



**SECOND AMENDMENT OF RESTRICTIVE COVENANT  
FOR  
ZONING CASE NO. C14-00-2062**

Owner: Robertson Hill Land, Ltd., a Texas limited partnership  
Address: 1400 Post Oak Blvd., Suite 500, Houston, Austin, Texas 77056  
Owner: AMJRH Investments, Ltd., a Texas limited partnership  
Address: 3423 Bee Cave Rd., Bldg. B, Austin, Texas 78746  
Owner: Steven R. Martens, Trustee of the 2001 Property Trust  
Dated May 10, 2001  
Address: 100 Congress Ave., Suite 1100, Austin, Texas 78701  
City: The City of Austin, a home-rule city, municipal corporation and political  
subdivision of the State of Texas, in Travis County, Texas.  
City Council: The City Council of the City of Austin  
Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable  
consideration paid by the Owner to the City of Austin, the receipt and  
sufficiency of which is acknowledged.

WHEREAS, certain restrictions and covenants were imposed by the owner on property (the "Property") described as seven tracts of land in a restrictive covenant (the "Restrictive Covenant") recorded in Document No. 2001097088, of the Official Records of Travis County, Texas.

WHEREAS, Robertson Hill Land, Ltd., a Texas limited partnership ("Robertson"), amended certain restrictions on a portion of the property, Tract One (less Lot 17, Outlot 1, Division B, Fred Carleton Subdivision) through Tract Six (the "Six Tracts") as more particularly described in Document No. 2001097088 of the Official Property Records of Travis County, Texas (the First Amendment of Restrictive Covenant").

WHEREAS, Robertson desires to amend the First Amendment of Restrictive Covenant as to the Six Tracts.

WHEREAS, Steven R. Martens, Trustee of the 2001 Property Trust Dated May 10, 2001 ("Martens"), as owner of Lot 17, Outlot 1, Division B, Fred Carleton Subdivision, a subdivision in Travis County, Texas, according to the map or plat of record in Book Z, Page 608, of the Real Property Records of Travis County, Texas ("Lot 17"), and AMJRH Investments, Ltd., a Texas limited partnership ("AMJRH"), as owner of that certain real property more particularly

3-9-06  
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Z-3

described in the attached Exhibit "A" ("Tract Seven"), desire to amend the First Amendment of Restrictive Covenant as to its property, under this covenant.

WHEREAS, the Restrictive Covenant provided that the covenant could be modified, amended, or terminated 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.

WHEREAS, the City Council and the current owners, Robertson, Martens, and AMJRH, (the "Current Owners") agree the First Amendment of Restrictive Covenant should be amended.

NOW, THEREFORE, for and in consideration of the premises and mutual promises, covenants, and agreement hereinafter set forth, the City of Austin and the Current Owners agree as follows:

1. As to the Six Tracts, Lot 17, and Tract Seven, paragraph No. 5 is deleted in its entirety and no longer applies to the Six Tracts, Lot 17, and Tract Seven, and the following paragraph is substituted in its place:

Portions of the Property may be owned by different owners (each an "Owner") from time to time. At least ten percent (10%) of the residential units constructed by an Owner for each distinct project developed on a portion of the Property shall be Reasonably Priced for the period of time that the Owner of such project giving rise to such requirement receives economic development grants from the City plus an additional five year period of time. At the option of the Owner of each such project, such Reasonably Priced housing may be built totally on the Property ("onsite parcel") or five percent (5%) built onsite and five percent (5%) built or acquired and rehabilitated on one or more offsite parcel(s) located within the following zip code areas: 78722, 78721, 78702, and that portion of the 78723 zip code area which lies south of 51<sup>st</sup> Street (collectively, "offsite parcel"). Ownership of the onsite parcel and offsite parcel may become separate, but prior to any such conveyance separating the two, such Owner shall obtain written approval from the City of the entity to which Owner is proposing to convey the offsite parcel and impose a restrictive covenant on the offsite tract that incorporates the terms of this restrictive covenant. Upon the recording of such restrictive covenant, each parcel (the onsite parcel and offsite parcel) shall thereafter stand on its own for all purposes and the default or breach of the restrictions on one parcel shall have no effect upon and be no breach of this restrictive covenant on the other parcel. A breach of the restrictive covenants required for additional parcels as to each district project shall have no effect upon and shall not be a breach with regard to any other distinct project on another portion of the Property. Prior to the date a certificate of occupancy is issued with respect to an onsite parcel or offsite parcel (in the case of the acquisition of an offsite parcel which is an existing unit, at the time of such acquisition), a Land Use Restriction Agreement (substantially in the form attached to this restrictive covenant as Attachment 1 for an onsite parcel or an offsite parcel which is newly constructed; substantially in the form attached to this restrictive covenant as Attachment 2 for an offsite parcel which is not newly constructed)

shall be entered into between the Owner (in the case of an offsite parcel conveyed to an affiliate of the Owner or such other entity, the affiliate or other entity the offsite parcel in conveyed to) and the City and filed for record in the real property records of Travis County, Texas. In the event any conflict should arise between the terms of this restrictive covenant and the Land Use Restriction Agreement, the Land Use Restriction Agreement shall prevail.

"Reasonably Priced" is defined as onsite or newly constructed offsite housing available to a family whose earnings do not exceed eighty percent (80%) (for offsite housing which is not newly constructed, sixty-five percent [65%]) of the median family income for the Austin-San Marcos Metropolitan Statistical Area and who would normally spend no more than thirty percent (30%) (for offsite housing which is not newly constructed, twenty-eight percent [28%]) of its income on housing expenses.

2. Except as expressly provided for in this Second Amendment of Restrictive Covenant (the "Second Amendment"), each and every one of the terms, conditions, and provisions of the Restrictive Covenant, as set forth in the Restrictive Covenant, shall continue in full force and effect on and after the effective date of this Second Amendment.
3. The City Manager, or her designee, shall execute, on behalf of the City, this Second Amendment for Zoning File No. C14-00-2062, as authorized by the City Council of the City of Austin. The Second Amendment shall be filed in the Official Public Records of Travis County, Texas.
4. Counterparts. This Second Amendment of Restrictive Covenant may be executed in any number of counterparts, each of which is deemed to be an original, and all of which are identical.

EXECUTED this the 1st day of March, 2006.

**CURRENT OWNERS:**

**Robertson Hill Land, Ltd.,  
a Texas limited partnership**

By: RHL GP, LLC,  
a Texas limited liability company,  
General Partner

By: TE Wooten  
~~Martin J. Fein~~, sole member  
TIMMY WOOTEN, AGENT FOR

**AMJRH Investments, Ltd.,  
a Texas limited partnership**

By: AMJ Holding, L.L.C.,  
a Texas limited liability company,  
General Partner

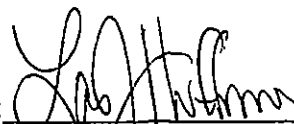
By:   
Arthur J. Johnson,  
Manager

**Steven R. Martens**

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Steven R. Martens,  
Trustee of the 2001 Property Trust  
Dated May 10, 2001

**CITY OF AUSTIN:**

By:   
Laura J. Huffman,  
Assistant City Manager,  
City of Austin

THE STATE OF TEXAS           §  
                                         §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Martin J. Fein, sole member of RHL GP LLC, a Texas limited liability company, General Partner, on behalf of Robertson Hill Land Ltd, a Texas limited partnership.

