



THE STATE OF TEXAS

COUNTY OF TRAVIS

This Declaration of Covenants, Conditions and Restrictions ("Declaration") is made by the Onion Creek Homeowners Association, Inc. ("OCHOA"), and Cella Investments, Ltd., a Texas limited partnership, ("Developer"), to be effective on the date hereinafter set forth.

RECITALS:

A. Developer is the fee simple owner of Lot 7, Onion Creek Section 4-D according to the map or plat thereof recorded at Volume 83, Page 55C of the Plat Records of Travis County, Texas, and more commonly known as 10933 South IH 35 Austin, TX 78747 (the "Property").

B. The Property is a lot in the Onion Creek Subdivision (the "Subdivision") and is currently subject to the Supplementary Declaration of Restrictions recorded at Volume 8028, Page 513 of the Deed Records of Travis County, Texas, the Restrictive Covenant recorded at File No. 2001013315 of the Deed Records of Travis County, Texas, and all other recorded documents affecting the Property (collectively, the "Existing Restrictions").

C. Developer and the OCHOA have agreed that the Property should be impressed with certain covenants and restrictions described herein to be established with respect to the Property, in order to protect the existing and future development and improvements within, and character of, the Property and the Subdivision, as a quality development.

ARTICLE I – PROTECTIVE COVENANTS

NOW, THEREFORE, in consideration of the receipt of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by OCHOA to Developer, the receipt and sufficiency of which is acknowledged, and in accordance with the doctrines of restrictive covenants and implied equitable servitude, Developer does hereby declare, impose, and subject upon the Property the following covenants, conditions, and restrictions, (collectively, the "Protective Covenants"), which shall be Protective Covenants running with the Property and shall be binding upon the Property and all parties having or acquiring any right, title of interest therein, or any portion thereof, their heirs, executors, administrators, devisees, successors and

assigns, and shall inure to the benefit of OCHOA, all lot owners within the Subdivision, and Developer. The Protective Covenants shall be additional conditions, covenants, and restrictions upon the Property, and shall in no way effect the Existing Restrictions, which shall continue to be binding upon the Property.

1.1. Permitted Uses. The Property shall be used only for the following uses which are included in the GR zoning classification of the City of Austin Land Development Code as of February 16, 2005: Administrative and Business Offices; Art Gallery; Art Workshop; Automotive Repair Services (this shall be limited exclusively to the repair of motorcycles, and all motorcycles must be stored inside of a permanent structure); Automotive Sales (this shall be limited exclusively to the sale of motorcycles, and all motorcycles must be stored inside of a permanent structure); Business or Trade School; Business Support Services; Consumer Convenience Services; Consumer Repair Services; Communications Services; Financial Services; Food Sales; General Retail Sales (Convenience); General Retail Sales (General); Medical Office (<5K Sq Ft of GFA); Medical Offices (>5K Sq Ft of GFA); Off-Site Accessory Parking; Personal Improvement Services; Personal Services; Pet Services (excluding the provision of veterinary and boarding services, pet stores, and small animal clinics); Professional Office; Research Services; Software Development; College and University Facilities; Communications Service Facilities; Counseling Services; Cultural Services; Day Care Services (Commercial); Day Care Services (General); Day Care Services (Limited); Family Home; Group Home, Class I (General); Group Home, Class I (Limited); Group Home, Class II; Guidance Services; Religious Assembly; and Safety Services.

1.2. Use Limitations. Notwithstanding the above, no portion of the Property may be used for (i) activities or purposes which violate or otherwise are contrary to the laws, regulations and ordinances of any governmental authorities with jurisdiction over the Property or its owners ("Governmental Regulations") including without limitation, applicable zoning ordinances and classification(s) of the City of Austin, Texas (when and if applicable to the Property), or any other provisions of this Declaration, or (ii) any of the following uses, directly or indirectly:

a. **Prohibited Uses.** Any use not specifically permitted in section 1.1 above, even if such use is authorized by the GR zoning classification of the City of

Austin, is prohibited. Furthermore, any drive-thru services of any type are prohibited on the Property.

