

RESTRICTIVE COVENANT

OWNER: Austin Elm Terrace, LP, a Texas limited partnership

ADDRESS: 1802 West Avenue, Suite 100, Austin, Texas 78703

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: Parcel 1: A 1.082 acre tract of land, more or less, out of the Daniel J. Gilbert Survey No. 8, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this covenant; and

Parcel 2: A 1.100 acre tract of land, more or less, out of the Daniel J. Gilbert Survey No. 8, the tract of land being more particularly described by metes and bounds in Exhibit "B" incorporated into this covenant.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. The Owner shall design and construct sidewalks with street trees in compliance with the standards set forth in Subchapter E, Article 2, Section 2.2.3.(*Urban Roadways: Sidewalks and Building Placement*) of the City Code.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the _____ day of _____, 2008.

OWNER:

**Austin Elm Terrace, LP,
a Texas limited partnership**

By: Exposition 3215, LLC,
a Texas limited liability company,
its General Partner

By: Burlington Ventures, Inc.,
a Texas corporation,
its sole Member

By: _____
Steve D. Beuerlein,
President

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 2008, by Steve D. Beuerlein, President of Burlington Ventures, Inc., a Texas corporation, sole member of Exposition 3215, LLC, a Texas limited liability company, general partner of Austin Elm Terrace, LP, a Texas limited partnership, on behalf of the corporation, limited liability company, and the limited partnership.

Notary Public, State of Texas

FIELD NOTES DESCRIPTION
(PARCEL 1)

DESCRIPTION OF 1.082 ACRES (47,143 SQUARE FEET) OF LAND IN THE DANIEL J. GILBERT SURVEY NO. 8, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; BEING A PORTION OF THAT CERTAIN CALLED 96.92 ACRE TRACT DESCRIBED IN A DEED TO THE STATE OF TEXAS, DATED JULY 26, 1916, OF RECORD IN VOLUME 286, PAGE 330, DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND ALSO BEING A PORTION OF LOT 5, SECOND RESUBDIVISION OF LOT 5 MAR-GLENN, A SUBDIVISION ACCORDING TO THE PLAT OF RECORD IN PLAT BOOK/VOLUME 29, PAGE 49, PLAT RECORDS OF TRAVIS COUNTY, TEXAS, SAID LOT 5, ACCORDING TO A SURVEY PLAT PREPARED BY HOMER BROWN, REGISTERED PUBLIC SURVEYOR NO. 386, DATED OCTOBER 1970, IS A PORTION OF THE PROPERTY CONVEYED FROM U. OF T. (PRESUMABLY THE UNIVERSITY OF TEXAS) TO T.D.M.H. & M.R. (TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION) BY EXCHANGE DEED DATED JANUARY 26, 1970 (A SEARCH OF THE TRAVIS COUNTY DEED RECORDS FOR THE EXCHANGE DEED WAS UNSUCCESSFUL); SAID TRACTS OF LAND BEING PART OF THE AUSTIN STATE SCHOOL PROPERTY SITUATED ALONG EXPOSITION BOULEVARD AND SOUTH OF WEST 35TH STREET; SAID 1.082 ACRE TRACT, AS SHOWN ON LOOMIS AUSTIN, INC. PLAN NO. 3117, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a calculated point in the east right-of-way line of said Exposition Boulevard for an angle point in the west line of said 96.92 acre State of Texas tract of land, from which a 3-inch brass cap stamped "AUSTIN STATE SCHOOL RM 22 ELEV 610.04" in concrete bears N 56° 06' 00" W a distance of 0.50 feet, said brass cap set as a reference monument to the tract corner by Homer Brown, Registered Public Surveyor No. 386, in his survey of the Austin State School property for the State of Texas as noted on his plat dated October 1970;

THENCE with the west line of said 96.92 acre tract, being the east right-of-way line of said Exposition Boulevard, the following four (4) courses and distances:

- 1) N 38° 10' 39" E a distance of 307.07 feet to a 3-inch brass cap stamped "AUSTIN STATE SCHOOL NO 23 ELEV 592.62" in concrete found for an angle point,
- 2) N 28° 11' 44" E a distance of 59.45 feet to a 3-inch brass cap stamped "AUSTIN STATE SCHOOL NO 24 ELEV 588.22" in concrete found for an angle point,
- 3) N 20° 49' 19" E, at a distance of 140.29 feet pass a mag nail with washer driven into a drilled hole in a concrete rip-rap set for the southwest corner of Parcel 2, a 1.100 acre portion of said 96.92 acre State of Texas tract also surveyed this date, continuing for a total distance of 366.39 feet to a 3-inch brass cap stamped "AUSTIN STATE SCHOOL NO. 25 ELEV 594.45" in concrete found at a point of curvature, and
- 4) with the arc of a curve to the left, having a radius of 270.00 feet, an arc distance of 1.30 feet and a chord bearing N 20° 40' 59" E a distance of 1.30 feet to a 3/4-inch iron pipe set into the ground with a 1/2-inch iron rod with plastic cap stamped "LAI" set inside the pipe, said iron pipe and iron rod set in a chain link fence running east-west approximately 2.3 feet east of a chain link fence corner post to mark the northwest corner of said Parcel 2 and being the southwest corner and **POINT OF BEGINNING** of the tract described herein; N 10,085,235.45-ft, E 3,107,633.45-ft

