described tract;

22) N 73°23'05" W along said chain link security fence a distance of 1.52 feet to 60D NAIL w/WASHER stamped "COA PUBLIC WORKS" set in concrete in the easterly right-of-way line of said West Avenue (80' ROW), same being the westerly line of said Lot 8, Block 24, for the southwest corner of the herein described tract;

THENCE, N 16°36'55" E along the easterly right-of-way line of West Avenue (80' ROW) and westerly line of said Lot 8, Block 24 a distance of 11.55 feet to the POINT OF BEGINNING and containing 5,624 Square Feet of land more or less.

TRACT 2 – (61 SF)

BEGINNING at a MAG NAIL w/WASHER stamped "COA PUBLIC WORKS" set in concrete at the intersection of the northerly right-of-way line of West 3rd Street (80' ROW) and the westerly right-of-way line of Rio Grande Street (80' ROW), same being the southeast corner of Lot 4, Block 24, and from which a City of Austin centerline monument previously found at the intersection of the centerline of Rio Grande Street and the centerline of West 5th Street bears S 73°25'05" E a distance of 40.00 feet and N 16°36'55" E a distance of 409.22 feet, also from which a City of Austin centerline monument previously found at the intersection of the centerline of Nueces Street (80' ROW) and the northerly right-of-way line of West 3rd Street (80' ROW) bears S 73°25'05" E a distance of 40.00 feet;

THENCE, N 73°25'53" W along the northerly right-of-way line of West 3rd Street, being the southerly line of Lot 4, Block 24 a distance of 26.04 feet to a ½" IRON ROD w/CAP stamped "COA PUBLIC WORKS" set in the southerly line of a chain link security fence, for the southwest corner of the herein described tract, from which a MAG NAIL w/WASHER stamped "COA PUBLIC WORKS" set in concrete at the southwest corner of Lot 1, Block 24, same being the intersection of the easterly right-of-way line of West Avenue and the northerly right-of-way line of West 3rd Street (80' ROW) bears N 73°25'53" W a distance of 277.37 feet, also from which a City of Austin centerline monument found at the intersection of the centerline of West Avenue (80' ROW) and the westerly prolongation of the southerly line of said Block 24 bears N 73°25'53" W a distance of 317.37 feet;

THENCE, leaving the northerly right-of-way line of West 3rd Street (80' ROW) and crossing said Lot 4, Block 24 along the southerly line of said chain link security fence the following three (3) courses:

1) S 80°43'39" E a distance of 14.12 feet to the base of a 2½" diameter chain link fence post, for an angle point of the herein described tract;

2) S 87°32'15" E a distance of 6.90 feet to the base of a 4" diameter chain link fence post, for an angle point of the herein described tract;

3) N 66°50'58" E a distance of 6.96 feet to the a ½" IRON ROD w/CAP stamped "COA PUBLIC WORKS" set in the westerly right-of-way line of Rio Grande Street (80' ROW), same being in

the easterly line of said Lot 4, Block 24, for the northeast corner of the herein described tract, from which a ½" IRON ROD w/CAP stamped "COA PUBLIC WORKS" set for reference in the westerly right-of-way line of Rio Grande Street (80' ROW) bears N 16°36'34" E a distance of 137.45 feet;

THENCE, S 16°36'34" W along the westerly right-of-way line of Rio Grande Street (80' ROW), same being the easterly line of said Lot 4, Block 24 a distance of 7.92 feet to the POINT OF BEGINNING and containing 61 Square Feet of land more or less.

"This legal description was prepared by John E. Moore, R.P.L.S. No. 4520 from surveys made on the ground in February 1996 and March 2008. The bearing basis of this description is the Texas State Plane Coordinate System of 1983, Central Zone (Grid).

John E. Moore, R.P.L.S. No. 4520
Engineering Services Division
Department of Public Works
City of Austin

REFERENCES
TCAD Parcel No. 01-0700-1601
Austin Grid H-22

EXHIBIT B
TO ECC MASTER DEVELOPMENT AGREEMENT

City Security Instrument

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

NOTE: PURSUANT TO THE TERMS OF A _____ DATED OF EVEN DATE HEREWITH BETWEEN OBLIGEE (AS DEFINED BELOW) AND _____ ("SENIOR LENDER"), THIS INSTRUMENT HAS BEEN SUBORDINATED TO THE SECURITY INSTRUMENT OF SENIOR LENDER; PROVIDED HOWEVER, IN THE EVENT SUCH SENIOR LENDER'S SECURITY INSTRUMENT IS FORECLOSED AND THE PROCEEDS ARE NOT SUFFICIENT TO PAYOFF THE AMOUNTS OWNED UNDER THIS INSTRUMENT, THIS INSTRUMENT SHALL NOT BE AFFECTED AND SHALL REMAIN IN FULL FORCE AND EFFECT TO SECURE THE AMOUNTS SECURED HEREBY.

WHEN RECORDED RETURN TO:
Thompson & Knight L.L.P.
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Attention: Andrew A. Ingrum

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

This Deed of Trust, Security Agreement and Fixture Filing (this "**Security Instrument**") is executed effective as of the ____ day of _____, 20____, by _____ ("**Grantor**"), whose mailing address is _____, to Andrew A. Ingrum, Trustee, of Dallas County, Texas (the "**Trustee**"), for the benefit of THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("**Obligee**"), whose address is 301 West 2nd Street, Austin, Texas 78701, Attention: City Manager.

FOR GOOD AND VALUABLE CONSIDERATION, including the obligations herein recited and the trust herein created, the receipt of which is hereby acknowledged, and in order to secure the obligations hereinafter referred to and the performance of the obligations, covenants, agreements and undertakings of Grantor hereinafter described, Grantor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER to the Trustee the real estate situated in the County of Travis and State of Texas described in Exhibit A attached hereto and made a part hereof, together with (i) all the buildings and other improvements now on or hereafter located thereon; (ii) all materials, equipment, fixtures or other property whatsoever now or hereafter attached or affixed to or installed in said buildings and other improvements, including, but not limited to, all heating, plumbing, lighting, water heating, cooking, laundry,

refrigerating, incinerating, ventilating and air conditioning equipment, disposals, dishwashers, refrigerators and ranges, recreational equipment and apparatus, utility lines and equipment (whether owned individually or jointly with others), sprinkler systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, engines, machines, elevators, motors, cabinets, shades, blinds, partitions, window screens, screen doors, storm windows, awnings, drapes, and rugs and other floor coverings, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all of which materials, equipment, fixtures and other property are hereby declared to be permanent fixtures and accessions to the freehold and part of the realty conveyed herein as security for the obligations herein mentioned; (iii) all easements and rights of way now and at any time hereafter used in connection with any of the foregoing property or as a means of ingress to or egress from said property or for utilities to said property; (iv) all interests of Grantor in and to any streets, ways, alleys and/or strips of land adjoining said land or any part thereof; (v) all water and water rights and shares of stock evidencing the same; and (vi) all rights, estates, powers and privileges appurtenant or incident to the foregoing.

TO HAVE AND TO HOLD the foregoing property (the "**Real Property**") unto the Trustee and his successors or substitutes in this trust and to his or their successors and assigns, IN TRUST, however, upon the terms, provisions and conditions herein set forth.

In order to secure the payment and performance of the obligations, covenants, agreements and undertakings of Grantor hereinafter described, Grantor hereby grants to Obligee (as hereinafter defined) a security interest in all goods, equipment, furnishings, fixtures, furniture, chattels and personal property of whatever nature owned by Grantor now or hereafter located or used in and about the building or buildings or other improvements now erected or hereafter to be erected on the lands described in Exhibit A attached hereto and made a part hereof, or otherwise located on said lands, and all fixtures, accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all building materials and equipment now or hereafter delivered to said premises and intended to be installed therein, all security deposits (whether cash, one or more letters of credit, bonds or other form of security) and advance rentals under lease agreements now or at any time hereafter covering or affecting any of the Property (as hereinafter defined) and held by or for the benefit of Grantor, all monetary deposits which Grantor has been required to give to any public or private utility with respect to utility services furnished to the Property, all rents and other amounts from and under leases of all or any part of the Property, all issues, profits and proceeds from all or any part of the Property, all proceeds (including premium refunds) of each policy of insurance relating to the Property, including, all proceeds from the taking of the Property or any part thereof or any interest therein or right or estate appurtenant thereto by eminent domain or by purchase in lieu thereof, all contracts related to the Property, all money, funds, accounts, instruments, documents, general intangibles (including trademarks, trade names and symbols owned by Grantor and used in connection therewith), all notes or chattel paper arising from or related to the Property, all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Property, all plans, specifications, maps, surveys, reports, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Property, all proceeds and other amounts paid or owing to Grantor under or pursuant to any and all contracts and bonds relating to the construction, erection or renovation of the Property, all oil, gas and other hydrocarbons and other minerals produced from or allocated to the Property

and all products processed or obtained therefrom, the proceeds thereof, and all accounts and general intangibles under which such proceeds may arise, together with any sums of money that may now or at any time hereafter become due and payable to Grantor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and future oil, gas and mining leases covering the Property or any part thereof (all of the property described in this Section collectively called the "**Collateral**") and all proceeds of the Collateral. (The Real Property and the Collateral are collectively called the "**Property**".)

ARTICLE I

Secured Obligations

1.1 Secured Obligations. This Security Instrument is made to secure and enforce the payment and performance of the following obligations and liabilities:

(a) the obligations and liabilities of Grantor under this Security Instrument,

(b) the following obligations and liabilities of ***[Grantor]*** under that certain ECC Master Development Agreement (the "**MDA**") dated _____, 20__ between Grantor and Obligee:

(i) pay to Obligee an infrastructure reimbursement of $1,000,000 pursuant to Section 6.1 of the MDA,

(ii) intentionally omitted,

(iii) contribute $250,000 cash to a City of Austin special public art fund or program facilities for public art on the Property, pursuant to Section 6.2 of the MDA,

(iv) pay to the Obligee (for delivery to a City of Austin sponsored affordable housing fund designated by the Obligee) a one-time payment equal to $5 per net square foot (sellable or leasable, as the case may be) of improvements (excluding common and parking areas) of the Property pursuant to Section 6.4 of the MDA; and

(v) pay any liquidated damages owing to the Obligee under Sections 8.2(c) of the MDA and Section 5(b) of that certain Special Warranty Deed dated of even date herewith from the Obligee to the Grantor concerning the Property; provided however, this Security Instrument will only secure up to $365,000 of such liquidated damages even though the amount of such liquidated damages may exceed $365,000.

The obligations referred to in this Section is hereinafter sometimes called the "**secured obligations**" or the "**obligations secured hereby**."

ARTICLE II

Representations, Warranties and Covenants

2.1 Representations, Warranties and Covenants. Grantor represents, warrants and covenants to and with Obligee as follows:

(a) Permitted Encumbrances. The Property is free and clear from all liens, security interests and encumbrances except (i) the liens, assignments and security interests evidenced hereby, (b) the liens, assignments and security interests of any first lien financing deed of trust encumbering the Property (the "**First Lien Security Instrument**"), and (iii) any and all valid restrictions, easements and other encumbrances, if any, affecting the Property as the same appear of record, but only to the extent that they are still in effect (all of the foregoing, the "**Permitted Encumbrances**"). Grantor will warrant and forever defend the title to the Property against the claims of all persons whomsoever lawfully claiming or to claim the same or any part thereof, subject to the Permitted Encumbrances.

(b) No Financing Statement. Except with respect to the Permitted Encumbrances, there is no financing statement covering all or any part of the Property or its proceeds on file in any public office.

(c) No Homestead. No portion of the Property is being used as Grantor's business or residential homestead.

2.2 Covenants and Agreements. So long as the secured obligations or any part thereof remains unpaid, Grantor covenants and agrees with Obligee as follows:

(a) Payment. Grantor will make prompt payment, as the same becomes due of all secured obligations.

(b) Existence. Grantor will continuously maintain its existence and its right and good standing to transact business in the State of Texas together with its franchises and trade names.

(c) Taxes. Grantor will promptly pay all income, franchise and other taxes owing by Grantor and any stamp taxes which may be required to be paid with respect to this Security Instrument or any other instrument evidencing or securing any of the secured obligations.

(d) Debts for Construction. Grantor will cause all debts and liabilities of any character, including without limitation all debts and liabilities for labor, material and equipment and all debts and charges for utilities servicing the Property, incurred in the construction, maintenance, operation and development of the Property to be promptly paid, except for those being contested in good faith and in accordance with the applicable provisions of this Security Instrument.

(e) Ad Valorem Taxes. Grantor will cause to be paid prior to delinquency all taxes and assessments heretofore or hereafter levied or assessed against the Property, or any part thereof, or against the Trustee or Obligee for or on account of obligations

secured hereby or the interest created by this Security Instrument and will furnish Obligee with receipts showing payment of such taxes and assessments at least 10 days prior to the applicable default date therefor; except that Grantor may in good faith, by appropriate proceedings, contest the validity, applicability, or amount of any asserted tax or assessment, and pending such contest Grantor shall not be deemed in default hereunder if (i) prior to delinquency of the asserted tax or assessment Grantor establishes an escrow acceptable to Obligee adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible costs, interest and penalties (which escrow shall be returned to Grantor upon payment of all such taxes, assessments, interest, costs and penalties); (ii) Grantor pays to Obligee promptly after demand therefor all reasonable costs and expenses incurred by Obligee in connection with such contest; and (iii) Grantor promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, promptly after such judgment becomes final; provided, however, that in any event each such contest shall be concluded and the tax, assessment, penalties, interest and costs shall be paid prior to the date any writ or order is issued under which the Property may be sold.

(f) Condemnation.

(i) Grantor's Obligations. Grantor will promptly notify Obligee of any threatened or instituted proceedings for the condemnation or taking by eminent domain of all or any portion of the Real Property by an entity other than Obligee (a "**Taking**"). Grantor shall, at its expense, (A) diligently prosecute these proceedings, (B) deliver to Obligee copies of all papers served in connection therewith, and (C) consult and cooperate with Obligee in the handling of these proceedings. No settlement of these proceedings shall be made by Grantor without Obligee's prior written consent; provided however, if the Senior Lender consents to such settlement, Obligee's consent thereto is deemed automatically granted hereunder. Obligee may participate in these proceedings (but shall not be obligated to do so) and Grantor will sign and deliver all instruments requested by Obligee to permit this participation and to pay all of Obligee's reasonable costs in such participation.

(ii) Obligee's Rights. All condemnation awards, judgments, decrees, or proceeds of sale in lieu of condemnation ("**Award**") are assigned and shall be paid to Obligee. Grantor authorizes Obligee to collect and receive them, to give receipts for them, to accept them in the amount received without question or appeal, and/or to appeal any judgment, decree, or award. Grantor will sign and deliver all instruments requested by Obligee to permit these actions. Obligee shall have the right to apply any Award as payment for the secured obligations. If Grantor receives any Award, Grantor shall promptly deliver the full amount thereof to Obligee without deduction of any kind. Notwithstanding anything in this Security Instrument or at law or in equity to the contrary, none of the Award paid to Obligee shall be deemed trust funds and Obligee may dispose of these proceeds as provided in this Section.

(iii) Effect on Secured obligations. Grantor must continue to pay the secured obligations and perform the obligations as provided herein. Any

reduction in the secured obligations due to application of the Award shall take effect only upon Obligee's actual receipt and application of the Award to the secured obligations. If the Real Property shall have been foreclosed, sold pursuant to any power of sale granted hereunder, or transferred by deed-in-lieu of foreclosure prior to Obligee's actual receipt of the Award, Obligee may apply the Award received to the extent of any deficiency upon such sale against any accrued fees and all costs incurred by Obligee in connection with such sale.

(g) Protection and Defense of Lien. If the validity or priority of this Security Instrument or of any rights, titles, liens or security interests created or evidenced hereby with respect to the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly or if any legal proceedings are instituted against Grantor with respect thereto, Grantor will give prompt written notice thereof to Obligee and at Grantor's own cost and expense will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such legal proceedings, including but not limited to the employment of counsel, the prosecution or defense of litigation and the release or discharge of all adverse claims, and the Trustee and Obligee, or either of them (whether or not named as parties to legal proceedings with respect thereto) are hereby authorized and empowered to take such additional steps as in their judgment and discretion may be necessary or proper for the defense of any such legal proceedings or the protection of the validity or priority of this Security Instrument and the rights, titles, liens and security interests created or evidenced hereby, including but not limited to the employment of counsel, the prosecution or defense of litigation, the compromise or discharge of any adverse claims made with respect to the Property, the purchase of any tax title and the removal of prior liens or security interests (including but not limited to the payment of debts as they mature or the payment in full of matured or nonmatured debts, which are secured by these prior liens or security interests), and all expenses so incurred of every kind and character shall be a demand obligation owing by Grantor and the party incurring such expenses shall be subrogated to all rights of the person receiving such payment.

(h) No Other Liens. Grantor will not, without the prior written consent of Obligee, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Property which are not delinquent or mechanic's or materialmen's liens which are being contested in accordance with the provisions of this Security Instrument), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Security Instrument, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Obligee, Grantor will cause the same to be promptly discharged and released. Notwithstanding the foregoing, Grantor may in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted mechanic's or materialmen's lien and pending such contest Grantor shall not be deemed in default hereunder if Grantor provides Obligee with security reasonably satisfactory to Obligee and if Grantor promptly causes to be paid any amount adjudged

by a court of competent jurisdiction to be due, with all costs and interest thereon, promptly after such judgment.

(i) Further Assurances. Grantor will, on request of Obligee, (i) promptly correct any defect, error or omission which may be discovered in the contents of this Security Instrument or in any other instrument now or hereafter executed in connection herewith or in the execution or acknowledgment thereof; (ii) execute, acknowledge, deliver and record or file such further instruments (including without limitation further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purposes of this Security Instrument and such other instruments and to subject to the liens and security interests hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; (iii) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Obligee to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iv) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Obligee to enable Obligee to comply with the requirements or requests of any agency having jurisdiction over Obligee or any examiners of such agencies with respect to the obligations secured hereby, Grantor or the Property; and Grantor will pay all costs connected with any of the foregoing.

(j) Fees and Expenses, Indemnification. Grantor will pay all filing and recording fees, inspection fees, survey fees, taxes, brokerage fees and commissions, abstract fees, uniform commercial code search fees, escrow fees, reasonable attorney's fees and all other costs and expenses of every character incurred by Grantor or Obligee in connection with the enforcement of, but not the closing of the transaction in connection with, this Security Instrument, and will reimburse Obligee for all such costs and expenses incurred by it. Grantor shall pay all expenses and reimburse Obligee for any expenditures, including reasonable attorney's fees and legal expenses, incurred or expended in connection with (i) the breach by Grantor of any covenant herein, and (ii) Obligee's exercise of any of its rights and remedies hereunder or Obligee's protection of the Property and its lien and security interest therein. Grantor will indemnify and hold harmless the Trustee and Obligee (for purposes of this Section, the terms "the Trustee" and "Obligee" shall include the directors, officers, partners, employees and agents of the Trustee and Obligee, respectively, and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with the Trustee and Obligee, respectively) from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including, without limitation, reasonable attorney's fees) which may be imposed upon, asserted against or incurred or paid by them by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon the Property through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property or with this Security Instrument. **WITHOUT**

LIMITATION, IT IS THE INTENTION OF GRANTOR AND GRANTOR AGREES THAT THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY OR ANY STRICT LIABILITY. HOWEVER, SUCH INDEMNITIES SHALL NOT APPLY TO ANY INDEMNIFIED PARTY TO THE EXTENT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY. The foregoing indemnities shall not terminate upon release, foreclosure or other termination of this Security Instrument but will survive foreclosure of this Security Instrument or conveyance in lieu of foreclosure and the repayment of the secured obligations and the discharge and release of this Security Instrument and the other documents evidencing and/or securing the secured obligations. Any amount to be paid under this Section by Grantor to Obligee and/or the Trustee shall be a demand obligation owing by Grantor to Obligee and/or the Trustee and shall be subject to and governed by the provisions of the Section of this Article II entitled "Right of Obligee to Perform". Notwithstanding anything to the contrary contained in the prior paragraph, so long as the City of Austin is the "Obligee" hereunder, Grantor shall not be obligated to indemnify or hold harmless Obligee from damages resulting from an act or omission of Obligee in its ownership of the Property prior to the closing under the MDA (except to the extent that the condition which is the subject of the indemnity or hold harmless has been exacerbated by the negligent or wrongful acts or omissions of any party other than Obligee).

(k) Tax on Lien. In the event of the enactment after this date of any law of the State of Texas or of any other governmental entity having jurisdiction over the Property deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Obligee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Grantor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Security Instrument or the obligations secured hereby or Obligee, then, and in any such event, Grantor, upon demand by Obligee, shall pay such taxes, assessments, charges or liens, or reimburse Obligee therefor; provided, however, that if in the opinion of counsel for Obligee (i) it might be unlawful to require Grantor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Obligee may elect, by notice in writing given to Grantor, to declare all of the obligations secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

(l) Change of Name, Identity or Structure. Grantor will not change Grantor's name, identity (including its trade name or names) or, if not an individual, Grantor's corporate, partnership or other structure without notifying Obligee of such change in

writing at least 30 days prior to the effective date of such change. Grantor will execute and deliver to Obligee, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Obligee to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Obligee, Grantor shall execute a certificate in form reasonably satisfactory to Obligee listing the trade names under which Grantor intends to operate the Property, and representing and warranting that Grantor does business under no other trade name with respect to the Property.

(m) Proceeds of Collateral. Grantor shall account fully and faithfully for and, if Obligee so elects, shall promptly pay or turn over to Obligee the proceeds in whatever form received from disposition in any manner of any of the Collateral, except as otherwise specifically authorized herein. Grantor shall at all times keep the Collateral and its proceeds separate and distinct from other property of Grantor and shall keep accurate and complete records of the Collateral and its proceeds.

(n) Permitted Encumbrances. Grantor will comply with and will perform all of the covenants, agreements and obligations imposed upon it or the Property in the Permitted Encumbrances in accordance with their respective terms and provisions.

(o) Single Asset Entity. Grantor shall not (i) acquire any real or personal property other than the Property and personal property related to the operation and maintenance of the Property; (ii) operate any business other than the management and operation of the Property; (iii) maintain its assets in a way difficult to segregate and identify; or (iv) create, assume, incur or become liable for debt, obligations, or performance of obligations for the benefit of any other entity, except for liabilities incurred in the normal operation of the Property or unsecured loans by Grantor's partners and/or members, as the case may be, to Grantor (other than liabilities secured by the Property).

(p) Executive Order 13224. Neither Grantor, nor any person or entity holding any legal or beneficial interest whatsoever in Grantor, shall hereafter be included in, owned by, or controlled by, or act for or on behalf of, or provide assistance, support, sponsorship, or services of any kind to or otherwise associated with, any of the persons or entities referred to or described in Executive Order 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, as amended).

(q) Limited Partnership. Grantor (if a partnership or a limited partnership, which is or becomes subject to the provisions of the Texas Revised Partnership Act) agrees with Obligee that Obligee is not required to comply with Art. 6132b-3.05(d) of the Texas Revised Partnership Act with respect to enforcement of the liability of Grantor hereunder against any general partner of Grantor.

2.3 Right of Obligee to Perform. Grantor agrees that, if Grantor fails to perform any act or to take any action which hereunder Grantor is required to perform or take, or to pay any money which hereunder Grantor is required to pay, or takes any action prohibited hereby, Obligee, in Grantor's name or in its own name, may but shall not be obligated to perform or

cause to be performed such act or take such action or pay such money or remedy any action so taken, and any expenses so incurred by Obligee, and any money paid by Obligee in connection therewith, shall be a demand obligation owing by Grantor to Obligee and Obligee, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment. No action on the part of Obligee or payment of any money by Obligee shall be deemed to cure any Event of Default.

2.4 Insurance Requirements.

(a) Property and Time Element Insurance. Grantor shall keep the Property insured for the benefit of Grantor and Obligee (with Obligee named as mortgagee) in the same manner as required by the loan documents concerning the First Lien Security Instrument (i.e., Grantor shall carry the same insurance as required by the Senior Lender and Obligee shall be recognized as an additional mortgagee under such insurance).

(b) Liability and Other Insurance. Grantor shall maintain nonproperty and time element insurance in accordance with the terms of the MDA.

ARTICLE III

Assignment of Rents

3.1 Assignment. In order to provide a source of future payment of the obligations secured hereby, Grantor does hereby absolutely and unconditionally assign, transfer and set over to Obligee all of the rents, income, receipts, revenues, issues, profits and other sums of money (collectively, the "**Rent**") that are now and/or at any time hereafter become due and payable to Grantor under the terms of any leases (the "**Leases**") now or hereafter covering the Property, or any part thereof, or arising or issuing from or out of the Leases or from or out of the Property or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default, security deposits (whether cash, one or more letters of credit, bonds or other form of security), advance rents, all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by destruction or damage to the Property, and all of Grantor's rights to recover monetary amounts from any lessee in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, under any applicable Bankruptcy Law (as hereinafter defined), including specifically the immediate and continuing right to collect and receive each and all of the foregoing and any and all guaranties of payment of the Rent. Until receipt from Obligee of notice of the occurrence of an Event of Default (a "**Notice of Default**"), each lessee under the Leases may pay Rent directly to Grantor and Grantor shall have the right to receive such Rent provided that Grantor shall hold such Rent as a trust fund to be applied as required by this Security Instrument and Grantor hereby covenants so to apply the Rent, before using any part of the same for any other purposes, first, to the payment of taxes and assessments upon the Property before penalty or interest is due thereon; second, to the cost of insurance, maintenance and repairs required by the terms of this Security Instrument; third, to the satisfaction of all obligations specifically set forth in the Leases; and, fourth, to the payment of obligations becoming due under this Security Instrument. Upon receipt from Obligee of a Notice of Default, each lessee under the Leases is hereby authorized and directed to pay directly to Obligee all Rent thereafter accruing and the receipt of Rent by Obligee shall be a release of such lessee to the extent of all amounts so paid. The receipt by a lessee

under the Leases of a Notice of Default shall be sufficient authorization for such lessee to make all future payments of Rent directly to Obligee and each such lessee shall be entitled to rely on such Notice of Default and shall have no liability to Grantor for any Rent paid to Obligee after receipt of such Notice of Default. Rent so received by Obligee for any period prior to foreclosure under this Security Instrument or acceptance of a deed in lieu of such foreclosure shall be applied by Obligee to the payment (in such order as Obligee shall determine) of (a) all expenses of managing the Property, including but not limited to the salaries, fees and wages of a managing agent and such other contractors or agents as Obligee may deem necessary or desirable; all expenses of operating and maintaining the Property, including but not limited to all taxes, assessments, charges, claims, utility costs and premiums for insurance, and the cost of all alterations, renovations, repairs or replacements; and all expenses incident to taking and retaining possession of the Property and/or collecting the Rent due and payable under the Leases; and (b) the obligations secured by this Security Instrument, reasonable attorneys' and collection fees and other amounts, in such order as Obligee in its sole discretion may determine. In no event will the assignment pursuant to this Section reduce the obligations secured by this Security Instrument, except to the extent, if any, that Rent is actually received by Obligee and applied upon or after said receipt to such obligations in accordance with the preceding sentence, which Obligee shall be obligated to so apply. Without impairing its rights hereunder, Obligee may, at its option, at any time and from time to time, release to Grantor Rent so received by Obligee or any part thereof. As between Grantor and Obligee, and any person claiming through or under Grantor, other than any lessee under the Leases who has not received a Notice of Default pursuant to this Section, the assignment contained in this Section is intended to be absolute, unconditional and presently effective and the provisions of this Section for notification of lessees under the Leases upon the occurrence of an Event of Default are intended solely for the benefit of each such lessee and shall never inure to the benefit of Grantor or any person claiming through or under Grantor, other than a lessee who has not received such notice. It shall never be necessary for Obligee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Section. At any time during which Grantor is receiving Rent directly from lessees under the Leases, Grantor shall, upon receipt of written direction from Obligee, make demand and/or sue for all Rent due and payable under one or more Leases, as directed by Obligee, as it becomes due and payable, including Rent which is past due and unpaid. In the event Grantor fails to take such action, or at any time during which Grantor is not receiving Rent directly from lessees under the Leases, Obligee shall have the right (but shall be under no duty) to demand, collect and sue for, in its own name or in the name of Grantor, all Rent due and payable under the Leases, as it becomes due and payable, including Rent which is past due and unpaid. Obligee shall not be deemed to have taken possession of the Property except on the exercise of its option to do so, evidenced by its demand and overt act for such purpose. Except with respect to the loan from the Senior Lender, or as permitted by the documents evidencing such loan, Grantor shall make no assignment or other disposition of the Rent, nor shall Grantor cancel or amend any Lease or any other instrument under which Rent is to be paid or waive, excuse, condone, discount, set off, compromise or in any manner release any obligation thereunder, nor shall Grantor receive or collect any Rent for a period of more than one month in advance of the date on which payment thereof is due and Grantor shall duly and punctually observe and perform every obligation to be performed by it under each Lease, and shall not do or permit to be done anything to impair the security thereof and shall enforce, to the extent such enforcement would be reasonably prudent under the circumstances, every obligation of each other party thereto. The assignment contained in this Section 3.1 shall terminate upon the release of this Security Instrument but no lessee

under the Leases shall be required to take notice of such termination until a copy of a release of this Security Instrument shall have been delivered to such lessee.

ARTICLE IV

Event of Default and Remedies

4.1 Defaults. The term "**Event of Default**" as used in this Security Instrument shall mean the occurrence of any of the following events:

(a) Monetary Obligations - Grantor fails to pay any amount required to be paid hereunder when due and such failure continues for a period of 15 days from the date of written notice thereof from the Obligee.

(b) Non-Monetary Obligations - Without limiting any other provision of this Section, Grantor fails to perform any other obligations or duties provided in this Security Instrument, after the time for any cure or the expiration of any grace period specified therefor, or if no such time is specified, within 30 days after the date of written demand by the Obligee to Grantor to perform such obligation and duty, or in the case of a default not susceptible of cure within 30 days, Grantor fails promptly to commence to cure such default and thereafter to prosecute diligently such cure to completion within a reasonable time, but in no event longer than 120 days after the date of the written demand.

(c) Representations - Any representation contained herein was false or misleading in any material respect when made.

(d) Execution Against Property - The Property or any material part thereof is taken on execution or other process of law in any action against Grantor.

(e) Attachment of Grantor's Property - Grantor fails to have discharged within a period of 60 days any attachment, sequestration or similar writ levied upon any property of Grantor.

(f) Failure to Pay Judgment - Grantor fails to pay within 30 days any final money judgment against Grantor.

(g) Default Under Other Debt - The holder of any lien or security interest on the Property (without hereby implying the consent of Obligee to the existence or creation of any such lien or security interest) declares a default thereunder or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(h) Default under the MDA - An Event of Default concerning the payment of money occurs under the sections of the MDA referenced in Section 1.1(b) hereof after the expiration of any grace or cure period.

4.2 Late Payment; Acceleration of Obligations. Any amounts due and owing by Grantor to Obligee and secured by this Security Instrument shall bear interest from the date such amount becomes due until paid at 12% per annum (but in no event greater than the maximum

amount allowed by law) and shall be a part of the secured obligations and shall be secured by this Security Instrument and by any other instrument securing the secured obligations. Upon the occurrence of an Event of Default, Obligee shall have the option of declaring all secured obligations in their entirety to be immediately due and payable, and the liens and security interests evidenced hereby shall be subject to foreclosure in any manner provided for herein or provided for by law as Obligee may elect.

4.3 Possession. Upon the occurrence of an Event of Default hereunder, Obligee is authorized prior or subsequent to the institution of any foreclosure proceedings to enter upon the Property, or any part thereof, and to take possession of the Property and of all books, records and accounts relating thereto and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection or preservation of the Property, including the right to rent the same for the account of Grantor and to deduct from such Rents all costs, expenses and liabilities of every character incurred by Obligee in collecting such Rents and in managing, operating, maintaining, protecting or preserving the Property and to apply the remainder of such Rents on the obligations secured hereby in such manner as Obligee may elect. All such costs, expenses and liabilities incurred by Obligee in collecting such Rents and in managing, operating, maintaining, protecting or preserving the Property, if not paid out of Rents as hereinabove provided, shall constitute a demand obligation owing by Grantor and shall bear interest from the date of expenditure until paid at 12% per annum (but in no event greater than the maximum amount allowed by law), all of which shall constitute a portion of the secured obligations. If necessary to obtain the possession provided for above, Obligee may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title and restitution. **IN CONNECTION WITH ANY ACTION TAKEN BY OBLIGEE PURSUANT TO THIS SECTION, OBLIGEE SHALL NOT BE LIABLE FOR ANY LOSS SUSTAINED BY GRANTOR RESULTING FROM ANY FAILURE TO LET THE PROPERTY, OR ANY PART THEREOF, OR FROM ANY OTHER ACT OR OMISSION OF OBLIGEE IN MANAGING THE PROPERTY (REGARDLESS OF WHETHER SUCH LOSS IS CAUSED BY THE NEGLIGENCE OF OBLIGEE) UNLESS SUCH LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF OBLIGEE, NOR SHALL OBLIGEE BE OBLIGATED TO PERFORM OR DISCHARGE ANY OBLIGATION, DUTY OR LIABILITY UNDER ANY LEASE COVERING THE PROPERTY OR ANY PART THEREOF OR UNDER OR BY REASON OF THIS SECURITY INSTRUMENT OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER. GRANTOR SHALL AND DOES HEREBY AGREE TO INDEMNIFY OBLIGEE FOR, AND TO DEFEND AND HOLD OBLIGEE HARMLESS FROM, ANY AND ALL LIABILITY, LOSS OR DAMAGE WHICH MAY OR MIGHT BE INCURRED BY OBLIGEE UNDER ANY SUCH LEASE OR UNDER OR BY REASON OF THIS SECURITY INSTRUMENT OR THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER AND FROM ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST OBLIGEE BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS OR AGREEMENTS CONTAINED IN ANY SUCH LEASE, REGARDLESS OF WHETHER SUCH LIABILITY, LOSS, DAMAGE, CLAIMS OR DEMANDS ARE THE RESULT OF THE NEGLIGENCE OF OBLIGEE OR ANY STRICT LIABILITY BUT NOT OBLIGEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** Should Obligee

incur any such liability, the amount thereof, including costs, expenses and reasonable attorney's fees, shall be secured hereby and Grantor shall reimburse Obligee therefor immediately upon demand. Nothing in this Section shall impose any duty, obligation or responsibility upon Obligee for the control, care, operation, management or repair of the Property, nor for the carrying out of any of the terms and conditions of any such lease; nor shall it operate to make Obligee responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, **OR FOR ANY NEGLIGENCE (BUT NOT GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) IN THE OPERATION, MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY TENANT, LICENSEE, EMPLOYEE OR STRANGER OR ANY STRICT LIABILITY**. Grantor hereby assents to, ratifies and confirms any and all actions of Obligee with respect to the Property taken under this Section other than Obligee's gross negligence or willful misconduct. For purposes of this Section, the term "Obligee" shall include the directors, officers, employees, attorneys and agents of Obligee and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Obligee.

4.4 Foreclosure. Upon the occurrence of an Event of Default, the Trustee, his successor or substitute, is authorized and empowered and it shall be his special duty at the request of Obligee to sell the Real Property or any part thereof situated in the State of Texas at the courthouse of any county in the State of Texas in which any part of the Real Property is situated, at public vendue to the highest bidder for cash between the hours of 10 o'clock a.m. and 4 o'clock p.m. on the first Tuesday in any month after having given notice of such sale in accordance with the statutes of the State of Texas then in force governing sales of real estate under powers conferred by deed of trust. Any sale made by the Trustee hereunder may be as an entirety or in such parcels as Obligee may request, and any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. The sale by the Trustee of less than the whole of the Real Property shall not exhaust the power of sale herein granted, and the Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Real Property shall be sold; and, if the proceeds of such sale of less than the whole of the Real Property shall be less than the aggregate of the obligations secured hereby and the expense of executing this trust as provided herein, this Security Instrument and the lien hereof shall remain in full force and effect as to the unsold portion of the Real Property just as though no sale had been made; provided, however, that Grantor shall never have any right to require the sale of less than the whole of the Real Property but Obligee shall have the right, at its sole election, to request the Trustee to sell less than the whole of the Real Property. After each sale, the Trustee shall make to the purchaser or purchasers at such sale good and sufficient conveyances in the name of Grantor, conveying the property so sold to the purchaser or purchasers in fee simple with general warranty of title, and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to the Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The power of sale granted herein shall not be exhausted by any sale held hereunder by the Trustee or his substitute or successor, and such power of sale may be exercised from time to time and as many times as Obligee may deem necessary until all of the Real Property has been duly sold and all secured obligations has been fully paid. In the event any sale hereunder is not completed or is defective in the opinion of Obligee, such sale shall not exhaust the power of sale hereunder and Obligee shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all

statements of fact or other recitals made in any deed or deeds given by the Trustee or any successor or substitute appointed hereunder as to nonpayment of the obligations secured hereby, or as to the occurrence of any Event of Default, or as to Obligee having declared all of such obligations to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to the refusal, failure or inability to act of the Trustee or any substitute or successor, or as to the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done by Obligee or by such Trustee, substitute or successor, shall be taken as prima facie evidence of the truth of the facts so stated and recited. The Trustee, his successor or substitute, may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by the Trustee, including the posting of notices and the conduct of sale, but in the name and on behalf of the Trustee, his successor or substitute.

4.5 Judicial Foreclosure. This Security Instrument shall be effective as a mortgage as well as a deed of trust and upon the occurrence of an Event of Default may be foreclosed as to any of the Property in any manner permitted by the laws of the State of Texas or of any other state in which any part of the Property is situated, and any foreclosure suit may be brought by the Trustee or by Obligee. In the event a foreclosure hereunder shall be commenced by the Trustee, or his substitute or successor, Obligee may at any time before the sale of the Property direct the said Trustee to abandon the sale, and may then institute suit for the collection of the secured obligations, and for the foreclosure of this Security Instrument. It is agreed that if Obligee should institute a suit for the collection of the secured obligations and for the foreclosure of this Security Instrument, Obligee may at any time before the entry of a final judgment in said suit dismiss the same, and require the Trustee, his substitute or successor to sell the Property in accordance with the provisions of this Security Instrument.

4.6 Receiver. In addition to all other remedies herein provided for, Grantor agrees that upon the occurrence and during the continuation of an Event of Default hereunder, Obligee shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed sale of such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the obligations secured hereby, and Grantor does hereby consent to the appointment of such receiver or receivers, waives, to the extent permitted by applicable law, any and all defenses to such appointment and agrees not to oppose any application therefor by Obligee, but nothing herein is to be construed to deprive Obligee of any other right, remedy or privilege it may now have under the law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Obligee to receive payment of the Rents and income pursuant to Section 3.1 hereof. Any money advanced by Obligee in connection with any such receivership shall be a demand obligation owing by Grantor to Obligee and shall bear interest from the date of making such advancement by Obligee until paid at the rate of 12% per annum (but in no event greater than the maximum amount allowed by law) and shall be a part of the secured obligations and shall be secured by this Security Instrument and by any other instrument securing the secured obligations.

4.7 Proceeds of Sale. The proceeds of any sale held by the Trustee or any receiver or public officer in foreclosure of the liens evidenced hereby shall be applied:

FIRST, to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to all court costs and charges of every

character in the event foreclosed by suit, and a reasonable fee to the Trustee acting under the provisions of the Section of this Article IV entitled "Acceleration" if foreclosed by power of sale as provided in said Section, not exceeding 5% of the proceeds of such sale;

SECOND, to the payment in full of the secured obligations (including specifically without limitation reasonable attorney's fees and the amounts due and unpaid and owed to Obligee under this Security Instrument) in such order as Obligee may elect; and

THIRD, the remainder, if any, shall be paid to Grantor or to such other party or parties as may be entitled thereto by law.

4.8 Obligee as Purchaser. Obligee shall have the right to become the purchaser at any sale held by any Trustee or substitute or successor or by any receiver or public officer, and Obligee shall have the right to credit upon the amount of the bid made therefor, to the extent necessary to satisfy such bid, the secured obligations owing to Obligee, or if Obligee holds less than all of such obligations the pro rata part thereof owing to Obligee, accounting to all other lenders not joining in such bid in cash for the portion of such bid or bids apportionable to such nonbidding lender or lenders.

4.9 Uniform Commercial Code. Upon the occurrence of an Event of Default, Obligee may exercise its rights of enforcement with respect to the Collateral under the Texas Business and Commerce Code, as amended, and in conjunction with, in addition to or in substitution for those rights and remedies:

(a) Obligee may enter upon the Property to take possession of, assemble and collect the Collateral or to render it unusable; and

(b) Obligee may require Grantor to assemble the Collateral and make it available at a place Obligee designates which is mutually convenient to allow Obligee to take possession or dispose of the Collateral; and

(c) written notice mailed to Grantor as provided herein 10 days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; and

(d) any sale made pursuant to the provisions of this Section shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the Real Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Collateral hereunder as is required for such sale of the Real Property under power of sale; and

(e) in the event of a foreclosure sale, whether made by the Trustee under the terms hereof, or under judgment of a court, the Collateral and the Real Property may, at the option of Obligee, be sold as a whole; and

(f) it shall not be necessary that Obligee take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and

(g) prior to application of proceeds of disposition of the Collateral to the secured obligations, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorney's fees and legal expenses incurred by Obligee; and

(h) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the obligations or as to the occurrence of any Event of Default, or as to Obligee having declared all of such obligations to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Obligee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(i) Obligee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Obligee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Obligee.

4.10 Partial Foreclosure. Upon the occurrence of an Event of Default in the payment of any part of the secured obligations, Obligee shall have the right to proceed with foreclosure of the liens and security interests evidenced hereby without declaring the entire secured obligations due, and in such event any such foreclosure sale may be made subject to the unmatured part of the secured obligations; and any such sale shall not in any manner affect the unmatured part of the secured obligations, but as to such unmatured part this Security Instrument shall remain in full force and effect just as though no sale had been made. The proceeds of any such sale shall be applied as provided in the Section of this Article IV entitled "Proceeds of Sale" except that the amount paid under Subsection SECOND thereof shall be only the matured portion of the secured obligations and any proceeds of such sale in excess of those provided for in Subsections FIRST and SECOND (modified as provided above) shall be applied to the obligations secured hereby in the inverse order of due dates. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the secured obligations.

4.11 Remedies Cumulative. All remedies herein expressly provided for are cumulative of any and all other remedies existing at law or in equity and are cumulative of any and all other remedies provided for in any other instrument securing the payment of the secured obligations, or any part thereof, or otherwise benefiting Obligee, and the Trustee and Obligee shall, in addition to the remedies herein provided, be entitled to avail themselves of all such other remedies as may now or hereafter exist at law or in equity for the collection of the secured obligations and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any remedy provided for hereunder or under any such other instrument or provided for by law shall not prevent the concurrent or subsequent employment of any other appropriate remedy or remedies.

4.12 Resort to Any Security. Obligee may resort to any security given by this Security Instrument or to any other security now existing or hereafter given to secure the payment of the secured obligations, in whole or in part, and in such portions and in such order as may seem best to Obligee in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Security Instrument.

4.13 Waiver. To the full extent Grantor may lawfully do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force pertaining to the rights and remedies of sureties or redemption, and Grantor, for Grantor and Grantor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by applicable law, hereby waives and releases (except to the extent otherwise provided herein or in the MDA) all rights of redemption, valuation, appraisement, stay of execution, notice of intention to mature or declare due the whole of the secured obligations, notice of election to mature or declare due the whole of the secured obligations and all rights to a marshaling of the assets of Grantor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and security interests hereby created. Except to the extent applicable law requires otherwise, Grantor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Obligee under the terms of this Security Instrument to a sale of the Property for the collection of the secured obligations without any prior or different resort for collection, or the right of Obligee under the terms of this Security Instrument to the payment of such obligations out of the proceeds of sale of the Property in preference to every other claimant whatever. If any law referred to in this Section and now in force, of which Grantor or Grantor's heirs, devisees, representatives, successors and assigns and such other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

4.14 Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale Grantor or Grantor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property by, through or under Grantor are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale. Such tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the portion of the Property occupied, such rental to be due daily to the purchaser. In the event the tenant fails to surrender possession of the portion of the Property upon demand, the purchaser shall be entitled to institute and maintain an action for forcible entry and detainer of the Property in the Justice of the Peace Court in the Justice Precinct in which the Property, or any part thereof, is situated.

4.15 Collection Expenses. Upon the occurrence of an Event of Default, Grantor shall reimburse Obligee for all expenses incurred by Obligee as a result of such Event of Default, including, but not limited to, all travel costs, third-party appraisal fees, environmental report preparation and testing fees, architectural and engineering expenses, and reasonable legal fees and expenses.

ARTICLE V

Miscellaneous

5.1 Defeasance. If all of the secured obligations be paid as the same become due and payable and if all of the covenants, warranties, undertakings and agreements made in this Security Instrument are kept and performed, then and in that event only, all rights under this

Security Instrument shall terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Obligee in due form at Grantor's cost.

5.2 Successor Trustee. The Trustee may resign by an instrument in writing addressed to Obligee, or the Trustee may be removed at any time with or without cause by an instrument in writing executed by Obligee. In case of the death, resignation, removal or disqualification of the Trustee or if for any reason Obligee shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named trustee or any substitute or successor trustee, then Obligee shall have the right and is hereby authorized and empowered to appoint a successor trustee, or a substitute trustee, without other formality than appointment and designation in writing executed by Obligee and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the obligations secured hereby has been paid in full or until the Property is sold hereunder. In the event the obligations secured hereby is owned by more than one person or entity, the holder or holders of not less than a majority in the amount of such obligations shall have the right and authority to make the appointment of a successor or substitute trustee provided for in the preceding sentence. Such appointment and designation by Obligee or by the holder or holders of not less than a majority of the obligations secured hereby shall be full evidence of the right and authority to make the same and of all facts therein recited. If Obligee is a corporation and such appointment is executed in its behalf by an officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Upon the making of any such appointment and designation, all of the estate and title of the Trustee in the Property shall vest in the named successor or substitute trustee and he shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon the Trustee; but nevertheless, upon the written request of Obligee or of the successor or substitute Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor or substitute Trustee all of the estate and title in the Property of the Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon the Trustee, and shall duly assign, transfer and deliver any of the properties and moneys held by said Trustee hereunder to said successor or substitute Trustee. All references herein to the Trustee shall be deemed to refer to the Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder. Grantor hereby ratifies and confirms any and all acts which the herein named Trustee or his successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof.

5.3 Liability and Indemnification of Trustee. **THE TRUSTEE SHALL NOT BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY THE TRUSTEE IN GOOD FAITH, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCES WHATSOEVER (INCLUDING THE TRUSTEE'S NEGLIGENCE), EXCEPT FOR THE TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. All moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and the Trustee shall be under no liability for interest on any moneys received by him hereunder. **GRANTOR WILL REIMBURSE THE TRUSTEE FOR, AND**

INDEMNIFY AND SAVE HIM HARMLESS AGAINST, ANY AND ALL LIABILITY AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) WHICH MAY BE INCURRED BY HIM IN THE PERFORMANCE OF HIS DUTIES HEREUNDER (INCLUDING ANY LIABILITY AND EXPENSES RESULTING FROM THE TRUSTEE'S OWN NEGLIGENCE) EXCEPT FOR THE TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. The foregoing indemnity shall not terminate upon release, foreclosure or other termination of this Security Instrument.

5.4 Waiver by Obligee. Obligee may at any time and from time to time (a) waive or not enforce compliance by Grantor with any covenant herein, (b) consent to Grantor doing any act which Grantor is prohibited from doing hereunder, or consent to Grantor failing to do any act which Grantor is required to do hereunder, (c) release any part of the Property, or any interest therein, from the lien and security interest of this Security Instrument without the joinder of the Trustee, or (d) release any party liable, either directly or indirectly, for the secured obligations without impairing or releasing the liability of any other party. No such act shall in any way impair the rights of Obligee hereunder except to the extent specifically agreed to by Obligee in writing.

5.5 Actions by Obligee. The lien, security interest and other security rights of Obligee hereunder shall not be impaired by any indulgence, moratorium or release granted by Obligee, including but not limited to (a) any renewal, extension, increase or modification which Obligee may grant with respect to any secured obligations, (b) any surrender, compromise, release, renewal, extension, exchange or substitution which Obligee may grant in respect of the Property, or any part thereof or any interest therein, or (c) any release or indulgence granted to any endorser, guarantor or surety of any secured obligations. The taking of additional security by Obligee shall not release or impair the lien, security interest or other security rights of Obligee hereunder or affect the liability of Grantor or of any endorser or guarantor or other surety or improve the right of any permitted junior lienholder in the Property.

5.6 Rights of Obligee. Obligee may waive any default or Event of Default without waiving any other prior or subsequent default or Event of Default. Obligee may remedy any Event of Default without waiving the Event of Default remedied. Neither the failure by Obligee to exercise, nor the delay by Obligee in exercising, any right, power or remedy upon any Event of Default shall be construed as a waiver of such Event of Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Obligee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Grantor therefrom shall in any event be effective unless the same shall be in writing and signed by Obligee and then such waiver or consent shall be effective only in the specific instances, for the purpose for which given and to the extent therein specified. No notice to or demand on Grantor in any case shall of itself entitle Grantor to any other or further notice or demand in similar or other circumstances. Acceptance by Obligee of any payment in an amount less than the amount then due on any secured obligations shall be deemed an acceptance on account only and shall not in any way affect the existence of an Event of Default hereunder.

5.7 Notification of Account Debtors. Obligee may at any time after the occurrence and during the continuance of an Event of Default by Grantor notify the account debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of obligations included in the Collateral to pay Obligee directly.

5.8 Financing Statement. A carbon, photographic or other reproduction of this Security Instrument or of any financing statement relating to this Security Instrument shall be sufficient as a financing statement. Grantor hereby irrevocably authorizes Obligee at any time and from time to time to file, without the signature of Grantor, in any jurisdiction any amendments to existing financing statements and any initial financing statements and amendments thereto that (a) indicate the Property (i) as "all assets of Grantor and all proceeds thereof, and all rights and privileges with respect thereto" or words of similar effect, regardless of whether any particular asset comprised in the Property falls within the scope of Article/Chapter 9 of the UCC, or (ii) as being of an equal or lesser scope or with greater detail; (b) contain any other information required by subchapter E of Article/Chapter 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Grantor is an organization, the type of organization and any organization identification number issued to Grantor; and (c) are necessary to properly effectuate the transactions described herein, as determined by Obligee in its discretion. Grantor agrees to furnish any such information to Obligee promptly upon request. Grantor further agrees that a carbon, photographic or other reproduction of this Security Instrument or any financing statement describing any Property is sufficient as a financing statement and may be filed in any jurisdiction by Obligee.

5.9 Fixture Filing. This Security Instrument shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records in the Office of the County Clerk where the Property (including said fixtures) is situated. This Security Instrument shall also be effective as a financing statement covering as-extracted collateral and is to be filed for record in the real estate records of the county where the Property is situated. The mailing address of Grantor and the address of Obligee from which information concerning the security interest may be obtained are the addresses of Grantor and Obligee set forth on the first page of this Security Instrument.

5.10 Filing and Recordation. Grantor will cause this Security Instrument and all amendments and supplements hereto and substitutions for this Security Instrument and all financing statements and continuation statements relating hereto to be recorded, filed, re-recorded and refiled in such manner and in such places as the Trustee or Obligee shall reasonably request, and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges. Grantor hereby authorizes Obligee or the Trustee to file any financing statement or financing statement amendment covering the Collateral or relating to the security interest created herein without the signature of Grantor, as debtor.

5.11 Dealing with Successor. In the event the ownership of the Property or any part thereof becomes vested in a person other than Grantor, Obligee may, without notice to Grantor, deal with such successor or successors in interest with reference to this Security Instrument and to the obligations secured hereby in the same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or for the payment of the obligations secured hereby.

5.12 Place of Payment. The secured obligations which may be owing hereunder at any time by Grantor shall be payable at the address in the first paragraph hereof, or if no such designation is made, at the office of Obligee at the address indicated in this Security Instrument, or at such other place in Travis County, Texas as Obligee may designate in writing.

5.13 Application of Obligations. If any part of the secured obligations cannot be lawfully secured by this Security Instrument or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such obligations or if the lien and security interest of the secured obligations of this Security Instrument are invalid or unenforceable as to any part of the secured obligations or as to any part of the Property, then all payments made on the secured obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be applied on said obligations first in discharge of that portion thereof which is unsecured in whole or in part by this Security Instrument.

5.14 Usury. It is the intent of Obligee and Grantor in the execution of this Security Instrument to contract in strict compliance with applicable usury law. If the interest received for the actual period of existence of the obligation exceeds the applicable maximum lawful rate, Obligee shall, at its option, either refund to Grantor the amount of such excess or credit the amount of such excess against the secured obligations then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. Grantor acknowledges that it believes this transaction to be non-usurious and agrees that if, at any time, Grantor should have reason to believe that this transaction is in fact usurious, it will give Obligee notice of such condition and Grantor agrees that Obligee shall have 90 days after receipt of such notice in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists.

5.15 Notice. Any notice, request, demand or other communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

To Obligee:	City of Austin City Manager's Office 301 West 2nd Street Austin, Texas 78701 Attention: City Manager
with a copy to:	City of Austin Economic Growth and Redevelopment Services Office 301 West 2nd Street Austin, Texas 78701 Attention: Director
and:	Thompson & Knight L.L.P. 98 San Jacinto, Suite 1900 Austin, Texas 78701 Attention: James E. Cousar and Andrew Ingrum
To Grantor:	_____ _____ _____

with a copy to: _____

_____

_____

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein; provided that, service of a notice required by Tex. Property Code § 51.002 shall be considered complete when the requirements of that statute are met.

5.16 Assignment. Obligee shall have the right to assign any portion of its rights hereunder and to disseminate to such assignee or any proposed assignee any information it has pertaining thereto.

5.17 Heirs, Successors and Assigns.The terms hereof are binding upon Grantor, and the heirs, devisees, representatives, successors and assigns of Grantor including all successors in interest of Grantor in and to all or any part of the Property, and shall inure to the benefit of the Trustee and Obligee and their respective heirs successors, substitutes and assigns and shall constitute covenants running with the land.

5.18 Reporting Requirements. Grantor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by this Security Instrument which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, and further agrees upon request of Obligee to furnish Obligee with evidence of such compliance.

5.19 Modification or Termination. This Security Instrument may only be modified or terminated by a written instrument or instruments executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

5.20 USA Patriot Act Notification. Grantor hereby acknowledges that Obligee has notified Grantor that pursuant to the requirements of the USA Patriot Act, Obligee is required to obtain, verify and record information that identifies Grantor, which information includes the name and address of Grantor and other information that will allow Obligee to identify Grantor in accordance with the USA Patriot Act.

5.21 Partial Releases. Grantor may, from time to time, obtain partial releases from the lien and security interest created by this Security Instrument upon satisfaction of the following terms and conditions:

(a) There shall be paid for such partial release an amount equal to any amount required to be paid under Section 6.4 (Affordable Housing – Density Bonus) and, if applicable because of prorated uses, Section 6.1 (Infrastructure Payment) of the MDA.

(b) At least 5 days prior to the date of such partial release, Grantor shall deliver to the Obligee at Grantor's expense (i) the form of the partial release to be executed by the Obligee (which form of partial release must be satisfactory to the Obligee in form and substance); and (ii) a certificate which sets forth the (A) anticipated closing date, (B) square footage of the Property to be released, (C) amount of the density bonus

to be paid to the Obligee under Section 6.4 and, if applicable, the amount to be paid to the Obligee under Section 6.1 of the MDA for such released portion of the Property, and (D) percentage of units in the Property that have already been released (but only prior to payment in full of the Infrastructure Payment).

(c) At the time of such partial release and the request therefor, there shall exist no "Event of Default" hereunder or under the MDA or any condition or event which after notice and/or the lapse of time would constitute an "Event of Default" hereunder or under the MDA.

(d) Prior to or contemporaneously with the execution and delivery of the partial release, Grantor shall pay, or cause to be paid, all costs and expenses incident to the preparation of the partial release and the consummation of the transaction specified therein, including without limitation recording fees, mortgage taxes, transfer taxes, any other applicable taxes and fees and reasonable expenses of legal counsel to the Obligee. Grantor shall indemnify the Obligee from any other cost or expense incurred by the Obligee in connection with the partial release.

5.22 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 shall not affect the balance of the terms and provisions hereof. This Security Instrument shall be governed by and construed and enforced in accordance with the laws of the State of Texas. This Security Instrument is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistencies or ambiguities exist herein, they shall not be interpreted or construed against either party as the drafter. All paragraph headings are inserted for convenience only and shall not be used in any way to modify, limit, construe or otherwise affect this Security Instrument.

5.23 **WAIVER OF JUDICIAL PROCEDURAL MATTERS. GRANTOR AND OBLIGEE HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, EXPRESSLY AND UNCONDITIONALLY WAIVE, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING IN CONNECTION WITH THIS SECURITY INSTRUMENT, ANY AND EVERY RIGHT THEY MAY HAVE TO A TRIAL BY JURY.**

REMAINDER OF PAGE INTENTIONALLY BLANK
SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE OF GRANTOR TO
DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust, Security Agreement and Fixture Filing as of the date first set forth above.

_____

By: _____
Name:_____
Title:_____

THE STATE OF TEXAS)

COUNTY OF _____)

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

_____
Notary Public, State of Texas

_____
(printed name)

My commission expires:
_____.

EXHIBIT C
TO ECC MASTER DEVELOPMENT AGREEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After Recording Return To:
Thompson & Knight L.L.P.
1722 Routh Street, Suite 1500
One Arts Plaza
Dallas, Texas 75201
Attention: Andrew A. Ingrum

DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants (this "**Declaration**") is made to be effective as of the ____ day of _____, 20___ by THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("**Declarant**").

RECITALS:

A. Declarant is the owner of that certain tract of land located in the County of Travis, State of Texas described on Exhibit A attached hereto and made a part hereof ("**Property**") which is approximately _____ acres;

B. Declarant and ***[_____]*** ("**Developer**") entered into that certain ECC Master Development Agreement ("**MDA**") dated _____ relating to the purchase, sale and initial development of the Property.

C. Pursuant to a Special Warranty Deed dated of even date herewith, Declarant is selling the Property to Developer;

D. Following the sale to Developer, it is anticipated that ownership of the Property will be bifurcated into multiple owners;

E. The Property is located near the Seaholm District; and

F. Declarant wishes to impose certain restrictions on the Property for the overall benefit of the Property and to ensure the Property's connectivity with the Seaholm District.

NOW THEREFORE, Declarant declares for the benefit of the Property, that the Property be held, transferred, sold, conveyed, or occupied subject to the following restrictions:

1. Design Approval.

(a) No substantial improvement will be commenced or constructed upon the Property, nor will any substantial exterior addition to or substantial exterior change or alteration thereof be made, unless and until the site plan, the exterior facades and the landscape plans therefor (and any material exterior modifications thereto) will have first been submitted to and reasonably approved in writing by the Declarant. Except as provided in Section 2 hereof and pursuant to the Declarant's regulatory capacity, the Declarant will not have any rights to review or approve interior aspects of the improvements.

(b) Each request for Declarant's approval (a "**Design Approval Request**") under section (a) above must be accompanied by plans and specifications showing the partition layout, site layout, exterior elevations, exterior materials and colors, landscaping, drainage, lighting, irrigation and such other information related to the exterior appearance of the improvements as Declarant may reasonably require (the "**Plans**"); which Plans must be submitted for Declarant's approval through a Design Approval Request at the conclusion of the following 2 planning stages – (A) upon completion of conceptual Plans (i.e., prior to commencement of detailed construction drawings) and (B) upon completion of "50% construction drawings".

(c) In reviewing a Design Approval Request, Declarant may consider any factors it reasonably deems relevant, including, without limitation, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, and harmony of the proposed external design with surrounding structures and environment.

(d) If Declarant fails to notify applicant in writing of its approval, disapproval or comments to the complete Design Approval Request within 30 days of Declarant's deemed receipt thereof, applicant may provide Declarant a second written Design Approval Request (containing a statement in all bold and capital letters that reads **"FAILURE TO RESPOND TO THIS DESIGN APPROVAL REQUEST WITHIN 15 DAYS SHALL CONSTITUTE DEEMED APPROVAL OF THIS DESIGN APPROVAL REQUEST"**) which if not responded to by Declarant within 15 days after deemed receipt will be deemed approval of the Design Approval Request. In such event and on the applicant's written request to the Declarant, the Declarant will provide written confirmation to the applicant of such deemed approval. Declarant will notify the applicant in writing of any materials that Declarant believes are missing to make a Design Approval Request complete. Declarant may: (i) approve the Design Approval Request with or without conditions; (ii) approve a portion of the Design Approval Request and disapprove other portions specifying the segments or features that are objectionable and suggestions, if any, to address the objectionable portions; or (iii) disapprove the Design Approval Request.

(e) If Declarant approves the Design Approval Request with conditions, approves a portion of the Design Approval Request and disapproves other portions and a revised Design Approval Request with revised Plans is submitted, Declarant shall notify the applicant in writing of the final determination on any such revised Design Approval

Request no later than 15 days after its receipt of such revised Design Approval Request and all required submissions.

(f) Following such approval, Declarant shall promptly apply for and diligently pursue regulatory approval (e.g., building permit, site plan) concerning such approved construction. If construction does not commence within the period required by such regulatory approval, the approval granted hereunder shall automatically expire, and the applicant must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion.

2. Minimum Square Footage and Units. The Property will be a mixed use facility comprised of the following:

(a) At least 15,000 gross square feet of retail space on the ground level of the Improvements (the "**Retail Space**"); provided that such square footage may be decreased by 10% without the prior written approval of the Declarant; and

(b) At least 425 units of for-sale residential or for-rent residential or some combination thereof; provided that the number of such units may be decreased by 15% without the prior written approval of the Declarant; provided however, any such unit may be combined with any other unit on the Property to form one unit and for the purposes of this paragraph will be counted as two separate units.

3. Construction. Each holder of fee simple title to all or any part of the Property (each such party, an "**Owner**") agrees to perform its respective construction: (i) where approval is required, in accordance with such approved Plans; (ii) with due diligence to completion and in a good and workmanlike manner, using first class materials; (iii) so as not to unreasonably interfere with any construction work being performed on any other portion of the Property or with the use, occupancy and enjoyment of any other portion of the Property; (iv) except with respect to the initial development of the Property as provided in Section 3.3(e) of the MDA, to comply with the then current private and governmental requirements applicable thereto (including amendments and modifications), including, without limitation, the Urban Design Guidelines for Austin (f/k/a the Downtown Austin Design Guidelines), Great Streets, building, environmental and zoning laws of the state, county, municipality or other subdivision in which the Property is situated, and all laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments and the appropriate departments, commissions, agencies, boards and officers thereof (collectively, "**Legal Requirements**").

4. Maintenance. Each Owner shall maintain its portion of the Property, including all structures, parking areas, landscaping, and other improvements, in good condition and repair in a manner consistent with a Class A mixed use urban development. Such maintenance includes, but is not limited to, the following (as applicable), which will be performed in a timely manner:

(a) Prompt removal of all litter, trash, refuse, and waste.

(b) Tree and shrub pruning.

(c) Watering.

(d) Keeping exterior lighting and mechanical facilities in working order.

(e) Keeping lawn and garden areas alive, free of weeds, and in an attractive condition.

(f) Keeping planting beds free of turf grass.

(g) Keeping sidewalks and driveways in good condition, repair and appearance.

(h) Complying with all government, health, safety and police requirements applicable to its portion of the Property in all material respects.

(i) Repainting of improvements.

Each Owner shall also be responsible for maintaining landscaping and common areas within that portion of any adjacent public right-of-way, plaza, common area, street or alley provided that the Owner has been granted and accepted a license from the Declarant in its regulatory capacity to do so.

The responsibility for maintenance includes responsibility for repair and replacement. Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on its Property, less a reasonable deductible, unless another entity (e.g., a condominium or owners association) carries such insurance. Within 180 days after any damage to or destruction of any improvement constructed upon the Property, the applicable Owner shall promptly repair or reconstruct the improvement in a manner consistent with the original construction or such other plans and specifications as are approved hereunder. Alternatively, the applicable Owner shall clear its Property of debris and maintain it in a neat and attractive landscaped condition.

5. Permitted Uses in the Retail Space. Generally, it is the intent of the Declarant that the Retail Space be used only for retail purposes. Specifically, the Retail Space may only be used for: (a) the sale of goods to the public, (b) a restaurant, bar, lounge, or other eating, drinking, or live music establishment, (c) a movie theater, (d) "quasi-retail" uses (e.g., travel agency, establishment that sells glasses but also has an optometrist on site, cell phone store, etc.), (e) "service retail" (e.g., copy service, cleaners, tailor/alterations, salon, travel agent, etc.), (f) brokerage offices (which use is preapproved by Landlord despite being office use), and (g) other office uses (e.g., insurance agency, medical or dental offices, law offices, income tax preparation, etc.) authorized in writing by the Declarant after written request; provided however, the uses described in (d), (e), (f), and (g) above shall not exceed 25% of the gross area of the Retail Space.

6. Other Restrictions And Requirements.

(a) Green Building. Owner will cause the shell portion of the improvements Property (i.e., not including individual condominium units or other commercial interiors) to be constructed to achieve at least a Gold certification under the Leadership in Energy and Environmental Design (LEED) NC (New Construction) Green Building Rating

System™. If such designations no longer exist, Declarant, in its reasonable discretion, shall select another comparable program and/or standard with which to evaluate the improvements.

(b) Bicycle Racks/Storage. Owner will construct bicycle storage facilities on the Property meeting the requirements of (i) the LEED requirements at the time of the Property's certification or (ii) the Legal Requirements, whichever is more stringent.

7. Modifications and Termination. This Declaration may be modified or terminated upon the written consent of (a) Declarant, and (b) (i) the declarant under any condominium regime affecting the Property until such declarant is required to turn over control of the condominium association to the owners of the condominium units, and (ii) thereafter the Owner(s) of at least fifty-one percent (51%) of the floor area of the improvements within the building located on the Property; provided however, the City may remove any portion of the Property from this Declaration if it owns fee title to said portion of the Property.

8. Term. The term of this Declaration will commence upon the date of filing this instrument for record in the land records of Travis County, Texas and will continue for a term of forty (40) years; thereafter this Declaration will be renewed automatically for successive twenty (20) years terms unless, at any time, terminated pursuant to Section 7 of this Declaration, and such termination is filed of record.

9. Default.

(a) In the event of a default of the terms and conditions of this Declaration by any Owner, such Owner will have 20 days in which to cure such default after receipt of notice of said default from Declarant or another Owner. Declarant shall also deliver such written notice to any unaffiliated, third party lender ("**Lender**") of such defaulting Owner if Declarant is provided notice of such Lender in writing (with a contact name and address) prior to such default and such Lender will have the same right of cure hereunder as the defaulting Owner and the timeframe for cure will run concurrently with such Owner's cure period. If the default can not be cured, using reasonable due diligence, within 20 days of receipt of the notice of default, then the defaulting Owner or the applicable Lender will have such additional time as may be reasonably necessary to cure such default, conditioned upon the defaulting Owner or applicable Lender commencing the cure within such 20 day period and diligently pursuing the curing of the default through conclusion; provided however, such additional time will not apply for any situations, conditions or issues in which the health or safety of the public at large is compromised. If that the default cannot be cured in a timely manner as required in this Section, Declarant or the notifying Owner will have the right to obtain an injunction from an applicable court of law to enforce specific performance on the part of the defaulting Owner, the amount of any bond for same being not more than $100. In addition to the foregoing, the Declarant will have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Declaration against the defaulting Owner. With respect to a default of maintenance responsibilities under Section 4 hereof, following the notice and cure period set forth above, the Declarant may perform such maintenance responsibilities and assess all costs incurred by the Declarant

against such defaulting Owner; provided, Declarant may assign its right to conduct such maintenance to any appropriate entity. **THE DECLARANT AND ANY NOTIFYING OWNER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES WILL NOT BE HELD LIABLE TO ANY PERSON FOR EXERCISING THE RIGHTS GRANTED BY THIS DECLARATION (INCLUDING LIABILITIES RESULTING FROM DECLARANT'S OR NOTIFYING OWNER'S NEGLIGENCE OR STRICT LIABILITY) UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR BAD FAITH OF THE DECLARANT OR NOTIFYING OWNER, AS THE CASE MAY BE, OR ONE OR MORE OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES.**

(b) In the event of a default hereunder which is not cured within any time herein specified, it will not terminate this Declaration nor the obligations of any of the Owners, nor terminate the rights of any other Owner with respect to its portion of the Property, nor withhold the benefits of this Declaration from any other Owner by reason of any default by such Owner, it being the express understanding that, subject to any other terms hereof, this Declaration will continue in effect throughout its term, notwithstanding any default by any Owner.

10. Approval. Unless expressly stated otherwise herein to the contrary, any approval (including without limitation, approval of any amendment), agreement, determination, consent, waiver, estoppel certificate, estimate or joinder by the Declarant required hereunder may be given by the City Manager of the Declarant or its designee; *provided however*, except for minor amendments, modifications or clarifications, the City Manager does not have the authority to execute any substantial modification or termination of this Declaration without the approval of the Austin City Council. With respect to any plan approvals, the City Manager may enlist any individual or party to assist in such approval.

11. Miscellaneous.

(a) Capacity of Declarant. **GENERALLY, APPROVALS UNDER THIS DECLARATION ARE NOT A SUBSTITUTE FOR ANY APPROVALS OR REVIEWS REQUIRED BY ANY GOVERNMENTAL AUTHORITY OR ENTITY HAVING JURISDICTION OVER ARCHITECTURAL OR CONSTRUCTION MATTERS. THE DECLARANT UNDER THIS DECLARATION IS A GOVERNMENTAL ENTITY, HOWEVER, ALL ACTIONS OF DECLARANT TAKEN SOLELY WITH RESPECT TO THIS DECLARATION WILL BE ACTIONS TAKEN IN ITS CAPACITY AS A LANDOWNER (I.E., A SELLING LANDOWNER) INSTEAD OF IN ITS CAPACITY AS A GOVERNMENTAL ENTITY. BY WAY OF EXAMPLE AND NOT OF LIMITATION, APPROVAL BY DECLARANT OF THE PLANS WILL NOT CONSTITUTE APPROVAL TO COMMENCE CONSTRUCTION (I.E., A BUILDING PERMIT) BY THE CITY OF AUSTIN IN ITS REGULATORY CAPACITY. NOTHING IN THIS SECTION IS DEEMED TO WAIVE OR INHIBIT ANY SOVEREIGN IMMUNITY RIGHTS. OWNER ACKNOWLEDGES THAT THE DECLARANT CANNOT CONTRACT**

IN ANY MANNER REGARDING THE EXERCISE OF ITS SOVEREIGN POWERS.

(b) Notices. 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 Declarant may designate in writing from time to time:

If Declarant: City of Austin
City Manager's Office
301 West 2nd Street
Austin, Texas 78701
Attention: City Manager

With a copy to: City of Austin
Economic Growth and Redevelopment Services Office
301 West 2nd Street
Austin, Texas 78701
Attention: Director

With a copy to: City of Austin
Law Department
301 West 2nd Street
Austin, Texas 78701
Attention: City Attorney

Notices to the Owners within the Property will be sent to the tax address maintained by the Travis Central Appraisal District (or successor entity).

(c) Consents. Whenever pursuant to this Declaration an Owner's consent or approval is required, such consent or approval must be in writing and, unless otherwise provided in this Declaration, the decision as to whether or not to grant such consent or approval will be in the sole discretion of such Owner and such consent or approval may be withheld by such Owner for any reason.

