

EXHIBIT C
TO GWTP 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. Ingram

DECLARATION OF RESTRICTIVE COVENANTS
(GWTP)

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 comprised of the properties commonly known as Block 1, Block 23, Block 185 and Block 188;

B. Declarant and TC Green Water Master Developer, LLC ("**Developer**") entered into that certain GWTP Master Development Agreement ("**MDA**") dated _____, 2012 relating to the purchase, sale and initial development of the Property.

C. Pursuant to certain Special Warranty Deed(s), Declarant is selling the Property to Developer;

D. The Property is located in the 2nd Street District; and

E. Declarant wishes to impose certain restrictions on the Property for the overall benefit of the Property and to ensure the Property's integration into the 2nd Street 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.

provided that the Owner has been granted and accepted a license from the Declarant in its regulatory capacity to do so.

Under the rights granted pursuant to a license agreement between Declarant and the owners of the Property, each Owner shall also maintain, or cause the maintenance of, the water quality system serving its property, which water quality system for the Property will be initially located underground within the public right-of way of Nueces Street between 2nd Street on the north and Cesar Chavez on the south.

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 (provided that insurance for wind, flood and earthquake may be less than full replacement cost, but will be for such amount as is reasonably available in the market), less a reasonable deductible, unless another entity (e.g., a condominium or owners association) carries such insurance. As soon as possible after any damage to or destruction of any improvement constructed upon the Property (but in any event within 365 days of such event), the applicable Owner shall promptly commence to repair or reconstruct the improvement in a manner consistent with the original construction or such other plans and specifications as are approved hereunder and diligently pursue same to completion. Alternatively, the applicable Owner shall clear its Property of debris and maintain it in a neat and attractive landscaped condition.

5. Use Restrictions.

(a) ~~Unless otherwise approved by Declarant, no~~No Owner may operate or permit on its portion of the Property:

(i) Any use which constitutes a public or private nuisance or which permits or generates a noxious (as opposed to the normal and customary Class A retail, Class A restaurant, Class A office, Class A hotel or residential in a mixed-use community) odor, noise, sound, litter, dust, or dirt which can be heard, smelled or readily seen outside of the improvements on the Property.

(ii) Any use which produces or is accompanied by any unusual fire, explosive, or other damaging or dangerous hazards (including the storage or sale of explosives or fireworks).

(iii) A thrift shop (e.g., Goodwill or St. Vincent de Paul), flea market or pawn shop.

(iv) Repair or service center (except that service centers or service uses which are incidental to a store selling goods and/or services is not prohibited hereunder).

(v) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

that live music venues, hotels, restaurants or comedy clubs with bars or cocktail lounges are permitted).

(xvi) Bowling alleys on the ground level.

(xvii) Check-cashing services, unless incidental to use as a bank or other financial institution. This restriction will not prohibit automated teller machines.

(xviii) Correctional or detention facilities.

(xix) Janitorial supplies or services (other than normal janitorial services being provided exclusively to the Property).

(xx) Laundromats, provided that this will not prohibit an internal laundry facility associated with a hotel.

(xxi) Plant nursery (but florist shops are permitted as long as they do not grow flowers in bulk on the premises).

(xxii) Tools and heavy equipment sales.

(xxiii) Workers compensation offices.

(b) ~~Unless otherwise approved by Declarant, no~~No Owner of any of the Retail Space may use or permit on the ground level of any public portion of the Property:

(i) Any school, training or educational facility, including but not limited to: beauty schools, barber colleges, trade school, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers.

(ii) A daycare center larger than 5,000 square feet.

(iii) Any business operated on a part time retail basis (i.e., a business operated less than 6 days per week), other than seasonal kiosks.

(iv) Collection agencies.

(v) Doctor or dentist offices or other medical facilities (other than incidental first aid facilities).

(vi) Rental offices (furniture, etc.); other than rental offices for local transport (e.g., personal motorized transports, bicycles, boats).

(vii) Tobacco shop (other than a "high end" tobacco shop) (provided that the ancillary sale of tobacco is permitted in other retail establishments).

(viii) Any residential use, including, but not limited to: single family dwellings, apartments, townhouses, condominiums, other multi-family units and other forms of living quarters, sleeping apartments or lodging rooms.

(ix) Not more than 25% of the Retail Space (0% on the ground level of the Retail Space) may be Office or Service Use. The term “Office or Service Use” includes those uses which are traditionally associated with an office, industrial, limited office and related uses and include Quasi-Retail, Service Retail, and Service Office uses. “Quasi-Retail” includes but is not limited to a travel agency, establishment that sells glasses but also has an optometrist on site, cell phone store. “Service Retail” includes but is not limited to a copy center, cleaners, tailor/alterations, salon, travel agent, etc. “Service Office” includes but is not limited to brokerage office, insurance agency, medical or dental office, law office, office offering income tax preparation.

It is the intent of the Declarant that the public portions of the ground floor of the Property be utilized for traditional retail uses except as specifically provided above.

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.

6. Other Restrictions and Requirements.

(a) Green Building. Owner will use commercially reasonable efforts to cause the shell portion of the improvements Property (i.e., not including commercial or residential interiors) to be constructed to achieve at least a (i) Silver certification under the Leadership in Energy and Environmental Design (LEED) NC (New Construction) Green Building Rating System™ with respect to improvements on the Property to the extent the improvements are predominantly “for rent” residential improvements and (ii) Gold certification under the Leadership in Energy and Environmental Design (LEED) NC (New Construction) Green Building Rating System™ with respect to all other improvements on the Property to the extent they are not predominantly “for rent” residential improvements. Additionally, Owner will use good faith efforts to achieve at least a “Two Star” rating Austin Energy’s Green Building Rating System. If such designations no longer exist, Declarant, in its reasonable discretion, shall select another reasonably comparable program and/or standard with which to evaluate the improvements.

(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) 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 ~~740~~ 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.

(c) Bicycle Storage Facilities. Each Owner shall maintain secured bicycle storage (either enclosed or covered) that will provide for bicycle storage at a ratio of one bicycle per 10,000 gross square feet of occupiable space (excluding garages). Such facilities shall be constructed and maintained on a block by block basis in a location determined by the Owner of such block within the applicable building or parking structure. These facilities will be in addition to any bicycle racks required as part of the Great Streets program. 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.

(d) Local Businesses. The Owner shall use diligent, good faith ongoing efforts to lease 35% of the Retail Space to “local businesses”, defined as a person or entity:

- (i) which is controlled and at least 51% owned by a person or entity residing or having its principal place of business in 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 Declarant 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 Declarant encourages the Owner to include businesses that reflect the nature and character of Austin in their décor, merchandise, and cuisine.

(e) Alternative Energy Vehicles. The Property must contain at least 10 plug in stations for alternative energy automobiles.

(f) Car Share Spaces. The Property must contain at least 4 parking spaces for a car share program.

(g) Public Parking. The Property must contain at least 250 parking spaces which are available to the general public at prevailing market parking rates.

(h) Public Safety Storefront. Owner must provide the Declarant a 2,000 rentable square foot storefront space at the Property for public safety purposes (the “**Public Safety Storefront**”). The Public Safety Storefront must be provided at no cost in “shell” condition (i.e., the condition which the Owner generally provides retail shell space). Declarant will pay its utilities for the Public Safety Storefront, but will otherwise not be liable for rent or any other operating expenses. The Public Safety Storefront *will* count towards the Retail Space requirements in Section 2(b) above (other than the requirement for square footage which “fronts” 2nd Street). The City may terminate or decrease the square footage of this obligation upon written notice to the applicable Owner.

(i) Nonprofit Space. Owner must lease, or hold open for lease, to a nonprofit entity (i.e., an entity which has obtained 501(c)(3) status with the Internal Revenue Service [or a comparable successive designation]) a 5,000 rentable square foot space at the Property (the “**Nonprofit Space**”). The Nonprofit Space must be provided in “shell” condition (i.e., the condition which the Owner generally provides shell office space) and the tenant will pay for the tenant improvements to be installed in such space. The tenant thereof will pay 50% of the prevailing market rent for comparable space and otherwise lease the Nonprofit Space on a “triple net” basis. Regardless of location, the Nonprofit Space *will not* count towards the Retail Space requirements in Section 2(b) above. The Nonprofit Space may be located anywhere on the Property. Declarant will not have approval rights concerning the tenant of the Nonprofit Space, but, Owner will first consider local tenants or tenants with strong ties to the City of Austin (as opposed to nationally focused nonprofit organizations) for the Nonprofit Space. The City may terminate or decrease the square footage of this obligation upon written notice to the applicable Owner.

(j) Showers. 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.

At any time after the conveyance of a block of the Property under the MDA to Developer, Developer may “lock in” the restrictions in this Section 6 to such individual block(s) of the Property to satisfy the restrictions in this Section 6; provided however, the Owner(s) of the affected block(s) and Developer (so long as the MDA is in effect) may agree to reallocate such restrictions between themselves. No such allocation may affect a block without the written consent of the Developer (so long as the MDA is in effect) and the affected block Owner. By way of example and not of limitation, if Block 23 contains the Nonprofit Space, then the restriction that the Property must contain the Nonprofit Space will attach only to Block 23. The applicable Owner(s) will confirm such “lock in” of restrictions (and reallocations thereof) in a recorded document reasonably approved by

EXHIBIT G
TO GWTP MASTER DEVELOPMENT AGREEMENT
Shoal Creek Bridge Construction Easement Area

~~TO BE PROVIDED PRIOR TO COUNCIL ACTION~~

To be provided once scope of easement is finalized. Approval and incorporation of this
exhibit is a minor amendment to the MDA.