

Zoning Case No. C14-2011-0088**RESTRICTIVE COVENANT**

OWNER: DCR Real Estate III SUB I, LLC, a Delaware limited liability company

ADDRESS: 12396 World Trade Drive, Suite 114, San Diego, CA 92128

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: A 1.217 acre tract of land out of outlot 50, Division "B" of the government outlots adjoining the City of Austin according to the map or plat filed in the Texas General Land Office being more particularly described by metes and bounds in Exhibit "A" attached and incorporated into this covenant (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. All principal commercial uses of the Property shall be conducted within a building.
2. A minimum of 10 percent of the gross floor area of any limited warehousing and distribution use in the building on the Property shall be for office use. The terms "gross floor area" and "limited warehousing and distribution" shall have the meanings given to them by the City Code as of the date hereof.
3. Deliveries to and from the Property by trucks of 1 ton or greater capacity are restricted to the hours between 8:00 a.m. and 6:00 p.m.
4. Outdoor loading and unloading of any type with the use of mechanized equipment is restricted to the hours between 8:00 a.m. and 6:00 p.m.
5. Traffic signage shall be erected and maintained on the Property along the exits directing trucks of 1 ton or greater capacity exiting the Property to proceed toward Manor Road.

6. Visual screening shall be installed and maintained between the existing parking area on the Property and Tillery Street, except within the permitted driveway onto the Property. Visual screening may consist of vegetation, a privacy fence or decorative wall, any of which shall be a minimum of 4 feet in height.
7. A 6 foot solid privacy fence shall be provided and maintained along any property line which is adjacent to other property zoned or used for a residential use.
8. Live outdoor amplified music is prohibited on the Property, including as a temporary use.
9. Vehicular access to or from Tillery Street shall not be permitted through the Property from adjacent sites to the north, south or west of the Property, except for emergency service vehicles.
10. Commercial activities conducted on the Property shall not be allowed to create a nuisance, including without limitation excessively loud noise, foul odors, or noxious fumes to the degree that such things would be offensive to a person of normal sensibilities.
11. The Owner shall not permit vehicular access to or from Tillery Street through the Property for any land which is adjacent to or otherwise in the vicinity of the Property, except for emergency service vehicles.
12. 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.
13. 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.
14. 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.
15. 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 _____, 2012.

OWNER:

**DCR Real Estate III SUB I, LLC
a Delaware limited liability company**

By: _____
Fred S. Razook, Jr.
Manager

APPROVED AS TO FORM:

Chad Shaw
Assistant City Attorney
City of Austin

THE STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me on this the ____ day of _____, 2012, by Fred S. Razook, Jr., Manager of DCR Real Estate III Sub I, LLC, a Delaware limited liability company, on behalf of the limited liability company.

Notary Public, State of _____

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

HOLT CARSON, INC.
PROFESSIONAL LAND SURVEYORS

1904 FORTVIEW ROAD
AUSTIN, TX 78704
TELEPHONE: (512) 442-0990
FACSIMILE: (512) 442-1084

FIELD NOTE DESCRIPTION OF 1.217 ACRES OF LAND OUT OF OUTLOT 50 DIVISION "B" OF THE GOVERNMENT OUTLOTS ADJOINING THE CITY OF AUSTIN ACCORDING TO THE MAP OR PLAT THEREOF FILED IN THE GENERAL LAND OFFICE OF THE STATE OF TEXAS, BEING ALL OF THAT CERTAIN (1.217 ACRE) TRACT OF LAND AS CONVEYED TO LAWRENCE C. MATHIS BY SPECIAL WARRANTY DEED RECORDED IN 2000050461 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" iron rod found with a plastic cap imprinted with "Carson and Bush Professional Surveyors" in the present West right-of-way line of Tillery Street for the Southeast corner of that certain (1.217 acre) tract of land as conveyed to Lawrence C. Mathis by Special Warranty Deed recorded in Document No. 2000050461 of the Official Public Records of Travis County, Texas, and for the Northeast corner of that certain (0.966 acre) tract of land as conveyed to Malik Khurshid by Warranty Deed recorded in Document No. 2002188636 of the Official Public Records of Travis County, Texas, and being the Southeast corner and **PLACE OF BEGINNING** of the herein described tract, and from which a ¾" iron pipe found for the Northeast corner of Lot 20, Encino Terrace, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 30 Page 22 of the Plat Records of Travis County, Texas, bears S 14 deg. 50' 55" E 121.69 ft. (direct tie);

THENCE leaving the West right-of-way line of Tillery Street with the common line of said Mathis (1.217 acre) tract and said Khurshid (0.966 acre) tract, S 80 deg. 01' 49" W 292.26 ft. to a ½" iron rod found with a plastic cap imprinted with "Carson and Bush Professional Surveyors" for the Southwest corner of said Mathis (1.217 acre) tract and for the Southeast corner of Lot 1, The Bartlett-Hudnall Addition, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 77 Page 313 of the Plat Records of Travis County, Texas, and being the Southwest corner of this tract, and from which a ½" iron rod found for the Northwest corner of said Khurshid (0.966 acre) tract bears S 80 deg. 01' 49" W 72.20 ft.;

THENCE with the West line of said Mathis (1.217 acre) tract, N 07 deg. 33' 45" W 186.96 ft. to a 2" iron pipe found for the Northwest corner of said Mathis (1.217 acre) tract and for the Southwest corner of that certain (1.658 acre) tract of land as conveyed to 3219 Manor Road L.L.C. by deed recorded in Document No. 2000132086 of the Official Public Records of Travis County, Texas, and being the Northwest corner of this tract;

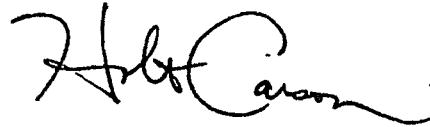
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1.217 ACRES

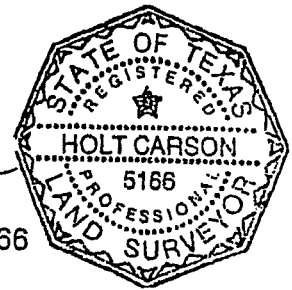
THENCE with the common line of said Mathis (1.217 acre) tract and said 3219 Manor Road L.L.C. (1.658 acre) tract, N 81 deg. 14' 22" E 284.38 ft. to a ½" iron rod found with a plastic cap imprinted with "Carson and Bush Professional Surveyors" in the present West right-of-way line of Tillery Street for the Northeast corner of said Mathis (1.217 acre) tract and being the Northeast corner of this tract;

THENCE with the West right-of-way line of Tillery Street and with the East line of said Mathis (1.217 acre) tract, S 10 deg. 00' 00" E 180.80 ft. to the **PLACE OF BEGINNING**, containing 1.217 acres of land.

SURVEYED: May 3, 2007.



Holt Carson
Registered Professional Land Surveyor No. 5166



see accompanying map: A 624040