Zoning Case No. C14-2007-0092

RESTRICTIVE COVENANT

OWNER: BRAZOS REI POE, LLC, a Texas limited liability company

ADDRESS: 200 South Fifth Street, Suite 200 North, Louisville KY 40202

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: Lots 1-6, Block 31, Original City of Austin, Travis County, Texas, according to the map or plat on file in the General Land Office of the State of Texas.

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. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property as specified in that certain Traffic Impact Analysis ("TIA") prepared by HDR/WHM Transportation Engineering Consultants, Inc., dated July 2007, or as amended and approved by the Director of the Watershed Protection and Development Review Department. All development on the Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Watershed Protection and Development Review Department, dated September 25, 2007. The TIA shall be kept on file at the Watershed Protection and Development Review Department.

2. The Owner shall design and construct streetscape improvements along Brazos Street, San Jacinto Boulevard, and West 3rd Street in compliance with the City of Austin Great Streets design criteria as the criteria existed on October 18, 2007. Design, permitting and construction of streetscape improvements will be at Owner's expense. The Owner shall coordinate the design of the streetscape improvements with the Urban Design Section of the Neighborhood Planning and Zoning Department. The Urban Design Section shall inspect and approve the streetscape improvements prior to issuance of a certificate of occupancy;

3. 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.

4. 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.

5. 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.

6. 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 _____, 2007.

OWNER:

BRAZOS REI POE, LLC,
a Texas limited liability company

By: POE Austin DT, LLC
a Kentucky limited liability company,
Member

By: __ _____
Stephen E. Poe, its Manager

APPROVED AS TO FORM:

_____
Assistant City Attorney
City of Austin

COMMONWEALTH OF KENTUCKY §

COUNTY OF JEFFERSON §

This instrument was acknowledged before me on this the _____ day of _____, 2007, by Stephen E. Poe, Manager of POE Austin DT, LLC, a Kentucky limited liability company, a Member of BRAZOS REI POE, LLC, a Texas limited liability company, on behalf of the limited liability companies.

_____
Notary Public, Commonwealth of Kentucky

My commission expires: _____

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767
Attention: Diana Minter, Paralegal