

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

After Recording Return To:

Thompson & Knight L.L.P.  
One Arts Plaza  
1722 Routh Street, Suite 1500  
Dallas, Texas 75201  
Attention: Andrew A. Ingram

**DECLARATION OF RESTRICTIVE COVENANTS AND RECIPROCAL EASEMENT AGREEMENT**

This Declaration of Restrictive Covenants and Reciprocal Easement Agreement (this "**Declaration**") is made to be effective as of the 9<sup>th</sup> day of April, 2013 by THE CITY OF AUSTIN, a Texas home rule city and municipal corporation ("**Declarant**" herein and sometimes referred to herein as "City" or "City of Austin").

RECITALS:

A. Declarant is the owner of that certain tract of land located in the County of Travis, State of Texas described on Exhibit A attached hereto and made a part hereof ("**Property**") which is approximately 4.985 acres.

B. Pursuant to a Master Development Agreement (the "**MDA**") dated June 17, 2008 between Declarant and Seaholm Power Development, LLC, a Delaware limited liability company ("**Seaholm**"), the Declarant has engaged Seaholm as the developer of the Property.

C. In the course of the development of the Property, the Property has been subdivided into 3 distinct parcels or lots: a residential portion described on Exhibit A-1 attached hereto (the "**Residential Property**"), the power plant portion described on Exhibit A-2 attached hereto (the "**Power Plant Property**") and an office portion described on Exhibit A-3 attached hereto (the "**Office Property**").

D. After the recordation of this Declaration, the Residential Property and the Office Property will also be burdened by a Master Condominium Declaration for Seaholm Power Master Condominium (as may be amended, the "**Condo Declaration**") executed by the Declarant and to be recorded in the Real Property Records of Travis County, Texas that will create the H/R Master Unit (herein so called), L/R Master Unit (herein so called), Garage Master Unit A (herein so called) and Garage Master Unit B (herein so called).

E. To ensure that the Property is developed, owned, managed and maintained as a uniform development, the Declarant desires to impose certain restrictions on the Property and grant and reserve certain reciprocal easements in, to, over and across portions of the Property.

F. The development of the Property will include the development of a 538 space underground parking garage (the “**Underground Garage**”) under the Office Property and the Residential Property. The Condo Declaration divides the Underground Garage into 2 units – Garage Master Unit A and Garage Master Unit B – as more particularly defined therein.

NOW THEREFORE, Declarant declares for the benefit of the Property, that the Property be held, transferred, sold, conveyed, or occupied subject to the following restrictions:

1. Design Approval.

(a) No substantial improvement will be commenced or constructed upon the Property, nor will any substantial exterior addition to or substantial exterior change or alteration thereof be made, unless and until the site plan, the exterior facades and the landscape plans therefor (and any material exterior modifications thereto) will have first been submitted to and reasonably approved in writing by the Declarant. Except as provided in Section 2(b) hereof and pursuant to the Declarant’s regulatory capacity, the Declarant will not have any rights to review or approve interior aspects of the improvements.

(b) Each request for Declarant’s approval (a “**Design Approval Request**”) under section (a) above must be accompanied by plans and specifications showing the partition layout, site layout, exterior elevations, exterior materials and colors, landscaping, drainage, lighting, irrigation and such other information related to the exterior appearance of the improvements as Declarant may reasonably require (the “**Plans**”); which Plans must be submitted for Declarant’s approval through a Design Approval Request at the conclusion of the following 2 planning stages – (A) upon completion of conceptual Plans (i.e., prior to commencement of detailed construction drawings) and (B) upon completion of “50% construction drawings”. The existing improvements on the Power Plant Property have been designated historic and, as such, are subject to federal regulation affecting any changes that may be made thereto.

(c) In reviewing a Design Approval Request, Declarant may consider any factors it reasonably deems relevant, including, without limitation, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, and harmony of the proposed external design with surrounding structures and environment.

(d) If Declarant fails to notify Owner in writing of its approval, disapproval or comments to the complete Design Approval Request within 30 days of Declarant’s deemed receipt thereof, Owner may provide Declarant a second written Design Approval Request (containing a statement in all bold and capital letters that reads “**FAILURE TO RESPOND TO THIS DESIGN APPROVAL REQUEST WITHIN 15 DAYS SHALL CONSTITUTE DEEMED APPROVAL OF THIS DESIGN APPROVAL REQUEST**”) which if not responded to by Declarant within 15 days after deemed receipt will be deemed approval of the Design Approval Request. In such event and on Owner’s written request to the Declarant, the Declarant will provide written confirmation to Owner of such deemed approval. Declarant will notify the applicant in writing of any

materials that Declarant believes are missing to make a Design Approval Request complete. Declarant may: (i) approve the Design Approval Request with or without conditions; (ii) approve a portion of the Design Approval Request and disapprove other portions specifying the segments or features that are objectionable and suggestions, if any, to address the objectionable portions; or (iii) disapprove the Design Approval Request.

(e) If Declarant approves the Design Approval Request with conditions, approves a portion of the Design Approval Request and disapproves other portions and a revised Design Approval Request with revised Plans is submitted, Declarant shall notify the applicant in writing of the final determination on any such revised Design Approval Request no later than 15 days after its receipt of such revised Design Approval Request and all required submissions.

(f) Following such approval, Declarant shall promptly apply for and diligently pursue regulatory approval (e.g., building permit, site plan) concerning such approved construction. If construction does not commence within the period required by such regulatory approval, the approval granted hereunder shall automatically expire, and the applicant must reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion.

## 2. Design Changes.

(a) Owner may, with the Declarant's prior consent (which consent shall not be unreasonably withheld or conditioned) switch the "residential" portion of the Residential Property to the Office Property, which approval will be requested, evaluated and granted under the same procedure as approval of the construction plans in Section 1 above.

(b) No substantial exterior addition to or substantial exterior change or alteration to the Property may be made, unless and until the modified site plan, the exterior facades and the landscape plans therefore will have first been submitted to and reasonably approved in writing by the Declarant, provided however, Declarant's approval shall not be required regarding changes solely related to a reduction in (A) the square footage of the improvements of any "hotel" portion of the Residential Property of less than 20% of an anticipated 100,676 square feet of hotel improvements, (B) the units of any "for rent" residential portion of the Residential Property to less than 280, (C) any "condo" portion of the Residential Property in which the total residential condo unit count is more than 40 units, and/or (D) the square footage of the improvements to the Office Property of less than 20% of an anticipated 66,000 square feet, unless the plans therefor will have first been submitted to and approved in writing by the Declarant, which approval will be requested, evaluated and granted under the same procedure as approval of the construction plans in Section 1 above.

## 3. Architectural Standards. The following architectural standards apply to the Power Plant Property:

(a) The generator building must be diligently conserved and thoughtfully adapted for one (or more) highly public uses to create a region-wide attraction.

(b) One or more exterior boiler structures and all smokestacks of the Power Plant Property are considered to be intrinsic to the historic significance of the complex and must be preserved.

(c) The industrial "power plant" spirit of the Power Plant Property should be clearly maintained and enhanced. Certain of the Power Plant Property's key artifacts have been selected to remain in and around the building as witness to its previous life. The Property should incorporate the power plant "Light" and "Power" motifs.

(d) The new uses should honor the Power Plant Property's architectural form and style.

(e) Constructed elements within the turbine hall of the Power Plant Property may be added to define space and increase square footage at potential mezzanine levels, but must maintain the sense of the overall volume of the space by ensuring that the clerestory windows and entire ceiling is visible from any point within this space. Likewise, suspended ceiling systems are inappropriate here, as these would obscure the original shell of the building. Mechanical and lighting systems should be expressed rather than hidden, in keeping with the industrial and functional spirit of the Power Plant Property.

(f) The Power Plant Property must conserve and restore the existing neon signage on the west face of the Power Plant Property depicting the "City of Austin Power Plant" and on its two southern doorways "Light" and "Power". The Property should work with these themes in establishing its new identity.

4. Construction. Each holder of fee simple title to all or any part of the Property, except if the applicable portion of the Property is subject to a Ground Lease, in which case the ground lessee (each such party, an "Owner") agrees to perform its respective construction: (i) where approval is required, in accordance with such approved Plans; (ii) with due diligence to completion and in a good and workmanlike manner, using first class materials; provided however, the standard for construction and completion contained in the MDA shall govern the initial construction of the improvements; (iii) so as not to unreasonably interfere with any construction work being performed on any other portion of the Property or with the use, occupancy and enjoyment of any other portion of the Property; (iv) to comply with the then current private and governmental requirements applicable thereto (including amendments and modifications), including, without limitation, the Downtown Austin Design Guidelines, building, environmental and zoning laws of the state, county, municipality or other subdivision in which the Property is situated, and all laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments and the appropriate departments, commissions, agencies, boards and officers thereof (collectively, "Legal Requirements").

5. Maintenance. Each Owner shall maintain its portion of the Property, including all structures, parking areas, landscaping, and other improvements, in good condition and repair in a

manner consistent with a Class A mixed use urban development. Such maintenance includes, but is not limited to, the following (as applicable), which will be performed in a timely manner:

- (a) Prompt removal of all litter, trash, refuse, and waste.
- (b) Tree and shrub pruning.
- (c) Watering.
- (d) Keeping exterior lighting and mechanical facilities in working order.
- (e) Keeping lawn and garden areas alive, free of weeds, and in an attractive condition.
- (f) Keeping planting beds free of turf grass.
- (g) Keeping sidewalks and driveways in good condition, repair and appearance.
- (h) Complying with all government, health, safety and police requirements applicable to its portion of the Property in all material respects.
- (i) Repainting of improvements.