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

THE STATE OF \_\_\_\_\_ §  
                                         §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Arthur J. Johnson, Manager of AMJ Holdings., L.L.C., a Texas limited liability company, General Partner of AMJRH Investments, Ltd., a Texas limited partnership, on behalf of the limited liability company and the limited partnership.

*see attached certificate H.C. 3-1-06*

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

THE STATE OF TEXAS           §  
                                         §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Steven R. Martens, Trustee of the 2001 Property Trust Dated May 10, 2001, on behalf of the Trust.

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

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of LOS ANGELES

SS.

On MARCH 1st, 2006

Date

before me, MONICA CICCONE "NOTARY PUBLIC"

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared

ARTHUR JAMES JOHNSON

Name(s) of Signor(s)



☐ personally known to me

☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: SECOND AMENDMENT OF RESTRICTIVE COVENANT FOR ZONING CASE NO C14-00-2069

Document Date: \_\_\_\_\_ Number of Pages: 6

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☒ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
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Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

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OF SIGNER  
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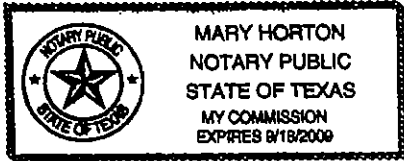
THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on this the 1st day of March, 2006, by ~~Martin J. Fein~~, sole member of RHL GP LLC, a Texas limited liability company, General Partner, on behalf of Robertson Hill Land Ltd, a Texas limited partnership.

*TIMM NOOTEN, AGENT FOR*



*Mary A. Horton*  
\_\_\_\_\_  
Notary Public, State of Texas

THE STATE OF \_\_\_\_\_

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COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Arthur J. Johnson, Manager of AMJ Holdings., L.L.C., a Texas limited liability company, General Partner of AMJRH Investments, Ltd., a Texas limited partnership, on behalf of the limited liability company and the limited partnership.

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

THE STATE OF TEXAS

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COUNTY OF TRAVIS

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Steven R. Martens, Trustee of the 2001 Property Trust Dated May 10, 2001, on behalf of the Trust.

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

**AMJRH Investments, Ltd.,  
a Texas limited partnership**

By: AMJ Holding, L.L.C.,  
a Texas limited liability company,  
General Partner

By: \_\_\_\_\_  
Arthur J. Johnson,  
Manager

**Steven R. Martens**



\_\_\_\_\_  
Steven R. Martens,  
Trustee of the 2001 Property Trust  
Dated May 10, 2001

**CITY OF AUSTIN:**

By: \_\_\_\_\_  
Laura J. Huffman,  
Assistant City Manager,  
City of Austin



THE STATE OF TEXAS

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COUNTY OF TRAVIS

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This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Martin J. Fein, sole member of RHL GP LLC, a Texas limited liability company, General Partner, on behalf of Robertson Hill Land Ltd, a Texas limited partnership.

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

THE STATE OF \_\_\_\_\_

§

COUNTY OF \_\_\_\_\_

§

§

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2006, by Arthur J. Johnson, Manager of AMJ Holdings., L.L.C., a Texas limited liability company, General Partner of AMJRH Investments, Ltd., a Texas limited partnership, on behalf of the limited liability company and the limited partnership.

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

THE STATE OF TEXAS

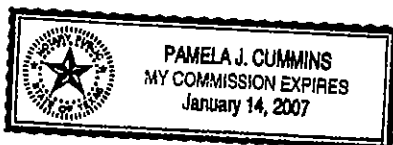
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COUNTY OF TRAVIS

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This instrument was acknowledged before me on this the 1<sup>st</sup> day of March, 2006, by Steven R. Martens, Trustee of the 2001 Property Trust Dated May 10, 2001, on behalf of the Trust.



Pamela J. Cummins  
Notary Public, State of Texas

THE STATE OF TEXAS

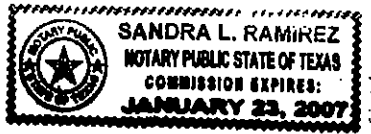
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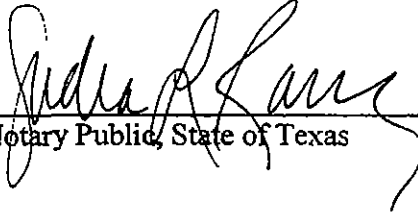
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COUNTY OF TRAVIS

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This instrument was acknowledged before me on this the 13 day of March, 2006, by Laura J. Huffman, as Assistant City Manager of the City of Austin, a municipal corporation, on behalf of the municipal corporation.



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

AFTER RECORDING RETURN TO:

City of Austin Law Department  
P.O. Box 1088  
Austin, Texas 78767  
Attn: Diana Minter, Paralegal

LAND USE RESTRICTION AGREEMENT

(\_\_\_\_\_)

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

THIS LAND USE RESTRICTION AGREEMENT ("Agreement") is made and entered into effective \_\_\_\_\_ 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Owner"), and CITY OF AUSTIN, a Texas home-rule city and municipal corporation ("City").

RECITALS:

The Owner is the owner of certain fixtures and improvements ("Improvements"), known as \_\_\_\_\_ (the "Project") situated on real property ("Land") located in the City of Austin, County of Travis, State of Texas, more fully described in Exhibit "A" attached hereto and by this reference incorporated in it, and all rights, titles and interests appurtenant thereto, which is generally located between \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, Austin, Travis County, Texas 787\_\_\_\_ (the Improvements and Land are collectively referred to as the "Property").

On 7 June 2001 the City and Riata Partners, L.L.C. entered into a Memorandum of Understanding for East Austin Economic Development ("Development Agreement") concerning the terms and conditions of an economic development agreement for the area generally located between Interstate Highway 35, East Eighth Street, San Marcos Street and East Eleventh Street. As a condition of the Development Agreement, Owner must agree to comply with certain occupancy, rent and other restrictions, and the parties have entered into this Agreement to evidence Owner's agreement to comply with such restrictions during the Term (hereinafter defined).

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I  
Definitions

Section 1.1. General. Capitalized terms used in this Agreement shall have, unless the context clearly requires otherwise, the meanings specified in this Article I. Certain additional terms may be defined elsewhere in this Agreement.

(a) **"Agreement"** means this Land Use Restriction Agreement, as it may from time to time be amended.

(b) **"Annual Income"** means "annual income" as defined in 24 CFR part 5.609.

(c) **"Board"** means the governing body of the City.

(d) **"CFR"** means the Code of Federal Regulations.

(e) **"City Compliance Monitoring Procedures"** means procedures and requirements adopted or imposed by the City for the purpose of monitoring the Property for compliance with this Agreement, including any inspections or examinations required by City on the Property which in City's reasonable judgment are necessary or required to determine such compliance.

(f) **"Development Agreement"** means the Memorandum of Understanding for East Austin Economic Development executed by and between City and Riata Partners, L.L.C., dated on or about 7 June 2001, concerning the terms and conditions of the economic development for the area generally located between Interstate Highway 35, East Eighth Street, San Marcos Street and East Eleventh Street, as the agreement may be amended from time to time.

