

# Late Backup

Zoning Case No. C814-2012-0128.SH

## RESTRICTIVE COVENANT

OWNER: thinkEAST Austin LP

ADDRESS: PO Box 50036, Austin, Texas 78763

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: 22.37 acre tract of land out of the Jesse C. Tannehill Survey Abstract No. 22, the tract of land being more particularly described by metes and bounds in Exhibit "A" attached and incorporated into this covenant; and,  
  
1.92 acre tract of land out of the Jesse C. Tannehill Survey Abstract No. 22, the tract of land being more particularly described by metes and bounds in Exhibit "B" attached and incorporated into this covenant.

WHEREAS, the Owner (the "Owner", whether one or more), 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.

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 as specified in that certain Traffic Impact Analysis ("TIA") prepared by Ternus Consulting Services, dated May 21, 2013, or as amended and approved by the Director of the Planning and Development Review Department. All development on the Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Planning and Development Review Department, dated May 23, 2013. The TIA shall be kept on file at the Planning and Development Review Department.

2. 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.
3. 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.
4. 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.
5. 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 the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**OWNER:**

thinKEAST Austin LP,  
a Texas limited partnership

By: thinKEAST Austin Management, LLC,  
a Texas limited liability company, its  
general partner

By: \_\_\_\_\_  
Robert Summers  
Manager

**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 \_\_\_\_ day of \_\_\_\_\_, 2013, by Robert Summers, Manager of thinkEAST Austin Management LLC, a Texas limited liability company, general partner of thinkEAST Austin LP, a Texas limited partnership.

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Notary Public, State of Texas

**After Recording, Please Return to:**  
**City of Austin**  
**Law Department**  
**P. O. Box 1088**  
**Austin, Texas 78767**  
**Attention: J. Collins, Paralegal**

## CORPORATE AUTHORIZATION RESOLUTION

I, Robert Summers, a Manager of thinkEAST Austin Management, LLC ("Corporation"), a Texas limited liability company and the general partner of thinkEAST Austin LP, a Texas limited partnership, ("Owner"), hereby certify that:

The Corporation is duly organized and existing under the laws of the State of Texas, and the following is a true, accurate and compared transcript of the resolution contained in the minute book of the Corporation, duly adopted at a meeting of the Board of Directors of said Corporation duly held on the 12th day of June, 2013, at which meeting there was present and acting throughout a quorum authorized to transact the business hereinafter described, and that the proceedings of said meeting were in accordance with the Charter and By-Laws of said Corporation and that said resolutions have not been amended or revoked and are in full force and effect.

**Resolved**, that the corporation is hereby authorized and empowered to sign any and all documents, to take such steps, and to do such other acts and things, on behalf of Owner as in its judgment may be necessary, appropriate, or desirable in connection with any agreement entered into with the City of Austin affecting 1141 Shady Lane, and 5300 Jain Lane, Austin, Texas

-and-

**Resolved**, that Robert Summers, Manager of the Corporation, be and is hereby authorized and empowered to sign any and all documents, to take such steps, and do such other acts and things, on behalf of Corporation, as in his judgment may be necessary, appropriate or desirable in connection with any agreement entered into with the City of Austin affecting 1141 Shady Lane, and 5300 Jain Lane, Austin, Texas

-and-

**Resolved**, that any and all transactions with the City of Austin involving any agreement affecting the above-referenced real property by any of the officers or representatives of the Corporation, in its name and for its account, prior to the adoption of these resolutions be, and they are hereby, ratified and approved for all purposes.

Witness my hand and the seal of the Corporation this the 12th day of June, 2013.

[THINKEAST AUSTIN MANAGEMENT, LLC  
CORPORATE SEAL]



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Robert Summers, Manager of thinkEAST Austin  
Management, LLC, as General Partner of thinkEAST, LP

**HOLT CARSON, Inc.**  
**PROFESSIONAL LAND SURVEYORS**  
1904 FORTVIEW ROAD  
AUSTIN, TX 78704  
TELEPHONE: (512) 442-0990  
FACSIMILE: (512) 442-1084

