

Zoning Case No. C14-2016-0079

RESTRICTIVE COVENANT

OWNER: Painter Enterprises, Inc., a Texas corporation and
3212 Cesar Chavez, LP, a Delaware limited partnership

OWNER ADDRESS: Painter Enterprises, Inc., 3224 E. 1st Street, Austin, Texas 78702,
and
3212 Cesar Chavez, LP, 1601 S MoPac Expressway, Austin, Texas
78746

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 A:
3.4806 acres (151,616 square feet), being a portion of Lots 9 and
10, Block 1 of the unrecorded plat of the E.H. Deets, et al. Estate,
recorded in Volume 102, Page 277 of the Deed Records of Travis
County, Texas, and being out of Outlots 15 and 16, Division "O"
of the Government Outlots adjoining the Original City of Austin,
and being all of a called 3.124 acre tract conveyed to Painter
Enterprises, Inc., in Volume 11354, Page 923, of the Real Property
Records of Travis County, Texas, and a portion of Lot 9 conveyed
to Hector Barrios and Sandra Sandoval in Document No.
2000107171 of the Official Public Records of Travis County,
Texas and being a portion of said Lot 9 conveyed to James A.
Gomez in Volume 13279, Page 813, of the Real Property Records
of Travis County, Texas, said 3.4806 acres more particularly
described by metes and bounds in **Exhibit "A"** incorporated into
this ordinance, and;

Tract B:
0.1030 acre (4,487 square feet), being out of and a part of Lot 10,
Block 1 of the unrecorded plat of the E.H. Deets, et al. Estate,
recorded in Volume 102, Page 277, of the Deed Records of Travis
County, Texas, and being out of Outlots 15 and 16, Division "O"
of the Government Outlots adjoining the Original City of Austin,
and out of and a part of a called 3.124 acre tract conveyed to
Painter Enterprises, Inc., in Volume 11354, Page 923, of the Real
Property Records of Travis County, Texas, said 0.1030 acre being
more particularly described by metes and bounds in **Exhibit "B"**
incorporated into this covenant (cumulatively referred to as the
"Property"),

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;

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.

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property as specified in that certain Traffic Impact Analysis (“TIA”) prepared by Big Red Dog Engineering, dated March 27, 2017, or as amended, and approved by the Director of the Development Services Department. All development on the Property is subject to the Development Services Department, Transportation Review Section’s staff memorandum (“memorandum”) dated May 17, 2017, and any amendments to the memorandum that address subsequent TIA updates for the Property. The TIA and memorandum shall be kept on file at the Development Services Department.
2. 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.
3. 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.
4. If at any time the City of Austin fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This Agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the Owner(s) of the Property, or a portion of the Property, subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the _____ day of _____, 2018.

Owner:

Painter Enterprises, Inc., a Texas corporation

By: _____
Donald E. Painter, President

3212 Cesar Chavez, LP, a Delaware limited partnership

By: CREAII Cesar Chavez Management, LLC, a Delaware
limited liability company, its General Partner

By: CREA Partners II Holdings, LLC, a Delaware
limited liability company, its Manager

By: _____
Brent D. Heath, Vice President

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____ 2018,
by Donald E. Painter, as President of Painter Enterprises, Inc., a Texas corporation, on behalf of
said corporation.

Notary Public, State of Texas

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____ 2018,
by Brent D. Heath, as Vice President of CREA Partners II Holdings, LLC, a Delaware limited
liability company, as managing member of CREAI Cesar Chavez Management, LLC, a
Delaware limited liability company, general partner of 3212 Cesar Chavez, LP, a Delaware
limited liability company, on behalf of said company.

