

#53

RESTRICTIVE COVENANT

This Restrictive Covenant (the "Restrictive Covenant"), is executed this 31st day of August, 2006, (the "Effective Date") by The Southside Church of Christ, Austin, Texas, a Texas non-profit corporation (hereinafter referred to as the "Owner") and is as follows:

GENERAL RECITALS:

- A. Owner is the owner of those certain tracts of land (hereinafter, the "Property") described in **Exhibit "A"** attached hereto and made a part hereof for all purposes.
- B. The term "Owner" means, individually, and the term "Owners" means, collectively, The Southside Church of Christ, Austin, Texas, a Texas non-profit corporation and all future owners of the fee interest of any portion of the Property (whether such fee interest is obtained through a purchase from Owner or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.
- C. The term "Neighboring Properties" means any and all real property any portion of which lies within three hundred feet (300') of the Property.
- D. The term "Neighboring Owners" means any and all owners of Neighboring Properties and their heirs, successors and assigns.
- E. The term "Neighborhood Association" means the Bouldin Creek Neighborhood Association, a Texas unincorporated neighborhood association in Austin, Travis County, Texas.
- F. Owner has filed a rezoning application (the "Rezoning") with the City of Austin for the purpose of rezoning the Property to CS-MU-CO-NP General Commercial Services Mixed Use Conditional Overlay zoning district.
- G. Owner has sought the support of the Neighboring Owners and the Neighborhood Association for the Rezoning.
- H. Owner has agreed to impose upon the Property these covenants and conditions for the mutual benefit of the Property, the Neighboring Owners, the Neighborhood Association, and the Neighboring Properties.
- I. In reliance on Owner's Agreement to impose these covenants and conditions, the Neighborhood Association and certain Neighboring Owners have agreed to not object to Rezoning of the Property.

NOW, THEREFORE, it is hereby declared that the Property be subject to the following covenants, conditions and restrictions which shall run with the land and shall be binding upon all parties having right, title, or interest in or to such portion of the Property or any part, their heirs, successors, and assigns and shall inure to the benefit of the Owner and Neighboring Owners.

deed or conveyance of any kind conveying any portion of the Property, but any such conveyance shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not the same are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. Recitals Incorporated. The above Recitals and all terms defined therein are not mere recitals but are terms of and incorporated into this Restrictive Covenant for all purposes.
2. Definition of Uses. Definitions for all uses named in this Restrictive Covenant shall be as defined in Chapter 25-2 of the City Code of the City of Austin in effect as of the Effective Date.
3. Limitation on Off-Site Accessory Parking Use. Off-site accessory parking use shall only be permitted in connection with and as an accessory use for the development upon that certain portion of the Property comprised of those certain tracts of land legally described as Lots 12, 13, 14, 15, 16, 17, 18, and 19, Block 13, Newning Resubdivision of blocks 13 and 2A, Swishers Addition, City of Austin, Volume 1, Page 44C, P.R.T.C.T.
4. Limitation Concerning Personal Improvement Services Use and Personal Services Use. No personal improvement services use or personal services use shall be permitted on any part of the Property beyond one hundred feet (100') from the eastern boundary line of the Property.
5. No Above-Ground Parking Structures. No above-ground parking structures or surface parking lots shall be permitted on the Property except as follows:
 - a. four, one-car residential garages (the "Permitted Garages") shall be permitted in the general location shown in **Exhibit "B"** if and only if said garages are accessory to residential units on the same lot as that on which the garage is located;
 - b. a parking structure may extend for a maximum distance of twelve (12) along the eastern boundary line of the Property.
6. Permitted Uses. Development and use of the Property shall be limited to the following uses:
 - a. Administrative and Business Office
 - b. Art Gallery
 - c. Art Workshop
 - d. Condominium Residential

- e. Counseling Services
- f. Hotel/Motel
- g. Off-site Accessory Parking restricted in accordance with Paragraph 3 above
- h. Personal Improvement Services restricted in accordance with Paragraph 4 above
- i. Personal Services restricted in accordance with Paragraph 4 above
- j. Professional Offices
- k. Religious Assembly
- l. Software Development
- m. Townhouse Residential; and
- n. Single-Family Residential, excluding Duplexes.

Definitions for the above uses shall be as defined in Chapter 25-2 of the City Code of the City of Austin in effect as of the Effective Date.

7. Maximum Vehicle Trips. No use or combination of uses shall be permitted on the Property if such use or combination of uses generates more than one thousand four hundred (1400) vehicle trips per day.
8. Restriction on Site Development Regulations. The site shall be developed and used in compliance with the following site development regulations:
 - a. minimum lot width shall be fifty feet (50');
 - b. minimum street side yard setback shall be ten feet (10');
 - c. maximum building coverage shall not exceed sixty percent (60%) of the total square footage of the Property;
 - d. maximum impervious cover shall not exceed seventy-five percent (75%) of the total square footage of the Property;
 - e. floor to area ratio, as defined in the City Code of the City of Austin, shall not exceed 1.25:1;
 - f. no lot on the Property shall be smaller than five thousand seven hundred fifty (5,750) square feet in size;
 - g. no structure on the Property shall be taller in height than the lesser of either fifty feet (50') or the height allowed according to the applicable compatibility standards as set for in the City code of the City of Austin in height;
 - h. minimum front yard setback shall be ten feet (10'); and
 - i. no structure of any kind, including but not limited to balconies, is permitted within nine feet (9') (the "Buffer Area") of the western boundary line of the Property, except as set forth in Paragraph 9 below.
9. Vegetative Buffer and Retaining Wall Required. Within the Buffer Area, Owner shall construct and maintain a vegetative landscape buffer (the "Landscape Buffer") with an average of five feet (5) in width with a minimum of no less than three feet (3') along the western boundary line of the Property. Owner shall also construct and maintain a retaining wall (the "Retaining Wall") along the western

boundary line of the Property sufficient to minimize erosion along said western boundary line of the Property and along the boundary line of all tracts of land adjacent to the Property along the western boundary line of the Property. The Landscape Buffer shall consist of native vegetation and shall be sufficient to screen the Project from view by all Neighboring Properties zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation as of the Effective Date. The Retaining Wall shall be no taller than forty-four inches (44") above the grade of the alley adjacent to the Property to the west. Both the Landscape Buffer and the Retaining Wall are permitted within the Buffer Area.

10. Non-residential Development. No more than four thousand (4,000) square feet of non-residential use and development may take place on and be constructed on the Property, excluding off-site parking.
11. Mechanical Equipment. No exterior mechanical equipment, including but not limited to HVAC equipment, ventilation fans, and fresh air intake and exhaust equipment, shall be within fifty feet (50') of any property zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation as of the Effective Date. Further, all exterior mechanical equipment installed within one hundred feet (100') of property zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation shall be screened with masonry or another method to buffer sound generated by the equipment as of the Effective Date. Roof parapets, masonry housing, or other acoustic buffers shall be designed to provide acoustic dampening of the rooftop mechanical equipment. Excluding, but not limited to, surrounding development and traffic on Congress Avenue, the combined running of any mechanical equipment on the Property shall not exceed fifty-five (55) decibels, measured at the boundary line of any Neighboring Property zoned SF-3 (Family Residence) zoning district designation or more restrictive zoning district designation as of the Effective Date.
12. Ventilation. No ventilation or exhaust from the parking garage shall be directed in any manner toward any property or structure zoned or used as a residence.
13. Waste Disposal and Pick-Up. Trash and recycling pick-up between the hours of 10:00 o'clock p.m. central standard time and 7:00 o'clock a.m. central standard time is strictly prohibited. No waste receptacle shall be within fifty feet (50') of the western boundary line of the Property or within fifty feet (50') of the boundary line of the Property adjacent to James Street. Further, any waste receptacle within one hundred feet (100') of the boundary line of the Property shall be screened with a masonry wall at least the height of the receptacle.
14. Rooftop Terraces. Any rooftop terraces along the western side of the Property to which occupants of the Property have access shall be designed with walls, vegetation or other methods (the "Terrace Barriers") to prevent persons from directly overlooking the Neighboring Properties located to the west of the Property. Such Terrace Barriers shall be constructed such that they leave no

accessible space within ten feet (10') of the edge of the building on which the terrace is located.

15. Restricted Second-Floor Balconies. There shall be no balconies facing the western boundary line of the Property on any second floor living space.
16. Existing Church Building Permitted. Notwithstanding the provisions set forth in this Restrictive Covenant, the buildings that constitute the Southside Church of Christ as of the Effective Date hereof shall not be deemed to be in violation of Paragraph 8 (Restrictions on Site Development Regulations) above.
17. Additional Height Restriction on Building. No structure shall be taller than two (2) stories and twenty-five feet (25') which shall include the parapet wall above the average grade adjacent to the building, within fifty feet (50') directly East of the Eastern boundaries of the Southern most thirty feet (30) of Lot 24 and Lots 25, 26 & 27 of the Nora Eck Resubdivision
18. Tree Guarantee. Owner guarantees the life of all trees larger than twenty-five (25) caliper inches in diameter ("Protected Trees"). The Protected Trees shall be insured by a Letter of Credit or Surety Bond in the amount of thirty thousand dollars (\$30,000.00) per tree that is over forty (40) caliper inches and fifteen thousand dollars (\$15,000.00) per tree that is between twenty-five (25) and forty (40) caliper inches. The Protected Trees shall be monitored by a tree expert approved by the Neighborhood Association during the construction and/or relocation phase outlined in Paragraph 19. Should any Protected Tree fail to survive for the first three (3) years after the certificate of occupancy is granted, if the tree is not relocated as set forth in Paragraph 19, or for the first three (3) years after relocation, as set forth in Paragraph 19, then Owner shall pay to the Neighborhood Association the applicable amount(s) as stated in the Letter of Credit or Surety Bond for the affected tree(s) and shall be used for general landscaping improvements at site(s) approved by the Neighborhood Association.
19. No tree larger than twenty-five (25) caliper inches in diameter may be removed from the Property, with the exception of the live oak tree located on the northern boundary of the Property line which may be removed only under the following conditions:
 - a. the tree is relocated to another site (the "Tree Relocation Site") by a company approved by the Neighborhood Association within the boundaries of the Bouldin Creek Neighborhood Association (as such boundaries are set forth in the records of the City Clerk of the City of Austin); and
 - b. the Tree Relocation Site is a site approved by the Neighborhood Association; and
 - c. the success of the relocation and subsequent life of the relocated tree is guaranteed or insured as set forth in Paragraph 18.
 - d. the conditions above are contingent upon the physical ability to relocate the tree. If the City of Austin and a certified Arborist determines the tree

cannot be relocated, then Owner is permitted to remove the tree and Owner shall pay to the Neighborhood Association the applicable amount as stated in the Letter of Credit or Surety Bond for the affected tree(s), referenced in Paragraph 18, and shall be used for general landscaping improvements at site(s) approved by the Neighborhood Association.

20. Great Streets. A twelve (12) foot wide sidewalk along Gibson Street and an eight (8) foot sidewalk along James Street shall be provided and include trees planted every forty (40) feet on center.
21. Breach Shall Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant shall entitle the Owner to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations shall not affect in any manner any other rights or remedies which the Owner may have hereunder by reason of any breach of this Restrictive Covenant.
22. General Provisions.
 - A. Inurement. This Restrictive Covenant and the restrictions created hereby shall inure to the benefit of the Owner and Neighboring Owners, and shall be binding upon the Owner, and its successors and assigns. If Owner conveys all or any portion of the Property so long as the terms of this Restrictive Covenant are included in any documents of conveyance, Owner shall thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the property conveyed by it from and after the date of recording of such conveyance, but no such sale shall release the Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.
 - B. Duration. Unless terminated in accordance with Paragraph 22(I) below, this Restrictive Covenant shall remain in effect in perpetuity.
 - C. Non-Merger. This Restrictive Covenant shall not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
 - D. Severability. The provisions of this Restrictive Covenant shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision.
 - E. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and shall be

disregarded in the construction and interpretation of this Restrictive Covenant.

- F. Governing Law; Place of Performance. This Restrictive Covenant and all rights and obligations created hereby shall be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the county in Texas where the Property is located.
- G. Notices. Any Notice to the Owner shall be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant shall be deemed given, received, made or communicated on the date personal delivery is affected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- H. Enforcement. If any person, persons, corporation, or entity of any other character shall violate or attempt to violate this Restrictive Covenant, the Neighborhood Association, any of the Neighboring Owners, or an organization representing such Neighboring Owners may prosecute proceedings at law, or in equity, and recover reasonable attorney's fees, against said person, or entity violating or attempting to violate such covenant and to prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by any of those persons entitled to enforce it or their heirs, successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.
- I. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Official Records of Travis County, Texas, executed, acknowledged and approved by the joint action of (a) 75% or more of the Neighboring Owners; (b) the Neighborhood Association; and (c) the Owner. Should the Neighborhood Association not be in existence, as evidenced by a resolution so stating filed with the Texas Secretary of State, such modification, amendment, or termination shall be effective if executed, acknowledged and approved by the joint action of (a) 75% or more of the Neighboring Owners; and (b) the Owner.

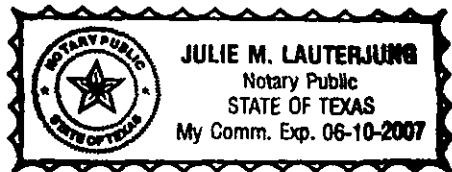
Executed to be effective this 31ST day of August, 2006.

DECLARANT:

Josue Villa
JOSUE VILLA, PRESIDENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 21ST day of AUGUST, 2006, by JOSUE VILLA, PRESIDENT of SOUTHSIDE CHURCH OF CHRIST, TEXAS NON-PROFIT CORPORATION



Julie M. Lauterjung
Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

Nikelle Meade
Brown McCarroll, L.L.P.
111 Congress Avenue, Suite 1400
Austin, Texas 78701

JAMES STREET
(60' R.O.W.)

PERMITTED RESIDENTIAL
GARAGES

NORA ECK SUBDIVISION OF
WEST PORTION OF BLOCKS 13 & 2A
SWISHERS ADDITION TO THE CITY OF AUSTIN
VOL. 3, PG. 228
P.R.T.C.

108 GIBSON

NEWNINGS RESUBDIVISION OF BLOCKS 1
SWISHERS ADDITION TO THE CITY OF A
VOL. 1, PG. 44, P.R.T.C.



GIBSON STREET
(60' R.O.W.)

Carter Burgess

Consultants in Engineering, Architecture,
Construction Management and Related Services
Carter and Burgess, Inc.

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Austin, Texas 78746
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108 GIBSON

WINSTON CAPITAL

EXHIBIT B

DATE: Aug. 29, 2006 SCALE: 1"=50'

DRAWN BY: handdollar

PROJECT No.: 050729

Survey: 1. VADON Survey: Carter/Burgess, Inc. 108 GIBSON/20A PLAT/COMPL/2006/8/29/06
Drawing: 108 GIBSON/20A PLAT/COMPL/2006/8/29/06
Scale: 1"=50'
Date: Aug. 29, 2006
Drawn by: handdollar
Checked by: [redacted]
Title: 108 GIBSON/20A PLAT/COMPL/2006/8/29/06