FIELD NOTE DESCRIPTION OF 22.37 ACRES OF LAND OUT OF THE JESSE C. TANNEHILL SURVEY ABSTRACT No. 22 IN TRAVIS COUNTY, TEXAS, BEING COMPRISED OF ALL OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO COASTAL STATES MARKETING, INC., NOW KNOWN AS EL PASO MERCHANT ENERGY PETROLEUM COMPANY, BY DEED RECORDED IN VOLUME 4131 PAGE 2307 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, TOGETHER WITH ALL OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO EL PASO MERCHANT ENERGY PETROLEUM COMPANY BY SPECIAL WARRANTY DEED RECORDED IN DOCUMENT No. 2003017135 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, TOGETHER WITH ALL OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO EL PASO MERCHANT ENERGY PETROLEUM COMPANY BY WARRANTY DEED RECORDED IN DOCUMENT No. 2003135554 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, TOGETHER WITH ALL OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO EL PASO MERCHANT ENERGY PETROLEUM COMPANY BY WARRANTY DEED RECORDED IN DOCUMENT No. 2003264332 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND TOGETHER WITH A PORTION OF THAT CERTAIN STRIP OF LAND LOCALLY KNOWN AS "JAIN LANE" AS ESTABLISHED BY INSTRUMENT RECORDED IN BOOK U PAGE 33 OF THE COMMISSIONERS' COURT MINUTES OF TRAVIS COUNTY, TEXAS, SAME BEING ALL OF THAT CERTAIN (22.41 ACRE) TRACT OF LAND AS DESCRIBED IN THAT AFFIDAVIT OF OWNERSHIP IDENTITY AND CONSOLIDATED REAL PROPERTY DESCRIPTION AS RECORDED IN DOCUMENT No. 2004098950 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, LESS THAT CERTAIN (1,585 SQUARE FEET) TRACT OF LAND AS CONVEYED TO THE CITY OF AUSTIN BY QUIT CLAIM DEED RECORDED IN DOCUMENT No. 2012076626 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a ½" iron rod found at the intersection of two fences in the South line of that certain (16.05 acre) tract of land as conveyed to Hugo Anderson by deed recorded in Volume 429 Page 248 of the Deed Records of Travis County, Texas, and in the North line of that certain (7.35 acre) tract of land described as "First Tract" and as conveyed to Otto Friedrich by deed recorded in Volume 376 Page 276 of the Deed Records of Travis County, Texas, for the Southeast corner of that certain (3.2 acre) tract of land as conveyed to J.E. Hamby, et ux, by deed recorded in Volume 569 Page 15 of the Deed Records of Travis County, Texas, and for the Southeast corner of that certain (2.024 acre) tract of land as conveyed to Paubla Gutierrez by deed recorded in Volume 13304 Page 3132 of the Real Property Records of Travis County, Texas, and for an angle corner of that certain (11.256 acre) tract of land as conveyed to James H. Crockett by deed recorded in Volume 8775 Page 500 of the Deed Records of Travis County, Texas, and for an angle corner of that certain tract of land as conveyed to Stephen Craig Anderson and Rodney Milton Anderson by Warranty Deed recorded in Volume 13127 Page 2576 of the Real Property Records of Travis County, Texas, and being an angle corner of that certain tract of land as conveyed to El Paso Merchant Energy Petroleum Company by Special Warranty Deed recorded in Document No. 2003017135 of the Official Public Records of Travis County, Texas, and being the **PLACE OF BEGINNING** of the herein described tract;

THENCE entering the interior of said Hugo Anderson (16.05 acre) tract with the East line of said Gutierrez (2.024 acre) tract and with a Westerly line of said Stephen and Rodney Anderson tract, N 29 deg. 45' 31" E 236.82 ft. to a ½" iron pipe found at a chain-link fence corner post for the Northeast corner of said Gutierrez (2.024 acre) tract, and for the Southeast corner of a twenty-five foot (25') wide "Roadway" strip of which title was reserved and retained in said deed recorded in Volume 569 Page 15 of the Deed Records of Travis County, Texas, and for an angle corner of said Stephen and Rodney Anderson tract, same being an angle corner of this tract;

THENCE with the South line of said 25 ft. "Roadway" strip and with the common line of said Stephen and Rodney Anderson tract and Gutierrez (2.024 acre) tract, N 58 deg. 50' 36" W 355.68 ft. to a spindle set in the interior of the improved Shady Lane and in the Westerly line of said Hugo Anderson (16.05 acre) tract, and for the Northwest corner of said Gutierrez (2.024 acre) tract and for the Northwest corner of that certain tract of land as conveyed to the City of Austin by Street Deed recorded in Volume 9647 Page 182 of the Real Property Records of Travis County, Texas, same being an angle corner of this tract;

