

# CENTRAL WEST AUSTIN NEIGHBORHOOD PLAN CONTACT TEAM

December 11, 2014

Organized 2010

*"To facilitate the implementation of the Central West Austin Combined Neighborhood Plan."*

Honorable Mayor Leffingwell and City Council Members  
Austin City Council  
City Hall  
301 West 2nd Street  
Austin, Texas 78701

## OFFICERS

Michael Cannatti  
Chair

August Harris  
Vice Chair

Joyce Basciano  
Secretary

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Craig DUEWALL  
Roya Johnson  
Jerry Lloyd  
Mark Nixon  
Blake Tollett  
Betty Trent  
Diane Umstead  
Tina Weinberger  
Vivian Wilson

Re: Neighborhood Plan Amendment Case No. NPA-2014-0027 (1018 W. 31th Street)

Dear Mayor Leffingwell and Council Members:

The Central West Austin Neighborhood Plan Contact Team (PCT) has not voted to oppose the requested amendment to our Future Land Use Map (FLUM) for 1018 W. 31th Street because the Applicant (St. Andrews Episcopal School) has reached an agreement with neighbors as shown in the attached Agreement. We recognize that the Applicant and neighbors made significant efforts to negotiate the terms of this Agreement, and note with appreciation their good faith efforts to resolve the issues here.

Sincerely,

Michael Rocco Cannatti  
Chair, Central West Austin Neighborhood Plan Contact Team

**AGREEMENT REGARDING REZONING OF 1018 W. 31<sup>ST</sup> STREET  
AUSTIN, TEXAS**

This Agreement Regarding Rezoning of 1018 W. 31<sup>st</sup> Street, Austin, Texas (this "**Agreement**") is made and entered into on this the 10<sup>th</sup> of December, 2014 by and between St. Andrew's Episcopal School (the "**School**") and the West 31<sup>st</sup> Street Creekside Neighborhood Association (the "**WCNA**") and individual owners and residents executing this Agreement (the "**Neighbors**") of property located near the property locally known as 1018 W. 31<sup>st</sup> Street, Austin, Texas (the "**Property**"). The WCNA and the Neighbors are collectively referred to herein as the "**Neighborhood**".

**RECITALS**

WHEREAS, the Property is more particularly described as Lot 1-A, Amended Plat of Lots 1 and 2, Block 1, Martha E. Whitten Addition and Lot 1, Seton Medical Center Addition No. 4, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Plat Book 95, Page 344 of the Plat Records of Travis County, Texas and is located across Wabash Street from the School's current lower school and middle school campus, and the School has entered into a contract with the Daughters of Charity to acquire the Property for school use;

WHEREAS, in order to complete the sale of the Property to the School, the Daughters of Charity have applied with the City of Austin the ("**City**") for (i) an amendment to the Future Land Use Map associated with the current neighborhood plan covering the Property from "Multi-family" to "Office/Mixed Use" in City File No. NPA-2014-0027 (the "**NPA Application**"), (ii) a re-zoning of the Property from "MF-2" to "LO-MU-CO" as set forth in City File No. C14-2014-0145 (the "**Rezoning Application**"), and (iii) a variance with the City Board of Adjustment from the requirements of Section 25-2-832 of City Code (the "**Variance Application**"). The NPA Application, the Rezoning Application and the Variance Application are collectively referred to herein as the "**Applications**";

WHEREAS, the School has been appointed by the Daughters of Charity as agent with respect to the Applications, and, as the proposed future owner of the Property, is willing to make certain agreements with respect to the Applications, the School and the Property as set forth herein; and

Whereas, the undersigned Neighbors and the Neighborhood agree to withdraw any previously filed opposition to the Applications subject to the terms set forth herein. Individual retractions will be emailed to Maureen Meredith (Planning Department), Tori Haase (Zoning Department) and the CWAN-CT. Further, the Neighborhood desires to support the Applications subject to the terms of this Agreement.

**AGREEMENT**

NOW, THEREFORE, for and in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the School and the Neighborhood hereby agree as follows:

1. The School agrees that the zoning ordinance approved in connection with the Rezoning Application will contain a conditional overlay stating that any uses allowed by the City with the "MU" combining district (but not allowed in the "LO" base district) will be restricted to those uses allowed in

the "MF-1" base district, except for those MF-1 uses listed hereafter which shall be prohibited to the extent the City allows such prohibition under applicable law: 1. Communication services facilities; 2. Any daycare services; 3. Any telecommunication towers; 4. Any group homes; and 5. Any public educational facilities.