(g) **"HUD"** means the United States Department of Housing and Urban Development.

(h) **"Low Income Families"** means families or individuals whose Annual Income does not exceed eighty (80) percent of the median family income for the Metropolitan Area, as periodically determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower for the Metropolitan Area if HUD finds that such variations are necessary because of unusually high or low family incomes (individually, a "Low Income Family"). Exhibit B sets forth the HUD income limits by household size effective \_\_\_\_\_ 20\_\_ for families at 80% of median income for the Metropolitan Area.

(i) **"Maximum Rent Limit"** means the following maximum monthly amounts by bedroom size that Owner may charge for: (A) the rent rate for each Qualifying Unit, plus (B) the average electric, gas, and water utility expense as periodically determined by HUD for units of similar size and type in the Metropolitan Area (however, to the extent the actual rental rate charged a Qualified Tenant by the Owner includes any electric, gas or water expense, such expenses shall not be added to the rental rate for purposes of making this determination). The maximum monthly amount by bedroom size is:

(1) For an Efficiency or One-Bedroom Unit the amount charged may not exceed thirty percent (30%) of the HUD median income limit for a one-person household size Low Income Family in the Metropolitan Area, as periodically determined by HUD, divided by twelve.

(2) For a Two-Bedroom Unit the amount charged may not exceed thirty percent (30%) of the HUD median income limit for a three-person household size Low Income Family in the Metropolitan Area, as periodically determined by HUD, divided by twelve.

(3) For a Three-Bedroom Unit the amount charged may not exceed thirty percent (30%) of the HUD median income limit for a five-person household size Low Income Family in the Metropolitan Area, as periodically determined by HUD, divided by twelve.

(j) **"Metropolitan Area"** means the Austin-San Marcos MSA as designated by the Bureau of the Census in the most recent decennial census.

(k) **"Owner"** has the meaning as set forth at the beginning of this Agreement, or any successor in title to the Property.

(l) **"Prior Restrictive Covenant Provision"** means section 5 of that certain Restrictive Covenant executed by ASN Company, LLC, a California limited liability company that is filed of record as Document No. 2001097088 in the Official Public Records of Travis County, Texas.

(m) **"Project"** means Owner's activities concerning the ownership and operation of the Property.

(n) **"Property"** has the meaning as set forth in the first paragraph of the Recitals of this Agreement.

(o) **"Qualified Tenant"** means a family or individual tenant occupying a Qualifying Unit who satisfies the requirements of Section 2.2(a) of this Agreement with respect to such Qualifying Unit.

(p) **"Qualifying Unit"** means a Unit that (i) is rented or sold to a Low Income Family and (ii) is used in complying with the low income occupancy requirements of Section 2.2(a) of this Agreement. The Owner has the discretion to designate any unit as a "Qualifying Unit" and change such designation at any time, provided Owner maintains sufficient documentation to allow City to monitor compliance with this Agreement in accordance with Article IV of this Agreement.

(q) **"Term"** means the period commencing on the effective date of this Agreement and ending on the date which is the earlier to occur of the following:

- (1) 1 January 2029; or
- (2) five years next following termination of the Development Agreement with respect to this project; or
- (3) the date this Agreement is otherwise terminated by the City and the Owner.

(r) **"Unit"** means a residential accommodation constituting a part of the Property and containing separate and complete living facilities. All units on the Property must be comparable in quality to similarly sized units of the same type.

**Section 1.2. Generic Terms.** Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the masculine shall include the feminine or neuter, and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Agreement their proper meanings.

## ARTICLE II

### Use and Occupancy of the Property

**Section 2.1. Use of the Property.** In the event any conflict should arise between the terms of the Prior Restrictive Covenant Provision and this Agreement, this Agreement shall prevail, then the Prior Restrictive Covenant Provision. During the Term, Owner will either (a) maintain the Property

as multifamily rental housing and will rent or hold available for rental each Unit on a continuous basis, or (b) convert the housing to condominium housing which is restricted by a restrictive covenant that runs with the land for the Term, which is acceptable in writing to the City in its sole discretion, that requires each Qualifying Unit to be transferred only to a purchaser who is a Lower Income Family and intends to occupy the unit as owner-occupied housing.

## Section 2.2. Occupancy Requirements.

- (a) Subject to subsection (c), during the Term, Owner will set aside \_\_\_\_\_ (\_\_\_\_) Qualifying Units of the \_\_\_\_\_-unit development to be made continuously available for Low Income Families.
- (b)
  - (i) The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit exceeds the applicable income limit shall be made prior to admission of such family or individual to occupancy in a Qualifying Unit (or to designation of a Unit occupied by such family or individual as a Qualifying Unit). Thereafter such determinations shall be made at least annually on the basis of an examination or reexamination of the anticipated Annual Income of the family or individual.
  - (ii) If the Annual Income of a Qualified Tenant shall be determined upon reexamination to exceed the applicable income limit for Low Income Families, the Unit occupied by such family or individual shall be counted as occupied by a Qualified Tenant [and such family or individual shall be considered, for purposes of Subsection (a) and Article III, a qualified Tenant which is a Low Income Family] so long as (A) the Annual Income of such family or individual shall not be determined to exceed one-hundred forty percent (140%) of the applicable income limit for Low Income Families, or (B) if the Annual Income of such family or individual shall be determined to exceed one-hundred forty percent (140%) of the applicable income limit for Low Income Families, so long as each Unit of comparable or smaller size in the Property which is or becomes available is occupied or held available for occupancy by a new resident whose Annual Income does not exceed the applicable income limit for Low Income Families (or a Unit other than a Qualifying Unit occupied by a family or individual whose Annual Income is determined to not exceed the applicable income limit for Low Income Families is designated a Qualifying Unit) until the occupancy requirements of Subsection (a) are met without counting such over-income family or individual.
  - (iii) A Unit that was occupied by a Qualified Tenant and becomes vacant shall be counted as occupied by a Qualified Tenant until it is reoccupied for a period in excess of thirty-one (31) calendar days, at which time the Unit shall be considered to be occupied by a Qualified Tenant only if the family or individual then occupying the Unit satisfies the definition of a Qualified Tenant.

### **ARTICLE III Rent**

#### **Section 3.1. Rent Limitations for Qualified Tenants.**

(a) The gross rent charged by Owner for Qualifying Units occupied by families and individuals designated as Low Income Families, based on the number of bedrooms in the unit, shall not exceed the Maximum Rent Limit.

(b) Such rents shall be subject to annual adjustments upon publication by HUD of revised income limits for Low Income Families and Individuals, which adjustments shall be based upon changes in the applicable area median income limits.

(c) If a Qualified Tenant ceases to be considered a Qualified Tenant in accordance with Section 2.2(b), Owner shall, subject to the terms of such tenant's lease, be free to condition such tenant's continued occupancy in the Property upon its payment of a rental charge not subject to the limitations in this Article III.

### **ARTICLE IV Administration**

**Section 4.1. Lease Provisions.** All tenant leases entered into with Qualified Tenants during the Term shall contain provisions wherein each individual tenant (i) certifies the accuracy of the information provided in connection with the examination or reexamination of Annual Income of the household of such lessee, and (ii) agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy, that he or she will comply promptly with all requests for information with respect thereto from Owner or the City, and that his or her failure to timely provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her tenancy and constitute cause for immediate termination thereof.

