

#48

Late Backup

Zoning Case No. C14-2010-0087

RESTRICTIVE COVENANT

OWNER: RREEF DOMAIN LP, a Texas limited partnership, RREEF Domain GP, LLC, a Delaware limited liability company, Its General Partner

ADDRESS: 221 West 6th 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.

ENDEAVOR TRACT: That certain 169.20 acre tract of land in Travis County, more particularly described on Exhibit A attached hereto and made a part hereof.

SIMON TRACT: That certain 50.68 acre tract of land in Travis County, more particularly described on Exhibit B attached hereto and made a part hereof.

PROPERTY: That certain one (1) acre tract of land in Travis County, Texas, being a portion of the Endeavor Tract and being more particularly described on Exhibit C attached hereto and made a part hereof.

WHEREAS, the Domain Project is a 223.84 acre mixed use project generally located at the northwest corner of MOPAC and Braker Lane; and

WHEREAS, the Domain Project is divided into two tracts known as the Endeavor Tract and the Simon Tract depicted in Exhibit D; and

WHEREAS, the Endeavor Tract and the Simon Tract are zoned MI-PDA and are located in the Walnut Creek watershed and both tracts share a common water quality and detention pond on the Endeavor Tract for the handling of storm water; and

WHEREAS, the requirements of the Land Development Code for both the Endeavor Tract and the Simon Tract allow for a combined maximum of eighty percent (80%) net site area impervious cover resulting in a total allowable impervious cover area of 138.53 acres for the Endeavor Tract and 40.54 acres for the Simon Tract; and

WHEREAS, in order to provide a bank site, the Simon Tract requires a small increase in impervious cover; and

WHEREAS, Owner has agreed to reduce the allowable impervious cover area of the Endeavor Tract by a total of 1.0 acre to accommodate the Simon Tract increase; and

WHEREAS, the reduction in impervious cover will result in a new allowable impervious cover requirement for the Endeavor Tract of 134.36 acres or 79.42% of the net site area; and

WHEREAS, the owner of the Simon Tract has agreed to accept the 1.0 acre of impervious cover from the Endeavor Tract resulting in a new allowable impervious cover requirement for the Simon Tract of 41.54 acres or 81.97% of the net site area; and

WHEREAS, the total calculated impervious cover requirement for the combined Endeavor Tract and Simon Tract remains at 80% of the net site area as required by Code; and

WHEREAS, the City Council initiated a zoning case for the property identified on Exhibit B as the Simon Tract from major industrial – planned development area (MI-PDA) to major industrial - planned development area (MI-PDA) to increase the maximum impervious cover limit from 80% to 81.97% of the net site area.

NOW, THEREFORE, it is declared that the Owner of the Property, for said 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 Property shall be included in the Planning Conditions Impervious Cover Table on the Master Tracking Plan Tables sheet (Table) of all site plan applications on file with the City of Austin on the Endeavor Tract. The Tables shall reflect that the Property has 100% impervious cover or 1 acre of impervious cover allocated to it. The impervious cover allocated to the Property on the Table will be deducted from the total allowable impervious cover area of 135.36 acres on the Endeavor Tract resulting in a new allowable impervious cover requirement of 134.36 acres on the Endeavor Tract. Therefore, the Property shall be limited to zero (0) percent impervious cover.
2. No impervious cover is allowed on the Property.
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 modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the _____ day of _____, 2010.

OWNER:

RREEF DOMAIN LP,
a Texas limited partnership

By: RREEF Domain GP, LLC,
a Delaware limited liability company
Its General Partner

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 2010, by _____, the _____ of RREEF Domain, GP, LLC, a Delaware limited liability company, general partner of RREEF Domain LP, a Texas limited partnership, on behalf of said partnership.

