

AUSTIN CITY CLERK
RECEIVED

Zoning Case No. C14-2010-0087

2012 AUG 23 PM 2 07

FIRST AMENDED RESTRICTIVE COVENANT

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

DOMAIN RETAIL I, LP, a Texas limited partnership, RREEF Domain GP, LLC, a Delaware limited liability company its General Partner

DOMAIN PARKSIDE I, LP, a Delaware limited partnership, Columbus AD I GP, LLC, a Texas limited liability company its General Partner

ADDRESS: 504 Lavaca Street, Suite 1160, 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 160.74 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 211.42 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

#128 6-28-12

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 135.36 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 A as the Endeavor 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 _____, 2012.

OWNER:

RREEF DOMAIN LP,
a Texas limited partnership

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

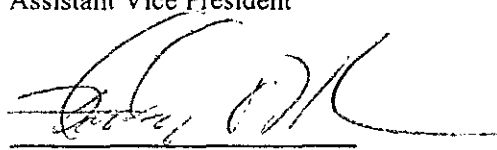
By: _____
Name: Michael Nigro
Title: Assistant Vice President

By: 
Name: Norton O'Meara
Title: Assistant Vice President

DOMAIN RETAIL I, LP,
A Texas limited partnership

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

By: _____
Name: Michael Nigro
Title: Assistant Vice President

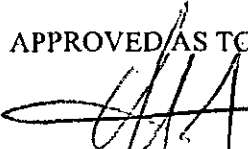
By: 
Name: Norton O'Meara
Title: Assistant Vice President

DOMAIN PARKSIDE I, LP,
A Delaware limited partnership

By: Columbus AD I GP, LLC,
A Texas limited liability company
Its general partner

By: _____
Name: Robert Shaw
Title: President

APPROVED/AS TO FORM:



Chad Shaw
Assistant City Attorney
City of Austin

DOMAIN RETAIL I, LP,
A Texas limited partnership

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

By: _____
Name: Michael Nigro
Title: Assistant Vice President

By: _____
Name: Norton O'Meara
Title: Assistant Vice President

DOMAIN PARKSIDE I, LP,
A Delaware limited partnership

By: Columbus ADI GP, LLC,
A Texas limited liability company
Its general partner

By: _____
Name: Robert Shaw
Title: President

APPROVED AS TO FORM:

Chad Shaw
Assistant City Attorney
City of Austin

STATE OF TEXAS §

COUNTY OF TRAVIS §

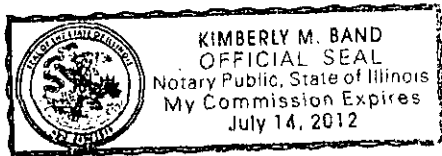
This instrument was acknowledged before me on this the _____ day of _____, 2012, by Michael Nigro, an Assistant Vice President of RREEF DOMAIN, GP, LLC, a Delaware limited liability company, general partner of RREEF DOMAIN LP, a Texas limited partnership, on behalf of said partnership.

Notary Public, State of Texas

STATE OF TEXAS- 11/1/05 §

COUNTY OF TRAVIS COX §

This instrument was acknowledged before me on this the 20th day of JUNE, 2012, by Norton O'Meara, an Assistant Vice President of RREEF DOMAIN, GP, LLC, a Delaware limited liability company, general partner of RREEF DOMAIN LP, a Texas limited partnership, on behalf of the partnership.



Kimberly M. Band
Notary Public, State of Texas 11/1/05

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 2012, by Michael Nigro, an Assistant Vice President of RREEF DOMAIN, GP, LLC, a Delaware limited liability company, general partner of DOMAIN RETAIL I, LP, a Texas limited partnership, on behalf of said partnership.

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____ 2012, by Norton O'Meara, an Assistant Vice President of RREEF DOMAIN, GP, LLC, a Delaware limited liability company, general partner of DOMAIN RETAIL I, LP, a Texas limited partnership, on behalf of the partnership.

Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 26th day of June 2012, by Robert Shaw, the President of Columbus AD I GP, LLC a Texas limited liability company, general partner of DOMAIN PARKSIDE I, LP, a Delaware limited partnership, on behalf of the partnership.

Pat Malone
Notary Public, State of Texas

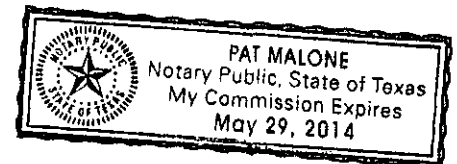


EXHIBIT A

Endeavor Tract

Lots 2 and 3, Block A, RREEF Domain Whole Foods Market Subdivision being a Resubdivision of Lot 1, Block A, RREEF Domain Block T and H Subdivision in Travis County, Texas as described in Document 201100129 of the Official Public Records of Travis County, Texas;

Lots 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;