Notary Public, State of Texas

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

After Recording, Please Return to:
City of Austin
Law Department
P. O. Box 1088
Austin, Texas 78767
Attention: Cathy Curtis, Paralegal

EXHIBIT " _____ "

TRACT A

Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 3.4806 ACRES (151,616 SQUARE FEET), BEING A PORTION OF LOTS 9 AND 10, BLOCK 1 OF THE UNRECORDED PLAT OF THE E.H. DEETS ET AL. ESTATE RECORDED IN VOLUME 102, PAGE 277 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS (D.R.T.C.T.), AND BEING OUT OF OUTLOTS 15 AND 16, DIVISION "O" OF THE GOVERNMENT OUTLOTS ADJOINING THE ORIGINAL CITY OF AUSTIN, AND BEING ALL OF A CALLED 3.124 ACRE TRACT CONVEYED TO PAINTER ENTERPRISES, INC., IN VOLUME 11354, PAGE 923 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS (R.P.R.T.C.T.), AND A PORTION OF LOT 9 CONVEYED TO HECTOR BARRIOS AND SANDRA SANDOVAL IN DOCUMENT NO. 2000107171 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS (O.P.R.T.C.T.), AND BEING A PORTION OF SAID LOT 9 CONVEYED TO JAMES A. GOMEZ IN VOLUME 13279, PAGE 813 OF THE (R.P.R.T.C.T.), SAID 3.4806 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:



PO Box 90876
Austin, TX 78709
512.554.3371
jward@4wardlls.com
www.4wardlls.com

BEGINNING, at a 1/2-inch iron rod with "RPLS 4324" cap found in the north right-of-way line of East Cesar Chavez Street (100' right-of-way), and being at the southwest corner of a called 0.929 acre tract (described as Tract One, more particularly described by metes and bounds in Volume 9444, Page 382 (R.P.R.T.C.T.)) conveyed to the Kurtz/Zirkelbach Lifetime Trust in Document #200700940 of the Official Public Records of Travis County, Texas (O.P.R.T.C.T.), and being the southeast corner of said Painter tract, for the southeast corner and POINT OF BEGINNING hereof, from which a 1/2-inch iron pipe found in the north right-of-way line of said East Cesar Chavez Street, and being at the southwest corner of a called 2.50 acre tract (described as Tract Two, more particularly described by metes and bounds in Volume 1317, Page 11 (D.R.T.C.T.)) also conveyed to the Kurtz/Zirkelbach Lifetime Trust in said Document #200700940 (O.P.R.T.C.T.), and being the southeast corner of said Kurtz/Zirkelbach Tract One bears, N83°34'06"E, a distance of 95.39 feet;

THENCE, with the north right-of-way line of said East Cesar Chavez Street and the south line of said Painter tract, the following two (2) courses distances:

- 1) S83°37'20"W, a distance of 112.54 feet to a mag nail with "Ward-5811" washer set for an angle point hereof, and
- 2) S86°04'20"W, a distance of 15.77 feet to a mag nail with "Ward-5811" washer set for an angle point hereof, said point being at the intersection of the north right-of-way line of said East Cesar Chavez Street with the north right-of-way line of East 2nd Street (60' right-of-way), and being the east corner of a called 0.16 acre tract (described as a save and except tract to the City of Austin in Volume 3826, Page 1500 (D.R.T.C.T.)), and being an angle point in the south line of said Painter tract;

THENCE, with the north right-of-way line of said East 2nd Street and the south line of said Painter tract, and in part with the north line of said 0.16 acre right-of-way tract, along the arc of a curve to the right, having a radius of 470.13 feet, passing at an arc length of 65.67 feet, a 1/2-inch iron rod found at the northwest corner of said 0.16 acre right-of-way tract, and continuing for a total arc length of 73.43 feet, and whose chord bears N74°59'12"W, a distance of 73.35 feet to a 1/2-inch iron rod found for the southwest corner hereof, said point being at the southeast corner of a called 0.255 acre tract conveyed to Tillery 105, LLC, in Document #2016004129 (O.P.R.T.C.T.), and being the southwest corner of said Painter tract, from which a 1/2-inch iron rod with aluminum cap stamped "Holt-Carson" found bears, N58°50'04"W, a distance of 0.71 feet, and also from which, a 1/2-inch iron rod with aluminum cap stamped "Holt-Carson" found at the intersection of the east right-of-way line of Tillery Street (60' right-of-way) with the north right-of-way line of said East 2nd Street, and being the southwest corner of said Tillery 105 tract bears, 128.40 feet along the arc of a curve to the right, having a radius of 470.13 feet, and whose chord bears N62°55'36"W, a distance of 128.01 feet;