2. The School agrees that the zoning ordinance approved in connection with the Rezoning Application will contain a conditional overlay stating that any future use allowed in the "MU" combining district (but not allowed in the "LO" base district) will be restricted to the City's site development regulations applicable to the "MF-1" base district. In addition, the School agrees to enter into a private restrictive covenant for the benefit of the WCNA and Neighbors in the form attached as Exhibit A to this Agreement (the "**Restrictive Covenant**") that provides a minimum twenty-five (25) foot setback from the adjacent property at 1014 W. 31<sup>st</sup> Street for any new structures and maintains the current setback, which is approximately twelve (12) feet, from the adjacent property at 1014 W. 31<sup>st</sup> Street for any current structures. The foregoing setback restrictions shall not apply to any new structure that fully encloses as conditioned space the existing small, narrow courtyard located between the north wing and the south wing of the building that currently exists on the Property. Notwithstanding anything to the contrary, compatibility standards set forth in the City's Code remain applicable and nothing in this Agreement or the Restrictive Covenant shall be deemed to have modified the compatibility standards of the City Code.

3. The School agrees that the zoning ordinance approved in connection with the Rezoning Application will contain a conditional overlay stating that any uses allowed in the "LO" base district shall be restricted to Administrative and Business Office and Private Primary Educational Facilities use, and all other "LO" allowed uses shall be prohibited. The School agrees that the Restrictive Covenant will also restrict the Property to provide that any Administrative and Business Office must be associated with a Private Primary and Secondary Educational Facilities use on the Property or other property owned or occupied by the School.

4. Except for (i) temporary access as may be reasonably necessary during any construction on the Property, and (ii) parking for School staff (but not for any drop-off or pick-up) along W. 31<sup>st</sup> ("**Staff Parking**"), the School agrees that access to the Property from West 31<sup>st</sup> Street shall be prohibited as long as the Property is owned and occupied by the School and that such prohibition shall be set forth in (i) a conditional overlay in the zoning ordinance approved in connection with the Rezoning Application to the extent allowed by the City, and (ii) the Restrictive Covenant; provided that, the Restrictive Covenant will provide that if the Property is ever transferred by the School separate from the School's property to the north, such prohibition shall not apply if the Property is rezoned to MF-1, or a zoning district with the same or more restrictive site development regulations as set forth in the City Code as of November 20, 2014. The Staff Parking along W. 31<sup>st</sup> Street shall be limited to no more than 3 parking spaces and shall be located generally where the existing W. 31<sup>st</sup> Street driveway and parking for the Property is located, except that no Staff Parking will be allowed within 12 feet of the western property line of 1014 W. 31<sup>st</sup> Street and the current driveway will not be used as a driveway to access the back or side of the Property. In the event that the City does not allow the use of the area where the existing W. 31<sup>st</sup> Street driveway and parking for the Property is located for the Staff Parking as provided herein, the Neighborhood agrees not to oppose any variance or waiver required by the City to allow the use of the area for such Staff Parking.

5. The School agrees that the zoning ordinance approved in connection with the Rezoning Application will contain a conditional overlay stating that with respect to any use allowed in the "LO"

base zoning district, such use shall be restricted to two (2) stories or 30' in height. The School agrees that the Restrictive Covenant will provide that any windows located on the south side of any second story of any building used for School purposes on the Property will be located above eye level so that the second story windows allow light but not views except to the sky.

6. By December 15, 2014, the School agrees to provide the Neighborhood with a tree survey according to City standards for both the Property and the adjacent parking lot property owned by the School. The School agrees to use reasonable, good faith efforts to remove bamboo that is currently on the Property and the lot to the North of the Property, without the use of chemical treatment.