Lot 2, Block A, RREEF Domain Block T and H Subdivision being an amended plat of Lot 2-A1, Block A, amended plat of Lots 2-A1 and 2-A4, Block A, Resubdivision of Lot 2-A, Block A, Resubdivision of Lot 2, Block A, Domain Section 2 Subdivision; Lot 2-A3, Block A, Resubdivision of Lot 2-A, Block A, Resubdivision of Lot 2, Block A, Domain Section 2 Subdivision and Lot 2-A1-A, Block A, RREEF Domain-Multek Parking Subdivision in Travis County, Texas as described in Document 200800272, of the Official Public Records of Travis County, Texas;

Lots 1A, 2A, 5A and 6A, RREEF Domain Block V Subdivision being a Resubdivision of Lot 1, Block A RREEF Domain Whole Foods Subdivision, Lot 2-A2, Block A Resubdivision of Lot 2, Block A Domain Section 2 Subdivision, and Lot 3, Block A Multek Subdivision in Travis County, Texas as described in Document 201100200 of the Official Public Records of Travis County, Texas; and,

EXHIBIT B

Simon Tract

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

Legal Description

Land Surveying

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 1.0041 ACRES, (43,740 SQUARE FEET), BEING PARTIALLY OUT OF LOT 1, BLOCK "A", OF RREEF DOMAIN WHOLE FOODS MARKET SUBDIVISION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, RECORDED IN DOCUMENT NUMBER 201100129, OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY TEXAS, (O.P.R.T.C.T.), AND BEING PARTIALLY OUT OF LOT 3, BLOCK "A", OF MULTEK SUBDIVISION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, RECORDED IN DOCUMENT NUMBER 200400090, (O.P.R.T.C.T.), SAID 1.0041 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS (ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, CENTRAL ZONE (4203):

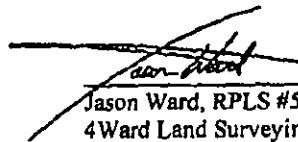
PO Box 90876
Austin, TX 78709
512.554.3371
jward@4wardls.com
www.4wardls.com

COMMENCING at a Mag nail with "Bury" Washer found for the southeast corner of Lot 2, Block "A" of Rreef Domain Block T and H Subdivision, recorded in Document Number 200800272, O.P.R.T.C.T., said point being an interior ell-corner of said Lot 1, from which a 1/2-inch iron rod with "Bury" cap found for the southwest corner of said Lot 2 bears, N81°13'15"W, a distance of 597.77 feet;

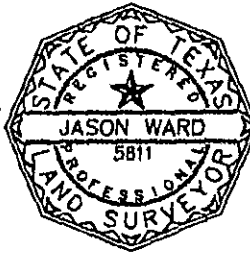
THENCE, over and across said Lot 1, S30°02'28"W, a distance of 122.71 feet to a calculated point for the northeast corner and POINT OF BEGINNING hereof;

THENCE, in part over and across said Lot 1, and in part over and across Lot 3, Block "A" of Multek Subdivision, recorded in Document Number 200400090, O.P.R.T.C.T., the following four (4) courses and distances:

- 1) S19°36'23"W, a distance of 243.00 feet to a calculated point for the southeast corner hereof,
- 2) N70°23'37"W, a distance of 180.00 feet to a calculated point for the southwest corner hereof,
- 3) N19°36'23"E, a distance of 243.00 feet to a calculated point for the northeast corner hereof, from which a 1/2-inch iron rod found for an angle point in the common line of said Lots 1 and 3 bears, S36°38'53"W, a distance of 94.92 feet, and
- 4) S70°23'37"E, a distance of 180.00 feet to the POINT OF BEGINNING and containing 1.0041 Acres (43,740 Square Feet) more or less.


Jason Ward, RPLS #5811
4Ward Land Surveying, LLC

12/21/2011



RECORD INFORMATION
 (.....) PLAT, DOC # 200800272
 (.....) PLAT, DOC # 201100129
 (.....) PLAT, DOC # 200400090

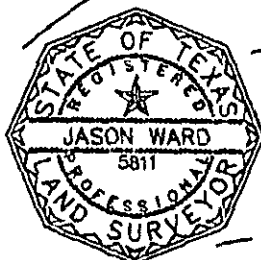
LOT 2, BLOCK "A"
 RREEF DOMAIN
 BLOCK T AND H SUBDIVISION

DOC. # 200800272,
 O.P.R.T.C.T.

LOT 1, BLOCK "A"
 RREEF DOMAIN WHOLE FOODS
 MARKET SUBDIVISION
 DOC. # 201100129, O.P.R.T.C.T.

P.O.C.
 GRID N: 10,118,180.73
 GRID E: 3,120,042.88

12/21/2011



BEARING BASIS:
 ALL BEARINGS ARE BASED
 ON THE TEXAS STATE
 PLANE COORDINATE SYSTEM,
 GRID NORTH, CENTRAL
 ZONE, (4203), NAD83, ALL
 DISTANCES WERE ADJUSTED
 TO SURFACE USING A
 COMBINED SCALE FACTOR
 OF 1.000100775386.