Exhibit A

THENCE, leaving the north right-of-way line of said East 2nd Street, with the common line of said Tillery 105 tract and said Painter tract, N20°04'18"E, a distance of 91.21 feet to a 1/2-inch iron rod with "Ward-5811" cap set for an exterior ell-corner hereof, said point being in the south line of a called 0.16 acre tract conveyed to James A. Gomez in Volume 13279, Page 813 (R.P.R.T.C.T.), and being the northeast corner of said Tillery 105 tract, and being an exterior ell-corner of said Painter tract;

THENCE, with the common line of said Gomez tract and said Painter tract, N69°09'56"W, a distance of 131.77 to a calculated point in the west right-of-way line of Tillery Street (60 feet wide right-of-way), being the northwest corner of said called Tillery 105 tract and the southwest corner of said Gomez tract;

THENCE, with the west right-of-way line of said Tillery Street and the east line of said Gomez tract, N20°31'11"E, a distance of 49.80 feet to an iron rod with cap marked "Tritech" found for the northwest corner of said Gomez tract and the southwest corner of a tract of land conveyed to Christopher John Hejl in Document #2012025739 (O.P.R.T.C.T.);

THENCE, leaving the west right-of-way line of said Tillery Street and with the south line of said Hejl tract and the north line of said Gomez tract, S69°29'47"E, a distance of 139.59 feet to a 1/2-inch iron pipe found in the west line of said Painter tract and being the northeast corner of said Gomez tract and being the southeast corner of said Hejl tract;

THENCE, with the east line of said Painter tract and the west line of said Hejl tract, N20°30'37"E, a distance of 59.56 feet to the northwest corner of said Hejl tract and the southwest corner of a tract conveyed to Hector Barrios and Sandra Sandoval in Document #2000107171 (O.P.R.T.C.T.);

THENCE, leaving the west line of said Painter tract and with the north line of said Hejl tract and the south line of said Barrios/Sandoval tract, N69°48'43"W, a distance of 139.59 feet to a Mag Nail found in the west right-of-way line of said Tillery Street and being the northwest corner of said Hejl tract and being the southwest corner of said Barrios/Sandoval tract;

THENCE, with the east right-of-way line of said Tillery Street and in part the west line of said Hejl tract, N20°31'11"E, passing at 61.22 feet, a 1/2-inch iron pipe found at the northwest corner of said Barrios/Sandoval tract, and being an exterior ell corner of said Painter tract, and continuing for a distance of 343.32 feet to a calculated point (could not be set due to obstruction) for the northwest corner hereof, said point being the southwest corner of a called 2.594 acre tract conveyed to Pecan Radio Partners, Ltd., in Document #2005232253 (O.P.R.T.C.T.), and being the northwest corner of said Painter tract, from which a 1" iron rod found in the south line of a tract described as the West 150 feet of Lot 1, Block 1 of said E.H. Deets Estate, conveyed to DCW Properties, Ltd., in Volume 12343, Page 631 (R.P.R.T.C.T.), and being in the north line of said Pecan radio tract bears, N20°31'11"E, a distance of 345.01 feet, and S69°42'18"E, a distance of 2.13 feet;

THENCE, leaving the east right-of-way line of said Tillery Street, with the common line of said Pecan Radio tract and said Painter tract, S72°10'39"E, a distance of 319.20 feet to a calculated point (could not be set due to obstruction), for the northeast corner hereof, said point being at the common north corner of said Kurtz/Zirkelbach Tract One and said Painter tract, from which a 1/4-inch iron rod found in the north line of said Kurtz/Zirkelbach Tract One, and being at the southwest corner of Lot 6, Block B of Joseph Brothers Subdivision, recorded in Volume 5, Page 183 of the Plat Records of Travis County, Texas (P.R.T.C.T.), and being the southeast corner of said Pecan Radio tract, bears S72°10'39"E, a distance of 16.35 feet;

THENCE, with the common line of said Kurtz/Zirkelbach Tract One and said Painter tract, S20°21'43"W, a distance of 494.40 feet to the POINT OF BEGINNING and containing 3.4806 Acres (151,616 Square Feet) more or less.

Notes:

All bearings are based on the Texas State Plane Coordinate System, Grid North, Central Zone (4203); all distances were adjusted to surface using a combined scale factor of 1.000055230079. See attached sketch (reference drawing: 00497_rev-2.dwg.)