THENCE with the most Westerly line of said Stephen and Rodney Anderson tract and with the West line of said Hugo Anderson (16.05 acre) tract, N 72 deg. 35' 00" E 34.23 ft. to a spindle set in the interior of the improved Shady Lane for the Southwest corner of that certain tract of land as conveyed to Fidel Estrada, Jr. by deed recorded in Volume 3709 Page 1867 of the Deed Records of Travis County, Texas, and being an angle corner of said Stephen and Rodney Anderson tract, same being an angle corner of this tract;

THENCE re-entering the interior of said Hugo Anderson (16.05 acre) tract with the common line of said Stephen and Rodney Anderson tract and said Estrada tract and with the North line of said 25 ft. "Roadway" strip, S 58 deg. 50' 36" E 332.27 ft. to a ½" iron pipe found at the base of an old fence corner post for the Southeast corner of said Estrada tract and for an angle corner of said Stephen and Rodney Anderson tract, and being an angle corner of this tract;

THENCE continuing across the interior of said Hugo Anderson (16.05 acre) tract, N 29 deg. 22' 23" E 163.88 ft. to a ½" iron pipe found at an old fence corner post for an angle corner of said Stephen and Rodney Anderson tract and for the Northeast corner of said Hamby (3.2 acre) tract and for the Northeast corner of that certain (one acre) tract of land as conveyed to F.F. Gooding by deed recorded in Volume 812 Page 583 of the Deed Records of Travis County, Texas, and for the Northeast corner of that certain tract of land as conveyed to William A. Gouldie by deed recorded in Volume 8450 Page 753 of the Deed Records of Travis County, Texas, and being an angle corner of this tract;

THENCE along an old wire fence, S 60 deg. 30' 37" E 108.21 ft. to a ½" iron pipe found in the centerline of a small creek for an angle corner of said Stephen and Rodney Anderson tract and for the Southeast corner of that certain tract of land as conveyed to Steven DePaz by deed recorded in Volume 10936 Page 977 of the Real Property Records of Travis County, Texas, and being an angle corner of this tract;

THENCE with the common line of said Stephen and Rodney Anderson tract and said DePaz tract, N 30 deg. 09' 08" E at 188.63 ft. passing a PK nail found in asphalt in the South line of Jain Lane, a thirty-foot (30') wide Right-of-Way as established by instrument dated April, 1930, and recorded in Book U Page 33 of the Commissioners' Court Minutes of Travis County, Texas, and continuing with the same course for a total distance of 203.63 ft. to a spindle found in the centerline of Jain Lane an angle corner of this tract;

THENCE with the centerline of "Jain Lane", N 59 deg. 58' 10" W 142.22 ft. to a ½" iron rod found with a plastic cap imprinted with "Carson and Bush Professional Surveyors" at a point of intersection with the Westerly projection of the North line of that certain (3.08 acre) tract of land as conveyed to Coastal States Marketing, Inc., now known as El Paso Merchant Energy Petroleum Company, by deed recorded in Volume 4131 Page 2307 of the Deed Records of Travis County, Texas, and the South line of the Southern Pacific Railroad, and being a Northwesterly angle corner of this tract;

THENCE with the South line of the Southern Pacific Railroad, N 73 deg. 02' 50" E 753.42 ft. to a ½" iron rod found with a plastic cap imprinted with "Carson and Bush Professional Surveyors" for the Northeast corner of said (3.08 acre) tract and for the Northwest corner of that certain tract of land as conveyed to El Paso Merchant Energy Petroleum Company by Warranty Deed recorded in Document No. 2003135554 of the Official Public Records of Travis County, Texas;

THENCE continuing with the South line of the Southern Pacific Railroad, N 73 deg. 02' 50" E 612.18 ft. to a currently inundated point on a concrete drainage channel for the Northeast corner of said El Paso tract (Document No. 2003135554) and for the North common corner of Lots 10 and 11, Block C, Pecan Grove, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 59 Page 3 of the Plat Records of Travis County, Texas, and for a Northwesterly corner of that certain (49.99 acre) tract of land as conveyed to Joe Stanzel and Victor Stanzel by deed recorded in Volume 3099 Page 196 of the Deed Records of Travis County, Texas, and being the Northeast corner of this tract;