LEGEND

- PARKLAND AREA
- EXISTING PROPERTY LINES
- 1/2-INCH IRON ROD FOUND, UNLESS NOTED
- ⊗ IRON ROD WITH "BURY" CAP FOUND
- △ CALCULATED POINT
- ▲ MAG NAIL WITH "BURY" WASHER FOUND
- ⊙ UTILITY POLE
- SIGN (AS NOTED)
- OU OVERHEAD UTILITIES
- DOC. # DOCUMENT NUMBER
- P.O.C. POINT OF COMMENCEMENT
- P.O.B. POINT OF BEGINNING
- VOL. VOLUME
- PG. PAGE
- R.O.W. RIGHT-OF-WAY
- O.P.R.T.C.T. OFFICIAL PLAT RECORDS, TRAVIS COUNTY, TEXAS

1.0041 ACRES
 43,740 SQUARE FEET

N70°23'37"W 180.00'

LOT 3, BLOCK "A"
 MULTEK SUBDIVISION
 DOC. # 200400090,
 O.P.R.T.C.T.

ALTERRA PARKWAY
 PRIVATE DRIVE

PARKLAND EXHIBIT
 City of Austin,
 Travis County, Texas

Land Surveying

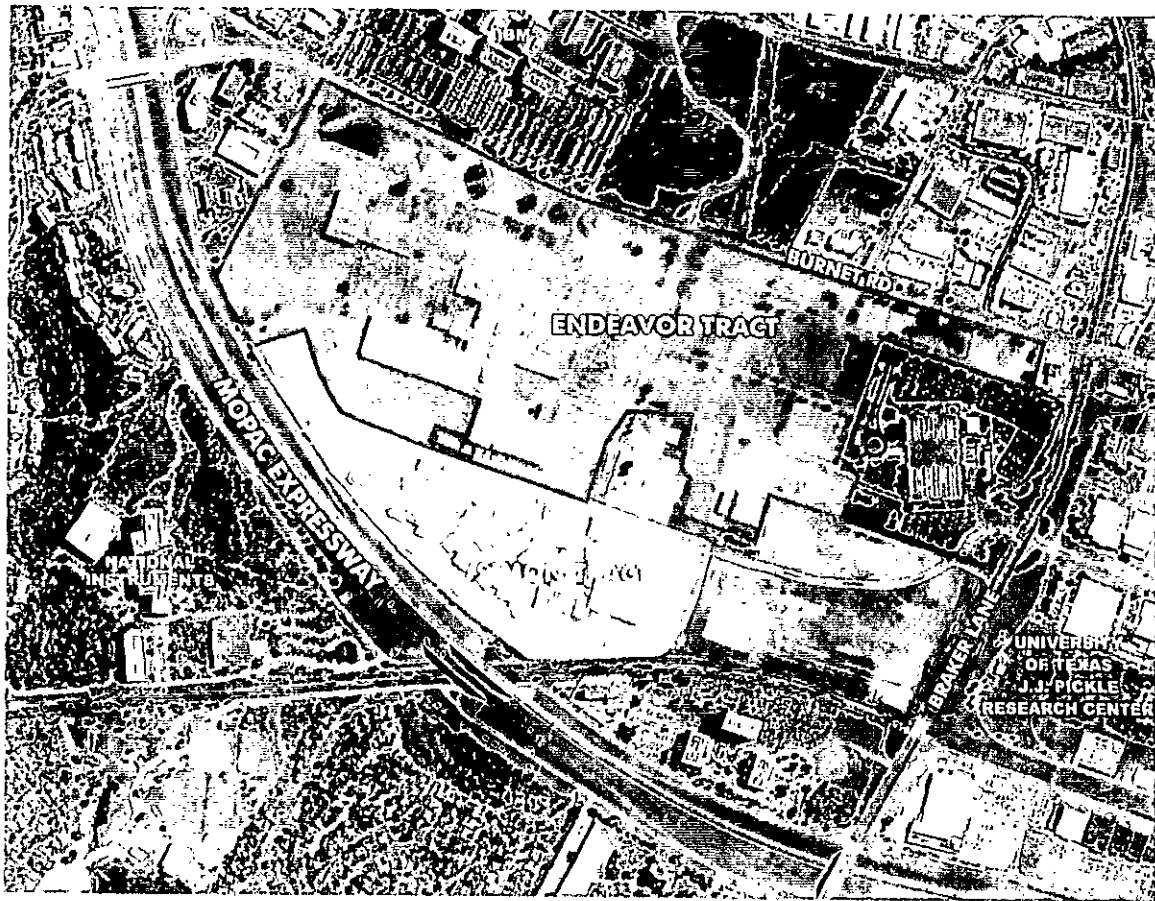
A United Liability Company

PO Box 90876, Austin Texas 78709
 www.4WardIs.com (512) 654-3371

Date: 12/21/2011
 Project: 00108
 Scale: 1" = 60'
 Reviewer: JSW
 Tech: JWS
 Field Crew: JCR/KD/JL
 Survey Date: 11/22/11
 Sheet: 1 OF 1

P:\00108\Draw\00108_1 Acre Area.dwg

EXHIBIT D



FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

Jul 06, 2012 02:44 PM

2012109191

BENAVIDESV: \$68.00

Dana DeBeauvoir, County Clerk

Travis County TEXAS