Notary Public, State of Texas

EXHIBIT A

Lots 1 and 2, Block A, RREEF Domain Block T and H Subdivision, a subdivision in Travis County, Texas described in Document 200800272 of the Official Public Records of Travis County, Texas;

Lot 2-A2, Block A, Resubdivision of Lot 2-A, Block A, Resubdivision of Lot 2, Block A, Domain Section 2 Subdivision, a subdivision in Travis County, Texas described in Document 200700336 of the Official Public Records of Travis County, Texas;

Lot 2-A1-B, Block A, RREEF Domain-Multek Parking Resubdivision, a subdivision in Travis County, Texas described in Document 200800178, of the Official Public Records of Travis County, Texas;

Lot 3, Block A, Multek Subdivision in Travis County, Texas as described in Document 200400090 of the Official Public Records of Travis County, Texas; and,

Lots 1-B, 1-C, 1-D, and 1-E, Block A, Domain Section 2 Subdivision, in Travis County, Texas as described in Document 200600294, of the Official Public Records of Travis County, Texas

EXHIBIT B

Lot 2A, The Domain Shopping Center Section 2 Subdivision, described in Document 200800026 of the Official Public Records of Travis County, Texas;

Lot 4A, Block A, The Domain Shopping Center Section 2 Subdivision, described in Document 200800026 of the Official Public Records of Travis County, Texas; and,

Lot 5A, Block A, The Domain Shopping Center Section 3 Subdivision, described in Document 200800025 of the Official Public Records of Travis County, Texas.

EXHIBIT C

1.008 ACRES
RREEF DOMAIN

FN.NO. 10-202(KWA)
OCTOBER 01, 2010
BPI JOB NO. 1262-32

DESCRIPTION

OF A 1.008 ACRE TRACT OF LAND OUT OF THE JAMES RODGERS SURVEY NO. 19, SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOT 1, BLOCK "A" RREEF DOMAIN BLOCK T AND H SUBDIVISION, A SUBDIVISION OF RECORD IN DOCUMENT NO. 200800272 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS; SAID 1.008 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING, for reference, at a 1/2 inch iron rod found at the northwesterly corner of Lot 3, Block "A" Multek Subdivision, a subdivision of record in Document No. 200400090 of said Official Public Records, being an angle point in the southerly line of said Lot 1;

THENCE, N82°19'44"E, leaving said Lot 3, over and across said Lot 1, a distance of 412.38 feet to a calculated point for the **POINT OF BEGINNING** and southwesterly corner hereof;

THENCE, continuing over and across said Lot 1, for the exterior lines hereof, the following five (5) courses and distances:

- 1) N08°41'09"E, a distance of 162.52 feet to a calculated point for the northwesterly corner hereof, from which a 1/2 inch iron rod with cap found at the southeasterly corner of Lot 2, Block "A" of said RREEf Domain Block T and H Subdivision bears N17°02'28"E, a distance of 57.83 feet;
- 2) S81°12'14"E, a distance of 300.05 feet to a calculated point for the northeasterly corner hereof, from which a 1/2 inch iron rod with cap found at the southeasterly corner of Lot 2-A3, Block "A" Resubdivision of Lot 2, Block "A", Domain Section 2, a subdivision of record in Document No. 200700336 of said Official Public Records bears S89°17'46"E, a distance of 355.89 feet
- 3) S18°53'45"W, a distance of 104.22 feet to a calculated point for the southeasterly corner hereof;
- 4) S65°59'34"W, a distance of 110.48 feet to a calculated point for an angle point;

FN 10-202(KWA)
OCTOBER 01, 2010
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- 5) N81°13'25W, a distance of 188.61 feet to the **POINT OF BEGINNING**, and containing 1.008 acres (43,916 square feet) of land, more or less, within these metes and bounds.

BEARING BASIS: THE BASIS OF BEARINGS SHOWN HEREON IS THE TEXAS COORDINATE SYSTEM, CENTRAL ZONE NAD 83(93) AND WERE DETERMINED BY GLOBAL POSITIONING SYSTEM (GPS) OBSERVATIONS CONNECTED TO THE FOLLOWING:

MM02-HIGH PRECISION CONTROL POINT LOCATED ON THE ROOF OF THE OFFICES OF McGRAY & McGRAY LAND SURVEYORS, 3301 HANCOCK DRIVE, AUSTIN, TEXAS 78731

AUSIN RRP-COOPERATIVE BASE NETWORK CONTROL STATION AND AN "A" ORDER HARN STATION LOCATED ON THE ROOF OF BUILDING 4 OF THE TEXAS DEPARTMENT OF TRANSPORTATION OFFICES AT CAMP HUBBARD, LOOP 1 @ 35th STREET, AUSTIN, TEXAS 78731

I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND, AND IS TRUE AND CORRECT TO THE BEST OF MY ABILITIES. A SURVEY SKETCH WAS PREPARED TO ACCOMPANY THIS FIELDNOTE DESCRIPTION.