#### **Section 4.2. Examination and Reexamination of Incomes.**

(a) Owner shall be responsible for the collection, verification and certification of the Annual Income and family composition of Qualified Tenants, and for reexamination of Annual Income and family composition of Qualified Tenants at least annually, in accordance with procedures prescribed by HUD for federal housing programs or as otherwise prescribed by the City.

(b) As a condition of admission to occupancy of a Qualifying Unit, Owner shall require the household head and other such household members as it designates to execute a City-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to Owner and to the City such information as Owner or City determines to be necessary. Owner shall also require the household to submit directly to Owner documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a household's eligibility as a

Qualified Tenant, or for verifying related information. The use or disclosure of information obtained from a household or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Agreement.

(c) Owner shall not be deemed to be in violation of Articles II and III of this Agreement if, in determining Annual Income and family composition of a Qualified Tenant, (i) Owner has relied in good faith upon information which is supplied to Owner by the tenant, (ii) Owner has no reason to believe such information is false, and (iii) Owner shall have complied with all requirements of the City with respect to verification of household income and family composition.

**Section 4.3. Certification by Owner.** During the term of this Agreement, Owner, at least quarterly or as the City may otherwise approve, shall submit to the City in a form prescribed by the City, a certificate of continuing compliance with all occupancy standards, terms and provisions of this Agreement. The certification will also include statistical data relating to race, ethnicity, income and fair housing opportunities.

**Section 4.4. Maintenance of Documents.** All tenant lists, utility allowance documents, applications, leases, lease addenda, tenant and owner certifications, advertising records, waiting lists, rental calculations and rent records, income examinations and reexaminations relating to the Property shall at all times be kept separate and identifiable from any other business of Owner which is unrelated to the Property, and shall be maintained, in compliance with City requirements, in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the City.

**Section 4.5. Compliance Review.** During the Term of this Agreement, Owner agrees to permit City, or its designated representative, access to the Property, including all parts thereof, for the purpose of performing City Compliance Monitoring Procedures. The City periodically will monitor Owner's compliance with the requirements of this Agreement in accordance with City Compliance Monitoring Procedures. In conducting its compliance review, the City will rely primarily on information obtained from Owner's records and reports, findings from on-site monitoring, and audit reports. The City may also consider relevant information gained from other sources, including litigation and citizen complaints.

**Section 4.6. Releases.** The City shall execute such documents as may be required to evidence release of the Property from the covenants and restrictions set forth in this Agreement upon the expiration of the Term as provided in Section 1.1 hereof.

**Section 4.7 Nondiscrimination.** Owner shall select Qualified Tenants for available Units from a written waiting list in chronological order of their application, insofar as it is practical, and without regard as to race, color, family composition, national origin or sex or whether such Qualified Tenants are holders of a certificate of family participation under 24 C.F.R. Part 882 (Rental Certificate Program) or a rental voucher under 24 C.F.R. Part 887 (Rental Voucher Program) or holders of a comparable document evidencing participation in a HOME tenant-based assistance program and without regard as to whether such Qualified Tenants receive or rely on any other rent-based assistance from any state or federal program.



**ARTICLE V**  
**Representations and Warranties of Owner**

**Section 5.1. Representations and Warranties.** Owner represents and warrants to the City that:

(a) Valid Execution. Owner has validly executed this Agreement and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity (i) to enter into this Agreement, (ii) to carry out Owner's obligations as described in this Agreement, and (iii) to assume responsibility for compliance with all applicable State and local rules and regulations.

(b) No Conflict or Contractual Violation. To the best of Owner's knowledge, the making of this Agreement and Owner's obligations hereunder:

- (i) will not violate any contractual covenants or restrictions (A) between Owner or any third party or (B) affecting the Property;
- (ii) will not conflict with any of the instruments that create or establish Owner's authority;
- (iii) will not conflict with any applicable public or private restrictions;
- (iv) do not require any consent or approval of any public or private authority which has not already been obtained; and
- (v) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Owner, without regard to capacity, (B) any person with whom Owner may be jointly or severally liable, or (C) the Property or any part thereof.

(c) No Litigation. Other than litigation involving Guadalupe Association for an Improved Neighborhood, et.al., to which the City is also a party, to the best of Owner's knowledge, no litigation or proceedings are pending or threatened against Owner or a prior owner of the Property which, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Agreement.

(d) No Bankruptcy. There is not pending or, to Owner's best knowledge, threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law, regulation relating to bankruptcy, insolvency or relief for debtors.

(e) Conflicting Agreements. Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof. In any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(f) Consideration. Owner has freely and without reservation placed itself under the obligations of this Agreement and acknowledges that the receipt of financial assistance from the City is an essential part of the consideration for this Agreement.

**Section 5.2. INDEMNIFICATION. OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY FROM AND AGAINST ALL LIABILITIES, LOSSES, CLAIMS, DAMAGES, JUDGMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) INCURRED BY THE CITY AS A RESULT OF ANY MATERIAL INACCURACY OR MATERIAL BREACH IN ANY OF THE REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 5.1 HEREOF.**

## **ARTICLE VI Enforcement and Remedies**

### **Section 6.1. Remedies of the City.**

(a) If Owner defaults in the performance of any of its obligations under this Agreement or breaches any covenant, agreement or restriction set forth herein, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by the City (or for an extended period approved by the City if the default or breach stated in such notice can be corrected, but not within such 30-day period, unless Owner does not commence such correction or commences such correction within such 30-day period but thereafter does not diligently pursue the same to completion within such extended period), the City in its sole discretion may (i) apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Agreement, or (ii) take any and all other action at law, in equity or otherwise for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's default. The City shall be entitled to its reasonable attorneys' fees in any such judicial action in which the City shall prevail. The City shall also be compensated for fees associated with additional compliance monitoring during corrective periods of non-compliance upon default by Owner hereunder.

(b) Each right, power and remedy of the City provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the City of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the City of any or all such other rights, powers or remedies.

**Section 6.2. Remedies of Other Parties.** The occupancy and maximum rent requirements set forth in Section 2.2 and Section 3.1, respectively, and Section 4.7 of this Agreement also shall inure

to the benefit of, and may be judicially enforced against Owner by, affected Low Income Families. As used herein, the term "affected Low Income Families" shall mean families or individuals who are renting a Qualifying Unit or who are eligible to rent a Qualifying Unit in the Project. Any of the persons or entities described above shall be entitled to judicially enforce Section 2.2, Section 3.1, or Section 4.7 of this Agreement in the same manner that the City may seek judicial enforcement in accordance with Section 6.1, and any such party that prevails in any such judicial action shall be entitled to its reasonable attorneys' fees.

**Section 6.3. Reliance Upon Information.** In carrying out its obligations hereunder, Owner shall be entitled to rely upon information provided by the City with respect to (i) income limits applicable to Low Income Families, (ii) the method for calculating the incomes of such individuals and families, and (iii) the maximum rents which may be charged to such families pursuant to Section 3.1 hereof.

## **ARTICLE VII Miscellaneous**

**Section 7.1. Amendments.** This Agreement may not be amended or modified except by written instrument signed by Owner and the City, or their respective heirs, successors or assigns, which instrument shall not be effective until it is recorded in the Real Property Records of the county in which the Property is located. Owner agrees to enter into such amendments to this Agreement as City may reasonably request from time to time.

