

EXHIBIT R  
TO MASTER DEVELOPMENT AGREEMENT  
**PROJECT REVENUE ESCROW AGREEMENT**

[SEE ATTACHED PAGE(S)]

## PROJECT REVENUE ESCROW AGREEMENT

This Project Revenue Escrow Agreement (this "Agreement") is entered into to be effective as of the \_\_\_ day of \_\_\_\_\_, 2004, among THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("City"), CATELLUS AUSTIN, LLC, a Delaware limited liability company ("Catellus") and HERITAGE TITLE COMPANY OF AUSTIN, INC., a Texas corporation (the "Escrow Agent").

### RECITALS:

A. City and Catellus entered into that certain Master Development Agreement ("MDA") dated effective \_\_\_\_\_, 2004, pursuant to which Catellus will purchase and redevelop or sell for redevelopment certain City property commonly known as Robert Mueller Municipal Airport and more particularly described therein ("Property").

B. The Property does not include the Hospital Property (as defined in the MDA).

C. Pursuant to the MDA, as the Property is redeveloped, certain "Project Revenues" will be collected from the sale, transfer or redevelopment of the Property as more particularly described therein (the "Project Revenues").

D. The MDA requires that all Project Revenues be deposited into an escrow account (the "Project Revenue Fund") to fund the development of the Infrastructure (as defined in the MDA) on the Property.

E. The purpose of this Agreement is to set forth the terms and conditions pursuant to which Project Revenues may be disbursed from the Project Revenue Fund. This Agreement constitutes the "Project Revenue 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. Delivery of the Project Revenues. Pursuant to the MDA, all Project Revenues shall promptly be deposited into the Project Revenue Fund to be held for the purposes herein described.

2. Term of Escrow. The term of this Agreement commences on the date hereof and extends until the date upon which the Project Revenue Fund balance is depleted following expiration of the MDA unless earlier terminated pursuant to the terms hereof (the "Termination Date"). The escrow created by this Agreement will continue until the Termination Date even though the balance of the Project Revenue Fund is zero. In no event will the Project Revenue Fund have a negative balance.

3. Accounts. Upon delivery of the Project Revenues to the Escrow Agent, the Escrow Agent shall place and hold such Project Revenue in the Project Revenue Fund, pursuant

to the terms hereof, which must be invested in accordance with the City's then current investment policies. All interest earned on the Project Revenue Fund will accrue to the Project Revenue Fund and be utilized in the same manner as Project Revenues. The Escrow Agent shall be the only person authorized to make disbursements from such account unless this Agreement has been terminated. The Escrow Agent shall not commingle the Project Revenue Funds with other funds held by it.

4. Disbursement Requests. At least ten (10) business days before the requested date of a requested disbursement of proceeds of the Project Revenue Fund (a "Disbursement"), Catellus shall deliver to the Escrow Agent a duly executed application for payment (a "Disbursement Request") specifying the total amount of the Disbursement, the amount of the Disbursement broken down by trade, and the period for which the Disbursement is requested. The period for which a reimbursement is requested may include costs and expenses that were incurred prior to the execution and delivery of the MDA, as provided in the MDA. The Escrow Agent shall, only upon satisfaction of all conditions of this Agreement, make the requested Disbursement to Catellus. Disbursements will be made on a business day.

5. Amounts Disbursed. Subject to the fulfillment of all the conditions of making Disbursements set forth herein, the Escrow Agent shall make Disbursements for Project Costs (as defined in the MDA) incurred by the requesting party during the period covered by the Disbursement Request.

6. Conditions to All Disbursements. As conditions precedent to each Disbursement:

(a) with respect to a Disbursement for hard costs, the Escrow Agent and City have received a properly completed and executed AIA Document G-702 Form;

(b) Escrow Agent and the City Project Manager for the Property have received copies of each underlying invoice which is the subject of the Disbursement (other than invoices for legal fees, which will be certified as amounts due for services rendered and subject to reimbursement as provided herein);

(c) Escrow Agent has received lien waivers in the form attached hereto as Exhibit A or in any other form approved by City and the Escrow Agent from each contractor, architect, supplier and materialman for which a Disbursement is requested; and

(d) If Escrow Agent has not received a notice of a Catellus Event of Default (as defined in the MDA) under the MDA, City does not have the authority to approve Disbursements. If Escrow Agent has received a notice of a Catellus Event of Default under the MDA, City must approve each Disbursement.

7. City's Ability to Draw Proceeds. As provided in the MDA, City may (but is not obligated to) submit a Disbursement Request in the same manner as Catellus relating to fees, costs and expenses appropriate for a Disbursement Request under MDA and the Escrow Agent shall fund any such Disbursement Request. City shall deliver to Catellus a copy of the Disbursement Request at the same time it delivers it to the Escrow Agent. Prior to the funding of

such City Disbursement Request, Catellus may, in good faith, reasonably object to any such requested City Disbursement Request in which case the City Disbursement Request will be delayed while the parties, in good faith, work to resolve any such objections. The Escrow Agent will not fund any such City Disbursement Request until after the expiration of the 10 business day period referenced in Section 4 above.

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

9. Development Liabilities. Between Catellus and City, the liabilities, obligations and rights of such parties with respect to development of the Infrastructure will be governed by the MDA and the documents executed in connection with the MDA.

10. Assignment. Except to the extent provided in the MDA, the Project Revenue Fund will not be assignable in whole or in part by any party and will not be pledged, mortgaged, or hypothecated.

11. 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 Catellus 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 Catellus 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. Catellus 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 Project Revenue Fund. Upon such resignation or replacement and delivery of the Project Revenue Fund, Escrow Agent will be released from all liability arising thereafter under this Agreement.