BURY & PARTNERS, INC.
ENGINEERS-SURVEYORS
221 WEST SIXTH STREET SUITE 600
AUSTIN, TEXAS 78701



10-1-10

ABRAM C. DASHNER
R.P.L.S. NO. 5901
STATE OF TEXAS



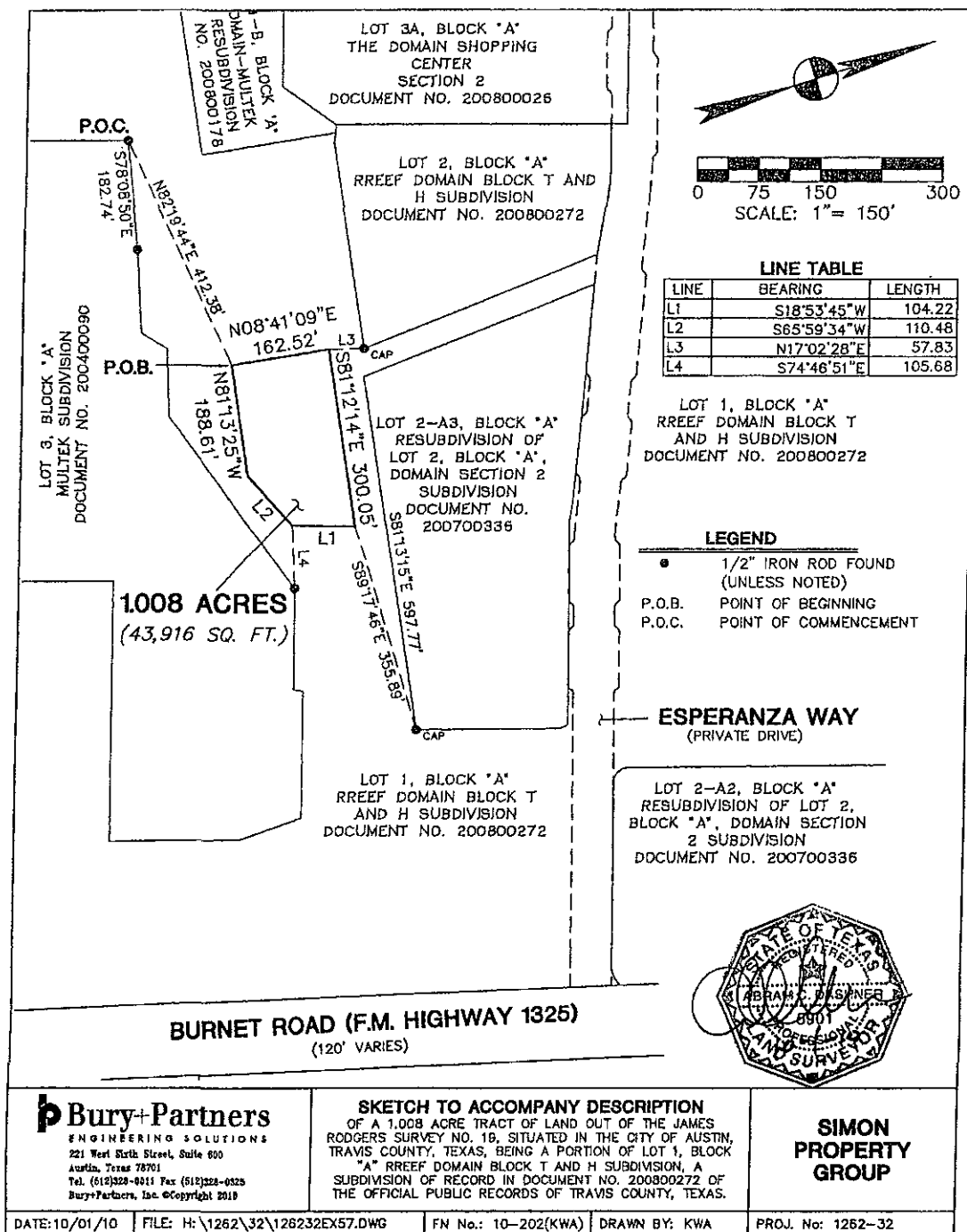


EXHIBIT D