Jason Ward, RPLS #5811
4Ward Land Surveying, LLC

9/28/2017



EXHIBIT "_____"

TRACT B

(Retail Zoning Area)
Outlot 15 and 16, Division "O"Legal Description

BEING A DESCRIPTION OF A TRACT OF LAND CONTAINING 0.1030 ACRE (4,487 SQUARE FEET), BEING OUT OF AND A PART OF LOT 10, BLOCK 1 OF THE UNRECORDED PLAT OF THE E.H. DEETS ET AL. ESTATE RECORDED IN VOLUME 102, PAGE 277 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS (D.R.T.C.T.), AND BEING OUT OF OUTLOTS 15 AND 16, DIVISION "O" OF THE GOVERNMENT OUTLOTS ADJOINING THE ORIGINAL CITY OF AUSTIN, AND OUT OF AND A PART OF A CALLED 3.124 ACRE TRACT CONVEYED TO PAINTER ENTERPRISES, INC., IN VOLUME 11354, PAGE 923 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS (R.P.R.T.C.T.), SAID 0.1030 ACRE BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:



PO Box 90876
Austin, TX 78709
512.554.3371
jward@4wardls.com
www.4wardls.com

COMMENCING, at a 1/2-inch iron rod with "RPLS 4324" cap found in the north right-of-way line of East Cesar Chavez Street (100' right-of-way), and being at the southwest corner of a called 0.929 acre tract (described as Tract One, more particularly described by metes and bounds in Volume 9444, Page 382 (R.P.R.T.C.T.)) conveyed to the Kurtz/Zirkelbach Lifetime Trust in Document #200700940 of the Official Public Records of Travis County, Texas (O.P.R.T.C.T.), and being the southeast corner of said Painter tract, from which a 1/2-inch iron pipe found in the north right-of-way line of said East Cesar Chavez Street, and being at the southwest corner of a called 2.50 acre tract (described as Tract Two, more particularly described by metes and bounds in Volume 1317, Page 11 (D.R.T.C.T.)) also conveyed to the Kurtz/Zirkelbach Lifetime Trust in said Document #200700940 (O.P.R.T.C.T.), and being the southeast corner of said Kurtz/Zirkelbach Tract One bears, N83°34'06"E, a distance of 95.39 feet;

THENCE, leaving the north right-of-way line of said East Cesar Chavez Street, over and across said Painter tract, N11°44'47"W, a distance of 58.66 feet to a calculated point for an exterior ell corner and the POINT OF BEGINNING hereof;

THENCE, continuing over and across said Painter tract, the following six courses and distances:

- 1) N69°41'55"W, a distance of 43.65 feet to a calculated point for an interior ell corner hereof,
- 2) S20°17'54"W, a distance of 71.16 feet to a calculated point for the southeast corner hereof,
- 3) N88°26'14"W, a distance of 31.58 feet to a calculated point for the southwest corner hereof, from which a 1/2-inch iron rod found in the north right-of-way line of East 2nd Street (60' Right-of-way), and being the northwest corner of a called 0.16 acre tract (described as a save and except tract to the City of Austin in Volume 3826, Page 1500 of the Deed Records of Travis County, Texas (D.R.T.C.T.), and being in the south line of said Painter tract bears, S87°16'06"W, a distance of 82.08 feet,
- 4) N20°18'05"E, a distance of 111.31 feet to a calculated point for the northwest corner hereof, from which a 1/2-inch iron pipe found in the west line of said Painter tract, and being the northeast corner of a called 0.16 acre tract, conveyed to James A. Gomez, recorded in Volume 13279, Page 813 (R.P.R.T.C.T.), and being the southeast corner of a tract conveyed to Christopher John Hejl, recorded in Document #2012025739 (O.P.R.T.C.T.) bears, N71°00'32"W, a distance of 75.66 feet,

EXHIBIT B

F# _____

- 5) S69°41'55"E, a distance of 73.58 feet to a calculated point for the northeast corner hereof, and
- 6) S20°21'43"W, a distance of 30.00 feet to the **POINT OF BEGINNING** and containing 0.1030 Acre (4,487 Square Feet) more or less.