7. Notwithstanding anything to be contained in the zoning ordinance described above, the School agrees that the Restrictive Covenant will be executed by the owner of the Property prior to third reading of the zoning ordinance for the Property and the executed Restrictive Covenant will be delivered to the Neighborhood; ten (10) days after passage of the zoning ordinance on third reading, the Neighborhood may record the Restrictive Covenant. The Restrictive Covenant will, in addition to the items described above, provide, at the WCNA's election, that in the event of any sale, assignment, lease, contribution or transfer of the Property, the School and subsequent owner of the Property will not oppose any "rollback" of the zoning of the Property to a MF-1 designation; the Restrictive Covenant will appoint the WCNA as the agent for the School or such subsequent owner of the Property for processing a rezoning of the Property in the event of any sale, assignment, lease, contribution or transfer of the Property by the School. In addition, the Restrictive Covenant will further provide that, to the extent the access prohibition provided in Paragraph 4 is included in the zoning ordinance as a conditional overlay and in the event of any such transfer of the Property by the School, the Neighborhood would not oppose a re-zoning of the Property to MF-1, or a zoning district with the same or more restrictive site development regulations as set forth in the City Code as of November 20, 2014, in order to remove such restriction from the conditional overlay. The foregoing restrictions in the event of transfer shall not apply to any transfer in connection with any security given to any lender pursuant to any mortgage or the foreclosure thereof so long as the use of the Property for school purposes continues, to any easement or license in connection with the use or development of the Property for school purposes, or to any transfer to an affiliate of the School or successor entity that uses the Property for school purposes.

8. The School agrees to take the following steps with respect to the current traffic issues on W. 31<sup>st</sup> Street:

i. The School agrees that it supports the establishment of School Zones on W. 31st Street, W. 32nd Street, W. 33<sup>rd</sup>, Wabash, and Medical Parkway, and agrees to participate in meetings with and in appropriate written applications to the Austin Transportation Department no later than April 15, 2015. If the City requires reimbursement for the reasonable cost of the signs associated with the establishment of these School Zones, and such cost are \$20,000 or less, the School will be responsible for those costs. If the total cost exceeds \$20,000, the School may, but shall not be obligated to, agree to cover the cost above \$20,000.

ii. The School agrees that it will support Neighborhood efforts to improve signage for the Bike Lane situated along the southern boundary of W. 31st Street. If the City requires reimbursement for the reasonable cost of the signs associated with the improved signage for the Bike Lane, and such costs are \$6,000 or less, the School and Neighborhood will split the cost of such signs or improvements 50-50; however, the

Neighborhood's cost shall not exceed \$2,000 and if the total cost is greater than \$4,000, the School will be responsible for the overage, but the School's cost shall not exceed \$4,000. If the total cost exceeds \$6,000, the School and Neighborhood may agree to split the cost above \$6,000.

iii. The School agrees to provide written support for the Neighborhood's request to the City, seeking immediate attention to cut back the overgrowth of the Bike Lane at W. 31st Street and Shoal Creek. The Neighborhood will provide contact information for the School to send such written request.

iv. Any pick-up or drop-off associated with classes held at the Property, including, but not limited to Kindergarten, will not occur on, or from, 31<sup>st</sup> Street or Wabash Ave.; instead, the drop-off and pick-up associated with classes held at the Property shall be done on the North side of the property from the adjacent property, which is currently a parking lot. This restriction set forth in this subparagraph will also be set forth in the Restrictive Covenant.

v. The School agrees that crosswalks are desirable at Lamar and W. 31<sup>st</sup> Street, Wabash and W. 31<sup>st</sup> Street and in front of the school across from the Hike and Bike trail where W. 31st St and Shoal Creek Blvd meet. The School supports the Neighborhoods efforts to request from, and work with, the City to implement crosswalks at the locations described in the immediately preceding sentence and, if the City should request reimbursement for reasonable costs associated with the crosswalk improvements, and such costs are \$6,000 or less, the School and Neighborhood will split such costs 50-50; however, the Neighborhood's cost shall not exceed \$2,000 and if the total cost is greater than \$4,000, the School will be responsible for the overage, but the School's cost shall not exceed \$4,000. If the total cost exceeds \$6,000, the School and Neighborhood may agree to split the cost above \$6,000.

vi. By March 15, 2015, the School agrees to send a letter to City Traffic Engineer in Transportation Department to request help in evaluating the current school traffic and the anticipated changes in traffic that may result from use of the Property for school purposes.

vii. By April 15, 2015, the School agrees to perform a traffic study by a qualified traffic engineer (the "**Traffic Study**"), at its sole cost, to (a) evaluate the current school traffic and circulation together with any anticipated changes in traffic and circulation that may result from the use of the Property for school purposes, (b) evaluate the efficiency of current and proposed drop-off and pick-up areas and procedures for both the existing school campus and the Property, and (c) make any recommendations that do not materially and adversely affect school operations with respect to area roadways, traffic circulation, and drop-off and pick-up in order to materially improve traffic and safety on W. 31st Street other streets during school drop-off and pick-up times. The School will allow the Neighborhood to participate (by the sharing of information and attendance at meetings) in the development and consideration of the Traffic Study.

Furthermore, the School agrees to allow the Neighborhood to reasonably and meaningfully participate (by the reasonable sharing of information and the reasonable attendance at meetings with the City and with the School's consultants) in the consideration of future traffic circulation issues by the School in connection with (i) the School's upcoming master planning efforts planned for 2015 and 2016, and (ii) at any subsequent consideration of a traffic study by the School concerning traffic circulation. The School agrees to provide the Neighborhood a copy of any traffic study it receives, including, but not limited to,

the Traffic Study and any traffic study that is prepared in connection with master planning efforts. In addition, the School and the Neighborhood agree to reasonably cooperate in connection with any future discussions with the City on any mutually beneficial changes to traffic conditions on W. 31st Street.

9. Noise Mitigation

a. Playground Equipment and Playground Area

The School agrees that any playground equipment on the Property will be at least 85 feet away from the shared property line between the Property and 1014 W. 31st Street, and the current wall/ fence along W. 31<sup>st</sup> Street and the Eastern end of the Property shall remain in place or, if it is demolished, the School shall build and maintain a new, solid, six foot (6') fence or wall along W. 31<sup>st</sup> Street and the Western end of the Staff Parking area. The term "playground" as used herein shall mean and refer to an area improved with play structures and large play equipment that is typically and commonly identified as a playground, but shall exclude any other area on the Property where students may play or be engaged in outdoor activities, with the exception of the area located within 60 feet of the western property line of 1014 W. 31<sup>st</sup> Street in which outdoor educational or play activities shall be prohibited.

b. Mechanical Equipment

The School also agrees that any additional mechanical equipment, including, but not limited to air conditioning equipment, on the Property will be more than 25 feet away from the shared property line between the Property and 1014 W. 31st Street and will be screened. The School agrees that any outside lighting on the Property that is less than 50 feet away from the shared property line between the Property and 1014 W. 31st Street (i) will be hooded and facing down (ii) will produce less than 1 foot candle at any location within such 25 foot area, and (iii) will only be used to the extent such use is appropriate for security purposes.

c. Sound wall

Prior to using the Property as an educational facility, the School shall build and maintain a wall/ fence in the form of a six (6) foot wall/ fence between north property line of 1014 W. 31st Street and the lot to the North of the Property constructed of cement, stone or material reasonably acceptable to the adjacent Neighbors.

d. Noise mitigation measures

Further, the School agrees to seek and reasonably consider input from those Neighbors that also own property adjacent to, or across from, the Property on the potential for additional landscaping or other noise mitigation measures.

The restrictions set forth in this paragraph will also be set forth in the Restrictive Covenant.

10. The WCNA, Neighbors and the Neighborhood, subject to the terms of this Agreement, agree to support the Applications through final approval by the Austin City Council and Austin Board of Adjustments. Without limiting the generality of the foregoing, the WCNA, Neighbors and Neighborhood, hereby agree that they will deliver written correspondence to the City affirming such



support, and that they will not oppose, contest, object to, protest against, campaign against, hinder or delay the Applications consistent with this Agreement.

11. The following miscellaneous provisions shall apply to this Agreement.

a. Entire Agreement. Each party hereto warrants that this Agreement has been executed without reliance of any representation of any kind or character not expressly set forth herein, that this Agreement and the Restrictive Covenant embodies the entire agreement and that no other agreements, representations or modifications exist, and this Agreement cannot be modified except in writing signed by all parties.

b. Applicable Law. This Agreement shall be construed in accordance with the applicable laws of the State of Texas and the United States and venue for any dispute hereunder shall be in a court of appropriate jurisdiction in Travis County, Texas.

c. Recitals Incorporated. The recitals set forth on page 1 above are hereby incorporated herein for all purposes.

d. Severability. The provisions of this Agreement are severable, such that if any provision is held invalid, then the remainder of the Agreement shall be enforced.

e. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, their heirs, executors, administrators, officers, directors, partners, shareholders, employees, members, managers, agents, representatives, attorneys, successors and/or assigns.

f. Authority to Execute. Each person signing this Agreement below represents and warrants that he or she has the full authority to sign this Agreement on behalf of the party he or she represents, and this his or her signature below will bind such party to this Agreement.

g. Counterparts / Faxed Signature. This Agreement may be executed in multiple counterparts, all of which shall constitute a single agreement, and this Agreement contains the entire agreement of the parties. A faxed signature shall constitute an original for purposes of execution of this Agreement.

h. Default. In the event of any default by any party hereto, prior to the exercise of any remedies for such default, the non-defaulting party shall provide written notice to the defaulting party and the defaulting party shall have thirty (30) days in which to cure such default; provided that, however, if such cure cannot be reasonably completed within such 30-day period, the defaulting party may commence its cure within the 30-day period and must thereafter diligently pursue such cure to completion.

