

Revised Item #46

**RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET (REVISED 10/08/10)**

**CASE:** C14-06-0121(RCA)

**Z.A.P. DATE:** August 24, 2010

**ADDRESS:** 10712, 10728, 10800, 11000, 11500, 11600 Burnet Road; 11601 Domain Drive;  
2900, 3001, 3101 Esperanza Crossing

**OWNER/APPLICANT:** RREEF Domain LP Development Trust, Domain Gateway I, LP,  
Domain Retail I LP (Chad Marsh)

**AGENT:** Drenner & Golden Stuart Wolff, LLP (Michele Haussmann)

**EXISTING ZONING:** MI-PDA

**AREA:** 169.7386 acres

**REQUESTED AMENDMENT:**

To modify the time period associated with the requirements to provide 9-acres of private parkland within the Domain development.\*

*\*10/04/10: To revise the timing of the \$4 million dollar funds for the parkland development so that this requirement can be staggered to state the following: 1) \$1 million shall be spent before the earlier of i) the first residential unit constructed south of Esperanza Crossing and adjacent to the park, or ii) before the completion of 500 residential units north of Esperanza Crossing.; 2) \$2 million shall be spent before the completion of 1,500 residential units on the site; 3) \$ 4 million shall be spent before the earlier of the date that is ten years from the effective date of the Amendment, or ii) before the completion of 3,000 residential units on the site; and to amend Part 7(b) in the covenant to incorporate the bicycle language from the Domain-Endeavor Ordinance in zoning case C14-2010-0015.*

**SUMMARY STAFF RECOMMENDATION:**

Staff recommends the applicant's request for the first amendment to the restrictive covenant for the property known as The Domain-Endeavor site.

**ISSUES:**

Upon review of the draft restrictive covenant amendment for this case, the applicant discovered that the proposed amendment would adversely affect the timing of the monetary dedication for the parkland development on the site. Therefore, the applicant would like to amend their request to revise the timing of the \$ 4 million dollar funds that are allotted for parkland development on the Domain-Endeavor property. The applicant would like to request that the timing of the funds be staggered to reflect the following:

- 1) \$1 million shall be spent before the earlier of i) the first residential unit constructed south of Esperanza Crossing and adjacent to the park, or ii) before the completion of 500 residential units north of Esperanza Crossing;
- 2) \$2 million shall be spent before the completion of 1,500 residential units on the site; and
- 3) \$4 million shall be spent before the earlier of the date that is ten years from the effective date of the Amendment, or ii) before the completion of 3,000 residential units on the site.

In addition, the staff determined that it would be beneficial to amend Part 7(b) in the covenant to incorporate the bicycle language from the Domain-Endeavor Ordinance in zoning case C14-2010-0015. This would make the requirements stated in the restrictive covenant consistent with the requirements stated in the ordinance for this property.

### **DEPARTMENT COMMENTS:**

In this amendment to the restrictive covenant for the Domain property, the applicant is asking to add language to Paragraph 7 to clarify the time period for the development of 9-acres of private parkland within the site (Please see original restrictive covenant – Attachment A). The proposed language would read as follows (in italics):

- 7 Parks Parkland Dedication requirements shall be satisfied as follows:
- a. Nine acres of private parks shall be provided by the Owner within the development. *The requirements to provide the 9-acres of private parkland shall be constructed upon the earlier of the first residential unit constructed south of Esperanza Crossing and adjacent to the park or prior to the completion of 500 residential units north of Esperanza Crossing.*

The City of Austin Parks and Recreation Department has reviewed this request and has stated that they have no issue with the proposed amendment to the restrictive covenant.

### **ZONING AND PLATTING COMMISSION RECOMMENDATION:**

8/24/10: Approved staff's recommendation for the public restrictive covenant amendment (9-0);  
J. Reddy-1<sup>st</sup>, R. Hatfield-2<sup>nd</sup>.

### **EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	MI-PDA	Commercial, Retail, Multi-family
<i>North</i>	NBG-NP	Hotel, Office, Bank
<i>South</i>	NBG-NP, MI, P	Financial Services, University of Texas J.J. Pickle Research Center
<i>East</i>	NBG-NP	Industrial/Office, Manufacturing, Gas Station, Retail Center, Bank, Service Station
<i>West</i>	MI-PDA	Commercial, Retail, Multifamily, Hotel

**AREA STUDY:** North Burnet/Gateway

**TIA:** N/A

**WATERSHED:** Walnut Creek, Shoal Creek

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** N/A

**HILL COUNTRY ROADWAY:** Yes

### **NEIGHBORHOOD ORGANIZATIONS:**

Austin Independent School District  
Austin Monorail Project  
Austin Neighborhoods Council  
Austin Parks Foundation

Homebuilders Association of Greater Austin  
 Homeless Neighborhood Association  
 League of Bicycling Voters  
 Neighborhoods of North Austin/NONA  
 North Burnet/Gateway Neighborhood Planning Contact Team  
 North Burnet/Gateway Neighborhood Plan Staff Liaison  
 North Growth Corridor Alliance  
 Sierra Club, Austin Regional Group  
 Super Duper Neighborhood Objectors and Appealers Organization  
 The Real Estate Council of Austin

**CASE HISTORIES:**

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-06-0121	MI-PDA to MI-PDA	<p>2/13/10: Approved staff's rec. for MI-PDA zoning with additional conditions of:</p> <ul style="list-style-type: none"> <li>• 2 star Green Building rating</li> <li>• natural landscaping of all water quality ponds (existing and future);</li> <li>• be in compliance with TIA conditions;</li> <li>• the applicant's requested parkland dedication proposal;</li> <li>• height base of 140-ft; plus an additional 12-stories based on electing to provide some of the public benefits as listed in the North Burnet/Gateway Neighborhood Plan.</li> <li>• Maximum height of 308 feet.</li> </ul> <p>Vote: (9-0); J.Reddy-1<sup>st</sup>, G. Stegeman-2<sup>nd</sup>.</p>	3/01/07: Approved MI-PDA zoning with the addition of low albedo roofing materials, one star construction for the total site and two star construction for 50% of the office and residential construction (7-0); McCracken-1 <sup>st</sup> , Dunkerley-2 <sup>nd</sup> .
C14-06-0154	MI-PDA to MI-PDA	8/08/06: Approved staff rec. of MI-PDA by consent (8-0)	<p>09/28/06: Approved MI-PDA (7-0); 1<sup>st</sup> reading</p> <p>10/05/06: Approved MI-PDA changes as a condition of zoning (6-0); 2<sup>nd</sup>/3<sup>rd</sup> readings</p>
C14-04-0151	MI-PDA to MI-PDA	11/23/04: Approved staff recommendation of MI-PDA, with Environmental Board conditions (9-0).	12/16/04: Approved MI-PDA (7-0); all 3 readings
C14-04-0146	P to CH	11/9/04: Approved staff's	12/2/04: Approved CH zoning