BEARING BASIS NOTE

The bearings described hereon are Texas State Plane Grid bearings (Texas Central Zone, NAD83), Combined Scale Factor 1.000055230079). Project Reference Control Point is a 1/2-inch iron rod with "4Ward" control cap set southwest of the southwest corner of the subject tract, near the south right-of-way line of East 2nd Street, said point was established from the Texas Cooperative Network.

Witness my hand this (To the City of Austin):

I, Jason Ward, licensed to practice Land Surveying in the State of Texas, hereby certify that the foregoing metes and bounds legal description and sketch were based on an on the ground survey.

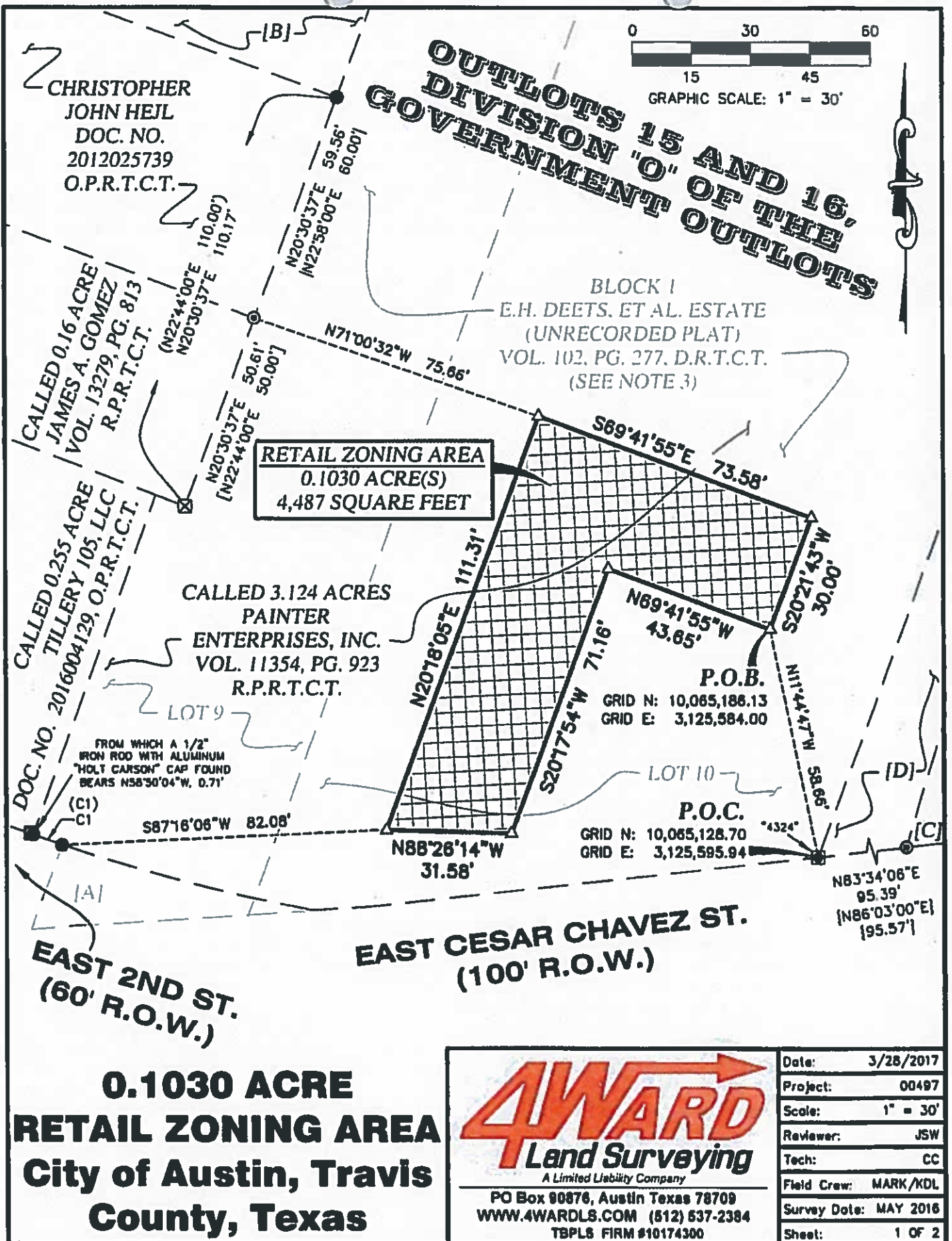
Witness my hand and seal this March 10, 2017.