b. Fire and Explosive Hazards. Activities involving the storage and utilization of materials or products which are explosive or otherwise decompose by detonation are prohibited, except firearms for the protection of the owner's or occupant's person, family and property, and firearms for sporting or recreational purposes are permitted. The foregoing restriction is not intended to prohibit pool supplies.

c. Liquid or Solid Wastes. No discharge shall be made into the sewage disposal system unless in accordance with the standards and ordinances approved by the City of Austin, Texas (as and when applicable to the Property) and any other Governmental Regulations, which are applicable to the specific use.

d. Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be unreasonably permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants; provided, however that this restriction shall not apply to odors normally associated with the operation of a business which is a permitted use under this Declaration.

e. Noise. No exterior speakers, horns, whistles, bells or other sound devices (other than the security and safety devices used exclusively for those purposes) shall be located, used or placed on any of the Property.

f. Temporary Structures. No tent, shack or other temporary building, improvement or structure (collectively referred to as "Temporary Structures") shall be placed upon the Property, except that Temporary Structures necessary for the storage of tools and equipment, and for office space for architects, builders and foremen during actual construction may be maintained with the prior approval of OCHOA, such approval to include the nature, size, duration and location of such structure, and not to be unreasonably withheld. Notwithstanding the foregoing, tents for special events may be placed on the Property for short periods of time, which shall not exceed 72 hours in any 7 day period.

g. Mining and Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil,

gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel aggregate, or earth.

h. Animals. No animals or poultry may be kept or raised on the Property without the prior consent of OCHOA, which said consent may be withheld for any reason.

i. Performance Standards. No portion of the Property or any Improvement, equipment or other personalty on the Property shall be used or occupied in any manner so as to unreasonably create any dangerous, hazardous, injurious, noxious, or otherwise offensive or objectionable noise, smoke, dust, odor (excluding odors normally associated with the operation of a permitted use under this Declaration), fumes, or other form of air pollution, liquid or solid refuse or waste, or other substance, condition, or element in such a manner or in such amount as to substantially affect any enjoyable use of premises within the Property or the Subdivision. All uses of the Property shall be conducted and operated in conformance with the applicable ordinances and regulations for the City of Austin, Texas (if and when applicable to the Property) and other applicable Governmental Regulations.

j. Zoning Ordinance Restrictions. In addition to the foregoing, the Property shall not be used for any use prohibited by the Zoning Ordinance for the Property adopted now, or adopted in the future by the City Council of the City of Austin (whether or not such ordinance may hereafter be amended, vacated or modified).

1.3. Minimum Setback Lines. Any Improvement (as hereinafter defined) constructed upon any portion of the Property shall comply with all valid applicable Governmental Regulations and the restrictions set forth herein. As used in this Declaration, the term "Improvements" shall mean and include all buildings, structures, Temporary Structures, parking areas, loading areas, fences, walls, hedges, mass plantings, poles, driveways, ponds, lakes and signs; it shall not include groundcover, shrub or tree replacements. In addition, no Improvements of any kind nor any part thereof shall be placed within eighty feet (80') of the Eastern Boundary line of the Property; provided, however, that the following Improvements are expressly excluded from the setback requirements above: structures below and covered by the ground; parking areas that are at least fifty feet (50') away from the Eastern Boundary line of the Property; ponds; walkways, driveways and curbing; planters, walls or hedges not to exceed eight feet (8') in height; fences required pursuant to this Declaration; and landscaping. Eastern

Boundary shall refer to the boundary of the Property furthest away from Interstate Highway 35 and next to residential lots inside the Subdivision, and Southern Boundary (as used below) shall refer to the boundary located between the Eastern Boundary and Interstate Highway 35 on the south side of the Property. Developer must receive written consent from OCHOA before removing any existing trees from the setback area.

1.4. Impervious Cover, Floor Area Ratio and Building Coverage. The terms “Impervious Cover”, “Floor Area Ratio”, and “Building Coverage” shall have the meanings ascribed to them in the City of Austin Land Development Code. Impervious cover shall not exceed 70%. Floor Area Ratio shall not exceed .35:1. Building Coverage shall not exceed 5000 square feet.