		recommendation of CH zoning with conditions (9-0)	(7-0); all 3 readings
C14-03-0017	MI-PDA to MI-PDA	6/11/03: Approved staff's recommendation of MI-PDA zoning, with inclusion of original PDA conditions (as read into the record) from Ordinance #000608-67 (8-0, R. Pratt-off dias)	7/31/03: Granted MI-PDA on all 3 readings (7-0)
C14-03-0016	MI to MI-PDA	6/11/03: Approved staff's recommendation of MI-PDA zoning (8-0, R. Pratt-off dias)	7/31/03: Granted MI-PDA on all 3 readings (7-0)
C14-03-0015	MI to CS	6/11/03: Approved staff's recommendation of CS-CO zoning (8-0, R. Pratt-off dias)	7/31/03: Granted CS-CO on all 3 readings
C14-02-0062	LI to CS-1	6/12/02: Approved CS-1 by consent (8-0)	7/11/02: Approved PC rec. of CS-1 (7-0); all 3 readings
C14H-00-2177	LI-PDA to LI-PDA	10/24/00: Approved staff rec. of LI-PDA (TR1), LI-PDA-H (TR2) by consent (9-0)	11/30/00: Approved LI-PDA (TR1) and LI-PDA-H (TR2); (7-0); all 3 readings
C14-00-2065	MI to MI-PDA	5/9/00: Approved staff rec. of MI-PDA by consent (8-0); with the following conditions: <ol style="list-style-type: none"> <li>1) That minimum lot size be 1 acre provided for any lots that directly abut Braker Lane and Burnet Road (but not both) and which are less than 3 acres in size.</li> <li>2) The total number of additional curb cuts on Braker Lane &amp; Burnet Road providing access to such lots shall not exceed 50 % of the total number of such lots.</li> <li>3) The foregoing limitation shall not apply to any lot of more than 3 acres, which abut Braker Lane and Burnet Road.</li> </ol>	6/8/00: Approved MI-PDA, with changes agreed to with neighborhood association (7-0); all 3 readings
C14-99-0024	MI to GR	4/20/99: Approved staff alternate rec. of GR-CO by consent (7-0)	5/20/99: Approved PC rec. of GR-CO w/ conditions (7-0); 1 <sup>st</sup> reading  6/3/99: Approved GR-CO w/ conditions (7-0); 2 <sup>nd</sup> /3 <sup>rd</sup> readings

C14-92-0072	IP to P	8/18/92: Approved	9/3/92: Approved P; all 3 readings
-------------	---------	-------------------	------------------------------------

**RELATED CASES:** C14-2010-0015 (Current rezoning case)

**ABUTTING STREETS:**

Name	ROW	Pavement	Classification	Sidewalks	Bus Route	Bike Route
MoPac	500'	Varies	Arterial	Portions	No	No
Burnet Road	120'	65'	Arterial	No	Yes	Priority 2
Braker Lane	Varies	2 @ 36'	Arterial	No	Yes	Priority 2

**CITY COUNCIL DATE:** September 23, 2010

**ACTION:** Postponed on consent to September 30, 2010 at the applicant's request (7-0); Spelman-1<sup>st</sup>, Shade-2<sup>nd</sup>.

September 30, 2010

**ACTION:** Postponed on consent to October 14, 2010 at the staff's request (7-0); Spelman-1<sup>st</sup>, Morrison-2<sup>nd</sup>.

October 14, 2010

**ACTION:**

**ORDINANCE READINGS:** 1<sup>st</sup>

2<sup>nd</sup>

3<sup>rd</sup>

**ORDINANCE NUMBER:**

**CASE MANAGER:** Sherri Sirwaitis

**PHONE:** 974-3057,  
[sherri.sirwaitis@ci.austin.tx.us](mailto:sherri.sirwaitis@ci.austin.tx.us)

This map has been produced by the Communications Technology Management Dept. on behalf of the Planning Development Review Dept. for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.













RESTRICT 2007071322

9 PGS

9  
Zoning Case No C14-06-0121

**RESTRICTIVE COVENANT**

OWNER RREEF Domain L P , a Texas limited partnership  
OWNER RREEF Domain II L P , a Texas limited partnership  
ADDRESS 221 West 6<sup>th</sup> Street, Suite 1300, Austin Texas 78701  
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 Lot 2, Block A, Domain Section 2 Subdivision, according to the plat recorded as Document No 200300333 and Lot 3, Block A, Multek Subdivision according to the plat recorded as Document No 200400090, both in the Official Public Records, Travis County, Texas, and  
Lots 1-B 1 C, 1 D, and 1 E, Block A, Rsubdivision of Lot 1, Block A, Domain Section 2 Subdivision according to the plat or record in Document No 200600294, Official Public Records, Travis County, Texas

WHEREAS, the Owners 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 Owners 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 Owners 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 specified in that certain Traffic Impact Analysis (the TIA ) prepared by HDR/WHM Transportation Engineering dated December 2006, or as amended and approved by the Director of the Watershed Protection and Development Review Department, or its successor department, of the City of Austin 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 January 24 2007 The TIA shall be kept on file at the Watershed Protection and Development Review Department, or its successor department of the City of Austin
- 2 At the time an application for approval of the site plan for the first phase of the development of the Property is submitted to the Watershed Protection and Development Review Department or its successor for development of the Property, or any portion of

4-12 07  
#24

the Property, an Integrated Pest Management Plan (the IPM Plan ) shall be submitted to the Watershed Protection and Development Review Department, or its successor department, for review and approval. The IPM Plan shall comply with the guidelines in Section 1692 (D) and (F) of the Environmental Criteria Manual that are in effect on the date of this restrictive covenant.

3 All new residential and commercial buildings shall comply with one of the following standards:

a a minimum of the two star rating under the Austin Energy Green Building Program in effect on April 12, 2007, or

b a minimum of the LEED Silver Certification for Core and Shell for residential and office development or LEED certification for retail development under the LEED program provided however all buildings certified under the LEED system must, at a minimum, require an increase in energy efficiency to 14% above ASHRAE 90.1 – 2004 User's Manual.

4 A licensed engineer or architect chosen by the Owner shall implement the following studies:

a Bioswale Study: A study analyzing the environmental benefits, risks, and methodology of direct infiltration of stormwater run-off into the subsurface,

b Rainwater Harvesting Study: A study analyzing the environmental benefits, methodology, and economic impact of the capture and re-use of rainwater,

c Adaptive Re-use of Building Materials Study: A study analyzing the environmental benefits, risks, methodology, and economic impact of the re-use of building materials from Building 60, an approximately 460,000 square foot building on the site that is to be razed. The location of Building 60 is described and shown in Exhibit A attached and incorporated into this covenant, and

d Blowdown Study: A study analyzing the environmental benefits, risks, methodology, and economic impact of the capture and re-use of the blowdown water from the Austin Energy central utility chiller plant located on the site (versus disposal of the water via the sanitary sewer system).

Owner shall meet and share the findings of the studies with the environmental staff of the Watershed Protection and Development Review Department. Owner shall incorporate into development of the site the recommendations of the studies that both City staff and Owner agree are practical.

5 Upon redevelopment of a minimum of 80 acres, the Owner shall

- a provide a cistern or cisterns or other structures capable of capturing a minimum of 75,000 gallons of rainwater or
  - b provide bioswales capable of causing an equivalent amount of rainwater to be retained on-site, or
  - c a combination of both alternatives which achieves the same effect
- 5 High albedo roofing material shall be used on roofs for the project
- 6 Landscaping for all water quality ponds, including the existing on site pond shall comply with the landscaping requirements according to City Code
- 7 Parks Parkland Dedication requirements shall be satisfied as follows
  - a Nine acres of private parks shall be provided by the Owner within the development
  - b A minimum of one mile of hike and bike trails shall be provided by the Owner. The trail systems shall connect to area bike routes and hike and bike trails existing at the time of such construction
  - c Owner will spend a minimum of \$4,000,000 for park infrastructure and other recreational facilities (excluding the hike and bike trail system)
  - d The parks and hike and bike trails shall be open to the public, subject to Owner's obligation to maintain the parks and trail systems and Owner's right to maintain adequate security and to conduct private events, and
  - e Owner will satisfy the requirements of a through c above on or before the earlier of i) the date that is five years from the effective date of the zoning ordinance or ii) the date that is one year after the site development permit(s) has been issued for a minimum of 3,000 residential units (including condominium residential, townhouse residential, and multifamily residential)
  - f Owner shall provide a minimum of two additional pocket parks totaling at least 0.5 of an acre, each pocket park to be located within 0.5 miles from residential units
- 7 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