Each Owner shall also be responsible for maintaining landscaping and common areas within that portion of any adjacent public right-of-way, plaza, common area, street or alley provided that the Owner has been granted and accepted a license from the Declarant in its regulatory capacity to do so.

The responsibility for maintenance includes responsibility for repair and replacement. Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on its Property, less a reasonable deductible, unless another entity (e.g., a condominium or owners association) carries such insurance. Within 180 days after any damage to or destruction of any improvement constructed upon the Property, the applicable Owner shall promptly repair or reconstruct the improvement in a manner consistent with the original construction or such other plans and specifications as are approved hereunder. Alternatively, the applicable Owner shall clear its Property of debris and maintain it in a neat and attractive landscaped condition.

6. Prohibited Uses on the Property. Unless otherwise approved by Declarant, no Owner may operate or permit on its portion of the Property:

- (a) Any use which constitutes a public or private nuisance or which permits or generates a noxious (as opposed to the normal and customary Class A retail, Class A restaurant, Class A office, Class A hotel or residential) odor, noise, sound, litter, dust, or dirt which can be heard, smelled or readily seen outside of the Property.

- (b) Any use which produces or is accompanied by any unusual fire, explosive, or other damaging or dangerous hazards (including the storage or sale of explosives or fireworks).
- (c) A thrift shop (e.g., Goodwill or St. Vincent de Paul), flea market or pawn shop.
- (d) Repair or service center (except that service centers or service uses which are incidental to a store selling goods and/or services is not prohibited hereunder).
- (e) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.
- (f) Any massage parlor (except that this prohibition will not prohibit day spas or health clubs or spas including those associated with a hotel use).
- (g) Any pet store (other than a "boutique" pet store), veterinary hospital, veterinary office or animal raising or boarding facilities.
- (h) Any mortuary, funeral home, or crematorium.
- (i) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall; provided however this will not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation.
- (j) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, fabricating, distilling, refining, smelting, agricultural or mining operation.
- (k) Any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia or which exhibits either live nude or partially clothed dancers or wait staff or similar establishments; provided, however, this will not prohibit the operation of a movie theater for movies, Blockbuster Video, Hollywood Video or similar operation or a Borders, Barnes & Noble, Waldenbooks or a Books-A-Million or similar operation so long as such operations are not adult oriented (as defined in the sexually-oriented business ordinance of the City).
- (l) A dry cleaning plant, provided this will not prohibit a dry cleaning drop off and pick up use.
- (m) A tattoo parlor, beauty supply store or tanning salon (other than tanning equipment incidental with a spa, health club or hotel).
- (n) A store selling alcoholic beverages for off-premises consumption, other than (i) an "upscale" store selling wines and similar alcoholic beverages, and (ii) stores in

which alcoholic beverages represent less than five percent (5%) of the store's merchandise calculated on the basis of approximate number of individually sold items in such store, it not being Declarant's intent, for example, to prohibit use of the Property for a market in which alcoholic beverages for off-premises consumption represent only a portion of the merchandise available in such market.

(o) Dance clubs, bars or cocktail lounges with aggregate square footage in excess of 8,000 square feet on the ground level of a building (provided that live music venues, hotels, restaurants or comedy clubs with bars or cocktail lounges are permitted).

(p) Bowling alleys on the ground level.

(q) Check-cashing services, unless incidental to use as a bank or other financial institution. This restriction will not prohibit automated teller machines.

(r) Correctional or detention facilities.

(s) Janitorial supplies or services (other than normal janitorial services being provided exclusively to the Property).

(t) Laundromats, provided that this will not prohibit an internal laundry facility associated with a hotel.

(u) Plant nursery (but florist shops are permitted as long as they do not grow flowers in bulk on the premises).

(v) Tools and heavy equipment sales.

(w) Workers compensation offices.

Declarant, through its City Manager (or the City Manager's designee), may waive any of the foregoing use restrictions in writing at any time and from time to time without the joinder of any other party, including without limitation any Owner.

7. Prohibited Uses in Power Plant Property. No Owner of any of the Power Plant Property may operate or permit on its portion of the Power Plant Property:

(a) Any school, training or educational facility, including but not limited to: beauty schools, barber colleges, trade school, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition will not be applicable to on-site employee training incidental to the conduct of its business in the Power Plant Property.

(b) A daycare center larger than 5,000 square feet.

(c) Any business operated on a part time retail basis (i.e., a business operated less than 7 days per week or half of a weekday or Saturday), other than seasonal kiosks.

- (d) Collection agencies.
- (e) Doctor or dentist offices or other medical facilities (other than incidental first aid facilities).
- (f) Rental offices (furniture, etc.); other than rental offices for local transport (e.g., personal motorized transports, boats).
- (g) Tobacco shop (other than a "high end" tobacco shop) (provided that the ancillary sale of tobacco is permitted in other retail establishments).
- (h) Any residential use, including, but not limited to: single family dwellings, apartments, townhouses, condominiums, other multi-family units and other forms of living quarters, sleeping apartments or lodging rooms.
- (i) With respect to the ground level of the existing improvements on the Power Plant Property opening to the Plaza (as such term is defined in Section 9(b)(iv) below) ("**Ground Level**"):

- (i) any Office or Services Use.

- (ii) The term "Office or Service Use" includes those uses which are traditionally associated with an office, industrial, limited office and related uses and include Quasi-Retail, Service Retail, and Service Office uses. "Quasi-Retail" includes but is not limited to a travel agency, establishment that sells glasses but also has an optometrist on site, cell phone store. "Service Retail" includes but is not limited to a copy center, cleaners, tailor/alterations, salon, travel agent, etc. "Service Office" includes but is not limited to brokerage office, insurance agency, medical or dental office, law office, office offering income tax preparation.

- (iii) Notwithstanding Sections 7(i)(i) and 7(i)(ii) above, the Ground Level may be used for Office or Service Use if:

- (A) the Ground Level includes a public space of at least 1,000 gross square feet providing views into the turbine hall volume (including clerestory windows and ceiling), that is intended to educate the public regarding the history of the Power Plant Property as a power plant and containing a coffee and/or juice bar or comparable public type use (unless such space is combined with another use which includes similar amenities) and in which space Declarant, at Declarant's sole option and expense, and with Owner's reasonable cooperation, can promote sustainable building design in no less than 100 contiguous square feet of dedicated wall or floor space (unless otherwise approved in writing by the City's Economic Growth and Redevelopment Services Office, or successor department, which approval will be given within 15 days after Owner's written request therefor);

(B) the Ground Level (including any space that is attached to the Power Plant Building [as defined in the MDA]) includes space for a public restaurant, public retail or other public use of at least 5,000 gross square feet facing the Plaza and contains at least 1,000 square feet of public dining, public retail or other public use space overlooking the turbine hall from the Ground Level or mezzanine level of the improvements on the Power Plant Property near a historic boiler;

(C) the Ground Level includes a public space of at least 1,000 gross square feet at a main entry of the improvements on the Power Plant Property providing views into the turbine hall volume and containing a public art display (the "Art Display") in accordance with the paragraph below concerning such Art Display; and

(D) No Office or Service Use lease of the Ground Level may provide for a term (including extension terms) longer than 20 years.

As used in (A), (B) or (C) above, the term "public" means a space that is open for at least eight hours a day five days a week (including at least one weekend day) to people in the general public who may or may not purchase goods or services in the applicable space.

The uses described in (A), (B) or (C) above may be separate or combined with each other so long as the total space is at least 7,000 gross square feet. The Owner may reasonably allocate such uses among the spaces described in (A), (B) and (C) above.

The use restrictions in (A), (B) or (C) above will be set forth in all leases of the applicable spaces.

Any space providing views into the turbine hall volume (including clerestory windows and ceiling) of the improvements on the Power Plant Property may be designed and constructed in such a manner as to reasonably protect the privacy and security of any tenant of the Power Plant Property affected thereby but provide the public aspects of spaces set forth above.

Unless required by applicable law, any space used for Office or Service Use shall not be required to provide access to or facilities for any members of the general public including, without limitation, restrooms.

The Owner of the Property will not be obligated to provide the Art Display. The Art Display may be provided, managed and maintained by the Declarant (in the Declarant's sole discretion) and the Owner of any space in which the Art Display will be located will reasonably cooperate (at no cost to such Owner) with the Declarant in connection therewith. The Declarant may change the Art Display from time to time with reasonable prior written notice to Owner. In Declarant's installation, replacement, management and maintenance of the Art Display, the Declarant will be entirely responsible for such art. The Declarant will not

unreasonably interfere with any tenants of the Power Plant Property or Owner's ownership, operation, maintenance or management thereof. The Declarant will be responsible for any damage it causes to person or property (including the Power Plant Property) in connection with Declarant's installation, replacement, management and maintenance of the Art Display. If the City Manager of the Declarant elects in writing not to provide an Art Display in the space described in (C) above then the Owner of such space may lease or use it for any other public type use and Declarant may not use such space for an Art Display without such Owner's (and, if applicable, such Owner's tenant's prior written consent) until such alternate public type use and related lease (if any) ceases, expires by its terms or is earlier terminated, as applicable.

(iv) If the Owner of the Power Plant Property in anticipation of the expiration or termination of such lease desires to lease the Ground Level for Office or Service Use after the initial lease term, such Owner shall market in good faith (A) the available space in the improvements on the Power Plant Property exclusively for Office or Service Use, and (B) the available space on the Ground Level for retail use and the other available space in the improvements on the Power Plant Property for all uses through an independent, nationally or regionally recognized real estate brokerage firm for a period of not less than 120 days or shall obtain a third party appraisal report from a licensed commercial real estate appraiser having no less than 10 years experience in the Austin commercial real estate market. The scope of the assignment given to the brokerage firm is subject to the prior reasonable approval of the City Manager of Declarant. Based on that marketing process or appraisal, the Owner shall submit to the City Manager of Declarant (for the City Manager's distribution to the City Council) a report or appraisal (the "**Report**"), as applicable, that compares the economic consequences of leasing the improvements on the Power Plant Property for exclusively Office or Service Use against leasing the Power Plant Property with Ground Level retail use (including all required capital expenditures, rental rates, term of lease, rent concessions such as tenant improvement allowance, free rent periods and similar economic factors (collectively, the "**Economic Factors**")). The City will have not less than 60 days nor more than 90 days to review the Report during which time the Owner may not lease the applicable space. If the overall Economic Factors of leasing the Power Plant Property with retail uses on the Ground Level are less advantageous to Owner by 10% or more as compared to leasing the Power Plant Property for exclusively Office or Service Use, then Owner may continue to lease the entire Power Plant Property (including the Ground Level) for Office or Service Use, subject to Section 7(i)(iii) above; and, provided, that in all instances, any other then existing Office or Service Use tenancy(ies) of the Power Plant Property (as the same from time to time may be extended) may continue unimpaired (but subject to the terms hereof).

(v) In anticipation of the expiration or termination of each lease of the lowest basement level of the improvements on the Power Plant Property (no such lease can exceed a total of 20 years) or if any currently anticipated Office and Service Use lease of the Ground Level and both basement levels of the

improvements on the Power Plant Property is not executed, the Declarant will have an ongoing exclusive sixty (60) day right to negotiate with the Owner thereof a lease for a civic and/or public use for up to 45,000 gross square feet in the lowest basement of the improvements on the Power Plant Property; provided, that in all instances, any other then existing tenancy(ies) of the basement levels of the improvements on the Power Plant Property (as the same from time to time may be extended) may continue unimpaired (but subject to the terms hereof). Any such lease must be on competitive market terms and conditions. If the Declarant and the applicable Owner do not agree in writing on the terms of such lease within that sixty (60) day period or if having agreed in writing on such terms during that sixty (60) day period do not enter into a binding lease document within sixty (60) days after agreeing to such terms, the Declarant's then current right to negotiate thereupon shall terminate and Owner shall have the right to lease such vacant space to any person and upon any lease terms desired by Owner which are, when taken as a whole, not less than 90% as favorable to such tenant as compared to the economic terms offered to Declarant. If the economic terms offered to such tenant are less than 90% as favorable to such tenant as the Declarant, such Owner must again offer such space to Declarant on the terms and conditions contained herein prior to leasing any such space to a third party. The Owner shall have the right to grant to any tenant in occupancy at any time, any extension of the term and/or any expansion of the space under its lease without triggering the right of first negotiation herein granted Declarant (provided the total term of such lease will not exceed 20 years).

The provisions of this Section 7(i) (iii)-(v) above will not be applicable unless the Ground Level is being leased (or contemplated being leased) for Office or Service Use.

Declarant, through its City Manager (or the City Manager's designee), may waive any of the foregoing use restrictions, conditions or requirements in writing at any time and from time to time without the joinder of any other party, including without limitation any Owner.

8. Other Restrictions And Requirements.

(a) Plaza Programming. The Owners must cause the Property's management company to submit to the Declarant, for the Declarant's review and approval, on or before January 1 of each of the first 3 years following completion of the renovation of the Power Plant Property a proposed programming plan for the Plaza. Such programming plan will include, in reasonable detail, the events planned for the upcoming year.

(b) Naming of Development. Owner shall not change the name of the Power Plant Property without the prior written consent of Declarant, which consent may be granted or withheld in Declarant's sole discretion.

(c) Tax Exempt Entities. Prior to the Repayment Incentives Date (as defined in the MDA), the Owner shall not sell any portion of the Property or lease any portion of the Property to a governmental entity, nonprofit corporation, nonprofit organization or

similar entity which may be exempted under Legal Requirements from the obligation to pay ad valorem taxes without the prior approval of the Declarant.

(d) Green Building Covenant. Owner will cause the shell portion of the improvements on the Residential Property and the Office Property (not including commercial interiors) to be constructed to achieve at least a Three Star Green Building rating under the Declarant's Green Building Program. Owner will cause the shell portion of the improvements on the Power Plant Property (not including commercial interiors) to be renovated to achieve at least a Two Star Green Building rating under the Declarant's Green Building Program. If Declarant's Green Building Program no longer exists, Declarant, in its reasonable discretion, shall select another comparable program and standard with which to evaluate the improvements.

(e) Affordable Housing. If any portion(s) of the Property equal to or greater 10% of the total units in the Property is owned by a single owner or a group of related owners and such units are utilized as a "for rent" residential multi-unit facility (e.g., not a hotel or the lease of individual units by end users), such applicable portion(s) of the Property must comply with the remainder of this Section. The Property is anticipated to be developed as a hotel, retail, office and "for sale" residential condos. If the Property is not so developed (or is later redeveloped) or all or any portion (or multiple portions) of the Property is utilized as a "for rent" (i.e., a common owner owns multiple units and rents such units to end users), it is the intent of the Declarant to ensure that a portion of such "for rent" units be available to persons of limited financial means, as provided below.

(i) For a period of 40 years beginning on the date the Property is utilized as "for lease" property (the "**Affordable Housing Period**"), the applicable Owner agrees to lease, or hold available to lease, to households whose income is equal to or less than 80% of the median income for households of equivalent size as determined by the United States Department of Housing and Urban Development ("**HUD**") for the Austin – San Marcos, Texas Metropolitan Statistical Area (the "**MSA**"), 5% of the units then in existence in the applicable portion of the Property. A unit that is leased, or held available for lease, to persons who meet the above criteria (a "**Qualifying Household**") is hereinafter referred to as a "**Restricted Unit**". If the applicable portion of the Property contains at least twenty units of a particular type (e.g., one bedroom, two bedroom three bedroom), then at least 5% of the "for rent" units of that type shall be Restricted Units. If the applicable portion of the Property contains less than twenty units of a particular type, then Owner may, but is not obligated to, designate one or more of the units of that type as a Restricted Unit. The Restricted Units must be comparable in quality to similarly sized, non-restricted units of the same type on the applicable Property, but Owner shall have the discretion to designate any unit on the applicable portion of the Property as a Restricted Unit and to change such designation at any time. The examples set out above (one bedroom, two bedroom, three bedroom, etc.) are examples only, and Owner is not obligated to construct or offer any specific type of unit, nor any specific number of particular types of units

(ii) The rental rate for the Restricted Units must be an amount which does not exceed 28% of such Qualifying Household's gross income. During the Affordable Housing Period, Owner shall keep records of the rental amounts of the Restricted Units and the gross income of the Qualifying Households. The records will be available for annual review by the Declarant.

(iii) Notwithstanding any other provision of this Declaration, the following provisions will govern any breach by Owner of its covenants in this Section:

(A) Owner must not be considered to have breached any covenant in this Section until Declarant has provided Notice to Owner of Owner's breach and Owner has not cured such breach within 30 days of Owner's receipt of such Notice.

(B) Should Owner breach a covenant in this Section and until such time as the breach is cured, as Declarant's sole and exclusive remedies, (i) Owner shall pay to Declarant liquidated damages in the amount of \$1,000 per month for each unrestricted unit that would need to be restricted in order to maintain the requirement that 5% of the units in the applicable portion of the Property be Restricted Units and (ii) Declarant shall have the right to specifically enforce the covenants set forth in this Section.

(C) Declarant acknowledges that Owner will be relying on prospective tenants to provide Owner with the information to determine whether or not such prospective tenants are Qualifying Households. Declarant agrees that in no event will Owner be held liable for a breach of this Section due to false information provided to Owner by such prospective tenants, provided that upon learning that a tenant of a Restricted Unit is not a Qualifying Household, Owner diligently pursues the leasing of such Restricted Unit to a Qualifying Household following the expiration of the lease term of such tenant.

(f) Bicycles and Showers. Subject to applicable laws, each occupant(s) of a condominium or for rent unit will be allowed to store its bicycles on the patio/deck/balcony of such unit. Subject to applicable laws, the Owner of an office building on the Property must make shower facilities available to the commuting cyclists who are tenants of such office building.

## 9. Easements.

(a) General Definitions and Documentation. For the purposes of this Section 9, the following provisions shall apply:

(i) Each easement is granted for the benefit of the applicable portion of the benefitted Property's then current Owner and its officers, directors, partners, employees, agents, contractors, subcontractors, customers, visitors,

invitees, tenants, subtenants, licensees and concessionaires to use such easement, provided that no Grantee shall authorize a use of the easement in excess of the use intended at the date of the grant of such easement.

(ii) The word "in" with respect to an easement grant means, as the context may require, "in", "to", "on", "over", "through", "upon", "across" and "under", or any one or more of the foregoing.