**Section 7.2. Notices.** All notices required or permitted to be given under this Agreement must be in writing. Notice will be deemed effective three (3) days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

**City:**

**City of Austin**  
Neighborhood Housing and Community Development Office  
1000 East Eleventh Street - Suite 300  
P.O. Box 1088  
Austin, Texas 78767-1088  
Attention: Community Development Officer

**Owner:**

\_\_\_\_\_  
Attention: Robertson Hill MOU  
\_\_\_\_\_  
\_\_\_\_\_

**With a copy to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this Section 7.2.

**Section 7.3. Entire Agreement.** This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof. There are no representations, oral or otherwise, other than those expressly set forth herein. Time is of the essence of this Agreement.

**Section 7.4. Cooperation.** Should any claims, demands, suits or other legal proceedings be made or instituted by any person against the City which arise out of any of the matters relating to this Agreement, Owner shall cooperate fully by giving City all pertinent information and reasonable assistance in the defense or other disposition thereof.

**Section 7.5. Confidence.** To the extent permitted by law, Owner agrees to maintain in confidence the dealings, negotiations and agreements of the parties with respect to the Property and Project, this Agreement, and any affidavits, and will not make public release of information regarding those matters unless the City approves such disclosure.

**Section 7.6. Choice of Law.** In the event the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by, and shall be construed in accordance with, the laws of the State of Texas or the federal laws, whichever may be applicable.

**Section 7.7. Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

**Section 7.8. Binding Effect; Covenants Running with the Land.** During the Term, this Agreement and the covenants, reservations and restrictions contained herein shall be deemed covenants running with the land for the benefit of the City and its successors, and shall pass to and be binding on Owner's heirs, assigns and successors in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Agreement and the covenants, restrictions and reservations shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Term in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such

contract, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property. Owner, at its cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or refiled in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of the City to enforce this Agreement.

**Section 7.09. Counterparts.** This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

**Section 7.10. Section Titles.** Section titles and the table of contents are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.

**Section 7.11 Other Statutes.** In addition to the requirements of this Agreement, Owner shall comply with the income or rent calculation requirements of HUD regulations, and all other federal, state and local statutes, regulations, rules and ordinances pertaining to the use and occupancy of the Property.

**Section 7.12. Change in Neighborhood.** A substantial or radical change in the character of the neighborhood surrounding the Property will not extinguish the restrictive covenants of this Agreement. The restrictive covenants shall survive any and all changed circumstances, including but not limited to the following: housing pattern changes; zoning amendments; the issuance of variances affecting the immediate or surrounding area; increased traffic or road conditions; enhancement of the value of the Improvements, Land or Property; growing industrial activity; encroachment of business areas; development of natural resources; financial downturn of the Owner; or commercialization of the neighborhood in question.

\_\_\_\_\_, a \_\_\_\_\_, acting by and through its \_\_\_\_\_,  
\_\_\_\_\_, a \_\_\_\_\_.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY OF AUSTIN**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant City Manager

THE STATE OF TEXAS   §  
                                 §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on \_\_\_\_\_ 20\_\_\_\_ by \_\_\_\_\_,  
\_\_\_\_\_, a \_\_\_\_\_ on behalf of \_\_\_\_\_, a \_\_\_\_\_.

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

THE STATE OF TEXAS   §  
                                 §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on \_\_\_\_\_ June 20\_\_\_\_ by \_\_\_\_\_, Assistant  
City Manager of the City of Austin, a Texas home-rule and municipal corporation, on behalf of said  
corporation.

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

**AFTER RECORDING RETURN TO:**

City of Austin  
% Law Department  
P.O. Box 1088  
301 West Second Street - Fourth Floor (78701)  
Austin, Texas 78767-1088

**PREPARED IN THE LAW OFFICE OF:**

City of Austin  
Law Department

**APPROVED AS TO FORM:**

James M. Williams, Sr.  
Assistant City Attorney  
Texas State Bar No. 21549500

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE LAND**

**Insert correct legal description  
and  
attach any necessary exhibits**

## Exhibit B

HUD Income Limits by Household Size  
For the Metropolitan Area  
(Effective \_\_\_\_\_ 20\_\_\_\_)

<u>Household Size:</u>	<u>80% of Median Income</u>
1-person Household	\$ _____
2-person Household	_____
3-person Household	_____
4-person Household	_____
5-person Household	_____
6-person Household	_____
7-person Household	_____
8-person Household	_____

[NOTE: City will insert current income limits]



LAND USE RESTRICTION AGREEMENT

(\_\_\_\_\_)

THE STATE OF TEXAS     §  
                                      §  
COUNTY OF TRAVIS     §

THIS LAND USE RESTRICTION AGREEMENT ("Agreement") is made and entered into effective \_\_\_\_\_ 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Owner"), and CITY OF AUSTIN, a Texas home-rule city and municipal corporation ("City").

RECITALS:

The Owner is the owner of certain fixtures and improvements ("Improvements"), known as \_\_\_\_\_ (the "Project") situated on real property ("Land") located in the City of Austin, County of Travis, State of Texas, more fully described in Exhibit "A" attached hereto and by this reference incorporated in it, and all rights, titles and interests appurtenant thereto, which has an address of \_\_\_\_\_, Austin, Travis County, Texas 787\_\_\_\_ (the Improvements and Land are collectively referred to as the "Property").

On 7 June 2001 the City and Riata Partners, L.L.C. entered into a Memorandum of Understanding for East Austin Economic Development ("Development Agreement") concerning the terms and conditions of an economic development agreement for the area generally located between Interstate Highway 35, East Eighth Street, San Marcos Street and East Eleventh Street. As a condition of the Development Agreement, Owner must agree to comply with certain occupancy, rent and other restrictions, and the parties have entered into this Agreement to evidence Owner's agreement to comply with such restrictions during the Term (hereinafter defined).

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I  
Definitions

**Section 1.1. General.** Capitalized terms used in this Agreement shall have, unless the context clearly requires otherwise, the meanings specified in this Article I. Certain additional terms may be defined elsewhere in this Agreement.

(a) "Agreement" means this Land Use Restriction Agreement, as it may from time to time be amended.

(b) **"Annual Income"** means "annual income" as defined in 24 CFR part 5.609.

(c) **"Board"** means the governing body of the City.

(d) **"CFR"** means the Code of Federal Regulations.

(e) **"City Compliance Monitoring Procedures"** means procedures and requirements adopted or imposed by the City for the purpose of monitoring the Property for compliance with this Agreement, including any inspections or examinations required by City on the Property which in City's reasonable judgment are necessary or required to determine such compliance.

(f) **"Development Agreement"** means the Memorandum of Understanding for East Austin Economic Development executed by and between City and Riata Partners, L.L.C., dated on or about 7 June 2001, concerning the terms and conditions of the economic development for the area generally located between Interstate Highway 35, East Eighth Street, San Marcos Street and East Eleventh Street, as the agreement may be amended from time to time.