(d) Covenants Run with the Land. The terms of this Declaration constitute covenants running with, and will be appurtenant to, the land affected by this Declaration for the term hereof. All terms of this Declaration will inure to the benefit of and be binding upon the parties which have an interest in the benefited or burdened land and their respective successors and assigns in title. This Declaration is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby. All provisions of this Declaration that govern the conduct of the Owner and that provide for sanctions against the Owner for the breach hereof will also apply to all occupants (including lessees), guests, and invitees. Every Owner shall cause all occupants (including lessees) of the Owner's portion of the

Property to comply with this Declaration and any rules and regulations adopted, and will be responsible for all violations and losses caused by those occupants (including lessees), notwithstanding the fact that those occupants (including lessees) of the Owner's portion of the Property are fully liable and may be sanctioned for any violation of this Declaration and rules and regulations adopted pursuant thereto.

(e) Estoppel. Upon 30 days' prior written notice and not more than once in any 12-month period, the Declarant agrees to deliver to any lender of Owner an estoppel certifying compliance with Sections 1-6 hereof, in form and content reasonably acceptable to the Declarant and such Owner and its lender. The estoppel may only be relied upon by the party requesting the estoppel and any parties specifically identified by name in the request, may only be used to estop the responding party from claiming that the facts are other than as set forth in the estoppel, and may not be relied upon by any person or entity, even if named in such estoppel, who knows that the facts are other than as set forth in such estoppel.

(f) Singular and Plural. Whenever required by the context of this Declaration, the singular will include the plural, and vice versa, and the masculine will include the feminine and neuter genders, and vice versa.

(g) Negation of Partnership or Other Entity. None of the terms or provisions of this Declaration will be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor will it cause them to be considered joint venturers or members of any joint enterprise. Each Owner will be considered a separate owner, and no Owner will have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

(h) Not a Public Dedication. Nothing herein contained will be deemed to be a gift or dedication of any portion of the Property or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of the Owner will inure to the benefit of any third party, nor will any third party be deemed to be a beneficiary of any of the provisions contained herein.

(i) Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order will in no way affect any of the other provisions hereof or the application thereof to any other person and the same will remain in full force and effect.

(j) Captions and Capitalized Terms. The captions preceding the text of each article and/or section are included only for convenience of reference. Captions will be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

(k) Time. Time is of the essence of this Declaration.

(l) Non-Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof will not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and will not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

(m) No Merger. The subsequent merger of title in and to any one or more of portions of the Property, or any portions thereof, by sale, transfer or other conveyance, will not operate as a merger or termination of any other rights created and established hereunder, it being the intent that such rights will survive notwithstanding the merger of title.

(n) Legal Fees. In any action to enforce this Declaration, the prevailing party will be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs reasonably incurred in such action.

(o) Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the Property will at all times be subject and subordinate to the terms of this Declaration and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, will acquire title subject to all of the terms and provisions of this Declaration.

(p) Binding Effect. Every agreement, declaration, covenant, promise undertaking, condition, right, privilege, option and restriction made, declared, granted or assumed, as the case may be, in this Declaration is not only for the benefit of each Owner personally but also as Owners of a portion of the Property, and will constitute an equitable servitude on the portion of the Property owned or leased by such party appurtenant to and for the benefit of the other portions of the Property, and the benefits and burdens thereof will run with the title to the Property. Any transferee of any part of the Property will automatically be deemed, by acceptance of the title to any portion of the Property, to have assumed all obligations of this Declaration relating thereto to the extent of its interest in its portion of the Property and to have agreed with the then Owner or Owners of all other portions of the Property to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Declaration at no cost to such Owners. Upon the completion of such transfer, the transferor will be relieved of all further liability under this Declaration except liability with respect to matters remaining unsatisfied which arose during its period of ownership of the portion of the Property so conveyed. All obligations and restrictions set out in this Declaration will run with the land, be binding upon and inure to the benefit of all of the Owners of the Property.

(q) Remedies Cumulative. All of the remedies permitted or available to the Declarant or Owners under this Declaration, or at law or in equity, will be cumulative and not alternative, and the invocation of any such remedy will not constitute a waiver or election of remedies with respect to any other permitted or available remedy.

(r) Effect of Declaration. Reference in any deed, mortgage, trust deed or any other recorded documents to the restrictions and covenants herein described or to this Declaration will be sufficient to create and reserve such covenants to the respective grantees, mortgagees, or trustees of such parcels as fully and completely as if those restrictions and covenants were fully related and set forth in their entirety in said documents.

(s) Effect of Force Majeure. If the Declarant or an Owner is delayed, hindered, or prevented from performance of any of its respective obligations under this Declaration by reason of acts of God, strikes, lockouts or other industrial disturbances, shortages of labor or materials, war, acts of public enemies, terrorism, order of any kind of the government of the United States, the State of Texas, Travis County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, acts of public enemies, orders of any kind of the government of the United States, the State of Texas, Travis County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, a party not receiving a governmental permit, license, approval or inspection in time to meet a contractual time period imposed hereunder provided that party, in good faith, was diligent in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, restraint of government and people, civil disturbances, explosions, acts or omissions of either party (or a subdivision thereof) to this Declaration or other causes not reasonably within the control of the party claiming such inability (other than (a) financial inability to perform, or (b) acts of the party claiming such inability, or a subdivision thereof, including without limitation any ordinances, regulations, orders or similar action by such party or a subdivision thereof), and if such party has not otherwise committed an event of default hereunder which is continuing, the time for performance of such obligation is automatically extended for the period of such delay, provided that the following requirements are complied with by the affected party:

(i) The affected party shall give prompt written notice of such occurrence to the other party; and

(ii) The affected party shall diligently use commercially reasonable efforts to remove, resolve, or otherwise eliminate any such event within the reasonable control of such affected party, keep the other party advised with respect thereto, and commence performance of its affected obligations hereunder immediately upon such removal, resolution, or elimination.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Declarant has duly executed this Declaration on the date of acknowledgment set forth below to be effective as of the date set forth above.

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

By: _____
Name: _____
Title: _____

Approved as to form and content for the City by the City's external legal counsel:

THOMPSON & KNIGHT L.L.P.

_____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 20___, by _____, _____ of THE CITY OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

_____
Notary Public, State of Texas

_____
(Printed name)

My Commission Expires:

_____

EXHIBIT A
TO DECLARATION OF RESTRICTIVE COVENANTS

PROPERTY

EXHIBIT D
TO ECC MASTER DEVELOPMENT AGREEMENT

FORM OF SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After Recording Return To:
DuBois, Bryant & Campbell, LLP
700 Lavaca, Suite 1300
Austin, Texas 78701
Attention: Rick Reed

SPECIAL WARRANTY DEED
(WITH RESERVATION OF DECLARATION RIGHTS AND EASEMENTS)

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS THAT:
COUNTY OF TRAVIS §

1. Grant. THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("**City**"), for and in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration paid to City by _____ ("**Developer**"), the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, SELL, CONVEY, ASSIGN and DELIVER to Developer the real property described in Exhibit A-1 attached hereto and made a part hereof, together with all buildings and other improvements situated thereon, all fixtures and other property affixed thereto and all and singular the rights and appurtenances pertaining to such real property (the "**Property**"), subject to the encumbrances described in Exhibit B attached hereto and made a part hereof and the reservations in Sections 6 and 8(the "**Permitted Encumbrances**").

2. Warranty. TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Developer, its successors and assigns, forever, and City does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto Developer, its successors and assigns against every person whomsoever lawfully claiming, or to claim the same, or any part thereof by, through or under City, but not otherwise; subject, however, to the Permitted Encumbrances.

3. AS-IS. **EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN THAT ECC MASTER DEVELOPMENT AGREEMENT DATED _____, 2010 BETWEEN CITY AND ********[DEVELOPER]******** RELATING TO THE PROPERTY (THE "MDA") TO THE CONTRARY, IT IS UNDERSTOOD AND**

AGREED THAT THE PROPERTY IS BEING SOLD AND CONVEYED HEREUNDER "AS IS" WITH ANY AND ALL FAULTS AND LATENT AND PATENT DEFECTS WITHOUT ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY BY CITY. CITY HAS NOT MADE AND DOES NOT HEREBY MAKE AND HEREBY SPECIFICALLY DISCLAIMS (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE MDA) ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY (OTHER THAN AS SET FORTH IN THE MDA AND CITY'S SPECIAL WARRANTY OF TITLE CONTAINED HEREIN), ITS CONDITION (INCLUDING WITHOUT LIMITATION ANY REPRESENTATION OR WARRANTY REGARDING SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE), ITS COMPLIANCE WITH ENVIRONMENTAL LAWS OR OTHER LAWS, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY AND CITY HEREBY DISCLAIMS AND RENOUNCES ANY OTHER REPRESENTATION OR WARRANTY. DEVELOPER ACKNOWLEDGES AND AGREES THAT IT IS ACCEPTING THIS SPECIAL WARRANTY DEED WITHOUT RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND THE MDA) UPON ANY SUCH REPRESENTATION, WARRANTY, STATEMENT OR OTHER ASSERTION, ORAL OR WRITTEN, MADE BY CITY OR ANY REPRESENTATIVE OF CITY OR ANY OTHER PERSON ACTING OR PURPORTING TO ACT FOR OR ON BEHALF OF CITY WITH RESPECT TO THE PROPERTY BUT RATHER IS RELYING UPON ITS OWN EXAMINATION AND INSPECTION OF THE PROPERTY. DEVELOPER REPRESENTS THAT IT IS A KNOWLEDGEABLE PURCHASER OF REAL ESTATE AND THAT IT IS RELYING (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE MDA) SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS IN PURCHASING THE PROPERTY (EXCEPT AS EXPRESSLY SET FORTH HEREIN AND IN THE MDA). DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS SECTION WERE A MATERIAL FACTOR IN CITY'S DETERMINATION OF THE CONSIDERATION FOR THE TRANSFER OF THE PROPERTY TO DEVELOPER.

4. Terms. Capitalized terms used herein but not defined have the meanings assigned to such terms in the MDA and the following terms shall have the meanings assigned:

"**Commencement of Construction**" means the date construction commences by Developer on the Property.

"**Delinquency Interest Rate**" means a per annum rate of interest equal to the lesser of (1) the Prescribed Rate plus 3% or (2) the then highest lawful contract rate which Developer is authorized to pay and the City is authorized to charge under the laws of the State of Texas with respect to the relevant obligation.

"**Dry-In Condition**" means the Improvements have been completed to a "dried in" and "weather tight" condition (i.e. completion of the foundation and shell of the building with windows, doors, final roof and final exterior facing) and the surrounding property landscaped (as appropriate based on seasonal conditions and construction

phasing of a building), each in accordance with plans approved by the City, and consistent with the Declaration, the MDA and Legal Requirements.

"**Force Majeure**" means acts of God, strikes, lockouts or other industrial disturbances, shortages of labor or materials, war, acts of public enemies, terrorism, orders of any kind of the government, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, restraint of government and people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

"**Owner**" means the owner of the Property.

"**Prescribed Rate**" means the "prime rate" published in The Wall Street Journal as being the base rate on corporate loans at large U.S. money center commercial banks on the first Business Day (as defined in the MDA) following the due date of such payment. If The Wall Street Journal ceases to publish such a prime rate, the Prescribed Rate will be the per annum interest rate which a large U.S. money center commercial bank doing business in Texas designated by the City publicly announces (whether or not actually charged in each instance) from time to time (adjusted daily) as its "prime rate" (or if there is no "prime rate," a similar borrowing reference rate).

5. Liquidated Damages – Work Stoppage.

(a) Upon Commencement of Construction, Owner agrees to diligently and in good faith prosecute the construction of the Improvements (as defined in the MDA) to Dry-In Condition (as defined in the MDA).

(b) If, following Commencement of Construction, the good faith and bona-fide construction of the Improvements ceases for a period of 30 or more consecutive days (a "**Delay Period**"), such event will be deemed an event of default hereunder and Owner will pay to City as liquidated damages the sum of $1,000 per day for each day past the Delay Period which bona-fide construction does not occur (such amount, "**Liquidated Damages - Work Stoppage**"). The calculation of each potential Delay Period will be extended on a day for day basis for each Business Day of actual delay due to Force Majeure which would otherwise be within such Delay Period. City and Owner agree that the Liquidated Damages - Work Stoppage has been set as liquidated damages for such event because of the difficulty and uncertainty of determining actual damages for such event. The Liquidated Damages - Work Stoppage will be due and payable monthly on the 10th day of the month following the month in which they accrue and any unpaid Liquidated Damages - Work Stoppage which are not paid within 10 days of the date which they are due and payable will accrue interest at a per annum interest rate equal to the Delinquency Interest Rate.

(c) Upon termination of the Liquidated Damages – Work Stoppage provision (including payment of any Liquidated Damages – Work Stoppage) and receipt of a written request from the Owner, City will execute and deliver in recordable form a notice

of termination of the Liquidated Damages – Work Stoppage. This Section 5 will automatically terminate upon Dry-In Condition being achieved (but will not release Owner for any unpaid Liquidated Damages – Work Stoppage).

6. Reservation of Declaration. City is executing and encumbering, or has executed and encumbered, the Property with the Declaration. The execution and encumbrance of the Property pursuant to the Declaration is also deemed to be pursuant to a reservation of such rights hereunder and will be superior to any vendor's lien, deed of trust, mortgage, assignment and/or security interest which burdens the Property.

7. Estoppel. Upon 30 days' prior written notice and not more than once in any 12-month period, the City agrees to deliver to any lender of Owner an estoppel certifying compliance with Section 5 hereof, in form and content reasonably acceptable to the City and such Owner and its lender. The estoppel may only be relied upon by the party requesting the estoppel and any parties specifically identified by name in the request, may only be used to estop the responding party from claiming that the facts are other than as set forth in the estoppel, and may not be relied upon by any person or entity, even if named in such estoppel, who knows that the facts are other than as set forth in such estoppel.

8. Reservation of Easement. City reserves unto itself the exclusive right and easement in, on, across and under the real property described in Exhibit A-2 attached hereto (which is a portion of the Property) (such portion, the "Easement Property") for use only as a recreational facility, park, open space, stormwater transmission facility, stormwater detention facility, water quality facility and scenic area and for no other purpose (the "Easement"), subject to the following terms:

(a) The Easement is perpetual and irrevocable unless the Easement Property is dedicated to the public at which time the Easement will automatically terminate. Any other transfer of the Easement Property will be subject to the Easement.

(b) The City may make or enforce rules and regulations for the Easement Property.

(c) No trash or garbage will be stored or dumped by Owner on the Easement Property. No hazardous or toxic materials will be stored or dumped by Owner on the Easement Property.

(d) No underground storage tanks will be placed or used by Owner on the Easement Property.

(e) No new structures or other improvements will be placed, constructed or modified on or under the Easement Property by Owner without the prior written approval of City.

(f) No billboard or advertising material may be erected by Owner on the Easement Property.

(g) Removal, destruction and cutting of trees, shrubs, or other vegetation is prohibited except for:

(i) Reasonable maintenance of existing accesses or construction and maintenance of accesses permitted within the provisions of the Easement; or

(ii) Application of good husbandry practices including the prevention or treatment of disease; or

(iii) Maintenance and repair of the Easement Property.

9. Obligations and Other General Rights.

(a) Subject to appropriation and Force Majeure, the City shall maintain the Easement Property in good condition and repair as a first class trail system including without limitation providing vegetation and trash management, silt and debris removal, maintaining operational functionality and structural integrity of the trail system. Because the City's obligations under this paragraph are subject to appropriation, Owner acknowledges that the City's maintenance may be discontinued, suspended, curtailed or reduced at any time and from time to time.

(b) If the City fails to maintain the Easement Property as provided in Section 9(a) above, Owner has the option (but not the obligation), at Owner's sole cost and expense, to maintain the Easement Property in good condition and repair as a first class trail system including without limitation providing vegetation and trash management, silt and debris removal, maintaining operational functionality and structural integrity of the trail system. In addition, even though the City is maintaining the Easement Property as provided in Section 9(a) above, Owner may, at Owner's sole cost and expense, provide additional maintenance to the Easement Property.

(c) Owner will provide insurance over the Easement Property in accordance with the City's procedures and requirements for obtaining a license agreement, as amended from time to time, and such other insurance as reasonably requested by the City.

(d) Monetary damages would not be an adequate remedy for the breach of any of the terms, conditions and restrictions herein contained, and therefore, in the event that Owner, violates or breaches any of such terms, conditions and restrictions herein contained, the City may institute a suit, and will be entitled, to enjoin by temporary and/or permanent injunction such violation and to require the restoration of the Easement Property to its prior condition. The City, by any prior failure to act will not waive or forfeit, and will not be deemed to have waived or forfeited, the right to take any action as may be necessary to insure compliance with the terms, conditions and purposes of the Easement.

(e) The Easement Property cannot be subdivided without the prior written consent of the City.

(f) Owner will indemnify and hold City and its respective officers, directors, employees and agents harmless from, and reimburse City and its respective officers, directors, employees and agents for and with respect to, all claims, demands, actions, damages, losses, liabilities, judgments, costs and expenses, including, without limitation, reasonable legal fees and court costs (each a "Claim") which are suffered by, recovered from or asserted against City or its respective officers, directors, employees and agents to the extent any such Claim arises from or in connection with any event of default by Owner (including its contractors, agents, employees, licensees or invitees) hereunder; provided, however, such indemnification, hold harmless and reimbursement does not include any Claim to the extent caused by, arising from, or in connection with (i) the established or admitted negligent or wrongful act or omission of the City and/or any agents, contractors, representatives or employees of the City or (ii) any environmental condition, whether known or unknown, existing on, under, or otherwise with respect to the Easement Property (including offsite areas impacted by migration from the Easement Property, if any) as of the date hereof unless (and only to the extent) it can be established that the condition has been exacerbated by the negligent or wrongful acts or omissions of Owner or any agents, contractors, representatives or employees of Owner with respect to the deconstruction of existing improvements and/or the construction of any improvements on the Easement Property, and the City releases and discharges Owner and its affiliated entities, together with their respective officers, directors, partners, employees and agents, with respect to any such Claim under clause (ii) above. If City notifies Owner of any Claim, Owner shall assume on behalf of City and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel selected by Owner but reasonably satisfactory to City; provided, that City shall have the right to be represented by advisory counsel of its own selection and at its own expense; and provided further, that if any such Claim involves Owner and City, and City shall have been advised in writing by counsel that there may be legal defenses available to it which are inconsistent with those available to Owner, then City shall have the right to select separate counsel to participate in the investigation and defense of and response to such Claim on its own behalf, and Owner shall pay or reimburse City for all reasonable legal fees and costs incurred by City because of the selection of such separate counsel. If any Claim arises as to which the indemnity provided for in this section applies, and Owner fails to assume within 20 days after being notified of the Claim the defense of City, then City may contest (or settle, with the prior written consent of Owner, which consent will not be unreasonably withheld, conditioned or delayed) the Claim at Owner's expense using counsel selected by City; provided, that if any such failure by Owner continues for 30 days or more after Owner is notified thereof, no such contest need be made by City and settlement or full payment of any Claim may be made by City without Owner's consent and without releasing Owner from any obligations to City under this section so long as, in the written opinion of reputable counsel to City, the settlement or payment in full is clearly advisable. So long as Owner does not admit liability or agree to affirmative obligations on behalf of City, Owner is authorized to settle a Claim for itself and City. City shall (i) use its best efforts to provide prompt written notice to Owner of a Claim, and (ii) reasonably cooperate with Owner in the investigation and defense of a Claim. In the event City breaches its obligations contained in the previous

sentence, the liability of Owner under this section shall be reduced by the amount such breach directly caused a material impairment of the defense of the Claim.

(g) Owner shall transfer the Easement Property only to the purchaser of the Property in connection with the sale of the Property (whether in total or by undivided interests), but subject to the Easement. It is the intent of the parties that the ownership of the Easement Property be held by the same person who owns the remainder of the Property.

(h) Owner's rights and responsibilities hereunder may be delegated to any condominium association(s) which have authority over the Property.

10. Run with the Land. The terms of this Special Warranty Deed constitute covenants running with, and will be appurtenant to, the land affected by this Special Warranty Deed.

11. 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 shall not affect the balance of the terms and provisions hereof. If any action or suit is brought by reason of any breach of this Special Warranty Deed or any other dispute between the parties concerning this Special Warranty Deed, then the prevailing party shall be entitled to have and recover from the other party all costs and expenses of suit, including reasonable attorney's fees. This Special Warranty Deed shall be governed by and construed and enforced in accordance with the laws of the State of Texas. This Special Warranty Deed is to be deemed to have been prepared jointly by the parties hereto, and if any inconsistencies or ambiguities exist herein, they shall not be interpreted or construed against either party as the drafter. All paragraph headings are inserted for convenience only and shall not be used in any way to modify, limit, construe or otherwise affect this Special Warranty Deed. This Special Warranty Deed shall be binding upon and inure to the benefit of City and Owner and their respective heirs, successors, legal representatives and assigns.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Special Warranty Deed is executed by City on the date of acknowledgment set forth below to be effective as of the ____ day of _____, 20____.

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

By: _____
Name:_____
Title:_____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 20___, by _____, _____ of THE CITY OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

_____
Notary Public, State of Texas

_____
(Printed name)

My Commission Expires:

_____

EXHIBIT E
TO ECC MASTER DEVELOPMENT AGREEMENT

M/WBE Resolution (City Council Resolution No. 20071108-127)

[see attached]

RESOLUTION NO. 20071108-127

The City Council repeals and replaces Resolution No. 20071018-037 with the following:

WHEREAS, each year, the City of Austin enters into multiple third party agreements, which provide for the construction of public improvements or improvements to City real property by a third party rather than through a direct contract between the City and a general contractor; and

WHEREAS, such third party agreements include developer participation agreements, economic development agreements, ground lease agreements, and other third-party agreements negotiated between the City and private entities desiring to develop City-owned property ("Eligible Third-party Agreements"); and

WHEREAS, the City desires that the City's Eligible Third Party Agreements comply with the standards and principles of the City's M/WBE Ordinance; **NOW, THEREFORE,**

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

1. It is the policy of the City that Eligible Third Party Agreements comply with the standards and principles of the City's M/WBE Ordinance.

2. Eligible Third Party Agreements are to contain contract terms requiring compliance with the standards and principles of the City's M/WBE Ordinance.

3. Consistent with the standards and principles of the M/WBE Ordinance, Eligible Third-party Agreements will include the establishment of ethnic specific M/WBE utilization goals, and a requirement that contractors and consultants on the subject project either meet the ethnic specific M/WBE utilization goals or demonstrate a good faith effort to meet the goals.

4. When applicable, Eligible Third-party Agreements shall include the requirement of an outreach program designed to solicit participation of minority-owned businesses, women-owned businesses and small businesses. When applicable, a DSMBR-facilitated networking event shall also be held.

5. The requirement to comply with the standards and principles of the M/WBE Ordinance shall be included in the City's solicitation documents, if any, for the subject project.

6. The requirement to comply with the standards and principles of the M/WBE ordinance shall be addressed and negotiated at the earliest stages of negotiation of Eligible Third-party Agreements so as to allow ample opportunity for the standards and principles of the M/WBE Ordinance to be fully incorporated into the agreement and other contract documents.

7. The City employees who negotiate Eligible Third Party Agreements will be trained in the standards and principles of the M/WBE ordinance in order to carry out the directives of this resolution.

8. Eligible Third Party Agreements will include periodic reporting requirements to allow DSMBR to track compliance with the negotiated standards and principles of the M/WBE Ordinance.

9. Eligible Third Party Agreements do not include (1) agreements for the sale of land in which no continuing contractual relationship will exist between the purchaser and the City, (2) interlocal agreements administered by another governmental entity, and (3) agreements for privately-funded public improvements incidental to private development.

ADOPTED: November 8, 2007 **ATTEST:** Shirley A. Gentry

Shirley A. Gentry
City Clerk

EXHIBIT F
TO ECC MASTER DEVELOPMENT AGREEMENT

Prevailing Wage Ordinance (City of Austin Ordinance No. 20030508-031)

[see attached]

RESOLUTION NO. 20080605-047

WHEREAS, the City of Austin may participate with private developers and others in redevelopments that include the construction of buildings meant for residential, commercial, industrial, and civic uses, and

WHEREAS, such participation would include work on projects similar to the redevelopment of the former Seaholm Power Plant, the former Green Water Treatment Plant, and the former Energy Control Center, and

WHEREAS, the City wishes to ensure equitable treatment for workers hired by contractors for redevelopment projects in which the City participates, **NOW, THEREFORE,**

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

When the City of Austin participates in public - private projects to redevelop public or formerly public land, the City Manager is hereby directed to establish a requirement for contractors and subcontractors to pay the prevailing wage, as defined in Ordinance No 20030508-031, as part of an agreement authorized by the City Council after the passage of this resolution The signed agreement shall provide that the City Manager is authorized to monitor and enforce the developer's agreement to pay the prevailing wage on a public-private project

ADOPTED: June 5, 2008 **ATTEST:** Shirley A Gentry
City Clerk

ORDINANCE NO. 030508-31

AN ORDINANCE ADOPTING THE RATES OF WAGES TO BE PAID ON CITY PROJECTS; AND REPEALING ORDINANCE NO. 970904-H.

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

PART 1. The City adopts the general prevailing rate of per diem wages established by the U.S. Department of Labor for work of similar character in the locality in which the work is performed as the minimum per diem wages to be paid in connection with a City of Austin public improvement project for the construction of public buildings. The rates to be paid are the rates in effect for Travis County at the time the City advertises the project for bids.

PART 2. The City adopts the general prevailing rate of per diem wages established in the U. S. Department of Labor's annual survey of Highway-Heavy and Utilities Construction wage rates for work of a similar character in the locality in which the work is performed as the minimum per diem wages to be paid in connection with a City of Austin public improvement project for the construction of an improvement other than a building. The rates to be paid are the rates in effect for Travis County at the time the City advertises the project for bids.

PART 3. All laborers, workers and mechanics employed in connection with a City of Austin public improvement project shall be paid not less than the general prevailing rate of per diem wages adopted under this ordinance, including the applicable rate of per diem wages established for work performed on legal holidays and overtime work.

PART 4. Ordinance 970904-H, establishing the rates of wages to be paid in connection with construction of a City of Austin public improvement, is repealed.

PART 5. The Council waives the requirements of Sections 2-2-3 and 2-2-7 of the City Code for this ordinance.

PART 6. This ordinance takes effect on May 19, 2003.

PASSED AND APPROVED

May 8, 2003 §
§
§ Gustavo L. Garcia

Gustavo L. Garcia
Mayor

APPROVED: Sedora Jefferson — **ATTEST:** Shirley A. Brown

Sedora Jefferson
City Attorney

Shirley A. Brown
City Clerk

EXHIBIT G
TO ECC MASTER DEVELOPMENT AGREEMENT

Demonstrative Illustration of the Public Improvements

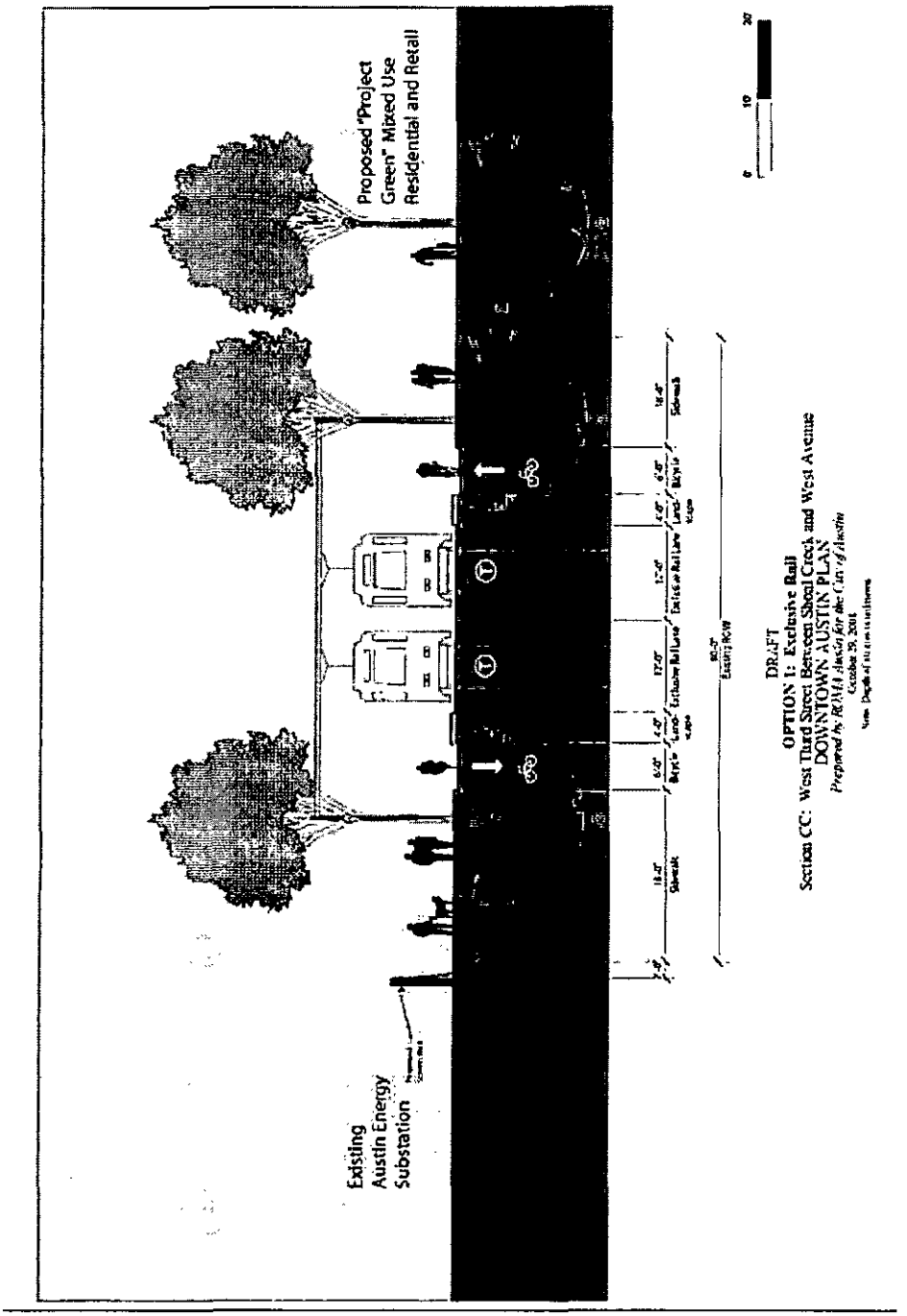

EXHIBIT H
TO ECC MASTER DEVELOPMENT AGREEMENT

Form of Release of Public Utility Easement

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After Recording Return To:
DuBois, Bryant & Campbell, LLP
700 Lavaca, Suite 1300
Austin, Texas 78701
Attention: Rick Reed

RELEASE OF PUBLIC UTILITY EASEMENT

THE STATE OF TEXAS §
§ KNOW ALL MEN BY THESE PRESENTS THAT:
COUNTY OF TRAVIS §

WHEREAS, by recorded resolution adopted February 4, 1932, recorded in Volume 474, Page 412, Real Property Records of Travis County, Texas, the City of Austin (the "City") reserved a public utility easement ("Easement") concerning the property described in Exhibit A attached hereto (the "Easement Property").

WHEREAS, it is the desire of the City to release the Easement Property and the Easement.

NOW, THEREFORE, the City does hereby RELEASE the Easement Property and any and all easements and rights that it might be entitled to by virtue of the Easement, and the Easement is hereby terminated, relinquished, vacated, and abandoned and shall be of no further force and effect.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Release of Public Utility Easement is executed by City on the date of acknowledgment set forth below to be effective as of the ____ day of _____, 20____.

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

By: _____
Name:_____
Title:_____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 20___, by _____, _____ of THE CITY OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

_____
Notary Public, State of Texas

_____
(Printed name)

My Commission Expires:

_____

EXHIBIT A
TO RELEASE OF PUBLIC UTILITY EASEMENT

Easement Property

(Public Utility Easement Release)

Block 24 – West 3rd Street Alley

LEGAL DESCRIPTION

BEING ALL OF THAT CERTAIN TWENTY FOOT (20.00') WIDE PUBLIC UTILITY EASEMENT AS RETAINED BY THE CITY OF AUSTIN BY COUNCIL RESOLUTION DATED FEBRUARY 2, 1932 AND RECORDED IN VOLUME 474 AT PAGE 412 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID TWENTY FOOT (20.00') WIDE PUBLIC UTILITY EASEMENT BEING ALL OF THAT CERTAIN TWENTY FOOT (20.00') WIDE ALLEY HAVING BEEN VACATED BY SAID COUNCIL RESOLUTION AND RECORDED IN VOLUME 474 AT PAGE 412 OF SAID DEED RECORDS, AND IS GENERALLY DESCRIBED AS RUNNING EAST AND WEST THROUGH BLOCK 24 OF THE ORIGINAL CITY OF AUSTIN, THE MAP OR PLAN OF SAID ORIGINAL CITY OF AUSTIN ON FILE IN THE GENERAL LAND OFFICE OF THE STATE OF TEXAS; SAID BLOCK 24 HAVING BEEN CONVEYED TO THE CITY OF AUSTIN BY WARRANTY DEED RECORDED IN VOLUME 2314 AT PAGE 417 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID TWENTY FOOT (20.00') WIDE ALLEY AND PUBLIC UTILITY EASEMENT BOUNDED ON THE WEST BY THE EASTERLY RIGHT-OF-WAY (80' ROW) LINE OF WEST AVENUE AND BOUNDED ON THE EAST BY THE WESTERLY RIGHT-OF-WAY (80' ROW) LINE OF RIO GRANDE STREET; SAID TWENTY FOOT (20.00') WIDE PUBLIC UTILITY EASEMENT IS TO BE RELEASED IN ITS ENTIRETY AS SHOWN ON THE ATTACHED SKETCH.

_____

John E. Moore, R.P.L.S. No. 4520
Engineering Services Division
City of Austin - Public Works Department

REFERENCES
TCAD Map No. 01-0700
Austin Grid H-22

[NEED SKETCH OF EASEMENT PROPERTY]

EXHIBIT I
TO ECC MASTER DEVELOPMENT AGREEMENT

CWSA Holdback Agreement

CWSA HOLDBACK ESCROW AGREEMENT

This CWSA Holdback Escrow Agreement (this "Agreement") is entered into to be effective as of the ____ day of _____, 20__, among THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("City"), _____ ("Developer") and HERITAGE TITLE COMPANY OF AUSTIN, INC., a Texas corporation (the "Escrow Agent").

RECITALS:

A. City and ***[Developer]*** entered into that certain ECC Master Development Agreement ("MDA") dated effective _____, 20__, pursuant to which Developer will purchase and redevelop certain City property commonly known as Energy Control Center and more particularly described therein (the "Property").

B. Pursuant to the MDA, at the closing of the sale of the Property, $100,000 of sale proceeds (the "CWSA Holdback") due to the City will be placed in an escrow account.

C. The purpose of this Agreement is to set forth the terms and conditions pursuant to which the CWSA Holdback may be held and disbursed. This Agreement constitutes the "CWSA Holdback Escrow Agreement" required by the MDA.

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. MDA Provisions Regarding the CWSA Holdback. The relevant provisions of the MDA addressing the deposit, maintenance and disposition of the CWSA Holdback are set forth on Exhibit A hereof and are fully incorporated herein.

2. Fees. Escrow Agent shall not charge any fees or seek reimbursement for expenses concerning its duties under this Agreement.

3. Development Liabilities. Between Developer and City, the liabilities, obligations and rights of such parties with respect to development of the chilled water system will be governed by the MDA and the CWSA.

4. Resignation of Escrow Agent. Escrow Agent may resign (and be discharged from its duties hereunder) at any time by giving twenty (20) days' written notice prior to the effective date of such resignation to Developer and City at the addresses herein set forth, specifying a date when such resignation shall take effect (the "Termination Notice"). Upon such Termination

Notice being given and received by the parties hereto, a successor escrow agent will be appointed with the mutual consent of Developer and City, and such successor escrow agent, upon written acceptance of such appointment, shall become the designated and successor "Escrow Agent" hereunder upon the termination date as specified in the original Escrow Agent's Termination Notice. Developer and City may at any time agree to replace the Escrow Agent upon twenty (20) days' advance written notice thereof to Escrow Agent then acting (but such notice may be waived by Escrow Agent), together with written instructions respecting the CWSA Holdback. Upon such resignation or replacement and delivery of the CWSA Holdback, Escrow Agent will be released from all liability arising thereafter under this Agreement.

5. Performance of Duties. Escrow Agent undertakes to perform such duties as are specifically set forth herein, and may, absent manifest error, rely on any written notice, instrument or signature believed by it to be genuine and to have been signed or presented by the proper party or parties. Escrow Agent will not be bound by any notice or demand, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received by it in writing. Escrow Agent may accept communications by facsimile or electronic mail as a delivery of such communications in writing until notified in writing by Developer or City that the use of such devices is no longer authorized. Escrow Agent is hereby authorized in the event of conflicting instructions from the parties and any good faith doubt as to the course of action it should take under this Agreement, to interplead the CWSA Holdback into a court of competent jurisdiction in Travis County, Texas.

6. Actions and Omission. Escrow Agent will not be liable for any action taken or omitted by it in good faith and believed by it to be authorized hereby or within the rights or powers conferred upon it hereunder. If Escrow Agent makes a written request for directions from Developer or City concerning a matter for which Developer or City is responsible in accordance with the terms of this Agreement, Escrow Agent may await such directions without incurring liability. Escrow Agent has no duty to act in the absence of such requested directions, but may, in its commercially reasonable discretion, take such action as it deems appropriate to carry out the purposes of this Agreement.

7. Notices. Formal notices, demands and communications between the parties will be sufficiently given if, and will not be deemed given unless, delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, sent by facsimile, sent by email, 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:

Developer:	_____ _____ _____
with a copy to:	DuBois, Bryant & Campbell, LLP 700 Lavaca, Suite 1300 Austin, Texas 78701 Attention: Rick Reed Facsimile: (512) 381-8008 Email: rreed@dbcllp.com
City:	City of Austin City Manager's Office 301 West 2nd Street Austin, Texas 78701 Attention: City Manager Facsimile: (512) 974-2833 Email:_____
with a copy to:	City of Austin Economic Growth and Redevelopment Services Office 301 West 2nd Street Austin, Texas 78701 Attention: Director Facsimile: (512) 974-7825 Email:_____
and:	City of Austin Law Department 301 West 2nd Street Austin, Texas 78701 Attention: City Attorney Facsimile: _____ Email:_____
and:	Thompson & Knight L.L.P. 98 San Jacinto, Suite 1900 Austin, Texas 78701 Attention: James E. Cousar and Andrew Ingrum Facsimile: (214) 969-1751 Email: Andrew.ingrum@tklaw.com

Such written notices, demands, and communications will be effective on the date shown on the delivery or facsimile record as the date read, delivered or received (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.

8. 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. Nothing contained herein or in any other agreement between the parties shall be construed as creating a partnership, an agency relationship or any other similar relationship between the parties hereto. 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.

9. 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. City and Developer shall only be entitled to assign this Agreement in the manner and to the extent provided in the MDA. Escrow Agent shall not assign this Agreement without the prior written consent of City and Developer.

[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.

DEVELOPER:

_____

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:_____

[SIGNATURE BLOCKS CONTINUE ON FOLLOWING PAGE]

ESCROW AGENT:

HERITAGE TITLE COMPANY OF AUSTIN, INC., a Texas corporation

By:_____
Name:_____
Title:_____

[END OF SIGNATURE BLOCKS]

EXHIBIT A
TO CWSA HOLDBACK ESCROW AGREEMENT

Relevant Provisions from MDA

DEFINITIONS FROM MDA

"**CWMOU**" means a Chilled Water Memorandum of Understanding between Developer and Austin Energy concerning the delivery of chilled water to the Property.

"**CWSA**" means a Chilled Water Service Agreement between Developer and Austin Energy concerning delivery of chilled water to the Property.

"**CWSA Holdback Escrow Agreement**" means the CWSA Holdback Agreement substantially in the form attached hereto as Exhibit I.

TEXT OF CWSA AGREEMENTS

5.1(c) CWSA Holdback.

(i) The parties anticipate that a CWMOU will be executed prior to the Takedown. During the development of the Property, Developer and Austin Energy will work together to execute a CWSA.

(ii) At the Takedown, $100,000 (the "CWSA Holdback") of the Transfer Price will be deposited by the Title Company into an interest-bearing escrow account (which interest-bearing component will be applicable to the extent allowable to obtain FDIC insurance on the entire CWSA Holdback) with a federally insured financial institution reasonably approved by the City. Any interest earned on the CWSA Holdback will accrue to the CWSA Holdback and be utilized in the same manner. The Title Company shall not commingle the CWSA Holdback with other funds held by it. If at any time the financial institution that actually holds the CWSA Holdback or its parent entity (A) is the subject of a bankruptcy, insolvency, conservatorship, receivership, custodianship or similar proceeding; (B) is otherwise adjudicated as, or determined by any governmental authority to be, insolvent or bankrupt; (C) is the subject of a cease and desist order by any governmental authority and such cease and desist order is not resolved within 20 days after the issuance of such order, or (D) admits in any filing that it is not able to continue as a going concern, Title Company shall promptly move the CWSA Holdback to another financial institution reasonably approved by the City.

(iii) If a CWSA (A) is not executed because of an act or omission of Austin Energy, or (B) is executed but a default occurs thereunder by Austin Energy (following the expiration of all grace, notice and/or cure periods) as a result of Austin Energy's failure to complete the chilled water delivery system and deliver chilled water to the

Property in accordance with the CWSA, Developer may, within 60 days following such default, deliver written notice to the Title Company of such event in which case the Title Company shall deliver the CWSA Holdback to Developer. The obligations of Austin Energy as set forth herein are informative only and no expectations should be derived therefrom, it being the intent of the parties that the obligations of Austin Energy with respect to the chilled water delivery to the Property be set forth solely in the CWMOU and CWSA.

(iv) If a CWSA is executed and chilled water is delivered to the Property, Developer or the City shall deliver written notice to the Title Company of such event and the Title Company must immediately disburse the CWSA Holdback to the City.

(v) At the Takedown, City, Developer and the Title Company must execute a CWSA Holdback Escrow Agreement which reflects the agreements of this subsection.

(vi) If Austin Energy incurs reasonable cost to design the chilled water piping and related infrastructure to serve the Property and Developer does not execute a CWSA, then Developer shall be obligated to reimburse Austin Energy for all such reasonable incurred costs at an interest rate equal to Austin Energy's cost of capital, expressly including costs of engineering, but in no event in excess of $100,000; provided that Developer has no obligation under this subsection 0 unless and until Takedown occurs. Austin Energy will not install any capital infrastructure unless a CWSA is executed. If a CWSA is executed and the Developer commits a default thereunder, the remedies for such default will be set forth in the CWSA (including the remedy for reimbursement of design costs as set forth in this subsection).