

Zoning Case No. C814-2008-0145

## RESTRICTIVE COVENANT

OWNER: Texas American Headquarters, LLC  
a Texas limited liability company

ADDRESS: 401 Congress Avenue  
Austin, TX 78701-4071

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 1, Block A, The Crescent on Bouldin Creek, a subdivision in Travis County, Texas, described in Document Number 200500141 of the Official Public Records of Travis County, 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 ("Agreement"). These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors and assigns.

Prior to issuance of a Certificate of Occupancy, the Owner shall comply with the following:

1. The parking facility for the project to be developed on the Property (the "Project") shall include two spaces dedicated to a car share program, to be provided free of charge to the program, for a period of thirty (30) years following the issuance of the first Certificate of Occupancy for the Project. The use of the spaces, and the

duration of such use, shall be at the sole discretion of the program, provided, however, if the program does not use these spaces for their intended purpose for twelve (12) consecutive months, thereafter the program shall not have the right to use such spaces.

2. The Project shall provide vehicle parking and bicycle parking, on a non-reserved, as-available basis, for neighboring cultural facilities and not-for-profit organizations. Such parking shall be available to patrons of such facilities and organizations during non-business hours at no greater than market rates.
3. The Project shall include a dedicated public easement of at least eight (8) feet in width along the eastern property line of the Property for the full length of the Property, and the construction (at the sole expense of the Owner) of a pathway within such access easement. This easement shall be dedicated by final plat or separate instrument, as determined by the Owner. At least thirty-five percent (35%) of the building frontage along the public access pathway shall include "pedestrian-oriented uses", as currently or hereafter defined in the City Code of the City of Austin. Any outdoor seating connected with a pedestrian-oriented use shall be included within such calculation.
4. The exterior building materials to be used on the southern façade of the Project shall consist of the following three (3) primary components:
  - a. Burnished block: Ground-face concrete masonry units made from natural and manufactured aggregates, cement and color;
  - b. Curtain wall glass: Multi-pane glass units designed to reduce the energy consumption of the building set within an aluminum extruded frame. The reflectivity of this glass will be limited by specifically the highest possible visible transmittance reasonably possible while avoiding the use of high reflective coatings on the tinted glass. For the purpose of the foregoing, visible

transmittance ("VT"), also referred to as visible light transmittance, shall mean the amount of light in the visible portion of the spectrum that passes through a glazing material. A higher VT means there is more daylight in a space which, if designed properly, can offset electric lighting and cooling loads due to lighting. VT is influenced by the glazing type, the number of layers and any coatings that might be applied to the glazings. VT of glazings ranges from above 90 percent (90%) for water white clear glass to less than 10 percent (10%) for highly reflective coatings on tinted glass.

c. Metal Panels: Rectangular flat seam metal wall panels of a painted or natural finish.

5. If any person or entity shall violate or attempt to violate this Agreement, 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, to prevent the person or entity from such actions, and to collect damages for such actions.
6. If any part of this Agreement 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.
7. 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.
8. 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, or a portion of the Property, subject to modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**OWNER:**

Texas American Headquarters, LLC,  
a Texas limited liability company.

By: \_\_\_\_\_  
David E. Honeycutt  
Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney  
City of Austin

Date: \_\_\_\_\_, 2011

STATE OF TEXAS           §

COUNTY OF TRAVIS       §

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_, the \_\_\_\_\_ of Texas American Headquarters, LLC, a Texas limited liability company on behalf of said partnership.

\_\_\_\_\_  
Notary Public, State of Texas