THENCE with the common line of said El Paso tract (Document No. 2003135554) and said Pecan Grove, S 30 deg. 19' 41" W at 322.14 ft. passing a ½" iron rod found for the West common corner of Lot 9 and Lot 10, Block C, Pecan Grove, and at 577.10 ft. passing a ½" iron rod found for the West common corner of Lot 6 and Lot 7, Block C, Pecan Grove, and continuing along the same course for a total distance of 936.44 ft. to a spindle found in asphalt paving for a Southeasterly corner of this tract and being in the curving North right-of-way line of Jain Lane;

THENCE with the North right-of-way line of Jain Lane (as described in the aforementioned Commissioners' Court Book U Page 33), the following three (3) courses;

- 1) along a curve to the left with a radius of 71.79 ft. for an arc length of 13.18 ft. and which chord bears S 49 deg. 43' 19" W 13.16 ft. to a spindle found in asphalt for a point of reverse curvature;
- 2) along a curve to the right with a radius of 46.14 ft. for an arc length of 60.86 ft. and which chord bears S 82 deg. 14' 51" W 56.54 ft. to a spindle found in asphalt for a point of tangency;
- 3) N 59 deg. 58' 10" W 10.19 ft. to a spindle found for an angle corner of this tract;

THENCE crossing the interior of "Jain Lane", S 29 deg. 58' 06" W at 30.00 ft. passing a ½" iron pipe found for the Northeast corner of that certain (0.432 acre) tract of land as conveyed to El Paso Merchant Energy Petroleum Company by Warranty Deed recorded in Document No. 2003264332 of the Official Public Records of Travis County, Texas, and continuing with the same course for a total distance of 216.48 ft. to a PK nail found in concrete at the base of a fence corner post for an angle corner in the West line of Lot 3, Block B, of said Pecan Grove and for an angle corner of the aforementioned El Paso tract (Document No. 200317135) and for the South corner of said El Paso (0.432 acre) tract, and being an angle corner of this tract;

THENCE with the common line of said Stephen and Rodney Anderson tract and said Pecan Grove, the following two (2) courses;

- 1) S 17 deg. 10' 06" E 83.36 ft. to a ½" iron pipe found;
- 2) S 18 deg. 31' 39" W 381.02 ft. to a ½" iron rod found in the West line of Lot 10, Pecan Grove, for the Southeast corner of said Stephen and Rodney Anderson tract and for the Northeast corner of that certain tract of land as conveyed to the City of Austin by Warranty Deed recorded in Volume 11297 Page 1112 of the Real Property Records of Travis County, Texas, and being the Southeast corner of this tract, and from which a chiseled "X" found in concrete for the Southeast corner of said City of Austin tract bears S 18 deg. 32' 48" W 132.41 ft.;

THENCE with the North line of said City of Austin tract, S 80 deg. 56' 48" W 37.40 ft. to a point in an Easterly deed line of that certain (23.32 acre) tract of land as conveyed to the City of Austin in September, 1946, by deed recorded in Volume 828 Page 5 of the Deed Records of Travis County, Texas, and being the Southeast corner of that certain (1,585 square feet) tract of land as conveyed to the City of Austin by Quit Claim Deed recorded in Document No. 2012076626 of the Official Public Records of Travis County, Texas, same being an angle corner of this tract, and from which a ½" iron rod found for an angle corner of said El Paso Merchant Energy (22.41 acre) tract bears S 80 deg. 56' 48" W 11.32 ft.;

THENCE with the East line of said City of Austin (1,585 square feet) tract, N 03 deg. 16' 30" E 286.50 ft. to a ½" iron pipe found at an old fence corner post for a common angle corner of said Stephen and Rodney Anderson tract and said City of Austin (23.32 acre) tract, same being an angle corner of this tract;

THENCE with the common line of said Stephen and Rodney Anderson tract and City of Austin (23.32 acre) tract and along old wire fence remnants, N 60 deg. 09' 07" W 123.14 ft. to a ½" iron pipe found at the end of said old wire fence for a common angle corner of said Stephen and Rodney Anderson tract and said City of Austin (23.32 acre) tract, and being an angle corner of this tract;