WE, THE UNDERSIGNED, HEREBY ACKNOWLEDGE THAT WE HAVE READ, HAD FULLY EXPLAINED TO US AND COMPLETELY UNDERSTAND THE FOREGOING AGREEMENT AND ALL PROVISIONS THEREOF. IT IS EXPRESSLY UNDERSTOOD BY ALL PARTIES THAT THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF ANY PARTY HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS OR UNDERSTANDINGS BETWEEN THE PARTIES.

AGREED TO AND ACCEPTED:

ST. ANDREW'S EPISCOPAL SCHOOL

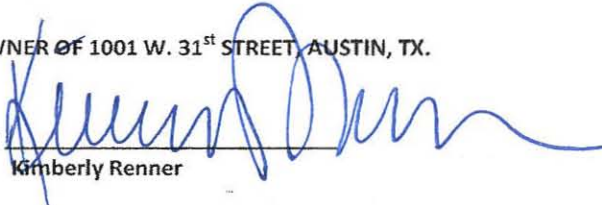
By:   
John C. Murphy, Head of School

By:   
Margaret Gaudin, Board Chair

WEST 31ST STREET CREEKSIDE NEIGHBORHOOD ASSOCIATION

By:   
Jason Thompkins, President  
West 31<sup>st</sup> Street Creekside Neighborhood Association

OWNER OF 1001 W. 31<sup>ST</sup> STREET, AUSTIN, TX.

By:   
Kimberly Renner

OWNER OF 1004, 1006 and 1014 W. 31<sup>ST</sup> STREET, AUSTIN, TX.

By: Philips 31<sup>st</sup> Street Investments, LLC

*SAP*  
By:   
Susan Philips, Member MANAGER



OWNER OF 1011 W. 31<sup>ST</sup> STREET, AUSTIN, TX.

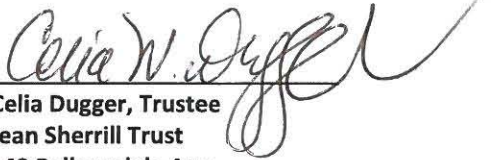
By: Philips Merlin Building, LLC

SSP

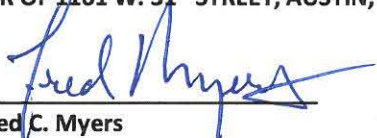
By:   
Susan Philips, Member **MANAGER**

OWNER OF 1017 W. 31<sup>ST</sup> STREET, AUSTIN, TX.


By: Jean W. D. M. Sherrill Trust

By:   
Celia Dugger, Trustee  
Jean Sherrill Trust  
149 Pelhamdale Ave.  
Pelham, NY 10803

OWNER OF 1101 W. 31<sup>ST</sup> STREET, AUSTIN, TX.

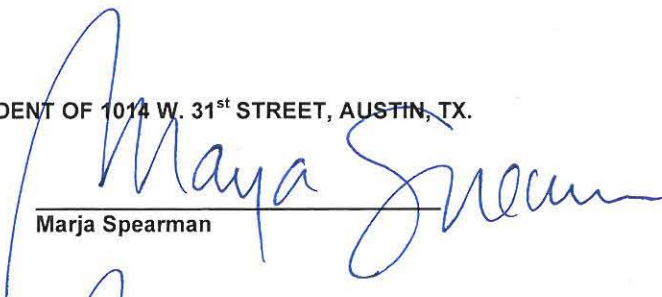
By:   
Fred C. Myers

OWNER OF 1111 W. 31<sup>ST</sup> STREET, AUSTIN, TX.

By:   
Jason Thompkins

RESIDENT OF 1014 W. 31<sup>ST</sup> STREET, AUSTIN, TX.

By:

  
\_\_\_\_\_  
Marja Spearman

TENANT OF 1004 & 1006 W. 31<sup>ST</sup> STREET, AUSTIN, TX.

By:

  
\_\_\_\_\_  
Marja Spearman

RESIDENT OF 1017 W. 31<sup>ST</sup> STREET, AUSTIN, TX.