(iii) Where only a portion of the Property is bound and burdened by an easement only that bound and burdened portion shall be deemed to be the servient tenement. Where only a portion of the Property is benefited by an easement, only that benefited portion shall be deemed to be the dominant tenement.

Each Owner may eject or cause the ejection from its portion of the Property any Person not authorized, empowered or privileged under this Declaration to use such portion of the Property. Notwithstanding the foregoing, each Owner may close any portion of its portion of the Property for such reasonable period or periods of time as may be legally necessary in the reasonable opinion of its attorney to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to any such closing, such Owner shall give written notice to each other Owner of its intention to do so, and shall coordinate such closing with all other Owners so that such closing shall cause no unreasonable interference with the operation of the Property.

(b) Specific Definitions. The following terms shall have the following respective meanings:

(i) Allocable Share. Shall mean 33.01% for the Power Plant Property, 48.37% for the H/R Master Unit, and 18.62% for the L/R Master Unit, respectively.

(ii) Condominium Association. Shall mean Seaholm Power Master Condominium Association, Inc., a Texas nonprofit corporation.

(iii) Person. Shall mean all individuals, partnerships, firms, associations and corporations, and any other form of business or government entity, and the use of the singular shall include the plural.

(iv) Plaza. Shall mean that certain area located on the Property as more particularly depicted on Exhibit B attached hereto.

(v) Property Access Areas. Shall mean the portion of the Property intended to be used for non-exclusive ingress and egress as initially depicted on Exhibit C attached hereto.

(vi) Property Percentage. Shall mean 53% for the Power Plant Property, 17% for the H/R Master Unit, and 30% for the L/R Master Unit, respectively.

(vii) Tunnel. Shall mean that certain area located on the Property as more particularly depicted on Exhibit E attached hereto.

(c) Plaza Easement. Declarant grants to each Owner (for the benefit of their respective portion of the Property) a perpetual and non-exclusive access and use easement in the Plaza.

The Owner of the L/R Master Unit shall be primarily responsible for the maintenance, replacement and repair of the Plaza and for causing the maintenance of insurance on the Plaza (but such assignment will not relieve the Owners of their responsibility for maintenance set forth in Section 5 hereof). The Owner of the L/R Master Unit shall have the right to charge the Owner of the H/R Master Unit its Allocable Share of the costs of maintaining the Plaza, such costs being due and payable within 30 days of the Owner of the H/R Master Unit's receipt of an invoice and reasonable back-up for such costs.

The Owner of the L/R Master Unit, from time to time, shall have the right to adopt reasonable regulations relating to the use of the Plaza (recognizing that the Plaza is intended to be used generally by tenants of the Property and the improvements thereon, the employees, guests and invitees of those tenants and the general public, except as may be reserved in accordance with such regulations) and such regulations shall be effective upon delivery of such regulations to the Owners. In accordance with Section 15(h) of this Declaration, nothing contained herein shall cause the Plaza to be dedicated to the public.

(d) Easement for Storm Water Drainage. Declarant grants to each Owner (for the benefit of their respective portion of the Property) a perpetual and non-exclusive drainage easement to discharge surface storm water drainage and/or runoff from such Owner's portion of the Property, upon the following terms and conditions:

(i) The grades and the surface water drainage/detention system for the Property shall be initially constructed in strict conformance with the plans and specifications approved by the Owners; and

(ii) No Owner shall alter or permit to be altered the surface of the Property or the drainage/detention system constructed on its portion of the Property if such alteration would materially increase the flow of surface water onto another portion of the Property either in the aggregate or by directing the flow of surface water to a limited area. The Condominium Association shall maintain and repair all drainage/detention systems for the benefit of the Owners and the cost of such maintenance and repair shall be allocated to the Owners in accordance with their respective Property Percentage, such costs being due and payable within 30 days of an Owner's receipt of an invoice and reasonable back-up for such costs.

(e) Easements for Ingress and Egress. Declarant grants to each Owner (for the benefit of their respective portion of the Property) a perpetual and non-exclusive

easement for pedestrian and vehicular traffic in the Property Access Areas and those portions of the pedestrian stairways, walkways, bicycle paths, parking decks, driveways, curbs and landscaping within or adjacent to the Property Access Areas or other areas used for parking of motor vehicles for the purpose of providing (i) ingress and egress between an Owner's portion of the Property and adjacent public streets, and (ii) vehicular and pedestrian circulation around and within the Property.

(f) Fire Lane Easement. Declarant hereby grants to each Owner (for the benefit of their respective portion of the Property) a perpetual and non-exclusive easement in the fire lanes as shown on Exhibit D attached hereto and as otherwise required by the Legal Requirements.

(g) Tunnel Easement. Declarant grants to each Owner (for the benefit of their respective portion of the Property) a perpetual and non-exclusive access easement to the Tunnel for access between the Power Plant Property and the Underground Garage.

The Owner of the L/R Master Unit shall be responsible for the maintenance, replacement and repair of the Tunnel and for causing the maintenance of insurance on the Tunnel in the types and amounts reasonably determined by the Owner of the L/R Master Unit. The Owner of the L/R Master Unit shall have the right to charge the Owner of the H/R Master Unit its Allocable Share of the costs of maintaining the Tunnel, such costs being due and payable within 30 days of the Owner of the H/R Master Unit's receipt of an invoice and reasonable back-up for such costs.

(h) Intentionally Omitted.

(i) Correction of Site Descriptions. It is recognized that the areas subject to the foregoing easements may not be precisely constructed as described in their respective exhibits and descriptions. In such event, promptly upon the request of any Owner, all of the Owners will join in the execution of an agreement, in recordable form, amending such exhibits and descriptions, to revise the description of such areas to coincide with the as-built location.

(j) Indemnification.

(i) General. Each Owner assumes liability for, and shall indemnify, protect, save and keep harmless each other Owner and its respective officers, directors, contractors, employees and agents (each an "Indemnitee") from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses, including reasonable legal expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against any Indemnitee (a "Claim"), in any way arising out of the Indemnifying Party's breach of Section 9 of this Declaration, the Indemnifying Party's acts or omissions, or the Indemnifying Party's use, ownership, possession, delivery, lease, sublease, operation or condition of the Property or any part thereof pursuant to Section 9 of this Declaration (including, without limitation, latent or other defects, whether or not discoverable by any Person, any claim in tort for strict liability and any claim

for patent, trademark or copyright infringement). The provisions of this Section 9(j)(i) will survive the expiration or earlier termination of this Declaration.

(ii) Indemnity Procedures. With respect to all the indemnity obligations in this Section 9(j), if an Indemnitee notifies the Indemnifying Party of any claim, demand, action, administrative or legal proceeding, investigation or allegation as to which the indemnity provided for in this Section 9(j) applies, the Indemnifying Party shall assume on behalf of the Indemnitee and conduct with due diligence and in good faith the investigation and defense thereof and the response thereto with counsel reasonably satisfactory to the Indemnitee; provided, that the Indemnitee shall have the right to be represented by advisory counsel of its own selection and at its own expense; and provided further, that if any such claim, demand, action, proceeding, investigation or allegation involves both the Indemnifying Party and the Indemnitee and the Indemnitee shall have been advised in writing by reputable counsel that there may be legal defenses available to it which are inconsistent with those available to the Indemnifying Party, then the Indemnitee shall have the right to select separate counsel to participate in the investigation and defense of and response to such claim, demand, action, proceeding, investigation or allegation on its own behalf, and the Indemnifying Party shall pay or reimburse the Indemnitee for all reasonable attorney's fees incurred by the Indemnitee because of the selection of such separate counsel. If any claim, demand, action, proceeding, investigation or allegation arises as to which the indemnity provided for in this Section applies, and an Indemnifying Party fails to assume promptly (and in any event within 20 days after being notified of the claim, demand, action, proceeding, investigation or allegation) the defense of the Indemnitee, then the Indemnitee may contest (or settle, with the prior consent of the Indemnifying Party, which consent will not be unreasonably withheld) the claim, demand, action, proceeding, investigation or allegation at the Indemnifying Party's expense using counsel selected by the Indemnitee; provided, that after any such failure by the Indemnifying Party which continues for 60 days or more no such contest need be made or continued by the Indemnitee and settlement or full payment of any claim may be made by the Indemnitee without the Indemnifying Party's consent and without releasing the Indemnifying Party from any obligations to the Indemnitee under this Section if, in the written opinion of reputable counsel to the Indemnitee, the settlement or payment in full is clearly advisable. The Indemnitee shall (a) use commercially reasonable efforts to provide prompt written notice to the Indemnifying Party of a Claim, and (b) reasonably cooperate with the Indemnifying Party in the investigation and defense of a Claim. If the Indemnitee breaches its obligations contained in the previous sentence, the liability of the Indemnifying Party under this Section shall be reduced by the amount such breach directly caused a material impairment of the defense of the Claim. The provisions of this Section 9(j)(ii) will survive the expiration or earlier termination of this Declaration.

(iii) Notwithstanding anything contained herein to the contrary, the City of Austin shall not be subject to any indemnity provisions contained in this Declaration, including, without limitation, those contained in Section 9(j) hereof.

(k) Condemnation.