1.5. Height Limitation. No building Improvement exceeding twenty-four feet (24') or two (2) stories in height may be erected upon the Property. If a two (2) story building is built on the Property, it shall contain no more than 10,000 square feet.

1.6. Parking Areas. Parking areas shall be at minimum curbed, guttered, and reasonably screened from adjacent property by use of berms, trees, landscaping or other means expressly approved in writing by OCHOA. Such parking shall comply with all applicable zoning ordinances for the City of Austin, Texas (as and when applicable to the Property), and other applicable Governmental Regulations.

1.7. Driveways. No more than one driveway, with a minimum width of twenty feet (20') and a maximum width of thirty feet (30'), shall be constructed of concrete on the Property, and shall otherwise comply with the applicable zoning ordinances for the City of Austin, Texas (as and when applicable to the Property), and other applicable Governmental Regulations.

1.8 Signs. All signs on any building improvements constructed on the Property must be approved by OCHOA in writing prior to installation or alteration. The design and location of any freestanding monument sign (a “Freestanding Sign”) installed on the Property must be approved by OCHOA in writing prior to the installation of any such Freestanding Sign. OCHOA and Developer agree that only one (1) Freestanding Sign may be installed on the Property. The height of the Freestanding Sign shall not exceed six feet (6'). The design of any sign panels installed on any Freestanding Sign must be approved by OCHOA in writing prior to the installation of any such sign panels. No other permanent or temporary signs,

including but not limited to advertising signs, shall be displayed on the outside of any structure without the prior written consent of OCHOA. OCHOA shall have the right to enter onto the Property, without notice to Developer, to remove, at the owner's expense, any sign erected or altered without such written approval or which does not comply with such written approval, and the right to enjoin the installation or alteration of a sign which does not have written approval or does not comply with such written approval. The following restrictions also apply to signs, unless OCHOA consents to exceptions to these items in writing before any sign is placed on the Property. Developer acknowledges that OCHOA may, in its sole discretion, approve or disapprove any sign that may be placed on the Property for any reason.

a. Prohibited Signs

1. No portable signs are permitted.
2. Window signs are not permitted.
3. Flashing, rotating, or moving signs are prohibited.
4. Box, cube, or panel signs are prohibited.
5. No vacuum formed plastic or injection molded plastic signs are permitted.

b. Secondary Signage

1. Entrance Door Graphics. Address numbers shall be centered above the front entry door. Numbers shall be 4" white vinyl die cut, Helvetica medium.
2. Rear Door Graphics. All rear doors shall be identified with suite number. Numbers shall be 4" white vinyl die cut, Helvetica medium.

1.9 Landscaping. Landscaping shall be required to be substantially completed on the Property contemporaneously with completion of other Improvements thereon, but in no event later than sixty (60) days after issuance of a certificate of occupancy or completion of Buildings, whichever shall first occur, and all landscaping shall conform to a landscaping plan approved by OCHOA and drawn by a registered landscape architect and shall otherwise comply with the applicable zoning ordinances for the City of Austin, Texas and other applicable Governmental Regulations. Factors to be considered by OCHOA may include, without limitation, whether the plans meet the following criteria:

- a. Provide automatic sprinkling systems for all landscaped areas.

b. Do not include landscaping or other Improvements which obstruct sight lines at street or driveway intersections.

c. Permit reasonable access to public and private utility lines and easements for installation and repair.

d. Provide that all setback areas will be covered with grass, shrubs, flowers and other ground cover, except as permitted by Section 1.3.

