

*Senna Hills Municipal Utility District and City of Austin, Texas
vs. O'Leary/Weaver, Inc. and 10324, Inc.
Cause No. GN403171*

In the 250th Judicial District Court of Travis County, Texas

RULE 11 T.R.C.P. MEDIATED SETTLEMENT AGREEMENT

After completing the Alternate Dispute Resolution Procedure of Mediation in the captioned litigation (the "Lawsuit") on February 19, 2008, Senna Hills Municipal District (the "District") and 10324, Inc. ("Defendant"), parties to the above entitled and numbered cause in which the District is one of the Plaintiffs and Defendant is one of the Defendants, agree to settle all issues by and between the District and Defendant as follows:

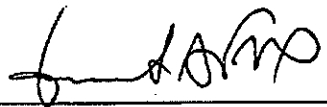
1. Concurrently with its execution hereof, Defendant, as successor in interest to Defendant O'Leary/Weaver, Inc., agrees to execute the Declaration of Covenants and Restrictions (the "Restrictive Covenant") attached hereto as **Exhibit A**. Tract 1 and Tract 2 as described in the Restrictive Covenant are hereafter collectively referred to as the "Weaver Property." The Restrictive Covenant shall be deposited with Independence Title Company ("Escrow Agent") to be held in escrow as hereafter provided.
2. Defendant agrees to petition the District for the annexation of Tract 2 into the District, and to thereafter develop and use the Weaver Property as a unified development.
3. Defendant shall not be required to purchase potable water from the District and shall continue to receive water service from the Lower Colorado River Authority.
4. The District agrees to approve the request of Defendant to annex Tract 2 into the District and to use all reasonable efforts to seek City of Austin approval of the annexation request. The District further agrees to approve an amendment to the District's Land Use Plan permitting future uses of the Weaver Property consistent with the uses described in the Restrictive Covenant and the site plan attached hereto as **Exhibit B** (the "Site Plan") and to use all reasonable efforts of the District to secure City of Austin approval of the amendment of the District's Land Use Plan.
5. Upon annexation, the District agrees to provide wastewater service to the Weaver Property as described in the Site Plan. The improvements necessary to provide wastewater service to the Weaver Property shall be installed by the District at the District's expense. No impact fee or connection charge for the wastewater service shall be required of Defendant. Defendant will, however, be required to pay the District's normal monthly charges for wastewater service.

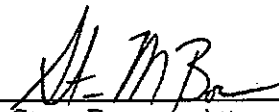
6. Within 15 days of the effective date of this Agreement, the District shall place the sum [REDACTED] (the "Settlement Payment") in an escrow with the Escrow Agent.
7. Upon delivery to Escrow Agent of a fully executed Ordinance of Amendment of the District's Land Use Plan with respect to the Weaver Property and ordinance of annexation of Tract 2 into the District, the Escrow Agent shall disburse the Settlement Payment to Defendant and shall record the Restrictive Covenant in the Official Public Records of Travis County, Texas as an encumbrance against the Weaver Property.
8. In the event the City does not approve both the amendment to the District's Land Use Plan with respect to Weaver Property and the annexation of Tract 2 into the District within 180 days of the filing date of the applications for land plan amendment and annexation with the City of Austin, then, at the option of either Weaver or the District and with notice to the other party, this Agreement shall terminate and be of no further force or effect, the Restrictive Covenant shall be returned to Defendant, the Settlement Payment shall be returned to the District, and the parties may proceed with the Lawsuit at their election.
9. Defendant shall cause all manufacturing and industrial uses within the metal building on the Weaver Property to cease and shall remove all equipment used in conjunction with the metal fabrication and other industrial uses within the latter of, (i) 10 days of the final approval by City of Austin and the District of the amendment to the District's Land Use Plan with respect to Weaver Property and of the annexation of Tract 2 into the District, or (ii) commencement of construction of the off-site wastewater service improvements necessary to serve the Weaver Property by the District.
10. Within 10 days of the final approval by City of Austin and the District of the amendment to the District's Land Use Plan with respect to Weaver Property and of the annexation of Tract 2 into the District, the District's and Defendant's existing claims in the Lawsuit shall be mutually released and dismissed with prejudice, with each party paying their own attorney's fees and costs.

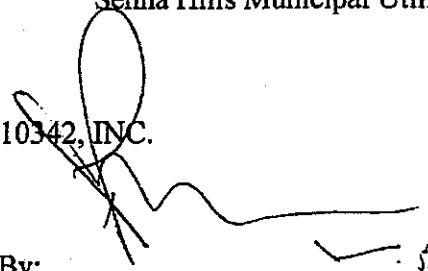
End of page – signatures on next page

SIGNED AND AGREED to be effective this ____ day of _____, 2008.


SENNA HILLS MUNICIPAL UTILITY DISTRICT

By:  Date: 7/1/08
Dr. Kenneth Fox, Board Director

By:  Date: 7-1-08
Steve Bowers, Attorney for
Senna Hills Municipal Utility District

10342, INC.
By:  Date: 6.25.08
By: Evans Weaver, Its Vice President

And Authorized Officer

By:  Date: June 25, 2008
Terrence L. Irion, Attorney for 10324, Inc

State of Texas §
 § **Declaration of Covenants and Restrictions**
County of Travis §

This **Declaration of Covenants and Restrictions** (this "Declaration") is executed to be effective as of _____, 2008, by **10324, Inc.**, a Texas corporation ("Owner"), for the benefit of the **Senna Hills Municipal Utility District**, a Texas municipal utility district (the "District").

Recitals

1. Owner is the owner of the following two contiguous pieces of real property located in Travis County, Texas:

Tract 1 – being 0.50 acres out of the John G. Mustain Survey 40, Abstract No. 2623, Travis County, Texas, and being more particularly described by metes and bounds in **Exhibit A** attached hereto and made a part hereof.

Tract 2 – being 0.708 acres out of the E.C. Gaines Survey (previously know as the Tap Railway Company Survey Section 40), Travis County, Texas, and being more particularly described by metes and bounds in **Exhibit B** attached hereto and made a part hereof.

Tract 1 and Tract 2 are hereafter collectively referred to as the "Property."

2. The District is a duly organized municipal utility district and body politic which provides potable water and wastewater service to properties within the District.

3. Owner and the District have now agreed to define and limit the scope of permissible activities on the Property through the covenants, conditions, and restrictions set forth herein.

Declaration

THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT:

Declarant does hereby declare and impose upon the Property the following covenants, conditions, and restrictions. The covenants, conditions, and restrictions of this Declaration shall apply to and become a part of all legal instruments whereby title to or possession of the Property is hereafter conveyed or transferred, such covenants, conditions, easements, restrictions, and limitations to run with the land and to be binding upon and inure to the benefit of all parties, now or hereafter, owning or using the Property or any portion thereof, their heirs, executors, administrators, successors, and assigns.

1. **Subdivision of the Property.** Owner agrees that it will own, hold, operate, and convey Tract 1 and Tract 2 as a single parcel of land, and that it will not attempt to divide or subdivide the Property in any form or fashion. This provision shall not prevent Owner or Owner's successors and assigns from attempting to plat the Property as a single legal lot, should it choose to do so.

2. **Permitted Uses.** Owner agrees that the future use and enjoyment of the Property shall be strictly limited to the following "Permitted Uses":

- a. ADMINISTRATIVE AND BUSINESS OFFICES, being the use of a structure on the Property for business offices engaged in the provision of executive, management, or administrative services (for example: real estate, insurance, property management, investment, personnel, travel, and secretarial services).
- b. ART GALLERY, being the use of a structure on the Property for the display or sale of works of art.
- c. BED AND BREAKFAST RESIDENTIAL, being the use of a residential structure or structures on the Property to provide rooms and meals for temporary lodging for overnight guests on a paying basis.
- d. MULTIPLE DWELLING RESIDENTIAL, being the use of the Property for multiple dwelling units, other than a mobile home or manufactured home, under common ownership.
- e. PROFESSIONAL OFFICE, being the use of a structure on the Property for the provision of professional or consulting services in the fields of law, architecture, design, engineering, accounting, or similar professions.
- f. RETAIL, being the use of a structure on the Property for the sale or rental of goods for personal or household uses; provided such use shall not include the operation of a convenience store, drug store, grocery store, liquor store or service station.

Any use of the Property, or any portion thereof, for any purpose outside of the foregoing Permitted Uses is strictly prohibited.

3. **Improvements.** All improvements constructed on the Property shall be built in place. No preconstructed, prefabricated, or existing building or structure may be moved onto any portion of the Property.

4. **Repair of Buildings.** All improvements upon any portion of the Property shall at all times be kept in good condition and repair and adequately painted or otherwise maintained.

5. **Manufacturing and Hazardous Activities.** No industrial applications or activities of any type, such as manufacturing, fabrication, refining, distilling, or assembly, shall be conducted on the Property at any time. In addition, no activities shall be conducted on the Property, and no improvements shall be constructed on the Property, which are or might be unsafe or hazardous to any person or property or which generate excessive noise or odor. Without limiting the generality of the foregoing, no firearms or fireworks shall be discharged upon the Property, no open fires shall be lighted or permitted except within safe and well-designed fireplaces, or in contained barbecue units while attended and in use for cooking purposes.

6. **Noise.** No exterior loudspeakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes or ordinary residential stereo speakers) shall be located, used or placed on any of the Property. No nuisance shall be permitted to exist or operate upon any portion of the Property and no unnatural noise which would be reasonably offensive or detrimental to any of the residents of the District shall be permitted.

7. **Rubbish and Debris.** No rubbish or debris or any kind shall be placed or permitted to accumulate upon the Property and no odors shall be 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. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view.

8. **Tanks.** All above ground tanks shall be screened so as not to be visible from outside of the Property.

9. **Temporary Structures.** No tent, shack, mobile home, trailer, or other temporary building, improvement, or structure shall be placed upon the Property; provided, however, that temporary structures necessary for the storage of tools and equipment may be placed upon the Property during actual construction of improvements on the Property.

10. **Unsightly Articles; Vehicles.** No unsightly articles shall be permitted to remain on the Property so as to be visible from adjoining property or public or private thoroughfares; Without limiting the generality of the foregoing, trailers, graders, trucks larger than three-quarter ton, boats, tractors, campers, wagons, buses, and garden maintenance equipment shall at all times, except when in actual use, be kept in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Service areas, storage areas, compost piles and facilities for hanging, drying, or airing clothing or household fabrics shall be appropriately screened from view and no lumber, grass, plant waste, shrub or tree clippings, metal, bulk materials or scrap, refuse or trash shall be kept, stored or allowed

to accumulate on any portion of the Property, except within enclosed structures or otherwise appropriately screened from view.

11. **Mobile Homes, Travel Trailers and Recreational Vehicles.** No mobile homes or manufactured homes shall be parked or placed on the Property at any time, and no travel trailers or recreational vehicles shall be parked on or near the Property so as to be visible from adjoining property or public or private thoroughfares for more than forty-eight (48) hours.

12. **Construction Activities.** Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements upon the Property. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area.

13. **Enforcement.** The District, and any successor to the rights, titles, and interests of the District, shall have the right to enforce the provisions of this Declaration. Such rights of enforcement shall include injunctive relief against, the breach of any such provision.

14. **Amendment and Variances:** No variance from the provisions of this Declaration may be granted, nor may any modification or amendment to this Declaration be made, without the prior written approval of the District's Board of Directors.

15. **Nonwaiver.** The failure on the part of the District to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Declaration.

16. **Governing Law.** This Declaration shall be construed and governed under the laws of the State of Texas.

17. **Duration:** These covenants, conditions, and restrictions shall run with the land and shall be binding upon and against the Property for a period of fifty (50) years from the date of recordation, after which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the then current owner of the Property and the District, or any successor to the rights, titles, and interests of the District, has been recorded agreeing to release said covenants, conditions, and restrictions in whole or in part.

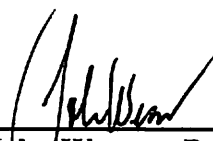
18. **Declaration Severable.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision of portion thereof.

19. **Singular Includes Plural**. Unless the context required a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

20. **Captions**. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the sections hereof.

Executed to be effective as of the date first written above.

10324, Inc., a Texas corporation

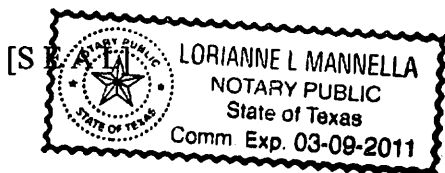
By: 
John Weaver, President


STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was ACKNOWLEDGED before me, on May 1
 , 2008, by John Weaver, President of 10324, Inc., a Texas corporation, on behalf
of said corporation.




Notary Public, State of Texas

When recorded return to:

Steven M. Bowers
Attorney at Law
PO Box 5035
Austin TX 78763

Lienholder Consent and Subordination

This **Lienholder Consent and Subordination** (this "Consent") is attached to and made a part of that certain Declaration of Covenants and Restrictions (the "Declaration") executed by 10324, Inc., a Texas corporation, as "Owner," for the benefit of the Senna Hills Municipal Utility District, a Texas municipal utility district (the "District") covering certain real property and appurtenances which are more particularly described in the Declaration (the "Property").

The undersigned is the sole holder (the "Holder") of certain liens and security interests (collectively, the "Liens") against the Property, which liens are evidenced by that certain Deed of Trust recorded under Document No. 2007137067 of the Official Public Records of Travis County, Texas, and by that certain Deed of Trust recorded under Document No. 2007065903 of the Official Public Records of Travis County, Texas.

Holder hereby consents to the execution and recordation of the Declaration and hereby subordinates the Liens to the covenants, conditions, restrictions, and encumbrances created upon the property by the Declaration, in all respects and for all purposes.

SIGNED

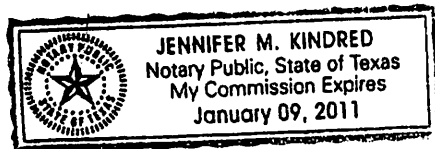


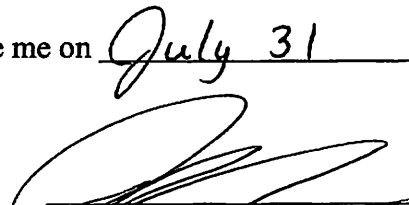
Dr. Lloyd Swiedom

STATE OF TEXAS §
 §
COUNTY OF Harris §

This instrument was ACKNOWLEDGED before me on July 31, 2008
by Dr. Lloyd Swiedom.

[S E A L]





Notary Public, State of Texas

Exhibit "A"

FIELD NOTES TRACT 1

Being 0.500 acre out of the John G. Mustain Survey No. 40, Abstract No. 2636, in Travis County, Texas, the same tract described as Tract 1 in Document No. 200221397, Official Public Records, Travis County, Texas. (bearings recited herein are based on the deed recorded in Volume 11214, Page 672, Real Property Records, Travis County, Texas) as shown on accompanying survey plat and being more particularly described as follows:

BEGINNING at a 1/4" iron pin found at an angle point in the south line of Senna Hills, Section 1-B, a subdivision recorded in Volume 100, Page 80, Plat Records, Travis County, Texas, at the northeast corner of Senna Hills, Section 1-A, a subdivision recorded in Volume 93, Page 239, Plat Records, Travis County, Texas, the northwest corner of said Tract 1, for the northwest corner of this tract, from said point, a 1/4" iron pin found bears, N 75°39'05" W, 76.34'.

THENCE, with the south line of said Senna Hills, Section 1-B, the north line of said Tract 1, and the north line of this tract, S 60°56'00" E, said course constitutes directional control for this survey, 200.09', to a 1/4" iron pin found with cap stamped "CA INC 2988", in the west line of a tract called 1403.19K acres in a deed to Leaf Lee Ranch, Ltd., recorded in Document No. 2000119521, Official Public Records, Travis County, Texas, at the southeast corner of said Senna Hills, Section 1-B, or the northeast corner of said Tract 1, for the northeast corner of this tract.

THENCE, with the west line of said Leaf Lee Ranch tract, the east line of said Tract 1, and the east line of this tract, S 29°04'00" W, 97.30', to a 1/4" iron pin set with cap stamped "ARPENTRIER RPI S 4772", at the southeast corner of said Tract 1, for the southeast corner of this tract.

THENCE, with the south line of said Tract 1 and the south line of this tract, N 72°10'04" W, 178.63', to a point in the east line of said Senna Hills, Section 1-A, at the southwest corner of said Tract 1, for the southwest corner of this tract.

THENCE, with the east line of said subdivision, the west line of said Tract 1, and the west line of this tract, N 18°25'00" E, 134.62', to the **PLACE OF BEGINNING**, and containing 0.500 acre of land, more or less.

Prepared from a survey made on the ground September 22, 2005, by:
Arpentier Professional Surveying
8906 Wall Street, Suite 302
Austin, Texas 78754
(512) 832-1232
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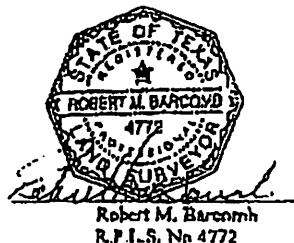


Exhibit "B"

FIELD NOTES TRACT 3

Being 0.708 acre out of the E. C. Gaines Survey (previously known as the Tyler Top Railway Company Survey Section 40) in Travis County, Texas, called 0.732 acre, Tract 2, in Document No. 2002231597, Official Public Records, Travis County, Texas, save and except that tract called 0.0337 acre in a deed recorded in Volume 7322, Page 148, Deed Records, Travis County, Texas, (hearings related herein are based on the deed recorded in Volume 11214, Page 672, Real Property Records, Travis County, Texas) as shown on accompanying survey plot and being more particularly described as follows:

Commencing for reference at a 1/2" iron pin found at an angle point in the south line of Senna Hills, Section 1-B, a subdivision recorded in Volume 100, Page 80, Plat Records, Travis County, Texas, at the northeast corner of Senna Hills, Section 1-A, a subdivision recorded in Volume 93, Page 239, Plat Records, Travis County, Texas, the northwest corner of a tract called 0.50 acre, Tract 1, in a deed recorded in Document No. 2002231597, Official Public Records, Travis County, Texas, from said point, $\pm 1/4$ " iron pin found bears, N 75°33'05" W, 76.34'.

THENCE, with the south line of said Senna Hills, Section 1-B and the north line of said Tract 1, S 60°56'00" E, said course constitutes directional control for this survey, 200.09', to a 1/2" iron pin found with cap stamped "CA INC 2988", to the west line of a tract called 1403.198 acres in a deed to Leaf Lee Ranch, Ltd., recorded in Document No. 2000119521, Official Public Records, Travis County, Texas, at the southeast corner of said Senna Hills, Section 1-B and the northeast corner of said Tract 1.

THENCE, with the west line of said Leaf Lee Ranch tract and the east line of said Tract 1, S 29°04'00" W, 97.50', to a 1/2" iron pin set with cap stamped "ARPENTEUR RPLS 4772", at the southeast corner of said Tract 1, for the northeast corner of said Tract 2 and the PLACE OF BEGINNING of this tract.

THENCE, continuing with the west line of said Leaf Lee Ranch tract, the east line of said Tract 2, and the east line of this tract, S 30°38'10" W, 141.01', to a mag nail set with aluminum washer stamped "ARPENTEURS RPLS 4772", to the curved north line of Bee Caves Road (F.M. 2244) (R.O.W. varies), at the northeast corner of said save and except tract, for the southeast corner of this tract, from said point, a concrete R.O.W. monument found at the end of said curve having a radius of 5644.58', a chord with bears N 68°05'30" E, 436.47'.

THENCE, with the curved north line of Bee Caves Road, the north line of said save and except tract, and the south line of this tract, with said curve having a radius of 5644.58', a chord which bears, S 70°45'40" W, 168.57', an arc distance of 168.57', to a mag nail set with aluminum washer stamped "ARPENTEURS RPLS 4772", at the end of said curve.

THENCE, continuing with the north line of Bee Caves Road, the north line of said save and except tract, and the south line of this tract, S 71°55'01" W, 19.06', to a 1/2" iron pin set with cap stamped "ARPENTEUR RPLS 4772", at the southeast corner of said Senna Hills, Section 1-A, for the southwest corner of this tract.

THENCE, with the east line of said subdivision, the west line of said Tract 2, and the west line of this tract, N 18°25'00" E, 250.30', to a point at the southwest corner of said Tract 1, the northwest corner of said Tract 2, for the northwest corner of this tract.

THENCE, with the south line of said Tract 1 and the north line of this tract, S 72°10'04" E, 178.63', to the PLACE OF BEGINNING, and containing 0.708 acre of land, more or less.

Prepared from a survey made on the ground September 22, 2005, by:
Arpenteurs Professional Surveying
8906 Wall Street, Suite 302
Austin, Texas 78754
(512) 832-1232
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