Jason Ward, RPLS #5811
4Ward Land Surveying, LLC

3/28/2017



REFERENCES:
TCAD #0200130333
COA Grid #L21



CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	BEARING	DISTANCE
C1	7.76'	470.13'	0°56'43"	N70°59'06"W	7.76'

RECORD CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	BEARING	DISTANCE
(C1)	(7.90')	(470.13')	(0°57'46")	(N68°40'00"W)	(7.90')

LEGEND

————	PROPOSED ZONING LINE
- - - - -	EXISTING PROPERTY LINES
●	1/2" IRON ROD FOUND (UNLESS NOTED)
⊙	1/2" IRON PIPE FOUND (UNLESS NOTED)
⊗	IRON ROD WITH "HOLT CARSON" CAP FOUND (UNLESS NOTED)
⊠	RAILROAD SPIKE FOUND
△	CALCULATED POINT
DOC. NO.	DOCUMENT NUMBER
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
VOL./PG.	VOLUME, PAGE
P.R.T.C.T.	PLAT RECORDS, TRAVIS COUNTY, TEXAS
R.O.W.	RIGHT-OF-WAY
R.P.R.T.C.T.	REAL PROPERTY RECORDS, TRAVIS COUNTY, TEXAS
O.P.R.T.C.T.	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
D.R.T.C.T.	DEED RECORDS, TRAVIS COUNTY, TEXAS
[.....]	RECORD INFORMATION PER VOL. 11354, PG. 923
[.....]	RECORD INFORMATION PER VOL. 9444, PG. 382
[.....]	RECORD INFORMATION PER PLAT VOL. 13279, PG. 813
[.....]	RECORD INFORMATION PER DOC. NO. 2012025739

TCAD #0200130333
COA GRID #L21

**0.1030 ACRE
RETAIL ZONING AREA
City of Austin, Travis
County, Texas**

[A]
CALLED 0.016 ACRES
(SAVE AND EXCEPT)
CITY OF AUSTIN
VOL. 3826, PG. 1500, D.R.T.C.T.

[B]
(PORTION OF LOT 9)
HECTOR BARRIOS AND
SANDRA SANDOVAL
DOC. NO. 2000107171
O.P.R.T.C.T.

[C]
LOT 11, BLOCK 1
(DESCRIBED AS TRACT TWO)
KURTZ/ZIRKELBACH
LIFETIME TRUST
DOC. NO. 2007000940, O.P.R.T.C.T.
DESCRIBED BY METES & BOUNDS
IN 317, PG. 111, D.R.T.C.T.

[D]
CALLED 0.929 ACRE
(DESCRIBED AS
TRACT ONE)
KURTZ/ZIRKELBACH
LIFETIME TRUST
DOC. NO. 2007000940
O.P.R.T.C.T.
DESCRIBED BY
METES & BOUNDS IN
VOL. 9444, PG. 382
R.P.R.T.C.T.



NOTES:

1) ALL BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, GRID NORTH, CENTRAL ZONE, (4203), NAD83 (CORS), ALL DISTANCES WERE ADJUSTED TO SURFACE USING A COMBINED SCALE FACTOR OF 1.000055230079.

2) SEE ATTACHED METES AND BOUNDS DESCRIPTION.

3) THE SUBDIVISION OF THE E.H. DEETS ET AL. ESTATE, IS AN UNRECORDED SUBDIVISION. HOWEVER, A COPY OF SAID SUBDIVISION WAS FOUND IN THE RECORDS OF THE CITY OF AUSTIN SURVEY DEPARTMENT FILES.



PO Box 90876, Austin Texas 78709
WWW.4WARDLS.COM (512) 637-2384
TBPLS FIRM #10174300

Date:	3/28/2017
Project:	00497
Scale:	1" = 30'
Reviewer:	JSW
Tech:	CC
Field Crew:	MARK/KDL
Survey Date:	MAY 2016
Sheet:	2 OF 2