

SUMMARY OF CHANGES TO GREEN WATER TREATMENT PLANT MDA
APRIL 5, 2012 VERSION TO MAY 23, 2012 VERSION

1. MDA Section 3.2(e) – Prevailing Wage. Revise Prevailing Wage covenant to delete good faith efforts standard:

Prevailing Wage. Developer shall, ~~or shall 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 Ordinances attached hereto as Exhibit E.

2. MDA Section 3.2(f) - OSHA Resolution. Revise OSHA covenant to delete good faith efforts standard:

OSHA Resolution. Developer shall, ~~or shall 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 comply with the OSHA Resolution attached hereto as Exhibit H.

3. MDA Section 3.2(g) – Worker’s Defense: Add as new section to the MDA:

Worker’s Defense. In addition to complying with the covenants pertaining to M/WBE, the Prevailing Wage Ordinance and the OSHA Resolution in accordance with Sections 3.2(d), (e) and (f) of this Agreement, Developer will comply with all applicable state and federal laws relating to construction, including laws related to labor, equal employment opportunity, safety, workers compensation and other applicable insurance and wage and hour (including minimum wage), and Developer agrees to make commercially reasonable efforts to work with the Workers Defense Project (“WDP”) in connection therewith. Additionally, Developer will, and will require its contractors to, use commercially reasonable efforts to comply with each of the following:

- (i) Advertise open labor positions with workforce training centers certified by WDP;
- (ii) Provide construction workers with personal protective equipment required by OSHA without charge;
- (iii) Provide construction workers with 10 hour OSHA safety training without charge;
- (iv) Provide construction workers breaks, in addition to a lunch break, for every four consecutive hours of work, and provide drinking water and sanitation facilities;
- (v) Require contractors to provide workers compensation insurance for construction workers;

(vi) Require general contractors to employ a safety representative with a minimum of 30 hours of OSHA approved supervisor safety training on any construction site;

(vii) Allow a WDP representative with a minimum of 30 hours of OSHA approved supervisor safety training to accompany representatives of Developer and the general contractor’s safety representative on scheduled monthly safety inspections;

(viii) Prohibit contractors from retaliating against construction workers who address workplace concerns with WDP;

(ix) Provide reasonable signage that provides contact information for WDP and encourages construction workers to contact WDP regarding project safety or wage issues, which signage shall be posted in the same general location where other federal and state regulation signage is posted; and

(x) Work with WDP to reasonably investigate and address concerns raised by construction workers regarding safety conditions or wages.

4. MDA Section 4.1(a) - Takedown: To facilitate the extension of the affordable housing covenant, require the first takedown any block to occur within 12 months.

	<u>Block</u>	<u>Timing</u>
First Takedown	1 or 23 <u>Any Block</u>	Within 6 <u>12</u> months following the Initial Ready Date (but in no event earlier than the date which is 6 <u>12</u> months following the Effective Date) (the “ First Required Takedown Date ”)

5. MDA Sections 4.1(b)-(d) - Takedown: To facilitate the extension of the affordable housing covenant, allow delay options to be utilized on the first required sale of property.

6. MDA Sections 6.2 and 6.3 – Community Benefit Payment Timing: To facilitate the extension of the affordable housing covenant, require payment of the AIPP and music program funds by issuance of the applicable certificate of occupancy.

7. Restrictive Covenants Section 5 – Use Restrictions: Allow the City, without the joinder of any owner, to waive the use restrictions on the property. New Provision:

Declarant, through its Economic Growth & Redevelopment Services Office (or appropriate successor department) (or such other office as is designated by the Declarant’s City Manager), may waive any of the foregoing use restrictions in writing at any time and from time to time without the joinder of any other party, including without limitation any Owner.

8. Restrictive Covenants Section 6(b) - Affordability Housing Covenant: Extend the affordability covenant from 7 to 40 years for the 80% MFI affordability units, delete the requirement for

30% MFI affordability units, provide a minimum number of affordable units and provide for payments in the event for sale housing is constructed and a minimum of for rent housing is not constructed. Revised covenant:

(b) Affordable Housing. If any portion(s) of the Property are utilized as a “for rent” residential multi-family unit facility (e.g., not a licensed senior housing facility, hotel or the lease of individual condominium units by end users), such applicable portion(s) of the Property must comply with the remainder of this Section 6(b) with the intent of the Declarant to ensure that a portion of such “for rent” units be available to persons of limited financial means, as provided below—:

~~(i) — For a period of 7 years beginning on the date of issuance of a Certificate of Occupancy (or its equivalent) for that portion of the Property utilized as “for rent” (the “Affordable Housing Period”):~~

(i) (A) The For a period of 40 years beginning on the date of issuance of a Certificate of Occupancy (or its equivalent) for that portion of the Property utilized as “for rent” (the “Affordable Housing Period”), the applicable Owner agrees to lease, or hold available to lease (subject to Section 6.1(b)(i)(A) and (B) immediately below), at least 10% of its units to households whose income is equal to or less than 80% of the median income for households of equivalent size as determined by the United States Department of Housing and Urban Development (“HUD”) for the Austin – San Marcos, Texas Metropolitan Statistical Area (the “MSA”). A unit that is leased, or held available for lease, to persons who meet the above criteria is hereinafter referred to as a “Restricted Unit”. The rental rate for the Restricted Units must be an amount which does not exceed 28% of such qualifying household’s gross income. The Restricted Units must be comparable in quality to similarly sized, non-restricted units of the same type on the applicable Property, but the applicable Owner shall have the discretion to designate any unit on the applicable portion of the Property as a Restricted Unit and to change such designation at any time. The Restricted Units may not be concentrated in one particular section of a building.

(A) If Block 1 of the Property is utilized as a “for rent” residential multi-family unit facility the total number of Restricted Units on that block shall be the greater of (i) 10% of the total number of “for rent” residential multi-family units constructed or (ii) the lesser of (a) 12% of the total number of “for rent” residential multi-family units constructed or (b) 50 Restricted Units.

~~(B) At least 5 units must be leased, or available to lease, to households whose income is equal to or less than 30% of the median income for households of equivalent size as determined by HUD for the MSA. A unit that is leased, or held available for lease, to persons who meet the above criteria is hereinafter also referred to as a “Restricted Unit”. The rental rate for the Restricted Units must be an amount which does not exceed 28% of such qualifying household’s gross income. If there are two blocks in the Property which must provide Restricted Units~~

~~under this paragraph, one property must provide 2 Restricted Units and the other Property must provide 3 Restricted Units.~~ **If Block 185 of the Property is utilized as a “for rent” residential multi-family unit facility the total number of Restricted Units on that block shall be the greater of (i) 10% of the total number of “for rent” residential multi-family units constructed or (ii) the lesser of (a) 12% of the total number of “for rent” residential multi-family units constructed or (b) 30 Restricted Units.**

~~The Restricted Units must be comparable in quality to similarly sized, non-restricted units of the same type on the applicable Property, but Owner shall have the discretion to designate any unit on the applicable portion of the Property as a Restricted Unit and to change such designation at any time. The Restricted Units may not be concentrated in one particular section of a building.~~

(ii) During the Affordable Housing Period, **the applicable** Owner shall keep records of the rental amounts of the Restricted Units and the gross income of the applicable households. The records will be available for annual review by the Declarant.

(iii) Notwithstanding any other provision of this Declaration, the following provisions will govern any breach by **the applicable** Owner of its covenants in this Section:

(A) **The applicable** Owner must not be considered to have breached any covenant in ~~this~~ Section **6(b)(i)** until Declarant has provided Notice to **the applicable** Owner of **such** Owner’s breach and **the applicable** Owner has not cured such breach within 30 days of **such** Owner’s receipt of such Notice.

(B) Should **the applicable** Owner breach a covenant in ~~this~~ Section **6(b)(i)** and until such time as the breach is cured, as Declarant’s sole and exclusive remedies, (i) **the applicable** Owner shall pay to Declarant liquidated damages in the amount of \$1,000 per month for each unrestricted unit that would need to be restricted in order to maintain the 80% MFI requirement set forth above, (ii) ~~Owner shall pay to Declarant liquidated damages in the amount of \$2,000 per month for each unrestricted unit that would need to be restricted in order to maintain the 30% MFI requirement set forth above and~~ **(iii) and (ii)** Declarant shall have the right to specifically enforce the covenants set forth in ~~this~~ Section **6(b)(i)**.

(C) Declarant acknowledges that **the applicable** Owner will be relying on prospective tenants to provide **the applicable** Owner with the information to determine whether or not such prospective tenants are qualifying households. Declarant agrees that in no event will **the applicable** Owner be held liable for a breach of ~~this~~ Section **6(b)(i)** due to false information provided to **such** Owner by such prospective tenants, provided that upon learning that a tenant of a Restricted Unit is

not a qualifying household, the applicable Owner diligently pursues the eviction of the applicable tenant and the leasing of such Restricted Unit to a qualifying household.

The design and construction of the improvements on the Property must show, on a block by block basis, reasonable progress towards the requirements of ~~this~~ Section 6(ab)(i).

(iv) The Declarant may, but will not be obligated to, extend the Affordable Housing Period beyond the initial ~~7~~40 years, at the Declarant's expense; provided however, the number and percentage of the Restricted Units cannot exceed the ~~numbers~~number and ~~percentages~~percentage set forth herein without the applicable Owner's prior approval. The extension of the Affordable Housing Period will be effective on a year by year basis and, to the extent exercised, must be continuous or it will terminate automatically. Written notification (the "**Extended Affordability Notice**") of this extension shall be provided to the applicable Owner by the Declarant not less than 120 days prior to the date representing the termination of the initial Affordable Housing Period, or the subsequent extension years, as applicable. In such notification, the Declarant shall, consistent with the proviso in the first sentence of this subsection (iv), indicate the number of units it intends to retain as Restricted Units (the "**Extended Restricted Units**"), the income levels to which those Restricted Units shall be offered, the monthly rents that correspond to those income levels and the annual period for which the Affordable Housing Period shall be extended (the "**Extended Affordable Rents**"). If Declarant fails to timely give the Extended Affordability Notice in any year, then Declarant's right to extend the Affordable Housing Period will be void and of no further force and effect.

(v) The Declarant will be responsible for the cost differential between the market rent for the Extended Restricted Units and the Extended Affordable Rents, together with reasonable and actual administrative costs and expenses associated with administering the extended affordable housing program for the ensuing year (collectively, the "**Affordable Rent Difference**"). Within 60 days following the date of the Extended Affordability Notice, the applicable Owner shall deliver to Declarant, in reasonable detail, its good faith calculation of the projected Affordable Rent Difference. If Declarant disagrees with the calculation of the Affordable Rent Difference, the parties shall work together in good faith to agree upon the Affordable Rent Difference. If the parties cannot agree upon the Affordable Rent Difference for the ensuing year within 60 days following the date of the Extended Affordability Notice then Declarant's right to extend the Affordable Housing Period thereafter will be void and of no further force and effect. The Affordable Rent Difference is due and payable to the applicable Owner on or before the date which is 90 days following the commencement of the applicable annual extension period. If Declarant fails to timely pay the Affordable Rent Difference, then the applicable Owner may terminate Declarant's right to extend the Affordable Housing Period after giving Declarant written notice and a period of 60 days to cure such failure.

No such termination shall discharge Declarant from its obligation to pay any Affordable Rent Difference.

(vi) If the Affordable Housing Period is extended, the applicable Owner shall continue to administer all other aspects of the affordable housing program described above, including marketing of units for qualifying households and maintenance and provision of tenant income records. The applicable Owner shall continue to be subject to the breach of covenant provisions above, including the requirements for liquidated damages.

