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## Zoning Case No. C14-05-0165

RESTRICTIVE COVENANT

OWNER: NOVARE-AU NUECES, L.P., a Delaware limited partnership

ADDRESS: 817 W. Peachtree Street, NW, Suite 601, Atlanta GA 30308-1138

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: A 1.287 acre tract of land out of Lots 1-6, Block 25, Original City of Austin, according to the map or plat of record in the General Land Office of the State of Texas, and those certain tracts of land being portions of alleys; all the tracts being more particularly described in Exhibit "A" attached and incorporated into this covenant.

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. 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 Owner shall design and construct streetscape improvements in full compliance with the City of Austin Great Streets design criteria as the criteria existed on November 17, 2005. Design, permitting and construction of streetscape improvements will be at Owner's expense. The Owner shall coordinate the design of the streetscape improvements with the Urban Design Section of the Neighborhood Planning and Zoning Department. The Urban Design Section shall inspect and approve the streetscape improvements prior to issuance of a certificate of occupancy.
2. 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.
3. 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.
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.

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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 subject to the modification, amendment or termination at the time of such modification, amendment or termination.


EXECUTED to be effective the 17th day of November, 2005.

**OWNER:**

NOVARE-AU NUECES, L.P.,  
a Delaware limited partnership

By: NOVARE-AU NUECES GP, LLC,  
a Delaware limited liability company,  
General Partner

By: NOVARE-AU AUSTIN  
DEVELOPMENT, LLC,  
a Georgia limited liability company,  
Managing Member

By:   
Billy R. Holley, Jr.,  
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 17<sup>th</sup> day of November, 2005, by Billy R. Holley, Jr., Vice President of NOVARE-AU AUSTIN DEVELOPMENT, LLC, a Georgia limited liability company, Managing Member of NOVARE-AU NUECES GP, LLC, a Delaware limited liability company, General Partner of NOVARE-AU NUECES, L.P., a Delaware limited partnership, on behalf of the limited liability companies and the limited partnership.



*Debra Ray Malmstrom*  
Notary Public, State of Texas

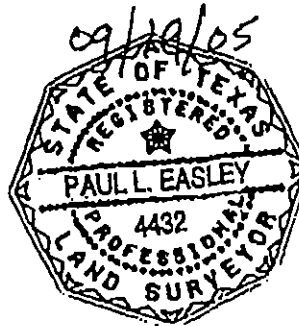
After Recording, Please Return to:  
City of Austin  
Department of Law  
P. O. Box 1088  
Austin, Texas 78767  
Attention: Diana Minter, Legal Assistant

Exhibit "A"

A 1.287-acre tract of land conveyed to Novare-AU Nueces, L.P., as recorded in Document # 2005171317 of the Real Property Records of Travis County, Texas; being a Legal Lot in an approved and recorded subdivision, Lots 1-6, Block 25, of the Original City of Austin, Travis County, Texas, according to the records of the General Land Office of the State of Texas, and including that 2,425 square feet of land, more or less, being a portion of the alley, as described in Quitclaim Deed of record in Volume 6776, Page 2048, and 336 square feet of land, more or less, being a portion of the alley between Lots 3 and 6, Block 25, vacated by Ordinance recorded in Document No. 2000007994.



Paul Easley, R.P.L.S.  
Doucet & Associates, Inc.  
7401-B Hwy. 71 W., Ste. 160  
Austin, TX 78735



**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS



2005 Nov 18 01:14 PM 2005215189

HERRERAR \$28.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS