



RESTRICTIVE COVENANT REGARDING UNIFIED DEVELOPMENT

This Restrictive Covenant regarding Unified Development for **1506 and 1508 Garner**, (the "Restrictive Covenant"), is executed this 23 day of January, 2008, by 1508 Garner, L.P. ("Declarant") and is as follows:

RECITALS

A. The Property.

1. **1508 Garner, L.P.** is the owner of land at 1506 Garner Avenue, more particularly described as **LOT 3 BLK C BARTON HEIGHTS B**, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Travis County, Texas ("Tract One").
2. **1508 Garner, L.P.** is the owner of land at 1508 Garner Avenue, more particularly described as **LOT 2 BLK C BARTON HEIGHTS B**, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Travis County, Texas ("Tract Two").
3. Tract One and Tract Two are herein referenced collectively as the "Property."

B. Definitions:

1. Owners. The term "Owner" and "Owners" include Declarant and all subsequent owners of the fee interest or any other interest in the Property, and their heirs, executors, administrators, successors, and assigns.
2. Parking. In this Restrictive Covenant, "Reciprocal Parking" is defined as parking within Building Permit No. 2008003032 RP serving both Tract One and Tract Two.

C. Restrictive Covenants.

1. Declarant desires to develop the Property for Single-Family Attached Residential use as such term is defined in §25-2-3(B)(9) of the Land Development Code of the City of Austin and to construct two single-family dwelling units for resale in connection therewith.
2. Declarant has agreed to impose covenants, restrictions, and conditions upon the Property for the benefit of the Property and Owners.

NOW, THEREFORE, it is now declared that the Property be subject to the following covenants, conditions and restrictions which shall run with the land, and will be binding upon all parties having right, title, or interest in the Property or any part of the Property, their heirs, executors, successors, administrators, and assigns and shall inure to the benefit of each Owner. Each contract, deed or conveyance of any kind conveying all or a portion of such Property shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. Recitals Incorporated. The above Recitals and all defined terms are incorporated into this Restrictive Covenant for all purposes.
2. Unified Development. For purposes of site plan review, modification, or approval by the City of Austin a home-rule municipal corporation located in Travis, Hays, and Williamson Counties, State of Texas (the "City"), the Property shall be constructed as a unified development/single site ("Unified Development"). Any proposed modifications to Tract One and/or Tract Two or any portion of either Tract shall be construed as a modification of the Unified Development, in accordance with the provisions of the Land Development Code of the City of Austin. This section includes, but is not limited to, the extent of impervious coverage, parking, and landscaping and use restrictions applicable to the Unified Development Property. As of the Effective Date, the Property is a single site in perpetuity, and is not and will not be subject to subdividing or division by Owner under any circumstances. Notwithstanding anything to the contrary in this Restrictive Covenant, nothing herein is intended to or shall prohibit Declarant from (a) developing the Property for Single-Family Attached Residential use, (b) constructing two single-family dwelling units for resale in connection therewith, with one unit to be located on Tract One and other unit to be located on Tract Two, or (c) conveying in fee simple to third parties Tract One and Tract Two, as improved with the units, subject to the this Restrictive Covenant.
3. Breach Shall Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of these Restrictive Covenants shall entitle the Owners to cancel, rescind or otherwise terminate these Restrictive Covenants but this limitation will not restrict or bar any other rights or remedies which the Owners may have under this Restrictive Covenant by reason of any breach or violation of this Restrictive Covenant.
4. Excusable Delays. Whenever performance is required of the Owners, the Owners shall use all due diligence to perform and take all reasonable and necessary measures in good faith to perform within a reasonable time. However, if completion of performance is delayed at any time by reasons of force majeure, war, civil commotion, riots, strikes, picketing, or other labor disputes,

unavailability of labor or material, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of the Owner (financial inability, imprudent management or negligence excepted), then the time for performance will be extended by the amount of delay actually so caused. Excusable Delay will not include delays that may be cured by payment of money by an Owner.

5. Conveyance. This Restrictive Covenant does not convey interest in real property to the City, the public or any governmental body.
6. General Provisions.
 - A. Inurement. This Restrictive Covenant will inure to the benefit of and be binding upon the Owners, and their heirs, administrators, executors, successors, and assigns.
 - B. Duration. This Restrictive Covenant shall run with the land and remain in effect in perpetuity.
 - C. Non-Merger. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is or may be vested in one party or entity.
 - D. Severability. The provisions of this Restrictive Covenant shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision.
 - E. Entire Agreement. This Restrictive Covenant and the attached exhibits contain all the representations and the entire agreement between the parties. Any prior correspondence, memoranda or agreements are superseded in total by this Restrictive Covenant and the attached exhibits. The provisions of this Restrictive Covenant shall be construed as a whole according to their common meaning and not strictly for or against any Owner.
 - F. Captions. The captions preceding the text of each section and subsection are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Restrictive Covenant.
 - G. Governing Law; Place of Performance. This Restrictive Covenant and all rights and obligations created shall be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in Travis County, Texas.
 - H. Notices. Any Notice to the Owners or the City shall be in writing and given by delivering the same to such party in person, by expedited, private

carrier services (such as Federal Express) or by sending the same by registered or certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