(i) Determination of Award. Any award for the value of an interest in real property and severance damages for injury to remaining real property (the "Award"), whether the same shall be obtained by agreement prior to or during the time of any court action, or by judgment, verdict or order, or by agreement under the threat of or after any such court action, resulting from a taking by exercise of right of eminent domain or in lieu of the exercise of the right of eminent domain of any portion of the Property subject to this Section 9 or resulting from a requisitioning thereof by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstances (hereinafter collectively referred to as "Condemnation"), shall be distributed among the parties to this Declaration in accordance with the terms and conditions of this Section 9(k), notwithstanding any provision of any mortgage, judgment, verdict or order to the contrary. To the extent the Condemnation Award includes a component identified as the undivided interest in the reciprocal easements created by this Section 9 such component shall be divided among the Owners according to the value assessed to such interests by the condemning authority.

(ii) Lender Participation. Nothing herein contained shall be deemed to prohibit any Lender (as such term is defined in Section 13(a) of this Declaration) from participating in any Condemnation proceedings on behalf of any Owner who has a Lender, or in conjunction with any such Owner; provided the same does not reduce the Award to any Owner or the distribution thereof in accordance with Section 9(k)(i).

(iii) Obligation to Repair. In the event of a Condemnation subject to this Section 9(k), whether partial or total, each Owner shall repair, restore, and rebuild or cause to rebuild its portion of the Property in a manner consistent with the original construction or such other plans and specifications as are approved by the applicable Owners, to the extent of the condemnation proceeds received by such Owner. Such constructing Owner shall be solely responsible for and shall pay the balance after any Award, if any, of the costs to so restore its portion of the Property.

(iv) Termination of Benefits. In the event of a permanent taking by Condemnation subject to this Section 9(k), all easements appurtenant to the portion so condemned shall, upon the taking of such portion, terminate to the extent they are appurtenant to such portion, but shall continue as to any portion not so condemned.

(i) Unresolved Issues. Any issue which is not resolved by any judgment in the Condemnation proceedings or supplemental determination therein shall be resolved among the Owners acting in good faith.

(l) Taxes and Assessments.

(i) Payment. Each Owner shall pay, or cause to be paid, prior to delinquency, all taxes and assessments upon its portion of the Property subject to this Section 9, and the buildings and improvements thereon, provided that, if the taxes or assessments or any part thereof, may be paid in installments, any Owner may pay each such installment as and when the same becomes due and payable.

(ii) Contest. If any Owner shall deem the taxes and/or assessments, or any part thereof, to be paid by such Owner to be excessive or illegal, such Owner shall have the right to contest the same at its own cost and expense, and shall have the further right to defer payment thereof so long as the validity or the amount thereof is contested in good faith; provided, however, that, if at any time payment of the whole or any part thereof shall be necessary in order to prevent the sale of the property because of the nonpayment of any such unpaid tax or assessment, then the contesting Owner shall pay or cause to be paid the same at least 30 days in advance of the date when payment is necessary to prevent such sale. Any such payment may be paid under protest.

(iii) Non-Payment of Taxes by an Owner. In the event any Owner shall fail to comply with its covenant as set forth in this Section 9(1), any other Owner may, upon at least 30 days written notice, pay such taxes and penalties and interest thereon, and shall be entitled to prompt reimbursement from the defaulting Owner for the sums so expended, with interest thereon as is permitted pursuant to this Declaration.

(iv) Applicability to City as Owner. Notwithstanding anything contained herein to the contrary, so long as the City is the Owner of Garage Master Unit A, the provisions of Section 9(1)(iii) shall not apply to the City.

10. Underground Garage.

(a) The Underground Garage is intended to be a public parking facility available to the general public, including the Property's tenants, subtenants, invitees, customers and guests, and Declarant grants to each of the Owners such perpetual and non-exclusive access easements and rights as are necessary and appropriate to allow use of the Underground Garage as a public parking facility as contemplated herein, but specifically limited as provided herein. Declarant agrees not to dedicate its spaces in Garage Master Unit A to any specific use (other than general public use) or development. For clarity, (i) subject to Section 10(b) below, Declarant has not, and will not, reserve, set aside or otherwise dedicate any spaces in Garage Master Unit A for the use of the tenants, subtenants, invitees, customers and guests of the Office Property and the Power Plant Property (collectively, the "Seaholm Garage Users"), and (ii) even though Garage Master Unit A is generally available for public parking, including the Seaholm Garage Users, such parking may not be available to all such parties at all times.

(b) Notwithstanding Section 10(a) above, of the 538 spaces in the Underground Garage, the Owner of the L/R Master Unit and the Owner of the Power Plant Property will have the first right to lease to Seaholm Garage Users up to 475 of the

spaces in the Underground Garage (252 in Garage Master Unit A) on an unreserved contract basis (although up to 65 spaces may be leased on a reserved contract basis) and the general public will have the first right to use/lease the remaining 63 spaces in Garage Master Unit A on an unreserved basis. Such right of the "general public" to use/lease spaces includes the use/lease by the employees, patrons, guests and invitees of the nearby City of Austin library of up to 50 spaces out of such 63 spaces. As used in this paragraph, the phrase "first right" means a group's right to use/lease a space will be superior to the other group. To the extent not fully used/leased, one such group may utilize/lease the other group's spaces. By way of example and not of limitation, if the Seaholm Garage Users lease 262 spaces in Garage Master Unit A and there is no corresponding need of the general public to use/lease all 63 spaces in Garage Master Unit A, such Seaholm Garage Users leases are permissible. By contrast, if the Seaholm Garage Users lease 262 spaces in Garage Master Unit A and there is a corresponding need of the general public to use/lease all 63 of the spaces in Garage Master Unit A, 10 of the leases to Seaholm Garage Users in Garage Master Unit A would have to be terminated. If unrelated Owners own the Power Plant Property and the L/R Master Unit, those Owners may, subject to this Section 10, allocate the parking spaces between the two properties as they determine in their sole discretion and will provide Declarant written notice thereof.

(c) Except for up to 65 reserved contract spaces in the Underground Garage, all spaces in the Underground Garage will be available to the general public (i.e., the general public will have a superior use right) from 7:00 pm until 7:00 am on weekdays and during the weekends.

11. Modifications and Termination. This Declaration may be modified or terminated upon the written consent of all of (a) Declarant, and (b) the Owner(s) of at least fifty-one percent (51%) of the floor area of the improvements within two of the three buildings located on the Property; provided however, the City may remove any portion of the Property from this Declaration if it owns fee title to said portion of the Property and such portion of the Property is not burdened by a ground lease. In (b) above "Owners" shall mean, with respect to a portion of the Property that is subject to a ground lease, the ground lessee and not the ground lessor. Notwithstanding the foregoing, any modification of Section 10 hereof will not require the consent of the Owner of the Residential Property or its mortgagee.

12. Term. The term of this Declaration will commence upon the date of filing this instrument for record in the land records of Travis County, Texas and will continue for a term of forty (40) years; thereafter this Declaration will be renewed automatically for successive twenty (20) years terms unless, at any time, terminated pursuant to Section 11 of this Declaration, and such termination is filed of record.

13. Default.

(a) In the event of a default of the terms and conditions of this Declaration by any Owner, such Owner will have 20 days in which to cure such default after receipt of notice of said default from Declarant or another Owner. Declarant shall also deliver such written notice to any unaffiliated, third party lender ("**Lender**") of such defaulting Owner

if Declarant is provided notice of such Lender in writing (with a contact name and address) prior to such default and such Lender will have the same right of cure hereunder as the defaulting Owner and the timeframe for cure will run concurrently with such Owner's cure period. If the default can not be cured, using reasonable due diligence, within 20 days of receipt of the notice of default, then the defaulting Owner or the applicable Lender will have such additional time as may be reasonably necessary to cure such default, conditioned upon the defaulting Owner or applicable Lender commencing the cure within such 20 day period and diligently pursuing the curing of the default through conclusion; provided however, such additional time will not apply for any situations, conditions or issues in which the health or safety of the public at large is compromised. If that the default cannot be cured in a timely manner as required in this Section, Declarant or the notifying Owner will have the right to obtain an injunction from an applicable court of law to enforce specific performance on the part of the defaulting Owner, the amount of any bond for same being not more than \$100. In addition to the foregoing, the Declarant will have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Declaration against the defaulting Owner. With respect to a default of maintenance responsibilities under Section 5 hereof, following the notice and cure period set forth above, the Declarant may perform such maintenance responsibilities and assess all costs incurred by the Declarant against such defaulting Owner; provided, Declarant may assign its right to conduct such maintenance to any appropriate entity. **THE DECLARANT AND ANY NOTIFYING OWNER AND THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES WILL NOT BE HELD LIABLE TO ANY PERSON FOR EXERCISING THE RIGHTS GRANTED BY THIS DECLARATION (INCLUDING LIABILITIES RESULTING FROM DECLARANT'S OR NOTIFYING OWNER'S NEGLIGENCE OR STRICT LIABILITY) UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR BAD FAITH OF THE DECLARANT OR NOTIFYING OWNER, AS THE CASE MAY BE, OR ONE OR MORE OF THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES.**

(b) In the event of a default hereunder which is not cured within any time herein specified, it will not terminate this Declaration nor the obligations of any of the Owners, nor terminate the rights of any other Owner with respect to its portion of the Property, nor withhold the benefits of this Declaration from any other Owner by reason of any default by such Owner, it being the express understanding that, subject to any other terms hereof, this Declaration will continue in effect throughout its term, notwithstanding any default by any Owner.

14. Approval. Unless expressly stated otherwise herein to the contrary, any approval (including without limitation, approval of any amendment), agreement, determination, consent, approval of scope, waiver, estoppel certificate, estimate or joinder by the Declarant required hereunder may be given by the City Manager of the Declarant or its designee; *provided however*, except for minor amendments, modifications or clarifications, the City Manager does not have the authority to execute any substantial modification or termination of this Declaration without

the approval of the Austin City Council. With respect to any plan approvals, the City Manager may enlist any individual or party to assist in such approval.

15. Miscellaneous.

(a) Capacity of Declarant. **GENERALLY, APPROVALS UNDER THIS DECLARATION ARE NOT A SUBSTITUTE FOR ANY APPROVALS OR REVIEWS REQUIRED BY ANY GOVERNMENTAL AUTHORITY OR ENTITY HAVING JURISDICTION OVER ARCHITECTURAL OR CONSTRUCTION MATTERS. THE DECLARANT UNDER THIS DECLARATION IS A GOVERNMENTAL ENTITY, HOWEVER, ALL GRANTS OF EASEMENTS AND OTHER RIGHTS AND OBLIGATIONS AS WELL AS ALL ACTIONS OF DECLARANT TAKEN WITH RESPECT TO THIS DECLARATION WILL BE GRANTS AND ACTIONS TAKEN IN ITS CAPACITY AS A LANDOWNER (I.E., A SELLING LANDOWNER AND AS THE OWNER OF AN ADJACENT PARCEL OF LAND) INSTEAD OF IN ITS CAPACITY AS A GOVERNMENTAL ENTITY. BY WAY OF EXAMPLE AND NOT OF LIMITATION, APPROVAL BY DECLARANT OF THE PLANS WILL NOT CONSTITUTE APPROVAL TO COMMENCE CONSTRUCTION (I.E., A BUILDING PERMIT) BY THE CITY OF AUSTIN IN ITS REGULATORY CAPACITY. NOTHING IN THIS SECTION IS DEEMED TO WAIVE OR INHIBIT ANY SOVEREIGN IMMUNITY RIGHTS. OWNER ACKNOWLEDGES THAT THE DECLARANT CANNOT CONTRACT IN ANY MANNER REGARDING THE EXERCISE OF ITS SOVEREIGN POWERS.**

(b) Notices. Formal notices, demands and communications will be sufficiently given if, and will not be deemed given unless, delivered personally, dispatched by certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the Declarant may designate in writing from time to time:

If Declarant:           City of Austin  
                                  City Manager's Office  
                                  301 West 2nd Street  
                                  Austin, Texas 78701  
                                  Attention: City Manager

With a copy to:        City of Austin  
                                  Economic Growth and Redevelopment Services Office  
                                  301 West 2nd Street  
                                  Austin, Texas 78701  
                                  Attention: Director

With a copy to:        City of Austin  
                                  Law Department  
                                  301 West 2nd Street

Austin, Texas 78701  
Attention: City Attorney

With a copy to: City of Austin  
Office of Real Estate Services  
505 Barton Springs, Suite 1355  
Austin, Texas 78704

Notices to the Owners within the Property will be sent to the tax address maintained by the Travis Central Appraisal District (or successor entity).

(c) Consents. Whenever pursuant to this Declaration an Owner's consent or approval is required, such consent or approval must be in writing and, unless otherwise provided in this Declaration, the decision as to whether or not to grant such consent or approval will be in the sole discretion of such Owner and such consent or approval may be withheld by such Owner for any reason.

(d) Covenants Run with the Land. The terms of this Declaration constitute covenants running with, and will be appurtenant to, the land affected by this Declaration for the term hereof. All terms of this Declaration will inure to the benefit of and be binding upon the parties which have an interest in the benefited or burdened land and their respective successors and assigns in title. This Declaration is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby. All provisions of this Declaration that govern the conduct of the Owner and that provide for sanctions against the Owner for the breach hereof will also apply to all occupants (including lessees), guests, and invitees. Every Owner shall cause all occupants (including lessees) of the Owner's portion of the Property to comply with this Declaration and any rules and regulations adopted, and will be responsible for all violations and losses caused by those occupants (including lessees), notwithstanding the fact that those occupants (including lessees) of the Owner's portion of the Property are fully liable and may be sanctioned for any violation of this Declaration and rules and regulations adopted pursuant thereto.

(e) Estoppel Certificates. Upon 30 days' prior written notice not more than twice in any 12-month period, the Owners each agree to sign and deliver to the other Owners a statement certifying (a) that this Declaration is unmodified and in full force and effect (or, if that is not the case, so stating and setting forth any modifications), (b) that, to the responding Owner's knowledge, the requesting Owner is not in breach of this Declaration (or, if that is not the case, so stating and setting forth any alleged breaches), and (c) any other information reasonably related to the status of this Declaration. Any such certificate from an Owner shall be in form and content acceptable to the Owner requesting same. This certificate may only be relied upon by the Owner requesting the certificate and any parties specifically identified by name in the request, may only be used to estop the responding party from claiming that the facts are other than as set forth in the certificate, and may not be relied upon by any Person or entity, even if named in such estoppel certificate, who knows or should know that the facts are other than as set forth in such certificate.

(f) Singular and Plural. Whenever required by the context of this Declaration, the singular will include the plural, and vice versa, and the masculine will include the feminine and neuter genders, and vice versa.

(g) Negation of Partnership or Other Entity. None of the terms or provisions of this Declaration will be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor will it cause them to be considered joint venturers or members of any joint enterprise. Each Owner will be considered a separate owner, and no Owner will have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

(h) Not a Public Dedication. Nothing herein contained will be deemed to be a gift or dedication of any portion of the Property or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of the Owner will inure to the benefit of any third party, nor will any third party be deemed to be a beneficiary of any of the provisions contained herein.

(i) Severability. Invalidity of any of the provisions contained in this Declaration, or of the application thereof to any person by judgment or court order will in no way affect any of the other provisions hereof or the application thereof to any other person and the same will remain in full force and effect.

(j) Captions and Capitalized Terms. The captions preceding the text of each article and/or section are included only for convenience of reference. Captions will be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

(k) Time. Time is of the essence of this Declaration.

(l) Non-Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof will not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and will not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

(m) No Merger. The subsequent merger of title in and to any one or more of portions of the Property, or any portions thereof, by sale, transfer or other conveyance, will not operate as a merger or termination of any other rights created and established hereunder, it being the intent that such rights will survive notwithstanding the merger of title.

(n) Legal Fees. In any action to enforce this Declaration, the prevailing party will be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs reasonably incurred in such action.

(o) Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the Property will at all times be subject and subordinate to the terms of this Declaration and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, will acquire title subject to all of the terms and provisions of this Declaration.

(p) Binding Effect. Every agreement, declaration, covenant, promise undertaking, condition, right, privilege, option and restriction made, declared, granted or assumed, as the case may be, in this Declaration is not only for the benefit of each Owner personally but also as Owners of a portion of the Property, and will constitute an equitable servitude on the portion of the Property owned or leased by such party appurtenant to and for the benefit of the other portions of the Property, and the benefits and burdens thereof will run with the title to the Property. Any transferee of any part of the Property will automatically be deemed, by acceptance of the title to any portion of the Property, to have assumed all obligations of this Declaration relating thereto to the extent of its interest in its portion of the Property and to have agreed with the then Owner or Owners of all other portions of the Property to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Declaration at no cost to such Owners. Upon the completion of such transfer, the transferor will be relieved of all further liability under this Declaration except liability with respect to matters remaining unsatisfied which arose during its period of ownership of the portion of the Property so conveyed. All obligations and restrictions set out in this Declaration will run with the land, be binding upon and inure to the benefit of all of the Owners of the Property.

(q) Remedies Cumulative. All of the remedies permitted or available to Declarant or Owners under this Declaration, or at law or in equity, will be cumulative and not alternative, and the invocation of any such remedy will not constitute a waiver or election of remedies with respect to any other permitted or available remedy.

(r) Effect of Declaration. Reference in any deed, mortgage, trust deed or any other recorded documents to the restrictions and covenants herein described or to this Declaration will be sufficient to create and reserve such covenants to the respective grantees, mortgagees, or trustees of such parcels as fully and completely as if those restrictions and covenants were fully related and set forth in their entirety in said documents.

(s) No Conflicts with Legal Requirements. Any and all rights granted or conveyed pursuant to this Declaration (including, without limitation, those rights relating to indemnification and casualty/condemnation) are enforceable against the City of Austin only to the extent authorized by the constitution and laws of the State of Texas and any other Legal Requirements.

(t) Effect of Force Majeure. If the Declarant or an Owner is delayed, hindered, or prevented from performance of any of its respective obligations under this Declaration by reason of acts of God, strikes, lockouts or other industrial disturbances, shortages of labor or materials, war, acts of public enemies, terrorism, order of any kind

of the government of the United States, the State of Texas, Travis County, Texas, City of Austin, or any other civil or military authority, insurrections, riots, epidemics, landslides, earthquakes, lightning, fires, hurricanes, storms, floods, washouts, other natural disasters, a party not receiving a governmental permit, license, approval or inspection in time to meet a contractual time period imposed hereunder provided that party, in good faith, was diligent in the application or request for and prosecution of the process to obtain that permit, license, approval or inspection, restraint of government and people, civil disturbances, explosions, acts or omissions of either party (or a subdivision thereof) to this Declaration or other causes not reasonably within the control of the party claiming such inability (other than (a) financial inability to perform, or (b) acts of the party claiming such inability, or a subdivision thereof, including without limitation any ordinances, regulations, orders or similar action by such party or a subdivision thereof), and if such party has not otherwise committed an event of default hereunder which is continuing, the time for performance of such obligation is automatically extended for the period of such delay, provided that the following requirements are complied with by the affected party:

(i) The affected party shall give prompt written notice of such occurrence to the other party; and

(ii) The affected party shall diligently use commercially reasonable efforts to remove, resolve, or otherwise eliminate any such event within the reasonable control of such affected party, keep the other party advised with respect thereto, and commence performance of its affected obligations hereunder immediately upon such removal, resolution, or elimination.

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IN WITNESS WHEREOF, the Declarant has duly executed this Declaration on the date of acknowledgment set forth below to be effective as of the date set forth above.

THE CITY OF AUSTIN, a Texas home rule city and municipal corporation



By: Lauraine Rizer  
Name: LAURINE RIZER  
Title: Officer of Real Estate

Approved as to form and content for the City by the City's external legal counsel:

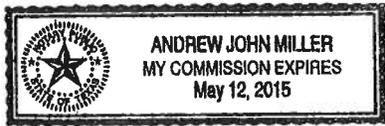
THOMPSON & KNIGHT L.L.P.

Andrew Ingram

STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on April 5th, 2013, by Lauraine Rizer, Officer of Real Estate of THE CITY OF AUSTIN, a municipal corporation, on behalf of said municipal corporation.

[Signature]  
Notary Public, State of Texas



Andrew John Miller  
(Printed name)

My Commission Expires:  
May 12, 2015

**EXHIBIT A-1**  
**TO DECLARATION OF RESTRICTIVE COVENANTS AND RECIPROCAL EASEMENT AGREEMENT**

**Residential Property**

Lot 3 of the SEAHOLM SUBDIVISION, an addition to the City of Austin, Travis County, Texas, as recorded in Instrument No. 201100062, Official Public Records, Travis County, Texas, to be known as H/R Master Unit of Seaholm Power Master Condominium in the City of Austin, Texas according to the Master Condominium Declaration for Seaholm Power Master Condominium to be recorded in the Real Property Records of Travis County, Texas together with all common elements and limited common elements appurtenant thereto.

**EXHIBIT A-2**  
**TO DECLARATION OF RESTRICTIVE COVENANTS AND RECIPROCAL EASEMENT AGREEMENT**

**Power Plant Property**

**Lot 1 of the SEAHOLM SUBDIVISION, an addition to the City of Austin, Travis County, Texas, as recorded in Instrument No. 201100062, Official Public Records, Travis County, Texas.**

**EXHIBIT A-3**  
**TO DECLARATION OF RESTRICTIVE COVENANTS AND RECIPROCAL EASEMENT AGREEMENT**

**Office Property**

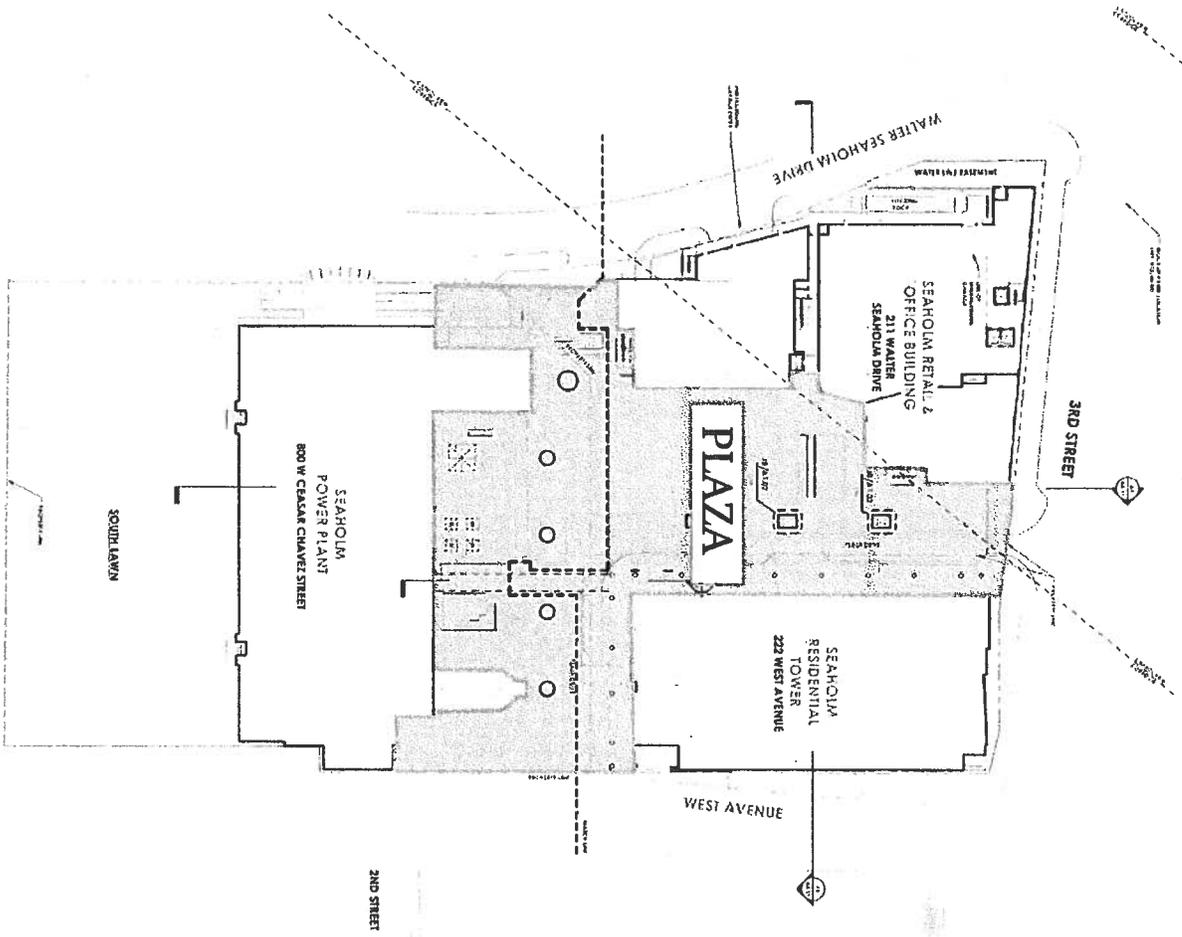
Lot 2 of the SEAHOLM SUBDIVISION, an addition to the City of Austin, Travis County, Texas, as recorded in Instrument No. 201100062, Official Public Records, Travis County, Texas, to be known as L/R Master Unit and Garage Master Unit B of Seaholm Power Master Condominium in the City of Austin, Texas according to the Master Condominium Declaration for Seaholm Power Master Condominium to be recorded in the Real Property Records of Travis County, Texas together with all common elements and limited common elements appurtenant thereto.

**EXHIBIT B**  
**TO DECLARATION OF RESTRICTIVE COVENANTS AND RECIPROCAL EASEMENT AGREEMENT**

Depiction of the Plaza

[see attached]

**A1** ARCHITECTURAL SITE REFERENCE PLAN



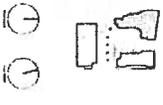
**NOTES:**  
 1. THIS PLAN IS A REFERENCE PLAN AND DOES NOT REPRESENT A FINAL DESIGN. IT IS FOR INFORMATIONAL PURPOSES ONLY.  
 2. THE DESIGNER HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS AND HAS FOUND THEM TO BE AS SHOWN ON THIS PLAN.  
 3. THE DESIGNER HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS AND HAS FOUND THEM TO BE AS SHOWN ON THIS PLAN.  
 4. THE DESIGNER HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS AND HAS FOUND THEM TO BE AS SHOWN ON THIS PLAN.



STC DESIGN, Inc.  
 1117 West 11th Street  
 Austin, TX 78703  
 Phone: 512.476.2888  
 Fax: 512.476.2889



[Seaholm Power, LLC]  
 RETAIL OFFICE AND  
 PARKING  
 PLANNING  
 Austin, TX 78703