(vii) The applicable Owner shall pay to a City of Austin sponsored affordable housing fund designated by the Declarant ("Designated Fund") a one-time payment equal to \$5.00 per sellable net square foot in any improvements (excluding common and parking areas) with respect to any portion of the Property which is intended to be marketed by such Owner of such portion of the Property as "for sale" residential condominium units to end users, upon the sale of each such unit (the amount of which is calculated upon the unit sold). It is the intent of the Declarant and the applicable Owner that the payment(s) described hereinabove will be paid on a one time basis with respect to each portion of the Property so developed and the obligation to deliver such payments as to a portion of the Property shall automatically expire upon the payment (in the aggregate) of such amount on the portion of the Property so developed.

(viii) For every usable square foot (exclusive of common and parking areas) of commercial space in excess of 700,000 usable square feet of commercial space in the aggregate for the entire Property ("Excess Commercial Space"), each applicable Owner who develops Excess Commercial Space shall pay to the Designated Fund a one-time payment equal to \$5.00 per each usable square foot of Excess Commercial Space; provided, however, no such payment shall be required if (i) there are then in existence no fewer than 80 Restricted Units or (ii) a site development permit for no fewer than 80 Restricted Units has been issued by the City of Austin on any portion of the Property ("Restricted Unit Minimum Condition"). As the Property will be developed on a block by block basis over time by different Owners, the payment described in the immediately preceding sentence (if any such payment is due) shall be paid by each Owner that develops Excess Commercial Space into an escrow account established pursuant to an escrow agreement among such Owner, the Declarant and an escrow agent reasonably acceptable to such Owner and the Declarant. Any such payment due shall be paid into the escrow account within 30 days after the issuance by the City of Austin of a final certificate of occupancy for the improvements containing such Excess Commercial Space on such Owner's portion of the Property. The escrow agreement will be in form and substance reasonably approved by such Owner and the Declarant and shall provide, among other things, that the amount therein shall be disbursed by the escrow agent to such Owner within 30 days after the Restricted Unit Minimum Condition has been satisfied. If the Restricted Unit Minimum Condition has not been satisfied by the date that a final

certificate of occupancy has been issued by the City of Austin for the improvements constructed on the final block to be developed out of the Property, then the escrowed amount shall be disbursed by the escrow agent to the Designated Fund within 30 days after the issuance of such final certificate of occupancy. As used in this subsection (viii) commercial space shall mean any space used for office, hotel or other commercial uses (other than “for rent” or “for sale” multi-family residential uses, which are respectively covered in Sections 6.1(b)(i) and 6.1(b)(vii) above, and any space used as retail space including the Retail Space). It is the intent of the Declarant and the applicable Owner that the payment described in this subsection (viii) will be paid into the escrow account on a one time basis with respect to such Owner’s Excess Commercial Space, if any, so developed and the obligation to deliver such payment as to such Owner’s Excess Commercial Space shall automatically expire upon the payment of such amount by such Owner.

(ix) **Under no circumstances shall an Owner be required to pay any such amount with respect to any space used as retail space including the Retail Space on any portion of the Property.**

9. Restrictive Covenants Section 6(c) - Bicycles: Add as a covenant:

Developer agrees to work with the Austin Bicycle and Pedestrian Program on the selection of bicycle racks to be installed on the Property. Subject to applicable laws, each occupant(s) of a condominium or for rent unit will be allowed to store its bicycles on the patio/deck/balcony of such unit.

10. Restrictive Covenants Section 6(j) - Showers: Add as a covenant:

Subject to applicable laws, the Owner of an office building on the Property must make shower facilities available to the commuting cyclists who are tenants of such office building.

11. Shoal Creek Bridge Construction Easement Area: As the easement area has not been finalized, replace text with: “To be provided once scope of easement is finalized. Approval and incorporation of this exhibit is a minor amendment to the MDA.”