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# Late Backup

Zoning Case No. C14-2009-0089

## RESTRICTIVE COVENANT

OWNER: CD 116 Indian Hills TX, LLC, a Delaware limited liability company

ADDRESS: 9285 Huntington Square, North Richland Hills, Texas 76180-4366

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: Tract One: A 89.907 acre tract of land, more or less, out of the Reuben Hornsby Survey No. 17, Abstract No. 15, Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this covenant; and

Tract Two: A 149.951 acre tract of land, more or less, out of the Reuben Hornsby Survey No. 17, Abstract No. 15, Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "B" incorporated into this covenant.

WHEREAS, the Owner (the "Owner", whether one or more) of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

WHEREAS, the Property, along with other property located in Travis County, Texas, is subject to that certain Whisper Valley and Indian Hills Annexation and Development Agreement dated effective as of June 18, 2009, by and among the City of Austin, Texas, and those other parties named in the agreement (the "Development Agreement"), and

WHEREAS, the Owner (the "Owner", whether one or more) of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions of the Development Agreement applicable to the Property also known as the Indian Hills Development Project (the "Project").

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant ("Agreement"). These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

A. Open Space and Environmental Protection

1. Development of the site shall comply with requirements of the Austin Energy Green Building Program (GBP) multifamily or commercial rating system for a minimum two-star rating. Certification from the GBP shall be required based on the version of the rating system in accordance with the Austin Energy Green Building Program rating packets.

2. Each site plan application filed for open space, commercial and multifamily development shall use plant material recommended in the Grow Green Native and Adapted Landscape Plants list attached as Exhibit "C". Plants on the Invasive Species/Problem Plants list, attached as part of this exhibit, may not be included.
3. For each site plan application filed for commercial, industrial, mixed use, multifamily residential or open space areas for the project, the Owner shall submit an integrated pest management (IPM) plan that complies with Section 1.6.9.2(D) and (F) of the Environmental Criteria Manual to the Director of the Planning and Development Review Department (the "Director") for approval of the plan.
4. As set forth in Section 3.08(e) of the Development Agreement, additional activities prohibited in all open space areas of the Project include the use of biocides, dumping and placement or use of underground storage tanks.
5. The use of tar sealants or other pavement sealants is prohibited in the Project.

B. Affordable Housing

1. As set forth in Section 3.14 of the Development Agreement, the developer shall set aside at least 10% of the owner occupied residential units within the project for occupancy by households whose income is less than 80% of the median family income in the Austin metropolitan statistical area ("Affordable Ownership Requirement").
2. The Affordable Ownership Requirement for condo-style projects shall be based on number of units and calculated on a condo project-by-condo project basis. Condo style projects shall follow the same multi-bedroom unit requirements as are set forth for apartments in subparagraph (5) below. For other forms of single family housing (either attached or detached), affordability shall also be calculated based on the number of units and, to the extent economically feasible, shall be spread across the various product types within the project. Although there shall be no requirement that each project or plat within the project contain a specific number of affordable units, the Developer shall be responsible for ensuring that ultimately the entire project contains the requisite number of affordable ownership units. The Developer shall report to the Director of the Neighborhood Housing Community Development on the status of the number and location of affordable ownership units within the project on a semi-annual basis commencing on the date the first plat is recorded.
3. Notwithstanding the foregoing, if the Developer provides more affordable units in any given apartment project than the ten percent (10%) required per Section 23B of this Ordinance, then the number of units required to meet the Affordable Ownership Requirement in the project shall be reduced (i) on a 1.5:1 ratio for up to three percent (3%) of the ten percent (10%) Affordable Ownership

Requirement for the project; and (ii) on a 4:1 ratio for up to an additional two percent (2%) of the ten percent (10%) Affordable Ownership Requirement for the project. Provided however, in no event shall the number of units required to meet the Affordable Ownership Requirement in the project be reduced below five percent (5%) of total ownership units through the method described above.

4. Pursuant to Section 3.14 of the Development Agreement, the developer shall set aside at least 10 percent of the rental units for multifamily residential within the Project for occupancy by households whose income is less than 60 percent of the median family income in the Austin metropolitan statistical area ("Affordable Rental Requirement").
5. The Affordable Rental Requirement shall be based on number of units and calculated on an apartment project-by-apartment project basis. The ratio of affordable single units to affordable multi-bedroom units shall be equal to the ratio of total single to total multi-bedroom units for the applicable project. The affordable units within any given apartment project shall be interspersed with market rate units.

C. Transportation

1. A site plan or building permit may not be approved, released, or issued, if the completed development or uses in the project, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the project specified in that certain Traffic Impact Analysis ("TIA") prepared by Bury + Partners, Inc., dated July 2009, or as amended and approved by the Director. All development in the project is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Planning and Development Review Department dated June 7, 2010 and the Declaration of Traffic Phasing Restrictive Covenant recorded in the real property records of Travis County. The TIA shall be kept on file at the Planning and Development Review Department.

- D. If any person or entity shall violate or attempt to violate this Agreement, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such Agreement, to prevent the person or entity from such actions, and to collect damages for such actions.
- E. If any part of this Agreement is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Agreement, and such remaining portion of this Agreement shall remain in full effect.
- F. If at any time the City of Austin fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

- G. This Agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of a majority of the land area of the Property if the modification, amendment or termination affects the entire Property, or, if the modification, amendment or termination only effects a portion of the Property, by the owner(s) of a majority of the land area of that portion of the Property.

EXECUTED this the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**OWNER:**

CD 116 Indian Hills TX, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Doug H. Gilliland,  
general partner

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney  
City of Austin

**THE STATE OF TEXAS** §

**COUNTY OF TRAVIS** §

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by Doug H. Gilliland, general partner of CD 116 Indian Hills TX, LLC, a Delaware limited liability company, on its behalf.

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

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