THENCE continuing with the west line of said 96.92 acre State of Texas tract, same being the east right-of-way line of said Exposition Boulevard and the west line of the tract described herein, the following two (2) courses and distances:

- 1) continuing with the arc of said curve to the left, having a radius of 270.00 feet, an arc distance of 75.89 feet and a chord bearing N 12° 29' 36" E a distance of 75.64 feet to 3/4-inch iron pipe set into the ground with a 1/2-inch iron rod with plastic cap stamped "LAI" set inside the pipe, said iron pipe and iron rod set to mark the end of said curve, and
- 2) N 04° 30' 49" E a distance of 114.83 feet to a 3/4-inch iron pipe set into the ground with a 1/2-inch iron rod with plastic cap stamped "LAI" set inside the pipe, said iron pipe and iron rod set to mark an angle point, same being the northwest corner of said 96.92 acre State of Texas tract;

THENCE N 70° 58' 28" E, continuing with the east right-of-way line of Exposition Boulevard, same being the north line of said 96.92 acre State of Texas tract, a distance of 21.68 feet to one-inch rounded bolt found (said bolt the type of marker often set by the City of Austin survey crews to mark right-of-way corners) driven into the ground for an angle point in said right-of-way line, same being the southwest corner of said Lot 5, Second Resubdivision of Lot 5 Mar-Glenn and an angle point in the west line of the tract described herein;

THENCE N 04° 47' 04" E, leaving the north line of said 96.92 acre State of Texas tract and continuing with the east right-of-way line of said Exposition Boulevard, same being the west line of said Lot 5 Second Resubdivision of Lot 5 Mar-Glenn, a distance of 16.74 feet to a 3/4-inch iron pipe set into the ground with a 1/2-inch iron rod with plastic cap stamped "LAI" set inside the pipe, said iron pipe and iron rod set under a chain link fence running north-south approximately 0.4-ft north of its intersection with another chain link fence running east-west to mark the most northern northwest corner of the tract described herein;

THENCE S 88° 47' 35" E, leaving said Exposition Boulevard right-of-way line, same being the west line of said Lot 5, at a distance of approximately 45 feet cross the south line of said Lot 5, same being the north line of said 96.92 acre State of Texas tract, continuing across said 96.92 acre tract for a total distance of 192.78 feet to a 3/4-inch iron pipe set into the ground with a 1/2-inch iron rod with plastic cap stamped "LAI" set inside the pipe, said iron pipe and iron rod set approximately 0.5-ft northeast of a metal chain link fence post to mark the northeast corner of the tract described herein; N 10,085,443.45-ft, E 3,107,873.46-ft

THENCE S 08° 45' 36" W, continuing across said 96.92 acre tract, a distance of 250.58 feet to a 3/4-inch iron pipe set into the ground with a 1/2-inch iron rod with plastic cap stamped "LAI" set inside the pipe, said iron pipe and iron rod set approximately 0.5-ft southeast of a metal chain link fence post to mark the southeast corner of the tract described herein, and being the northeast corner of said Parcel 2;
N 10,085,195.81-ft, E 3,107,835.30-ft

THENCE N 78° 53' 25" W, continuing across said 96.92 acre tract, a distance of 205.72 feet to the **POINT OF BEGINNING** and containing 1.082 acres (47,143 square feet) of land, more or less.

1.082-ac. ~ 47,143 Sq. Ft.
Daniel J. Gilbert Sur. No. 8
Travis County, Texas

LAI Job No. 070423
FN0432R2(wdo)
Page 3 of 3

BEARING BASIS: Texas Coordinate System, Central Zone, NAD83. The coordinates shown hereon are grid; the distances are surface. To convert the distances to grid multiply by the project combined scale factor of 0.999929.

LAI WORD FILE: FN0432R2(wdo)

THE STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS

COUNTY OF TRAVIS

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That I, John D. Barnard, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground during the month of April 2007 under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas on this 13rd of April, 2007 A.D.