By:

  
\_\_\_\_\_  
Ronnie Dugger

## RESTRICTIVE COVENANT

This Restrictive Covenant (this "Restrictive Covenant") is made to be effective the date set forth below (the "Effective Date") by DAUGHTERS OF CHARITY MINISTRIES, INC. (f/k/a Daughters of Charity Ministries) a Missouri nonprofit corporation ("Owner"). It is the express intent of Owner that this Restrictive Covenant shall run with the land more particularly described herein as the "Property", is for the benefit of the W. 31st Creekside Neighborhood Association ("WCNA") and the undersigned owners of the properties locally known as 1001 W. 31<sup>st</sup> St., 1004 W. 31<sup>st</sup> St., 1006 W. 31<sup>st</sup> St., 1011 W. 31<sup>st</sup> St., 1014 W. 31<sup>st</sup>, 1017 W. 31<sup>st</sup> St., 1101 W. 31<sup>st</sup> St., and 1111 W. 31<sup>st</sup> St., and more particularly described herein as the "Benefitted Properties" (such owners hereinafter, collectively the "Neighbors") and its successor organizations, and their successor owners and is enforceable by WCNA or the Neighbors and their successor owners of the Benefitted Properties.

### RECITALS:

A. Owner is the owner of Lot 1-A, AMENDED PLAT OF LOTS 1 AND 2, BLOCK 1, MARTHA E. WHITTEN ADDITION AND LOT 1, SETON MEDICAL CENTER ADDITION NO. FOUR, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 95, Page 344, Plat Records of Travis County, Texas. (the "Property");

B. Owner has applied with the City of Austin the ("City") for (i) an amendment to the Future Land Use Map associated with the current neighborhood plan covering the Property from "Multi-family" to "Office/ Mixed Use" in City File No. NPA-2014-0027 (the "NPA Application"), and (ii) a re-zoning of the Property from "MF-2" to "LO-MU-CO" as set forth in City File No. C14-2014-0145 (the "Rezoning Application"). The NPA Application and the Rezoning Application are collectively referred to herein as the "Applications";

C. The Neighbors own the property more particularly described on "Exhibit "A"" (the "Benefitted Properties").

D. Owner has sought the support of the WCNA and the Neighbors for the Applications and a variance application from 25-2-832 before the City Board of Adjustment;

E. Owner has agreed to impose upon the Property these covenants and conditions for the mutual benefit of the Property, Owner, WCNA, and the Neighbors;

F. In reliance upon Owner's Restrictive Covenant to impose these covenants and conditions, WCNA and the Neighbors have agreed to not object to the Applications and a variance application from 25-2-832 before the City Board of Adjustment.

NOW, THEREFORE, for the consideration set forth in Paragraphs D and E above, the receipt and sufficiency of which is hereby acknowledged, Owner does hereby impose the following obligations, restrictions and covenants upon the Property (collectively, the "**Restrictions**"), which shall be binding upon Owner and all subsequent owners of the Property,





or any portion thereof. Owner further declares that the Property shall be held, sold and conveyed, subject to the following:

**Covenants:**

1. The following uses as defined in the City of Austin City Code (“**City Code**”) on November 20, 2014 are prohibited on the Property: any Telecommunication Towers; any Family Home, and any Group Homes. In addition, any Administrative and Business Office use must be associated with a Private Primary or Secondary Educational Facility.
2. St. Andrew’s Episcopal School or any entity that it has an interest in (the “School”) shall maintain a minimum twenty-five (25) foot setback from the adjacent property at 1014 W. 31st Street for any new structures. The School shall maintain the setback, which is approximately twelve (12) feet, from the adjacent property at 1014 W. 31st Street for any current structures. Notwithstanding the foregoing, the foregoing setback restrictions shall not apply to any new structure that fully encloses as conditioned space the existing small, narrow courtyard located between the north wing and the south wing of the building that currently exists on the Property; so long as any new structure that fully encloses as conditioned space the existing small, narrow courtyard located between the north wing and the south wing of the building that currently exists on the Property is at least twelve (12) feet from the adjacent property at 1014 W. 31<sup>st</sup> Street.
3. Except for (i) temporary access as may be reasonably necessary during any construction on the Property, and (ii) parking for School staff (but not for any drop-off or pick-up) along W. 31st (“Staff Parking”), the School agrees that access to the Property from West 31st Street shall be prohibited as long as the Property is owned and occupied by the School and that such prohibition will be set forth in a conditional overlay in the zoning ordinance approved in connection with the Rezoning Application to the extent allowed by the City of Austin; provided that, if the Property is ever transferred by the School separate from the School’s property to the north, such access prohibition contained in this paragraph shall not apply if the Property is rezoned to Multifamily Residence Limited Density (MF-1), or a zoning district with the same or more restrictive site development regulations as set forth in the City Code as of November 20, 2014. The Staff Parking on the Property accessed from W. 31st Street shall be limited to no more than 3 parking spaces and shall be located generally where the existing W. 31st Street driveway and parking for the Property are located, except that no Staff Parking will be allowed within twelve (12) feet of the western property line of 1014 W. 31st Street and the current driveway off of W. 31<sup>st</sup> Street will not be used as a driveway to access the Property.
4. Any pick-up or drop-off associated with classes held at the Property, including, but not limited to Kindergarten, will not occur on, or from, 31st Street or Wabash Ave.; instead, the drop-off and pick-up associated with classes held at the