THENCE, S 29 deg. 49' 25" W 244.60 ft. to a ½" iron pipe found at an old fence corner post for an angle corner of said Stephen and Rodney Anderson tract and for the Northeast corner of the aforementioned Friedrich (7.35 acre) tract, and being an angle corner of this tract, and from which a ½" iron rod found at a chain-link fence corner post for an angle corner of said City of Austin (23.32 acre) tract bears S 29 deg. 39' 06" W 325.33 ft.;

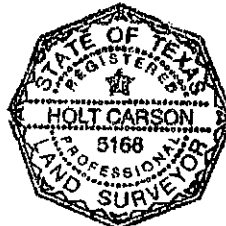
THENCE with a Southerly or Southwesterly line of said Stephen and Rodney Anderson tract, N 58 deg. 52' 07" W 687.85 ft. to the **PLACE OF BEGINNING** containing 22.37 acres of land.

**SURVEYED:** December 15, 2011



Holt Carson  
Registered Professional Land Surveyor No. 5166

see accompanying map: B 692002





PERIMETER SURVEY MAP OF

22.37 ACRES OF LAND OUT OF THE JESSE C. TANNEHILL SURVEY ABSTRACT NO. 22 IN TRAVIS COUNTY, TEXAS, BEING COMPRISED OF ALL OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO COASTAL STATES MARKETING, INC., NOW KNOWN AS EL PASO MERCHANT ENERGY-PETROLEUM COMPANY, BY DEED RECORDED IN VOLUME 4131 PAGE 2307 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, TOGETHER WITH ALL OF THE CERTAIN TRACT OF LAND AS CONVEYED TO EL PASO MERCHANT ENERGY-PETROLEUM COMPANY BY SPECIAL WARRANTY DEED RECORDED IN DOCUMENT NO. 2003017136 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, TOGETHER WITH ALL OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO EL PASO MERCHANT ENERGY-PETROLEUM COMPANY BY WARRANTY DEED RECORDED IN DOCUMENT NO. 2003138884 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, TOGETHER WITH ALL OF THAT CERTAIN TRACT OF LAND AS CONVEYED TO EL PASO MERCHANT ENERGY-PETROLEUM COMPANY BY WARRANTY DEED RECORDED IN DOCUMENT NO. 2003284332 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, TOGETHER WITH A PORTION OF THAT CERTAIN STRIP OF LAND LOCALLY KNOWN AS "JAIN LANE" AS ESTABLISHED BY INSTRUMENT RECORDED IN BOOK U PAGE 53 OF THE COMMISSIONERS' COURT MINUTES OF TRAVIS COUNTY, TEXAS, SAME BEING ALL OF THAT CERTAIN 122.41 ACRE TRACT OF LAND AS DESCRIBED IN THAT AFFIDAVIT OF OWNERSHIP IDENTITY AND CONSOLIDATED REAL PROPERTY DESCRIPTION AS RECORDED IN DOCUMENT NO. 2004086880 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, LESS THAT CERTAIN 11,680 SQUARE FEET TRACT OF LAND AS CONVEYED TO THE CITY OF AUSTIN BY QUIT CLAIM DEED RECORDED IN DOCUMENT NO. 2010074626 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

see accompanying Field Note Description

NOTES

1. The 116,800 sq. ft. portion of this tract shown in subject to an Easement for Driveway, Driveway and Recovery Work and Recovery Pumps, as indicated and recorded in Volume 10188 Page 14, Travis County Real Property Records.
2. This map was prepared in accordance with the 100 commitment entered by the City of Austin, Texas, on 11/11/03, as recorded in Volume 4131 Page 2307 of the Deed Records of Travis County, Texas.
3. The tract of land shown on the improved portion of Shady Lane and Jain Lane.
4. The 100 Year Floodplain, as shown on the 100 Year Floodplain Map, Travis County, Texas, has been shown by Document No. 2010074626 in the Official Public Records of Travis County, Texas.