- I. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant shall be deemed to create a partnership between or among any Owner, or the City of Austin in their respective businesses or otherwise; nor shall it cause them to be considered joint ventures or members of any joint enterprise.
- J. Enforcement. If any person, persons, corporation, or entity of any other character shall violate or attempt to violate this Restrictive Covenant, the City of Austin, its successors and assigns, may proceed at law, or in equity, against said person, or entity violating or attempting to violate such covenant or covenants. The failure at any time to enforce this Restrictive Covenant by the City of Austin, its successors and assigns, whether any violations are known or not, shall not constitute a waiver or estoppel of the right to do so at any time.
- K. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of such modification, amendment or termination in the Official Public Records of Travis County, Texas, executed, acknowledged and approved by (a) the Director of the Watershed Protection and Development Review Department, City of Austin; and (b) all of the Owners of the Property at the time of the modification, amendment, or termination.

Executed to be effective this 23RD day of January, 2008.

DECLARANT:

By: _____

By: John Torkelson- President
1508 Garner, L.P.

STATE OF TEXAS

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COUNTY OF TRAVIS

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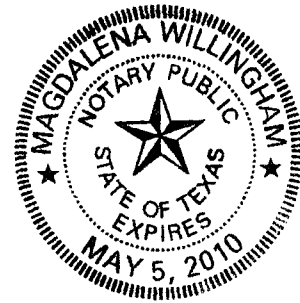
This instrument was sworn to, subscribed and acknowledge before me on this the 23 day of January, 2008, by John Torkelson, President of 1508 Garner, L.P. A Texas Limited Partnership, on behalf of said Limited Partnership.



Notary Public - State of Texas

ACCEPTED: CITY OF AUSTIN

By: Jessica Kinggacharat Britner
Name: Jessica Britner
Title: Principal Planner



APPROVED AS TO FORM:

By: Debra Thomas

AFTER RECORDING, RETURN TO:

City of Austin
Watershed Protection and Development Review Department
P.O. Box 1088
Austin, Texas 78767
Project Name: 1506 and 1508 Garner Avenue
Attn: Jessica King
Building Permit No. 2008-00803200000 BP

LIENHOLDER CONSENT TO GRANT OF RESTRICTIVE COVENANT

STATE OF TEXAS §

COUNTY OF TRAVIS §

Recitals:

1508 Garner, L.P. is the Owner (called "Owner", whether one or more) of the following property:

That tract of land situated in Travis County, Texas described in the attached and incorporated **EXHIBIT "A"** ("Property").

Compass Bank ("Lienholder") holds a lien against the Property under the following described documents:

Deed of Trust dated **the 20th day of September, 2007**, from **1508 Garner, L.P.** to **James D. Alfred**, Trustee, securing the payment of one promissory note of even date in the original principal amount of **\$1,005,510.00**, payable to **Lienholder**, of record in Document Number **2007176876**, of the Official Public Records of Travis County, Texas.

Owner has granted to the City of Austin ("City") a Restrictive Covenant against and running with the Property.

Agreement

In consideration of \$10, and other good and valuable consideration, the receipt of which is acknowledged, the Lienholder agrees as follows:

- 1. Compass Bank** consents to the grant of Restrictive Covenants against and running with the Property, which is executed contemporaneously herewith.

- 2. Lienholder** subordinates all of its liens on this Property to the rights and interests of the City, its successors and assigns, and any foreclosure of its liens will not extinguish City's rights and interests in the Restrictive Covenants or the Property.

3. Lienholder affirms that the undersigned has the authority to bind the Lienholder, and that all corporate acts necessary to bind the Lienholder have been taken.

Executed on the 28th day of December, 2007.

Compass Bank
A Texas Corporation

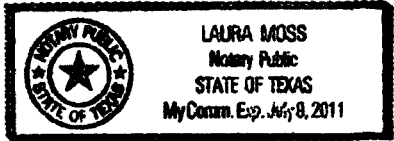
By: Craig Snow
Name: CRAIG SNOW
Title: Vice President

ACKNOWLEDGMENT

STATE OF Texas §
COUNTY OF Texas §

Before me ~~Craig Snow~~ ^{Laura Moss} Notary Public, on this day personally appeared Craig Snow, Vice President of Compass Bank a Texas Corporation, known to me personally to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 28 day of December, 2007.



Laura Moss
Notary Public, State of _____

Exhibit A

Lots 2 and 3, Block C, Barton Heights "B", a subdivision in Travis County, Texas, according to map or plat thereof recorded in Volume 4, Page 202, of the Plat Records of Travis County, Texas.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2008 Feb 05 02:52 PM 2008017981

CLARKMM \$44.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.