Property shall occur along the North side of the Property from the adjacent property with access from W. 32<sup>nd</sup> Street, which is currently a parking lot.

5. The School agrees that any windows located on the south side of any second story of any building used for school purposes on the Property will be located above eye level so that the second story windows allow light but not views, except to the sky.
6. In the event of any sale, assignment, lease, contribution or transfer of the Property by the School (any of which is referred to herein as a "Transfer"), the School and any subsequent owner of the Property will not oppose any rollback of the zoning of the Property to an MF-1 base zoning designation, or equivalent zoning district (if the MF-1 zoning district no longer exists at the time of such rollback) with the same site development regulations as set forth in the City Code as of November 20, 2014; and, further, the School and any subsequent owner of the Property hereby appoints the WCNA and the Neighbors as the agent for processing a rezoning of the Property in the event of Transfer by the School. The School and any subsequent owner of the Property will not oppose any rollback of the zoning of the Property to an MF-1 base zoning designation, or equivalent zoning district (if the MF-1 zoning district no longer exists at the time of such rollback) with the same or similar site development regulations as set forth in the City Code as of November 20, 2014. The foregoing restrictions and provisions in the event of a Transfer by the School shall not apply to any Transfer in connection with any security given to any lender pursuant to any mortgage or the foreclosure thereof so long as the use of the Property for school purposes continues, to any easement or license in connection with the use or development of the Property for school purposes, or to any transfer to an affiliate of the School or successor entity that uses the Property for school purposes.
7. To the extent the access prohibition provided in Paragraph 3 is included in the zoning ordinance as a conditional overlay and in the event of any Transfer of the Property by the School, the WCNA and the Neighbors will not oppose a re-zoning of the Property to MF-1 or a zoning district with the same or more restrictive site development regulations as set forth in the City Code as of November 20, 2014 in order to remove the conditional overlay restriction for access to the Property from W. 31<sup>st</sup> Street as set forth in Paragraph 3 above and in the zoning ordinance.
8. The School agrees that any playground equipment on the Property will be at least 85 feet away from the shared property line between the Property and 1014 W. 31st Street, and the current wall/ fence along W. 31st Street and the Eastern end of the Property shall remain in place or, if it is demolished, the School shall build and maintain a new, solid, six foot (6') fence or wall along W. 31st Street and the Western end of the Staff Parking area. The term "playground" as used herein shall mean and refer to an area improved with play structures and large play equipment that is typically and commonly identified as a playground, but shall exclude any other area on the Property where students may play or be engaged in



outdoor activities, with the exception of the area located within 60 feet of the western property line of 1014 W. 31st Street in which outdoor educational or play activities shall be prohibited.