SCALE: 1" = 60'

Legend

- 1. 100 Year Floodplain
- 2. 100 Year Floodplain with 100 Year Floodplain
- 3. 100 Year Floodplain with 100 Year Floodplain
- 4. 100 Year Floodplain with 100 Year Floodplain
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- 100. 100 Year Floodplain with 100 Year Floodplain

22.37 ACRES  
TOTAL SURVEYED  
El Paso Merchant Energy Petroleum Company  
(122.41 Acres)  
Affidavit of Ownership Identity and  
Consolidated Real Property Description  
Document No. 2004086880

El Paso Merchant Energy Petroleum Company  
Special Warranty Deed  
Document No. 2003017136  
JAMES E. COHEN  
ALL 2003  
Volume 4131 Page 2307

JESSE C. TANNEHILL SURVEY  
ABSTRACT NO. 22

SURVEYOR'S CERTIFICATION

- To Robert A. Cooney and Richard J. Cooney
1. The undersigned, being a duly registered and qualified land surveyor in the State of Texas, hereby certify that this plat of survey is based on an actual field survey made on the ground on December 10, 2003, by me or directly under my supervision, in substantial compliance with the current Texas Statute of Professional Surveyors, 2003, and the Statute of a Category 1A, Condition 1, Land Title Survey. To the best of my professional knowledge and belief:
  2. The survey fully and correctly represents the property owned by El Paso Merchant Energy Petroleum Company pursuant to deeds of record in Volume 4131 Page 2307 of the Travis County Deed Records, and in Document Nos. 2003017136, 2003138884 and 2003284332 of the Travis County Official Public Records, and otherwise accurately represents all facts found at the time of the survey.
  3. Except as shown herein, there are no discrepancies between the boundary lines of actual possession of the subject property as shown on the plat of survey and as described in the legal description of record, and the physical evidence of boundary lines and lines of possession or occupancy have been shown.
  4. The boundary line elevations as shown on the plat of survey form a mathematically closed figure.
  5. The boundary lines of the subject property are contiguous with the boundary lines of all adjoining parcels, roads, highways, streets or alleys as described in 1981 (a) and recent respective legal descriptions of record, unless otherwise noted herein.
  6. The area indicated on the plat and the improvements to be shown:
  7. A portion of the property is located in a Federal Emergency Management Agency (FEMA) Flood Zone AE, which is defined as a 100 Year Flood Hazard Area, according to the FEMA Panel No. 48022C dated 11/04/00, dated September 25, 2000.
  8. All improvements are located on other and are accurately shown, and there are no encroachments onto adjoining property or by encroachments on adjoining property onto the subject property, unless otherwise noted herein.
  9. There are no easements, encroachments, rights, interests, claims or any other uses affecting the subject property apparent from a careful inspection of the subject property when taken as accurately shown or based thereon.



Bill Cooney  
Engineered Professional Land Surveyor No. 1164  
HOLT CARBON, INC.  
1008 Foreview Blvd  
Austin, Texas 78704  
www.holtsurvey.com

7-05-2012

SOUTHERN PACIFIC RAILROAD

JESSE C. TANNEHILL SURVEY  
ABSTRACT NO. 22  
El Paso Merchant Energy Petroleum Company  
Special Warranty Deed  
Document No. 2003017136  
JAMES E. COHEN  
ALL 2003  
Volume 4131 Page 2307

El Paso Merchant Energy Petroleum Company  
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**HOLT CARSON, INC.**  
**PROFESSIONAL LAND SURVEYORS**

1904 FORTVIEW ROAD  
AUSTIN, TEXAS 78704  
TELEPHONE: (512) 442-0890  
FACSIMILE: (512) 442-1084  
www.hciaustin.com

FIELD NOTE DESCRIPTION OF 1.926 ACRES OF LAND OUT OF THE JESSE C. TANNEHILL SURVEY ABSTRACT No. 22 IN TRAVIS COUNTY, TEXAS, BEING ALL OF THAT CERTAIN (1.923 ACRE) TRACT OF LAND AS CONVEYED TO DERALD PHILLIP GUTIERREZ BY WARRANTY DEED RECORDED IN DOCUMENT No. 2011025780 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a ½" iron rod found at the intersection of two fences in the South line of that certain (16.05 acre) tract of land as conveyed to Hugo Anderson by deed recorded in Volume 429 Page 248 of the Deed Records of Travis County, Texas, and in the North line of that certain (7.35 acre) tract of land described as "First Tract" and as conveyed to Otto Friedrich by deed recorded in Volume 376 Page 276 of the Deed Records of Travis County, Texas, for the Southeast corner of that certain (3.2 acre) tract of land as conveyed to J.E. Hamby, et ux, by deed recorded in Volume 569 Page 15 of the Deed Records of Travis County, Texas, and for the Southeast corner of that certain (2.024 acre) tract of land as conveyed to Paubla Gutierrez by deed recorded in Volume 13304 Page 3132 of the Real Property Records of Travis County, Texas, and for the Southeast corner of that certain (1.923 acre) tract of land as conveyed to Derald Phillip Gutierrez by Warranty Deed recorded in Document No. 2011025780 of the Official Public Records of Travis County, Texas, and for an angle corner of that certain (11.256 acre) tract of land as conveyed to James H. Crockett by deed recorded in Volume 8775 Page 500 of the Deed Records of Travis County, Texas, and for an angle corner of that certain tract of land as conveyed to Stephen Craig Anderson and Rodney Milton Anderson by Warranty Deed recorded in Volume 13127 Page 2576 of the Real Property Records of Travis County, Texas, and being an angle corner of that certain tract of land as conveyed to El Paso Merchant Energy Petroleum Company by Special Warranty Deed recorded in Document No. 2003017135 of the Official Public Records of Travis County, Texas, and for an angle corner of that certain (22.41 acre) tract of land as described in that Affidavit of Ownership Identity and Consolidated Real Property Description as recorded in Document No. 2004096950 of the Official Public Records of Travis County, Texas, and being the Southeast corner and **PLACE OF BEGINNING** of the herein described tract, and from which a ½" iron pipe found at an old fence corner post for the Northeast corner of said Friedrich (7.35 acre) tract and for an angle corner of said (22.41 acre) tract bears S 58 deg. 52' 07" E 687.85 ft.;

end of Page 1

Exhibit "A"

Page 2 of 2  
1.926 ACRES

THENCE with the common line of said Friedrich (7.35 acre) tract and said Gutierrez (1.923 acre) tract, N 59 deg. 02' 18" W 362.66 ft. to a square-head bolt found in the East right-of-way line of Shady Lane for the Southwest corner of said Gutierrez (1.923 acre) tract and for the Southeast corner of that certain (4,428 square feet) tract of land as conveyed to the City of Austin by Street Deed recorded in Volume 9647 Page 182 of the Real Property Records of Travis County, Texas, and being the Southwest corner of this tract;

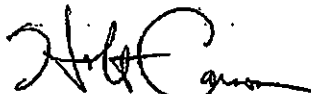
THENCE with the East right-of-way line of Shady Lane and with the West line of said Gutierrez (1.923 acre) tract and with the East line of said City of Austin (4,428 square feet) tract, the following two (2) courses;

- 1) N 29 deg. 43' 22" E 87.47 ft. to a 1/2" iron rod set with a plastic cap imprinted with "Holt Carson, Inc." for a point of curvature;
- 2) along a curve to the right with a radius of 270.00 ft. for an arc length of 158.42 ft. and which chord bears N 46 deg. 34' 26" E 156.16 ft. to a 1/2" iron rod set with a plastic cap imprinted with "Holt Carson, Inc." in the South line of a twenty-five feet (25') wide "Roadway" strip of which title was reserved and retained in said deed recorded in Volume 569 Page 15 of the Deed Records of Travis County, Texas, for the Northwest corner of said Gutierrez (1.923 acre) tract and for the Northeast corner of said City of Austin (4,428 square feet) tract, and being the Northwest corner of this tract, and from which a spindle found in the interior of the improved Shady Lane for an angle corner of said (22.41 acre) tract bears N 58 deg. 50' 36" W 38.13 ft.;

THENCE with the common line of said Gutierrez (1.923 acre) tract and said (22.41 acre) tract, S 58 deg. 50' 36" E 317.55 ft. to a 1/2" iron pipe found at a chain-link fence corner post for the Northeast corner of said Gutierrez (1.923 acre) tract and for the Southeast corner of said twenty-five (25') wide "Roadway" strip and for an angle corner of said (22.41 acre) tract and being the Northeast corner of this tract;

THENCE with the common line of said Gutierrez (1.923 acre) tract and said (22.41 acre) tract, S 29 deg. 45' 31" W 236.82 ft. to the PLACE OF BEGINNING, containing 1.926 acres of land

**SURVEYED:** May 23, 2012



Holt Carson

Registered Professional Land Surveyor No. 5166



## **EXHIBIT B**

### **Permitted Exceptions**

1. Taxes for the year 2012, a lien not yet due and payable.
2. Telecommunications/Cable easement awarded to AT&T Corp., by Supplemental Final Order and Judgment dated September 18, 2007, recorded under Document No. 2007201886, Official Public Records of Travis County, Texas.
3. Unrecorded lease dated June 1, 2012, between Shady Lane Property LLC, as lessor, and Brynda Lynn Gutierrez, as lessee.
4. The Ground Water Restriction contained herein.

11-GF# 201201000 JPB  
RETURN TO: HERITAGE TITLE  
401 CONGRESS, SUITE 1500  
AUSTIN, TEXAS 78701

1.926 ACRES OF LAND OUT OF THE JESSE C. TANNENHILL SURVEY  
ABSTRACT NO. 22 IN TRAVIS COUNTY, TEXAS, BEING ALL OF THAT  
CERTAIN (1.923 ACRE) TRACT OF LAND AS CONVEYED TO  
DERRAL PHILIP GUTIERREZ BY WARRANTY DEED RECORDED IN  
DOCUMENT NO. 2011025780 OF THE OFFICIAL PUBLIC RECORDS  
OF TRAVIS COUNTY, TEXAS.  
LOCATED AT 1141 SHADY LAKE.

### Legend

- ⊙ 1/2-Inch Rod Found
  - ⊙ 1/2-Inch Pipe Found
  - ⊙ 1/2-Inch Rod Set with plastic cap  
imprinted with "Mpi Corson, Inc."
  - \* Spindle Found
  - Chain-Link Fence
  - Square Head Bolt Found
  - ... Gearhead Utility Line
- (Record Bearing on Distance)

SHADY LANE

SHADY LANE

ref: B 692007  
A 882108

1.926 ACRES  
SURVEYED

J.B. Hamby, et ux  
 (3.2 Acres)  
 Volume 569 Page 15

- Paubla Gutierrez (2.024 Acres)  
Volume 13304 Page 3132

Derald Phillip Gutierrez  
(1.923 Acres)  
Warranty Deed  
Document No. 2011025780

Otto Friedrich "First Tract" (7.35 Acres)  
Volume 376 Page 376

NOTE:  
This tract of land is apparently subject to a Telecommunications Easement  
as awarded to AT&T Corp by Supplemental Final Order and Judgment  
as recorded in Document No. 200720485 of the Official Public Records  
of Travis County, Texas.

— William A. Gouldie —  
Volume 8450 Page 753

F.P. Gooding  
(One Acre)  
Volume 812 Page 583

Fidel Estrada, Jr.  
- Volume 3709 Page 1867  
Dionicio Sanchez  
Doc. 2000196748

— (25') wide "Roadway"  
title reserved and retained in  
Volume 389 Page 13

Hugo Anderson  
(16.05 Acres)  
Volume 429 Page 249

James H. Crockett  
(11.256 Acres)  
Volume 8775 Page 500

Stephen Craig Anderson and Rodney Milton Anderson  
Warranty Deed  
Volume 13137 Page 2576

El Paso Merchant Energy Petroleum Company  
(22.41 Acres)  
Affidavit of Ownership Identity and  
Consolidated Real Property Description  
Document No. 2004096950

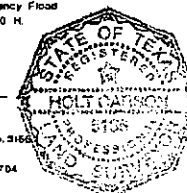
EF No. 14663-12-00064  
 TO: Brynda Lynn Gottarraz  
 Counselors Mortgage  
 North American Title Company

THE STATE OF TEXAS  
THE COUNTY OF TRAVIS

The undersigned does hereby certify that a survey was this day made on the ground of the property legally described hereon and is accurate to the best of my abilities and that there are no boundary line conflicts, encroachments, shortages in area, overlapping of improvements, visible utility lines, or roads in place, except as shown hereon, and said property shall be a dedicated roadway. This property is within Zone X areas determined to be outside of the 100 Year Flood Plain according to the Federal Emergency Management Agency Flood Insurance Rate Map Panel No. 48C624 0470 H, dated September 26, 2006.

THIS 23rd day of MAY, A.D. 2012.

BY:   
Holt Carson  
Registered Professional Land Surveyor No. 315  
HOLT CARSON INC.  
1904 Fortview Road Austin, Texas 78704  
(512)-442-0990  
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JESSE C. TANNEHILL SURVEY  
ABSTRACT No. 22