Loomis Austin, Inc
Austin, Texas 78746



John D. Barnard
Registered Professional Land Surveyor No. 5749
State of Texas

**FIELD NOTES DESCRIPTION
(PARCEL 2)**

DESCRIPTION OF 1.100 ACRES (47,896 SQUARE FEET) OF LAND IN THE DANIEL J. GILBERT SURVEY NO. 8, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; BEING A PORTION OF THAT CERTAIN CALLED 96.92 ACRE TRACT DESCRIBED IN A DEED TO THE STATE OF TEXAS, DATED JULY 26, 1916, OF RECORD IN VOLUME 286, PAGE 330, DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING A PORTION OF THE TRACTS MAKING UP THE AUSTIN STATE SCHOOL PROPERTY SITUATED ALONG EXPOSITION BOULEVARD AND SOUTH OF WEST 35TH STREET; SAID 1.100 ACRE TRACT, AS SHOWN ON LOOMIS AUSTIN, INC. PLAN NO. 3117, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a calculated point in the east right-of-way line of said Exposition Boulevard for an angle point in the west line of said 96.92 acre State of Texas tract of land, from which a 3-inch brass cap stamped "AUSTIN STATE SCHOOL RM 22-ELEV 610.04" in concrete found bears N 56° 06' 00" W a distance of 0.50 feet, said brass cap set as a reference monument to the tract corner by Homer Brown, Registered Public Surveyor No. 386, in his survey of the Austin State School property for the State of Texas as noted on his plat dated October 1970;

THENCE with the west line of said 96.92 acre tract, being the east right-of-way line of said Exposition Boulevard, the following three (3) courses and distances:

- 0) N 38° 10' 39" E a distance of 307.07 feet to a 3-inch brass cap stamped "AUSTIN STATE SCHOOL NO 23 ELEV 592.62" in concrete found for an angle point,
- 0) N 28° 11' 44" E a distance of 59.45 feet to a 3-inch brass cap stamped "AUSTIN STATE SCHOOL NO 24 ELEV 588.22" in concrete found for an angle point, and
- 0) N 20° 49' 19" E, a distance of 140.29 feet to a mag nail with washer driven into a drilled hole in a concrete rip-rap set for the southwest corner and **POINT OF BEGINNING** of the tract described herein; N 10,085,022.92-ft, E 3,170,552.63-ft

THENCE N 20° 49' 19" E, continuing with the west line of said 96.92 acre tract, same being the east right-of-way line of said Exposition Boulevard, a distance of 226.10 feet to a 3-inch brass cap stamped "AUSTIN STATE SCHOOL NO. 25 ELEV 594.45" in concrete found at a point of curvature;

THENCE continuing with the west line of said 96.92 acre tract, same being the east right-of-way line of said Exposition Boulevard, being an arc of a curve to the left, having a radius of 270.00 feet, an arc distance of 1.30 feet and a chord bearing N 20° 40' 59" E a distance of 1.30 feet to a 3/4-inch iron pipe set into the ground with a 1/2-inch iron rod with plastic cap stamped "LAI" set inside the pipe, said iron pipe and iron rod set in a chain link fence running east-west approximately 2.3 feet east of a chain link fence corner post to mark the northwest corner of the tract described herein, same being the southwest corner of Parcel 1, a 1.082 acre tract of said 96.92 acre State of Texas tract also surveyed this date;
N 10,085,235.45-ft, E 3,107,633.45-ft

1.100-ac. ~ 47,896 Sq. Ft.
Daniel J. Gilbert Sur. No. 8
Travis County, Texas

LAI Job No. 070423
FN0433R1(wdo)
Page 2 of 2

THENCE S 78° 53' 25" E, leaving said Exposition Boulevard right-of-way line and crossing said 96.92 acre State of Texas tract, a distance of 205.72 feet to a 3/4-inch iron pipe set into the ground with a 1/2-inch iron rod with plastic cap stamped "LAI" set inside the pipe, said iron pipe and iron rod set approximately 0.5-ft southeast of a metal chain link fence post to mark the northeast corner of the tract described herein, and being the southeast corner of said Parcel 1; N 10,085,195.81-ft, E 3,107,835.30-ft

THENCE S 19° 31' 08" W, continuing across said 96.92 acre tract, a distance of 238.08 feet to a 3/4-inch iron pipe set into the ground with a 1/2-inch iron rod with plastic cap stamped "LAI" set inside the pipe, said iron pipe and iron rod set in a field to mark the southeast corner of the tract described herein; N 10,084,971.43-ft, E 3,107,755.76-ft

THENCE N 75° 46' 34" W, continuing across said 96.92 acre tract, a distance of 209.57 feet to the **POINT OF BEGINNING** and containing 1.100 acres (47,896 square feet) of land, more or less.

BEARING BASIS: Texas Coordinate System; Central Zone, NAD83. The coordinates shown hereon are grid; the distances are surface. To convert the distances to grid multiply by the project combined scale factor of 0.999929.

LAI WORD FILE: FN0433(wdo)

THE STATE OF TEXAS

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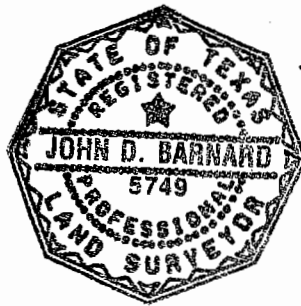
COUNTY OF TRAVIS


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That I, John D. Barnard, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground during the month of April 2007 under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas on this 23rd of April, 2007 A.D.

Loomis Austin, Inc
Austin, Texas 78746




John D. Barnard
Registered Professional Land Surveyor No. 5749
State of Texas