12. 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 Catellus 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 Project Revenue Fund into a court of competent jurisdiction in Travis County, Texas.

13. 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 Catellus or City concerning a matter for which Catellus 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.

14. 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, 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:

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

With a copy to: Catellus Development Corporation  
5720 LBJ Freeway, Ste. 190  
Dallas, Texas 75240  
Attention: Stephen Bryan

and Catellus Development Corporation  
201 Mission Street, 2nd Floor  
San Francisco, California 94105  
Attention: General Counsel

and DuBois, Bryant, Campbell & Schwartz, L.L.P.  
700 Lavaca, Suite 1300  
Austin, Texas 78701  
Attention: Rick Reed

City: City of Austin  
City Manager's Office  
301 West 2<sup>nd</sup> Street  
Austin, Texas 78701  
Attention: City Manager

with copy to: City of Austin  
Economic Growth and Redevelopment Services Office  
301 West 2<sup>nd</sup> Street  
Austin, Texas 78701  
Attention: Sue Edwards

and City of Austin  
Law Department

301 West 2<sup>nd</sup> Street  
Austin, Texas 78701  
Attention: Alison Gallaway

and

Thompson & Knight L.L.P.  
98 San Jacinto, Suite 1900  
Austin, Texas 78701  
Attention: James E. Cousar

Escrow Agent:

Heritage Title Company of Austin, Inc.  
401 Congress Ave., Suite 1500  
Austin, Texas 78701  
Attention: Nancy Grasshoff

Copies of Disbursement Requests to the City shall only be delivered to:

City of Austin  
301 West 2<sup>nd</sup> Street  
Austin, Texas 78701  
Attention: Chief Financial Officer

City of Austin  
Economic Growth and Redevelopment Services Office  
301 West 2<sup>nd</sup> Street  
Austin, Texas 78701  
Attention: Sue Edwards

City of Austin  
Economic Growth and Redevelopment Services Office  
301 West 2<sup>nd</sup> Street  
Austin, Texas 78701  
Attention: Mueller Project Manager

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

15. 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.

16. 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 Catellus 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 Catellus.

17. Confidentiality. Escrow Agent agrees that it will keep confidential and not disclose any information contained herein except for disclosures (a) in the process of discussions, meetings or conferences with its employees who reasonably need to know this information for purposes of effectuating the transactions contemplated hereby; (b) in response to a legal process or as otherwise required by law; or (c) in any manner to which City and Catellus both consent in writing.

[END OF TEXT - SIGNATURES ON FOLLOWING PAGES]

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

CATELLUS:

CATELLUS AUSTIN, LLC, a Delaware limited liability company

By: Ted A  
Name: Ted Antenucci  
Title: President

Date of Execution: 12-10, 2004

[SIGNATURE BLOCKS CONTINUE ON FOLLOWING PAGE]



CITY:

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

By: Toby Hummett Futrell  
Name: Toby Hummett Futrell  
Title: City Manager

Date of Execution: December 22, 2004

[SIGNATURE BLOCKS CONTINUE ON FOLLOWING PAGE]

ESCROW AGENT:

Heritage Title Company of Austin, Inc.,  
a Texas corporation

By: 

Name: Brenda K. Hindsman

Title: Senior Vice President

Date of Execution: December 14, 2004

[END OF SIGNATURE BLOCKS]

EXHIBIT A  
TO PROJECT REVENUE ESCROW AGREEMENT

Form of Lien Waiver

THE STATE OF TEXAS

COUNTY OF TRAVIS

The undersigned is an original contractor or subcontractor who has furnished labor and/or material ("Work") in the construction of improvements upon real property known as the former Robert Mueller Municipal Airport located adjacent to IH-35, Airport Boulevard, and 51<sup>st</sup> Street in the City of Austin, Texas (the "Property").

For Work in connection with the Property, the undersigned:

- received \$ \_\_\_\_\_ through \_\_\_\_\_, 200\_\_ (the "Prior Down Date"),
- is owed \$ \_\_\_\_\_ through \_\_\_\_\_, 200\_\_ (the "Down Date"),

The undersigned (a) through the Prior Down Date, and (b) additionally, upon receipt of the amount owed, through the Down Date:

1. Has been paid in full for all sums owed for Work concerning the Property;
2. Acknowledges complete satisfaction of, and forever waives and releases, all claims of every kind against the Property, including but not limited to all liens and claims of liens, which the undersigned may have as a result of or in connection with the Work;
3. Has represented and warranted and does hereby represent and warrant that all persons or entities who have furnished labor and/or material to the undersigned in connection with the Work have been paid all amounts they are owed through the "prior down date" and will make all payments owed to other entities promptly upon receipt of the amount owed through the "down date";
4. Agrees unconditionally to indemnify Catellus Development Corporation ("CDC"), Catellus Austin, LLC ("Catellus"), the City of Austin ("City") and the Property and hold CDC, Catellus, City and the Property harmless from and against all liability, loss, cost or expense (including but not limited to attorneys' fees) now or hereafter incurred, paid or suffered by or asserted against CDC, Catellus, City or the Property because of any claim or action by the undersigned, or by any person or entity claiming by, through or under the undersigned, with respect to the claims, liens and rights herein waived and released or arising out of any breach or untruth of any representation herein made.

The person signing this document represents that he or she is duly authorized to do so on behalf of the undersigned original contractor or subcontractor. All of the provisions of this

document will bind the undersigned original contractor or subcontractor and the undersigned's heirs, legal representatives, successors and assigns and inure to the benefit of CDC's, Catellus' and City's respective representatives, successors, assigns and sureties.

Executed to be effective as of \_\_\_\_\_, 200\_\_.

[ADD SIGNATURE AND NOTARY BLOCK]