(g) **"Existing Affordable Units"** means the \_\_\_\_\_ (\_\_\_\_) residential rental units on the Property that are rent-restricted under that certain \_\_\_\_\_ Agreement by and between \_\_\_\_\_ and \_\_\_\_\_ (Multifamily Properties) which runs with the land for a term ending on \_\_\_\_\_, is in accordance with the \_\_\_\_\_ Program entered into by the previously owner of the Property on \_\_\_\_\_ and is filed for record in \_\_\_\_\_ of the Real Property Records of Travis County, Texas (individually, an **"Existing Affordable Unit"**). [NOTE: This section is only inserted if the Property is income restricted]

(h) **"HUD"** means the United States Department of Housing and Urban Development.

(i) **"Low Income Families"** means families or individuals whose Annual Income does not exceed eighty (80) percent of the median family income for the Metropolitan Area, as periodically determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower for the Metropolitan Area if HUD finds that such variations are necessary because of unusually high or low family incomes (individually, a **"Low Income Family"**). Exhibit B sets forth the HUD income limits by household size effective \_\_\_\_\_ 20\_\_\_\_ for families at 80% of median income for the Metropolitan Area.

(j) **"Lower Income Families"** means families or individuals whose Annual Income does not exceed sixty-five (65) percent of the median family income for the Metropolitan Area, as periodically determined by the City with adjustments for smaller and larger families and based on a reasonable interpolation of HUD periodically determined median family incomes for Low Income Families (individually, a **"Lower Income Family"**). Exhibit B sets forth the City calculated HUD based income limits by household size effective \_\_\_\_\_ 20\_\_\_\_ for families at 65% of median income for the Metropolitan Area.

(k) **"Maximum Rent Limit"** means the following maximum monthly amounts by bedroom size that Owner may charge for: (A) the rent rate for each Qualifying Unit, plus (B) the average electric, gas, and water utility expense as periodically determined by HUD for units of similar size and type in the Metropolitan Area (however, to the extent the actual rental rate charged a Qualified Tenant by the Owner includes any electric, gas or water expense, such expenses shall not

be added to the rental rate for purposes of making this determination). The maximum monthly amount by bedroom size is:

(1) For an Efficiency or One-Bedroom Unit the amount charged may not exceed twenty-eight percent (28%) of the median income limit for a one-person household size Lower Income Family in the Metropolitan Area, as periodically determined by the City and HUD, divided by twelve.

(2) For a Two-Bedroom Unit the amount charged may not exceed twenty-eight percent (28%) of the median income limit for a three-person household size Lower Income Family in the Metropolitan Area, as periodically determined by the City and HUD, divided by twelve.

(l) **"Metropolitan Area"** means the Austin-San Marcos MSA as designated by the Bureau of the Census in the most recent decennial census.

(m) **"Owner"** has the meaning as set forth at the beginning of this Agreement, or any successor in title to the Property.

(n) **"Project"** means Owner's activities concerning the ownership and operation of the Property.

(o) **"Property"** has the meaning as set forth in the first paragraph of the Recitals of this Agreement.

(p) **"Qualified Tenant"** means a family or individual tenant occupying a Qualifying Unit who satisfies the requirements of Section 2.2(a) of this Agreement with respect to such Qualifying Unit.

(q) **"Qualifying Unit"** means a Unit that (i) is rented or sold to a Lower Income Family and (ii) is used in complying with the low income occupancy requirements of Section 2.2(a) of this Agreement.

(r) **"Term"** means the period commencing on the effective date of this Agreement and ending on the date which is the earlier to occur of the following:

- (1) 1 January 2029; or
- (2) five years next following termination of the Development Agreement with respect to this project; or
- (3) the date this Agreement is otherwise terminated by the City and the Owner.

(s) **"Unit"** means a residential accommodation constituting a part of the Property and containing separate and complete living facilities and is not an Existing Affordable Unit [NOTE: insert the clause following the word "facilities" if the term Existing Affordable Unit is defined]. All units on the Property must be comparable in quality to similarly sized units of the same type.

**Section 1.2. Generic Terms.** Unless the context clearly indicates otherwise, where appropriate the singular shall include the plural and the masculine shall include the feminine or neuter, and vice versa, to the extent necessary to give the terms defined in this Article I and/or the terms otherwise used in this Agreement their proper meanings.

## ARTICLE II

### Use and Occupancy of the Property

**Section 2.1. Use of the Property.** During the Term, Owner will either (a) maintain the Property as multifamily rental housing and will rent or hold available for rental each Unit on a continuous basis, or (b) convert the housing to condominium housing which is restricted by a restrictive covenant that runs with the land for the Term, which is acceptable in writing to the City in its sole discretion, that requires the housing units to be transferred only to a purchaser who is a Lower Income Family and intends to occupy the unit as owner-occupied housing.

#### **Section 2.2. Occupancy Requirements.**

- (a) Subject to subsection (c), during the Term, Owner will set aside \_\_\_\_\_ (\_\_\_\_) Qualifying Units of the \_\_\_\_-unit development to be made continuously available for Lower Income Families.
- (b)
  - (i) The determination of whether the Annual Income of a family or individual occupying or seeking to occupy a Qualifying Unit exceeds the applicable income limit shall be made prior to admission of such family or individual to occupancy in a Qualifying Unit (or to designation of a Unit occupied by such family or individual as a Qualifying Unit). Thereafter such determinations shall be made at least annually on the basis of an examination or reexamination of the anticipated Annual Income of the family or individual.
  - (ii) If the Annual Income of a Qualified Tenant shall be determined upon reexamination to exceed the applicable income limit for Lower Income Families, the Unit occupied by such family or individual shall be counted as occupied by a Qualified Tenant [and such family or individual shall be considered, for purposes of Subsection (a) and Article III, a qualified Tenant which is a Lower Income Family] so long as the Annual Income of such family or individual shall not be determined to exceed one-hundred forty percent (140%) of the applicable income limit for Lower Income Families.
  - (iii) A Unit that was occupied by a Qualified Tenant and becomes vacant shall be counted as occupied by a Qualified Tenant until it is reoccupied for a period in excess of thirty-one (31) calendar days, at which time the Unit shall be considered to be occupied by a Qualified Tenant only if the family or individual then occupying the Unit satisfies the definition of a Qualified Tenant.
- (c) Anything to the contrary in the foregoing notwithstanding, Owner will not terminate the occupancy of any tenants in occupancy on the effective date hereof that are not Lower Income Families for purposes of meeting the requirements of this section. In the event that Owner is unable to comply with the occupancy requirements of this section because of the occupancy as of the effective date hereof of any Units by tenants who are not Lower Income Families, or who have not been determined to be Qualified Tenants, Owner will be in compliance with this section if each

Unit which thereafter becomes vacant is occupied or held available for occupancy by Lower Income Families, in accordance with the requirements of Subsection (b) until the low income occupancy requirements of this Section 2.2 are met.

### **ARTICLE III Rent**

#### **Section 3.1. Rent Limitations for Qualified Tenants.**

(a) The gross rent charged by Owner for Qualifying Units occupied by families and individuals designated as Lower Income Families, based on the number of bedrooms in the unit, shall not exceed the Maximum Rent Limit.

(b) Such rents shall be subject to annual adjustments upon publication by HUD of revised income limits for Lower Income Families and Individuals, which adjustments shall be based upon changes in the applicable area median income limits.