1.10. Screening. No outdoor storage or display of material or products shall be permitted other than (a) the temporary storage of construction materials and equipment; (b) the location of docks, dumpsters, and shipping and receiving areas, but only so long as such items are reasonably screened from neighboring properties and all public roads and rights-of-way immediately adjacent to and at a level not more than ten feet (10') above the Property; and (c) storage tanks, cooling towers, air treatment facilities and support facilities normally segregated from primary structures. Storage areas, air conditioning and heating equipment, incinerators, storage tanks, trucks based on the premises, roof objects (including without limitation fans, vents, cooling towers, skylights and all roof mounted equipment which rises above the roof line), trash containers, ponds, and treatment and maintenance facilities shall either be housed in closed buildings or otherwise reasonably screened and not visible from neighboring properties or immediately adjacent public roads and rights-of way. Such screening shall (1) include landscaping or permanent fences constructed of masonry and be approved in writing by OCHOA; provided, however, that screening for any pond located on the Property may consist of (i) masonry fence and (ii) wax myrtles (or other non-deciduous trees providing top-to-ground foliage) of at least eight feet (8') in height planted initially at a minimum of four (4) foot on center, (2) be located as far from property lines as reasonably possible unless otherwise approved by OCHOA, and (3) comply with the applicable zoning ordinance for the City of Austin, Texas and other applicable Governmental Regulations. Notwithstanding the foregoing or anything to the contrary contained in this Declaration, Developer agrees to install a four foot (4') parapet (approved by OCHOA in writing prior to construction) to screen any rooftop equipment on any building or structure built on the Property. Any and all utility lines (including those for water, wastewater, gas, electricity and telephone) not within a building shall be constructed or placed and maintained underground, unless both the City of Austin and OCHOA approve otherwise in writing prior to construction. An eight foot (8') tall masonry fence (or wooden fence, if approved by the OCHOA in writing before construction) must be approved by OCHOA in writing prior to construction and shall be constructed on

the Property just inside the entire length of the Eastern Boundary of the Property. The purpose of this fence is to reduce the amount of noise transmitted to neighboring residential structures. Developer shall take all reasonable measures to reduce the amount of noise transmitted across the Eastern Boundary and Southern Boundary lines, including but not limited to screening Improvements and items listed above individually in a manner to help reduce noise as well as by building the fence required above. If for any reason these screening devices cannot be built as required, the Developer must receive written consent from OCHOA to construct alternative screening devices, and Developer shall construct such alternative screening devices in a timely manner.

1.11. Loading Docks and Areas. Loading docks and areas shall not be located on the street side of any building or structure. Loading areas may not encroach upon setback areas. Loading docks and areas shall be reasonably screened from immediately adjacent properties, public roads and rights-of-way, and shall comply with the applicable zoning ordinance for the City of Austin, Texas (as and when applicable to the Property) and other applicable Governmental Regulations. The trash receptacles commonly know as “dumpsters” shall not be emptied and deliveries and pick-up of inventory/merchandise (other than direct sales to customers) shall not be made at the Property between the hours of 10:00 p.m. to 8:00 a.m. local time. The purpose of this provision is to minimize noise during the time periods in which it is anticipated that residents might be sleeping.

1.12. Exterior Illumination. Illumination will be required on all exterior walls facing streets and for all parking areas and walkways between buildings and parking areas. Notwithstanding anything to the contrary contained herein, the intensity of such illumination may be that which is prudent and standard for similar improvements in Austin, Texas. In addition all light fixtures providing exterior illumination within the Property, whether mounted on buildings or on light poles, pylons or other fixtures, must be designed so as not to be directly visible from adjacent areas and so as not to create a direct glare into any adjoining streets or properties. Without limiting the generality of the foregoing provision, the light fixtures providing illumination shall be either mounted on the buildings and of the design known as “cut off fixtures” designed to prevent light transmission to the adjacent properties; or shall be mounted on poles on or near the common property line and directed so as to illuminate only the Property and not to allow light transmission to the adjacent properties. During the hours of 11p.m. to 6 a.m. all lights shall be turned off, or dimmed, as reasonably appropriate, to limit illumination but maintain adequate security on the Property.

1.13. Construction Standards.

a. One-hundred percent (100%) of the building facades, sides, and rear that are not constructed of glass or that do not serve as doorways must be faced with masonry, with masonry comprising at least 75% of each of the facades, sides, and rear of the building. Windows shall not be glazed or reglazed with mirrored or reflective glass, nor shall reflective film be applied to the interior of any window so as to give a mirrored or reflective appearance from the exterior. Notwithstanding anything to the contrary contained herein, non-reflective window tinting is expressly permitted. The roofing material of any building, if visible from any boundary of the Property, shall be constructed of commercial grade metal roofing commonly referred to as a "standing seam roof" of a neutral color, and be approved by OCHOA in writing prior to construction.

b. A dumpster or trash compactor shall be placed on the premises adequate to handle the trash and waste items generated, manufactured, or acquired thereon by such commercial activities. The sorting, handling, moving, storing, removing, and disposing of all such waste materials must be housed or screened in the manner required by Section 1.10 hereof. All facilities and plans for the disposal of wastes other than by public sewage methods (such as shredding, compaction, incineration, reclamation or chemical dissolution) must be approved in writing by OCHOA.

c. Any kitchen facility within the Property shall contain a water flushing garbage grinder disposal.

d. No excavation shall be made except in conjunction with construction of an Improvement. When such Improvement is completed, all exposed openings shall be back filled and graded and all disturbed landscaping replaced.

e. Once commenced, construction shall be diligently pursued to the end that it may not be left in a partly finished condition any longer than reasonably necessary.

1.14. Duty of Maintenance. Owners and occupants (including lessees) of any part of the Property shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep that part of the Property so owned or occupied, including buildings, improvements and grounds in connection therewith, in a well-maintained, safe, clean and attractive condition at all times. Such

maintenance includes, without limitation, the following which shall be performed in a timely manner:

- a. Prompt removal of all litter, trash, refuse, and wastes.
- b. Mowing of lawns.
- c. Pruning of trees and shrubs.
- d. Watering, fertilization and general care of and maintenance of all landscaping in a healthy attractive condition, free from diseases, pests, weeds, and litter, consistent with generally accepted horticultural practices.
- e. Keeping exterior lighting and mechanical facilities in working order and in compliance with the requirements of Section 1.12.
- f. Keeping parking areas, driveways, and roads clean and in good repair.
- g. Complying with all Governmental Regulations.
- h. Striping of parking areas and repainting of Improvements.
- i. Repairing damage and wear and tear to Improvements, and keeping all improvements in good condition and repair and adequately painted.

1.15. Owner's Right to Cure. In the event the owners of any part of the Property default in their obligations and duties under Section 1.14 or Section 1.16 herein and such default is not cured within two (2) days after notice thereof is given to such owners for any violation of Section 1.14 (a) – (e) and such default is not cured within twenty (20) days after notice thereof is given to such owners for any violation of Section 1.14 (f) – (i) or Section 1.16, the owner of any other part of the Property, or the OCHOA, shall have the right to take any and all reasonable actions necessary to cure such default. The person or party who is the owner of such Property at the time the non-defaulting party cures the subject default shall be personally obligated to reimburse the non-defaulting party for any and all actual out-of-pocket costs and expenses incurred by the non-defaulting party in curing the default. Such amount shall be paid within thirty (30) days after notice of the amount is given to such owner and if such amount is not timely paid, such owner shall be obligated thereafter to pay interest thereon at the maximum rate allowed

by applicable law, and to pay attorney's fees and court costs incurred by the party curing the default in collecting such amount.

1.16. Casualties. In the event of any damage to or destruction of any building or improvement on any portion of the Property, the owner of the affected portion, at its sole option and expense, shall, promptly after such damage or destruction, either (i) repair, restore, or rebuild such building or improvement with reasonable diligence, (ii) raze and demolish such building or improvement (or such part thereof that has been damaged or destroyed), clear the affected area of all debris and thereafter either pave and/or landscape such affected area and keep the same weed-free and clean, or (iii) effectuate any combination of subsections (i) and (ii) of this Section 1.16 as such owner may deem appropriate, so long as the affected area is left in a clean and safe condition.

ARTICLE II – GENERAL PROVISIONS

2.1 Applicability. Except as expressly set forth herein, each contract, deed, deed of trust, or ground lease which may be hereafter executed with respect to any portion of the Property shall be deemed and held to have been executed, delivered and accepted subject to all of the provisions of this Declaration, including, without limitation, the reservations, restrictions, covenants, conditions, liens, and charges set forth herein, regardless of whether or not any of such provisions are set forth in such contract, deed, deed of trust, or ground lease, and whether or not referred to in any such instrument.

2.2 Duration. The Protective Covenants and this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the OCHOA, any owner of property in the Subdivision, Developer, and any other owner of the Property, or portion thereof, and their respective legal representatives, heirs, successors and assigns, for an initial term commencing on the date this Declaration is recorded in the Official Public Records of Travis, County, Texas and ending twenty (20) years from such date. Upon the expiration of such initial term, these Protective Covenants (as amended, if amended), and the enforcement rights relative thereto, shall be automatically extended for successive periods of five (5) years each.

2.3 Enforcement. The OCHOA, Developer, and any other owner of the Property, or portion thereof, shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions, reservations, liens, charges, assessments, and all other provisions set out in this Declaration; provided,

however, that failure of the OCHOA, Developer, or such owner to take any enforcement action upon a breach of the Protective Covenants shall not render such party liable in any manner for such failure. No notice is required before a party seeks to enforce this Declaration other than the notice required in Section 1.15 above, if applicable. Failure of any of OCHOA, Developer, or any such owner to take any enforcement action upon any breach or default of or with respect to any of the foregoing shall not be deemed a waiver of the right to take enforcement action upon any subsequent breach or default. The prevailing party in any proceeding brought under this section shall recover all costs incurred in enforcing this Declaration from the non-prevailing party. In the event the owners of any part of the Property default in their obligations and duties or otherwise violate this Declaration, and Section 1.15 does not apply, the owner of any other part of the Property or the OCHOA shall have the right to immediately take any and all reasonable actions necessary to cure such default. The person or party who is the owner of such Property at the time the non-defaulting party cures the subject default shall be personally obligated to reimburse the non-defaulting party for any and all actual out-of-pocket costs and expenses incurred by the non-defaulting party in curing the default. The person or party who is the owner of the Property at the time of any violation of this Declaration shall be personally obligated to pay to OCHOA \$300 per day for each day that any provision of this Declaration is violated and OCHOA shall have a lien against the Property to secure the payment of such amount. All amounts shall be paid within thirty (30) days after notice of the amount is given to such owner and if such amount is not timely paid, such owner shall be obligated thereafter to pay interest thereon at the maximum rate allowed by applicable law, and to pay attorney's fees and court costs incurred by the party curing the default in collecting such amount and OCHOA shall be entitled to foreclose the lien securing the payment of the assessed penalty.

2.4 Amendments. This Declaration may be amended by the recording in the Official Records of Real Property of Travis County, Texas of an instrument executed and acknowledged by (i) all Owners of any portion of the Property at the time of the modification, amendment, or termination and (ii) the OCHOA, setting forth the amendment and stating that each party signing has approved such amendment and that the person signing on behalf of the OCHOA has the authority to sign on behalf of the OCHOA.

2.5 Notice. Any notice, approval, consent or other communication required or desired to be given under the Declaration shall be in writing and shall be deemed to have been properly served when (i) delivered in person and receipted for, or (ii) three (3) days after deposit in the United States Mail, certified, return

receipt requested, postage prepaid, addressed, if to an owner to the owner's last know address as shown on the records of OCHOA at the time of such mailing or, if to OCHOA or Developer, at the following respective addresses:

OCHOA: Onion Creek Homeowners Association, Inc.
10816 Crown Colony, Suite 205
Austin, Texas 78747

Developer: Cella Investments, Ltd.
505 Hintz Road
Owosso, MI 48867

Such address for OCHOA and Developer shall be effective unless and until a supplement to this Declaration shall be made and filed in the Real Property Records of Travis County, Texas, specifying notice of a different address for the party filing such supplement (in which event such address specified in such supplement shall be the address, for the purposes of this Section 2.5 for the addressee named in such supplement).

2.6 Severability. Invalidation of any one or more of the covenants, restrictions, conditions, or provisions contained in this Declaration, or any part thereof, whether by reason of abandonment, waiver, estoppel, judicial decision or otherwise, shall in no manner affect any of the other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Declaration this the 18th day of October, 2005.

[SIGNATURES AND ACKNOWLEDGMENTS APPEAR ON THE FOLLOWING PAGES]