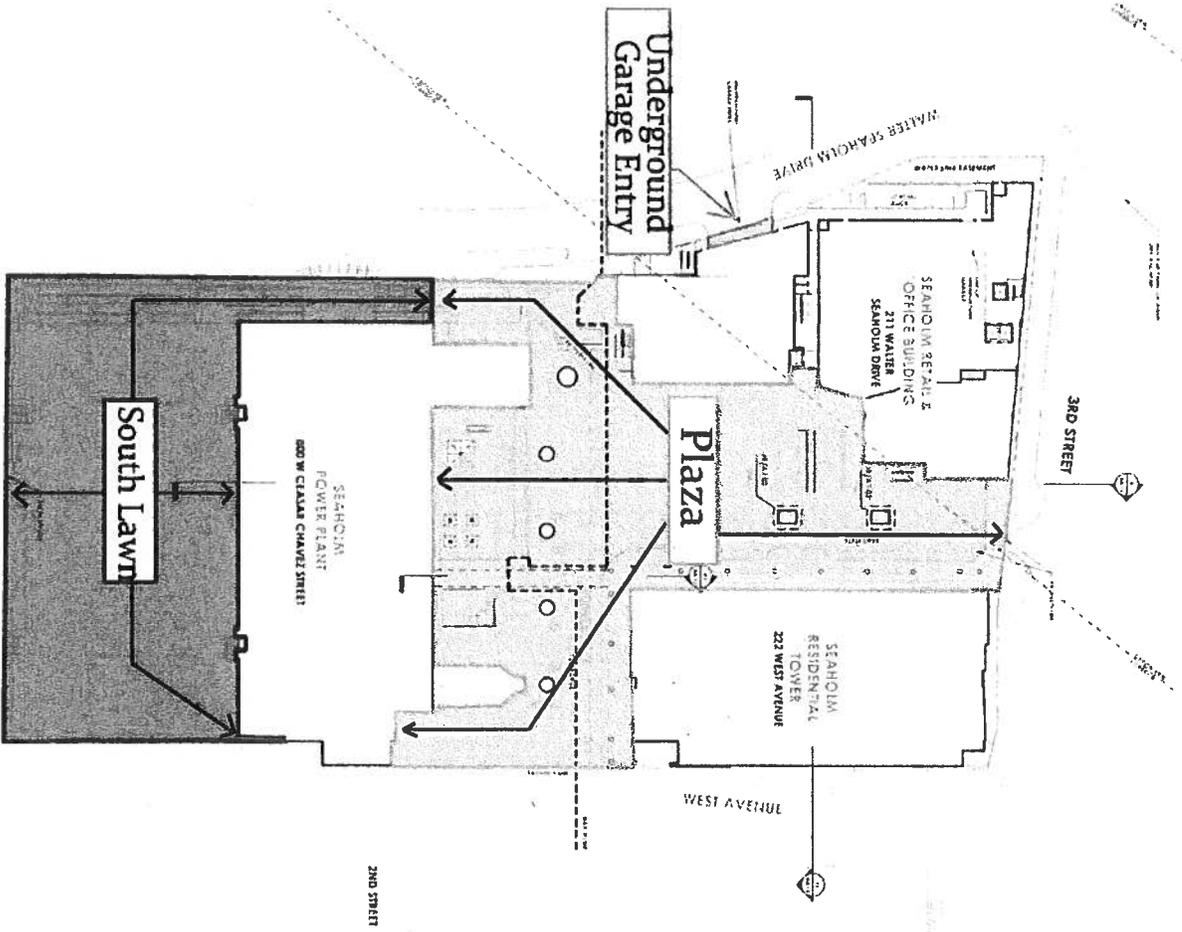
1. DATE: 11/17/2016  
 2. PROJECT: SEAHOLM POWER PLANT  
 3. DRAWING: ARCHITECTURAL SITE REFERENCE PLAN  
 4. SHEET: A1.01

**A1.01**

**EXHIBIT C**  
**TO DECLARATION OF RESTRICTIVE COVENANTS AND RECIPROCAL EASEMENT AGREEMENT**

Depiction of the Property Access Areas

**[see attached]**



**A1** ARCHITECTURAL SITE REFERENCE PLAN

CESSAR CHAVEZ

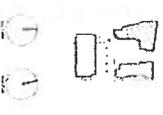
NOTES:  
 1. THIS PLAN IS A REFERENCE PLAN AND IS NOT TO BE USED FOR CONSTRUCTION.  
 2. THE CLIENT HAS PROVIDED ALL NECESSARY INFORMATION AND PERMITS FOR THIS PLAN.  
 3. THE DESIGNER HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS AND HAS FOUND THEM TO BE AS SHOWN ON THIS PLAN.  
 4. THE DESIGNER HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS AND HAS FOUND THEM TO BE AS SHOWN ON THIS PLAN.  
 5. THE DESIGNER HAS CONDUCTED VISUAL VERIFICATION OF THE EXISTING CONDITIONS AND HAS FOUND THEM TO BE AS SHOWN ON THIS PLAN.



1111 Broadway, Suite 1000  
 San Francisco, CA 94103  
 Tel: 415.774.1111  
 Fax: 415.774.1112  
 www.scdesign.com



SEAHOLM POWER, LLC  
 RETAIL, OFFICE AND  
 UNDERGROUND  
 PARKING  
 PROJECT NO. 1600  
 DATE: 11-14-2016



**EXHIBIT D**  
**TO DECLARATION OF RESTRICTIVE COVENANTS AND RECIPROCAL EASEMENT AGREEMENT**

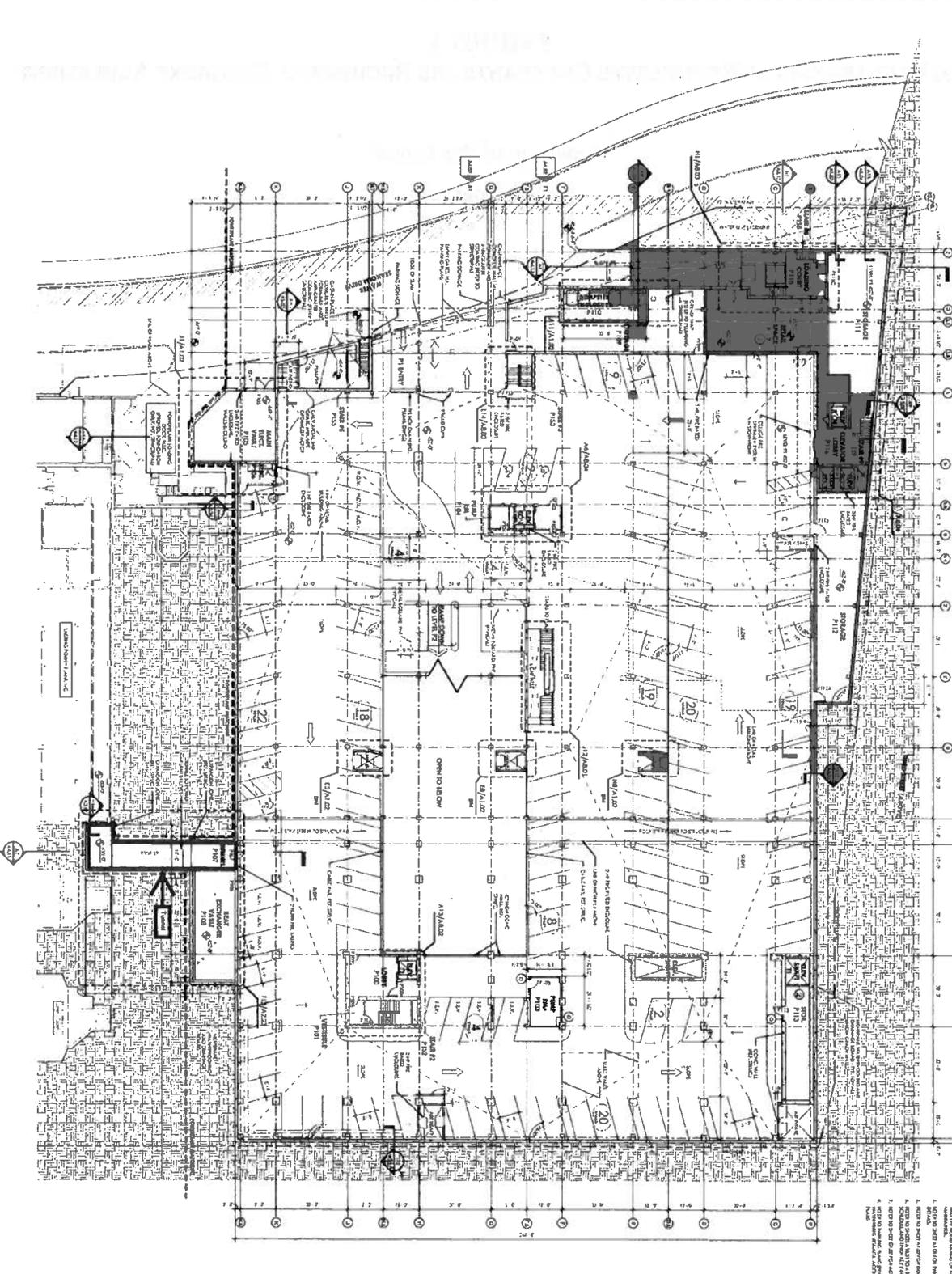
Depiction of the Fire Lanes

**[see attached]**



**EXHIBIT E**  
**TO DECLARATION OF RESTRICTIVE COVENANTS AND RECIPROCAL EASEMENT AGREEMENT**

Depiction of the Tunnel  
**[see attached]**



**GENERAL NOTES:**

1. ALL ROOMS SHALL BE FINISHED TO THE FINISHES SHOWN ON THE FINISH SCHEDULE.
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7. ALL ROOMS SHALL BE FINISHED TO THE FINISHES SHOWN ON THE FINISH SCHEDULE.
8. ALL ROOMS SHALL BE FINISHED TO THE FINISHES SHOWN ON THE FINISH SCHEDULE.
9. ALL ROOMS SHALL BE FINISHED TO THE FINISHES SHOWN ON THE FINISH SCHEDULE.
10. ALL ROOMS SHALL BE FINISHED TO THE FINISHES SHOWN ON THE FINISH SCHEDULE.



**SGC DESIGN, INC.**  
 625 WEST 10TH STREET  
 AUSTIN, TEXAS 78703  
 TEL: 512.476.1111  
 FAX: 512.476.1112  
 WWW.SGCDDESIGN.COM

**RENAL OFFICE AND  
 WAITING ROOM  
 FLOOR PLAN**  
 2111 Miller Street  
 Austin, TX 78701



FILED AND RECORDED  
OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

DANA DEBEAUVOIR, COUNTY CLERK  
TRAVIS COUNTY, TEXAS

April 09 2013 09:23 AM

FEE: \$ 168.00 2013062945