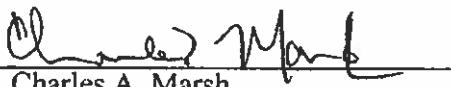
- 8 If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect
- 9 If at any time the City of Austin fails to enforce 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
- 10 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 12<sup>th</sup> day of April 2007

**OWNERS**


**RREEF DOMAIN L P,  
a Texas limited partnership**

By RREEF America REIT III Corp W,  
a Maryland corporation,  
its General Partner

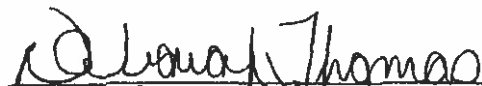
By   
Charles A Marsh  
Assistant Vice President

**RREEF DOMAIN II L P,  
a Texas limited partnership**

By RREEF America REIT III Corp X,  
a Maryland corporation  
its General Partner

By   
Charles A Marsh  
Assistant Vice President

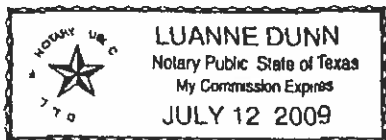
APPROVED AS TO FORM

  
Assistant City Attorney  
City of Austin

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 12<sup>th</sup> day of April, 2007, by Charles A Marsh Assistant Vice President of RREEF America REIT III Corp W,, a Maryland corporation, General Partner of RREEF Domain, L P a Texas limited partnership, on behalf of corporation and the limited partnership

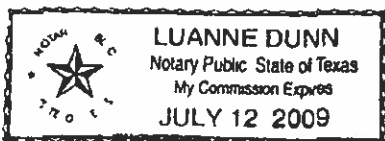


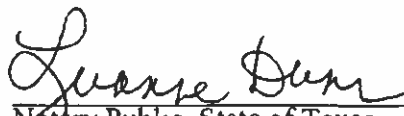
  
Notary Public State of Texas

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 12<sup>th</sup> day of April, 2007, by Charles A Marsh, Assistant Vice President of RREEF America REIT III Corp X, a Maryland corporation, General Partner of RREEF Domain II, L P, a Texas limited partnership, on behalf of corporation and the limited partnership



  
Notary Public, State of Texas

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

4 195 ACRES  
ENDEAVOR-DOMAIN  
BUILDING 60

FN NO 07-186(MM)  
APRIL 4 2007  
BPI JOB NO 1000-92

**EXHIBIT A**

**DESCRIPTION**

OF A 4 195 ACRE TRACT OF LAND, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY TEXAS BEING A PORTION OF LOT 3, BLOCK "A" MULTEK SUBDIVISION OF RECORD IN DOCUMENT NO 200400090 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS SAID 4 195 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS

**COMMENCING**, at a PK nail found in the northerly line of Braker Lane (R O W varies), being the southwesterly corner of Lot 1, Block A Domain Section 1 Subdivision of record in Document No 200100336 of said Official Public Records same being the southeasterly corner of said Lot 3 Block A ,

**THENCE**, leaving the northerly line of Braker Lane, along a portion of the easterly line of said Lot 3, Block A being the westerly and a portion of the northerly line of said Lot 1, Block "A", the following two (2) courses and distances

- 1) N17°46'50"E a distance of 1038 58 feet to a 1/2 inch iron rod found at the northwesterly corner of said Lot 1, Block "A" for a point
- 2) S72°12'26"E a distance of 299 87 feet to a point,

**THENCE**, N17°47'34'E leaving the northerly line of said Lot 1 Block 'A' over and across said Lot 3 Block "A" a distance of 19 11 feet to the **POINT OF BEGINNING** and southeasterly corner hereof

**THENCE**, continuing over and across said Lot 3, Block "A", along the outer lines of Building No 60 a three-story, tilt-wall structure for the southerly westerly northerly and easterly lines hereof, the following six (6) courses and distances

- 1) N72°12'07'W, a distance of 291 76 feet to the southwesterly corner hereof,
- 2) N17°47'53'E, a distance of 531 66 feet to an angle point
- 3) S72°12'07"E, a distance of 71 81 feet to an angle point,
- 4) N17°47'53"E, a distance of 125 58 feet to the northwesterly corner hereof,
- 5) S72°12'07"E, a distance of 219 95 feet to the northeasterly corner hereof,




FN NO 07-186(MM)  
APRIL 4 2007  
PAGE 2 of 2

- 6) S17°47'53 W, a distance of 657.24 feet to the POINT OF BEGINNING containing an area of 4.195 acres (182,739 sq ft) of land more or less, within these metes and bounds

BEARING BASIS REFERENCED TO THE TEXAS STATE PLANE COORDINATE SYSTEM CENTRAL ZONE BASED ON PUBLISHED NAD 83/93 HARN VALUES FOR THE CITY OF AUSTIN MONUMENTATION NETWORK

BURY & PARTNERS INC  
ENGINEERING SOLUTIONS  
221 WEST SIXTH STREET  
SUITE 200  
AUSTIN TEXAS 78701

  
\_\_\_\_\_  
JOHN T BILNOSKI  
R P L S NO 4998  
STATE OF TEXAS

4/4/07  
\_\_\_\_\_  
DATE



**MOPAC EXPRESSWAY NORTH**  
(ROW VARIES)

LOT 2 BLOCK A  
DOMAIN SECTION 2  
SUBDIVISION  
DOC NO 200300333

LOT 3 BLOCK A  
DOMAIN SECTION 2  
SUBDIVISION  
DOC NO 200300333

**4 195 AC  
BUILDING 60  
3-STORY TILT WALL  
WITH BASEMENT**

LOT 2  
BLK A

**MISSOURI PACIFIC RAILROAD**  
BRAKER POINTE  
SUBDIVISION  
VOL 101 PG 326

MULTEK SUBDIVISION  
DOC NO 200400090

LOT 1  
BLK A

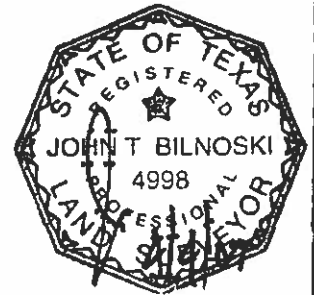
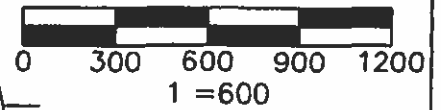
LOT 3  
BLK A  
**POB**

LOT 1 BLOCK A  
DOMAIN SECTION 1  
SUBDIVISION  
DOC NO 200100336

**POC**

**BRAKER LANE**

THE UNIVERSITY OF TEXAS  
VOL 994 PG 337



RESUBDIVISION  
OF LOT 1  
BLOCK A  
DOMAIN  
SECTION 2  
SUBDIVISION  
DOC NO 200600294

**BURNET ROAD**

1-E

1-D

1-C

1-B

1-A

**Bury+Partners**  
ENGINEERING SOLUTIONS  
221 West Sixth Street Suite 600  
Austin Texas 78701  
Tel (512)328-0011 Fax (512)328-0325  
Bury+Partners Inc ©Copyright 2007

**SKETCH TO ACCOMPANY DESCRIPTION**

OF THAT CERTAIN 4 195 ACRE TRACT OF LAND BEING A  
PORTION OF LOT 3 BLOCK A MULTEK SUBDIVISION OF  
RECORD IN DOCUMENT NO 200400090 OF THE OFFICIAL  
PUBLIC RECORDS OF TRAVIS COUNTY TEXAS SITUATED IN  
THE CITY OF AUSTIN TRAVIS COUNTY TEXAS

**ENDEAVOR REAL  
ESTATE GROUP**

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2007 Apr 20 02 26 PM 2007071322

BENAVIDESV \$48 00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

70412

**Recorders Memorandum** At the time of recordation this instrument was found to be inadequate for the best reproduction because of illegibility carbon or photocopy discolored paper etc All blockouts additions and changes were present at the time the instrument was filed and recorded