(c) If a Qualified Tenant ceases to be considered a Qualified Tenant in accordance with Section 2.2(b), Owner shall, subject to the terms of such tenant's lease, be free to condition such tenant's continued occupancy in the Property upon its payment of a rental charge not subject to the limitations in this Article III.

### **ARTICLE IV Administration**

**Section 4.1. Lease Provisions.** All tenant leases entered into with Qualified Tenants during the Term shall contain provisions wherein each individual tenant (i) certifies the accuracy of the information provided in connection with the examination or reexamination of Annual Income of the household of such lessee, and (ii) agrees that the Annual Income and other eligibility requirements shall be deemed substantial and material obligations of his or her tenancy, that he or she will comply promptly with all requests for information with respect thereto from Owner or the City, and that his or her failure to timely provide accurate information regarding such requirements (regardless of whether such inaccuracy is intentional or unintentional) or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of his or her tenancy and constitute cause for immediate termination thereof.

#### **Section 4.2. Examination and Reexamination of Incomes.**

(a) Owner shall be responsible for the collection, verification and certification of the Annual Income and family composition of Qualified Tenants, and for reexamination of Annual Income and family composition of Qualified Tenants at least annually, in accordance with procedures prescribed by HUD for federal housing programs or as otherwise prescribed by the City.

(b) As a condition of admission to occupancy of a Qualifying Unit, Owner shall require the household head and other such household members as it designates to execute a City-approved release and consent authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to Owner and to the City such information as Owner or City determines to be necessary. Owner shall also require the household to submit directly to Owner documentation determined to be necessary. Information or documentation shall be determined to be necessary if it is required for purposes of determining or auditing a household's eligibility as a Qualified Tenant, or for verifying related information. The use or disclosure of information obtained from a household or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of this Agreement.

(c) Owner shall not be deemed to be in violation of Articles II and III of this Agreement if, in determining Annual Income and family composition of a Qualified Tenant, (i) Owner has relied in good faith upon information which is supplied to Owner by the tenant, (ii) Owner has no reason to believe such information is false, and (iii) Owner shall have complied with all requirements of the City with respect to verification of household income and family composition.

**Section 4.3. Certification by Owner.** During the term of this Agreement, Owner, at least quarterly or as the City may otherwise approve, shall submit to the City in a form prescribed by the City, a certificate of continuing compliance with all occupancy standards, terms and provisions of this Agreement. The certification will also include statistical data relating to race, ethnicity, income and fair housing opportunities.

**Section 4.4. Maintenance of Documents.** All tenant lists, utility allowance documents, applications, leases, lease addenda, tenant and owner certifications, advertising records, waiting lists, rental calculations and rent records, income examinations and reexaminations relating to the Property shall at all times be kept separate and identifiable from any other business of Owner which is unrelated to the Property, and shall be maintained, in compliance with City requirements, in a reasonable condition for proper audit and subject to examination and photocopying during business hours by representatives of the City.

**Section 4.5. Compliance Review.** During the Term of this Agreement, Owner agrees to permit City, or its designated representative, access to the Property, including all parts thereof, for the purpose of performing City Compliance Monitoring Procedures. The City periodically will monitor Owner's compliance with the requirements of this Agreement in accordance with City Compliance Monitoring Procedures. In conducting its compliance review, the City will rely primarily on information obtained from Owner's records and reports, findings from on-site monitoring, and audit reports. The City may also consider relevant information gained from other sources, including litigation and citizen complaints.

**Section 4.6. Releases.** The City shall execute such documents as may be required to evidence release of the Property from the covenants and restrictions set forth in this Agreement upon the expiration of the Term as provided in Section 1.1 hereof.

**Section 4.7 Nondiscrimination.** Owner shall select Qualified Tenants for available Units from a written waiting list in chronological order of their application, insofar as it is practical, and without

regard as to race, color, family composition, national origin or sex or whether such Qualified Tenants are holders of a certificate of family participation under 24 C.F.R. Part 882 (Rental Certificate Program) or a rental voucher under 24 C.F.R. Part 887 (Rental Voucher Program) or holders of a comparable document evidencing participation in a HOME tenant-based assistance program and without regard as to whether such Qualified Tenants receive or rely on any other rent-based assistance from any state or federal program.

## ARTICLE V

### Representations and Warranties of Owner

**Section 5.1. Representations and Warranties.** Owner represents and warrants to the City that

(a) Valid Execution. Owner has validly executed this Agreement and the same constitutes the binding obligation of Owner. Owner has full power, authority and capacity (i) to enter into this Agreement, (ii) to carry out Owner's obligations as described in this Agreement, and (iii) to assume responsibility for compliance with all applicable State and local rules and regulations.

(b) No Conflict or Contractual Violation. To the best of Owner's knowledge, the making of this Agreement and Owner's obligations hereunder:

- (i) will not violate any contractual covenants or restrictions (A) between Owner or any third party or (B) affecting the Property;
- (ii) will not conflict with any of the instruments that create or establish Owner's authority;
- (iii) will not conflict with any applicable public or private restrictions;
- (iv) do not require any consent or approval of any public or private authority which has not already been obtained; and
- (v) are not threatened with invalidity or unenforceability by any action, proceeding or investigation pending or threatened, by or against (A) Owner, without regard to capacity, (B) any person with whom Owner may be jointly or severally liable, or (C) the Property or any part thereof.

(c) No Litigation. Other than litigation involving Guadalupe Association for an Improved Neighborhood, et.al., to which the City is also a party, to the best of Owner's knowledge, no litigation or proceedings are pending or threatened against Owner or a prior owner of the Property which, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property, or any portion thereof, or which could in any way interfere with the consummation of this Agreement.

(d) No Bankruptcy. There is not pending or, to Owner's best knowledge, threatened against Owner any case or proceeding or other action in bankruptcy, whether voluntary or otherwise, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for Owner under any federal, state or other statute, law, regulation relating to bankruptcy, insolvency or relief for debtors.

(e) Conflicting Agreements. Owner has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof. In any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

(f) Consideration. Owner has freely and without reservation placed itself under the obligations of this Agreement and acknowledges that the receipt of financial assistance from the City is an essential part of the consideration for this Agreement.

**Section 5.2. INDEMNIFICATION. OWNER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY FROM AND AGAINST ALL LIABILITIES, LOSSES, CLAIMS, DAMAGES, JUDGMENTS, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES) INCURRED BY THE CITY AS A RESULT OF ANY MATERIAL INACCURACY OR MATERIAL BREACH IN ANY OF THE REPRESENTATIONS AND WARRANTIES CONTAINED IN SECTION 5.1 HEREOF.**

## **ARTICLE VI**

### **Enforcement and Remedies**

#### **Section 6.1. Remedies of the City.**

(a) If Owner defaults in the performance of any of its obligations under this Agreement or breaches any covenant, agreement or restriction set forth herein, and if such default remains uncured for a period of thirty (30) days after written notice thereof shall have been given by the City (or for an extended period approved by the City if the default or breach stated in such notice can be corrected, but not within such 30-day period, unless Owner does not commence such correction or commences such correction within such 30-day period but thereafter does not diligently pursue the same to completion within such extended period), the City in its sole discretion may (i) apply to any court having jurisdiction of the subject matter for specific performance of this Agreement, for an injunction against any violation of this Agreement, for the appointment of a receiver to take over and operate the Property in accordance with the terms of this Agreement, or (ii) take any and all other action at law, in equity or otherwise for such other relief as may be appropriate, it being acknowledged that the beneficiaries of Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of Owner's default. The City shall be entitled to its reasonable attorneys' fees in any such judicial action in which the City shall prevail. The City shall also be compensated for fees associated with additional compliance monitoring during corrective periods of non-compliance upon default by Owner hereunder.