9. The School also agrees that any additional mechanical equipment, including, but not limited to air conditioning equipment, on the Property will be more than 25 feet away from the shared property line between the Property and 1014 W. 31st Street and will be screened. The School agrees that any outside lighting on the Property that is less than 50 feet away from the shared property line between the Property and 1014 W. 31st Street (i) will be hooded and facing down (ii) will produce less than 1 foot candle at any location within such 25 foot area, and (iii) will only be used to the extent such use is appropriate for security purposes.
10. Prior to using the Property as an educational facility, the School shall build and maintain a wall/ fence in the form of a six (6) foot wall/ fence between north property line of 1014 W. 31st Street and the lot to the North of the Property constructed of cement, stone or material reasonably acceptable to the adjacent Neighbors.
11. Notwithstanding anything to the contrary herein, all compatibility standards set forth in the City Code remain applicable and nothing in this Restrictive Covenant shall be deemed to have modified the compatibility standards of the City Code to the extent such compatibility standards may apply to the Property.
12. This Restrictive Covenant and the restrictions, covenants, benefits and obligations created hereby are benefits and servitudes running with the Property and shall inure to the benefit of the Owner, WCNA, the Neighbors as owners of the Benefitted Properties, and their respective heirs, representatives, lessees, successors, and assigns and shall be binding upon the Owner, and its heirs, representatives, lessees, successors and assigns.
13. If any part of this Restrictive Covenant or any of the foregoing covenants is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Restrictive Covenant, and such remaining portion of this Restrictive Covenant shall remain in full effect.
14. This Restrictive Covenant may be modified, amended, or terminated only by joint written action of (a) WCNA, the Neighbors, and (b) the Owner(s) of the Property, or the portion thereof subject to the modification, amendment or termination, at the time of such modification, amendment or termination.
15. All notices required shall be in writing addressed to the respective parties as set forth below, unless another address shall have been designated by notice to the other parties, and shall be delivered by personal delivery, or by registered or certified mail, to the parties as follows:



If to WCNA, to:

W. 31st Creekside Neighborhood Association  
Attn: Jason Thompkins, President  
1111 West 31st Street  
Austin, TX 78705

with a copy to:

Susan Philips  
P.O. Box 5970  
Austin, TX 78763

If to Owner, to:

Daughters of Charity Health Services of Austin,  
a Texas non-profit corporation

16. Governing Law. The laws of the State of Texas shall govern this Restrictive Covenant. Venue for all purposes shall be Travis County, Texas.

EXECUTED this the \_\_\_\_\_ day of December, 2014 (the "Effective Date").

*[SIGNATURE PAGES FOLLOW]*

OWNER:

DAUGHTERS OF CHARITY MINISTRIES, INC.  
(f/k/a Daughter of Charity Ministries)

By: Daughters of Charity Ministries, Inc. a Missouri  
nonprofit corporation, on behalf of said  
corporation.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF MISSOURI           §  
  §  
COUNTY OF ST. LOUIS       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2014, by \_\_\_\_\_, of Daughters of Charity Ministries, Inc. a Missouri  
nonprofit corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC, State of Missouri

**WEST 31ST STREET CREEKSIDE NEIGHBORHOOD ASSOCIATION**

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**Jason Thompkins, President**  
**West 31<sup>st</sup> Street Creekside Neighborhood Association**

STATE OF TEXAS                   §  
   §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2014, by Jason Thompkins.

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NOTARY PUBLIC, State of Texas

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**Kimberly Renner**  
**1001 W. 31<sup>st</sup> St., Austin, TX 78705**

STATE OF TEXAS                   §  
   §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2014, by Kimberly Renner.

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NOTARY PUBLIC, State of Texas

**Philips 31<sup>st</sup> Street Investments, LLC**  
**1004, 1006 and 1014 W. 31<sup>st</sup> Street, Austin, TX 78705**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS                   §  
   §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by Susan Philips, Manager, Philips 31<sup>st</sup> Street Investments, LLC, a Domestic Limited Liability Company.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

**Philips Merlin Building, LLC**  
**1011 W. 31<sup>st</sup> St., Austin, TX 78705**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by Susan Philips, Manager, Philips Merlin Building, LLC, a Domestic Limited Liability Company.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

**Celia Dugger, 1017 W. 31<sup>st</sup> St., Austin, TX 78705**  
**Trustee of the Jean Sherrill Trust**  
**149 Pelhamdale Ave**  
**Pelham, NY 10803**

STATE OF NEW YORK           §  
  §  
COUNTY OF \_\_\_\_\_ §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2014, by Celia Dugger, Trustee, Jean Sherrill Trust.

\_\_\_\_\_  
NOTARY PUBLIC, State of New York

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**Fred Meyers**  
1101 W. 31<sup>st</sup> St., Austin, TX 78705

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2014, by Fred Myers.

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NOTARY PUBLIC, State of Texas

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**Jason Thompkins**  
1111 W. 31<sup>st</sup> St., Austin, TX 78705

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2014, by Jason Thompkins.

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NOTARY PUBLIC, State of Texas



**AFTER RECORDING, PLEASE RETURN TO:**

**Graves Dougherty Hearon Moody  
Attn. Michael J. Whellan  
401 Congress Ave., Ste. 2200  
Austin, Texas 78701**

AUS:3836395.8  
524454