(b) Each right, power and remedy of the City provided for in this Agreement now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by the City of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not



preclude the simultaneous or later exercise by the City of any or all such other rights, powers or remedies.

**Section 6.2. Remedies of Other Parties.** The occupancy and maximum rent requirements set forth in Section 2.2 and Section 3.1, respectively, and Section 4.7 of this Agreement also shall inure to the benefit of, and may be judicially enforced against Owner by, affected Lower Income Families. As used herein, the term "affected Lower Income Families" shall mean families or individuals who are renting a Qualifying Unit or who are eligible to rent a Qualifying Unit in the Project. Any of the persons or entities described above shall be entitled to judicially enforce Section 2.2, Section 3.1, or Section 4.7 of this Agreement in the same manner that the City may seek judicial enforcement in accordance with Section 6.1, and any such party that prevails in any such judicial action shall be entitled to its reasonable attorneys' fees.

**Section 6.3. Reliance Upon Information.** In carrying out its obligations hereunder, Owner shall be entitled to rely upon information provided by the City with respect to (i) income limits applicable to Lower Income Families, (ii) the method for calculating the incomes of such individuals and families, and (iii) the maximum rents which may be charged to such families pursuant to Section 3.1 hereof.

## **ARTICLE VII Miscellaneous**

**Section 7.1. Amendments.** This Agreement may not be amended or modified except by written instrument signed by Owner and the City, or their respective heirs, successors or assigns, which instrument shall not be effective until it is recorded in the Real Property Records of the county in which the Property is located. Owner agrees to enter into such amendments to this Agreement as City may reasonably request from time to time.

**Section 7.2. Notices.** All notices required or permitted to be given under this Agreement must be in writing. Notice will be deemed effective three (3) days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, and properly addressed to the party to be notified. Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as hereinafter provided, be as follows:

**City:**

City of Austin  
Neighborhood Housing and Community Development Office  
1000 East Eleventh Street - Suite 300  
P.O. Box 1088  
Austin, Texas 78767-1088  
Attention: Community Development Officer

**Owner:**

\_\_\_\_\_  
Attention: Robertson Hill MOU

\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
  
With a copy to:  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_

Any party may change its address for notice purposes by giving notice to the other parties in accordance with this Section 7.2.

**Section 7.3. Entire Agreement.** This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof. There are no representations, oral or otherwise, other than those expressly set forth herein. Time is of the essence of this Agreement.

**Section 7.4. Cooperation.** Should any claims, demands, suits or other legal proceedings be made or instituted by any person against the City which arise out of any of the matters relating to this Agreement, Owner shall cooperate fully by giving City all pertinent information and reasonable assistance in the defense or other disposition thereof.

**Section 7.5. Confidence.** To the extent permitted by law, Owner agrees to maintain in confidence the dealings, negotiations and agreements of the parties with respect to the Property and Project, this Agreement, and any affidavits, and will not make public release of information regarding those matters unless the City approves such disclosure.

**Section 7.6. Choice of Law.** In the event the enforceability or validity of any provision of this Agreement is challenged or questioned, such provision shall be governed by, and shall be construed in accordance with, the laws of the State of Texas or the federal laws, whichever may be applicable.

**Section 7.7. Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

**Section 7.8. Binding Effect; Covenants Running with the Land.** During the Term, this Agreement and the covenants, reservations and restrictions contained herein shall be deemed covenants running with the land for the benefit of the City and its successors, and shall pass to and be binding on Owner's heirs, assigns and successors in title to the Property, or if the Property shall not include title to land, but shall include a leasehold interest in land, this Agreement and the covenants, restrictions and reservations shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns and successors to such interests; provided, however, that upon expiration of the Term in accordance with the terms hereof said covenants,

reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of the Property are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Property. Owner, at its cost and expense, shall cause this Agreement to be duly recorded or filed and re-recorded or refiled in such places, and shall pay or cause to be paid all recording, filing, or other taxes, fees and charges, and shall comply with all such statutes and regulations as may be required by law, in the opinion of qualified counsel, in order to establish, preserve and protect the ability of the City to enforce this Agreement.

**Section 7.09. Counterparts.** This Agreement and any amendments hereto may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

**Section 7.10. Section Titles.** Section titles and the table of contents are for descriptive purposes only and shall not control or limit the meaning of this Agreement as set forth in the text.

**Section 7.11 Other Statutes.** In addition to the requirements of this Agreement, Owner shall comply with the income or rent calculation requirements of HUD regulations, and all other federal, state and local statutes, regulations, rules and ordinances pertaining to the use and occupancy of the Property.

**Section 7.12. Change in Neighborhood.** A substantial or radical change in the character of the neighborhood surrounding the Property will not extinguish the restrictive covenants of this Agreement. The restrictive covenants shall survive any and all changed circumstances, including but not limited to the following: housing pattern changes; zoning amendments; the issuance of variances affecting the immediate or surrounding area; increased traffic or road conditions; enhancement of the value of the Improvements, Land or Property; growing industrial activity; encroachment of business areas; development of natural resources; financial downturn of the Owner; or commercialization of the neighborhood in question.

\_\_\_\_\_, a \_\_\_\_\_, acting by and through its \_\_\_\_\_,  
\_\_\_\_\_, a \_\_\_\_\_.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY OF AUSTIN

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Assistant City Manager

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on \_\_\_\_\_ 20\_\_ by \_\_\_\_\_,  
of \_\_\_\_\_ a \_\_\_\_\_ on behalf of \_\_\_\_\_, a  
\_\_\_\_\_.

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

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on \_\_\_\_\_ 20\_\_ by \_\_\_\_\_,  
Assistant City Manager of the City of Austin, a Texas home-rule and municipal corporation, on  
behalf of said corporation.

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

**AFTER RECORDING RETURN TO:**

City of Austin  
% Law Department  
P.O. Box 1088  
301 West Second Street - Fifth Floor (78701)  
Austin, Texas 78767-1088

**PREPARED IN THE LAW OFFICE OF:**

City of Austin  
Law Department

**APPROVED AS TO FORM:**

James M. Williams, Sr.  
Assistant City Attorney  
Texas State Bar No. 21549500

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE LAND**

**[Insert Project Legal Description]**

Exhibit B

HUD Income Limits by Household Size  
For the Metropolitan Area  
(Effective \_\_\_\_\_ 20\_\_)

<u>Household Size:</u>	<u>65% of Median Income</u>	<u>80% of Median Income</u>
1-person Household	\$ _____	\$ _____
2-person Household	_____	_____
3-person Household	_____	_____
4-person Household	_____	_____
5-person Household	_____	_____
6-person Household	_____	_____
7-person Household	_____	_____
8-person Household	_____	_____

[NOTE: City will insert current income limits]

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2008 Mar 20 09:59 AM 2006048831

HERRERAM \$164.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS