

June 14, 2006

**WHEREAS**, the amended deed restrictions in the attached instrument have been volunteered in connection with a tract of land in City Block 7437, fronting approximately 325 feet on the east line of Preston Road south of Dilbeck Lane, and containing approximately 5.3 acres, which is the subject of Zoning Case No. Z056-162 (DW); and

**WHEREAS**, the City Council desires to accept the amended deed restrictions in the attached instrument; Now, Therefore,

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**Section 1.** That the amended deed restrictions in the attached instrument be and are hereby accepted by the City Council of the City of Dallas, Texas, to be used in conjunction with the development of property that is the subject of Zoning Case No. Z056-162 (DW).

**Section 2.** That these amended deed restrictions must be filed in the Deed Records of Dallas County, Texas.

**Section 3.** That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Dallas, and it is accordingly so resolved.

**APPROVED AS TO FORM:**

**THOMAS P. PERKINS, JR., City Attorney**

By:   
Assistant City Attorney

APPROVED   
HEAD OF DEPARTMENT

APPROVED \_\_\_\_\_  
DIRECTOR OF FINANCE

APPROVED \_\_\_\_\_  
CITY MANAGER

AMENDMENT TO DEED RESTRICTIONS

THE STATE OF TEXAS            )  
   )  
 COUNTY OF DALLAS            )        KNOW ALL PERSONS BY THESE PRESENTS:

## I.

The undersigned, Realty Income Texas Properties, L.P. ("the Owner"), is the owner of the following described property ("the Property"), being in particular a tract of land out of City Block 7437, City of Dallas ("City"), Dallas County, Texas, and being that same tract of land conveyed to the Owner by W.O. Bankston Nissan, INC, a Texas corporation, by deed dated November 9, 2005, and recorded as instrument 200503575553, in the Deed Records of Dallas County, Texas, and being more particularly described in Exhibit "A", attached hereto and made a part hereof for all purposes.

## II.

That the Property was impressed with certain deed restrictions ("Original Restrictions") as shown in an instrument dated September 28, 1964, signed by Alma McCutchin and recorded in Volume 421, Page 1350, of the Deed Records of Dallas County, Texas, a true and correct copy of which is attached to this instrument as Exhibit "B" and made a part of this instrument.

## III.

As applied to the Property, the Owner does hereby amend the Original Restrictions to read as follows:

The following regulations pertain to the northern 325 feet of the 50-foot buffer strip in lieu of restrictions a, b, c, and d.

- (1) Landscaping must be provided as shown on the attached Landscape Plan. Plant materials shall not be removed, except in the event of disease or death.
- (2) No development of any kind is allowed within this 50-foot buffer strip.
- (3) Automatic irrigation must be installed within the 50-foot buffer strip within 120 days after June 14, 2006 or prior to the issuance of a certificate of occupancy for any use on the Property, whichever is earlier;
- (4) Drainage improvements approved by the Building Official must be installed within the 50-foot buffer strip within 120 days after June 14, 2006 or prior to the issuance of a certificate of occupancy for any use on the Property, whichever is earlier;

- (5) In the event that plantings within the 50-foot buffer strip die and/or must be removed as a result of disease, insect infestation, or other biological or natural causes that threaten an entire species (e.g. oak wilt, chestnut blight, Dutch elm disease), alternative equivalent species for replacement purposes may be approved by the arborist. Any landscaping that is removed because of disease or death, must be replaced unless the arborist determines that a replacement tree would not survive in the 50-foot buffer strip.
- (6) The 50-foot buffer strip must be maintained and kept free from trash and underbrush.
- (7) Plant materials within the 50-foot buffer strip must be preserved and must be maintained in a healthy, growing condition with the exception of underbrush, which must be cleared by the owner.

#### IV.

That the preceding amendment was made following notice and public hearing before the City Plan Commission and City Council of the City as required in the Original Restrictions, and notice of such public hearing was given as would have been required by law for a zoning change on the Property. The Owner must file this instrument in the Deed Records of the county or counties where the Property is located at his or her sole cost and expense before the amendment becomes effective.

#### V.

These restrictions shall continue in full force and effect for a period of twenty (20) years from the date of execution, and shall automatically be extended for additional periods of ten (10) years unless amended or terminated in the manner specified in this document.

#### VI.

These restrictions may be amended or terminated only after a public hearing before the City Plan Commission and a public hearing before and approval by the City Council of the City. Notice of the public hearings must be given as would be required by law for a zoning change on the Property. The amending or terminating instrument must be approved as to form by the city attorney. If the City Council approves an amendment or termination of these restrictions, the Owner must then file the amending or terminating instrument in the Deed Records of the county or counties where the Property is located at his or her sole cost and expense before the amendment or termination becomes effective.

#### VII.

These restrictions are not intended to restrict the right of the City Council of the City to exercise its legislative duties and powers insofar as zoning of the Property is concerned.

## VIII.

The Owner agrees that these restrictions inure to the benefit of the City. The Owner hereby grants the City the right to enforce these restrictions by any lawful means, including filing an action in a court of competent jurisdiction, at law or in equity, against the person violating or attempting to violate these restrictions, either to prevent the violation or to require its correction. If the City substantially prevails in a legal proceeding to enforce these restrictions, the Owner agrees that the City shall be entitled to recover damages, reasonable attorney's fees, and court costs. For further remedy, the Owner agrees that the City may withhold any certificate of occupancy or final inspection necessary for the lawful use of the Property until these restrictions are complied with. The right of the City to enforce these restrictions shall not be waived, expressly or otherwise.

## IX.

The Owner agrees to defend, indemnify, and hold harmless the City from and against all claims or liabilities arising out of or in connection with the provisions of this document.

## X.

The provisions of this document are hereby declared covenants running with the land and are fully binding on all successors, heirs, and assigns of the Owner who acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part thereof, thereby agrees and covenants to abide by and fully perform the provisions of this document.

## XI.

Unless stated otherwise in this document, the definitions and provisions of Chapter 51A of the Dallas City Code, as amended, apply and are incorporated into this document as if recited in this document.

## XII.

The Owner understands and agrees that this document shall be governed by the laws of the State of Texas.

## XIII.

That the Owner certifies and represents that there are no liens or mortgages, other than liens for ad valorem taxes, against the Property if there are no signatures of mortgagees or lienholders subscribed below.

## XIV.

That the invalidation of any provision in this instrument by any court shall in no way affect any other provision, which shall remain in full force and effect, and to this end the provisions are declared to be severable.

## XV.

That it is expressly stipulated and understood that this amendment shall only apply to the northern 325 feet of the 50-foot buffer strip and shall in no manner operate to impair or reduce the enforceability of the Original Restrictions, as originally written, and as applied to the remainder of the 50-foot buffer strip. All restrictions and provisions contained in the deed restriction instrument dated September 28, 1964, and recorded in Volume 421, Page 1350 of the Deed Records of Dallas County, Texas, shall remain in full force and effect except as amended by Paragraph III of this instrument.

EXECUTED at the City of Escondido, San Diego County, California, this the 13<sup>th</sup> day of June, 2006.

Realty Income Texas Properties, L.P.,  
a Delaware limited partnership  
By: Realty Income Corporation,  
a Maryland Corporation, Its General Partner

By: Michael R. Pfeiffer  
Printed Name: Michael R. Pfeiffer  
Title: Executive Vice President  
General Counsel

(OWNER REPRESENTS THERE IS NO LIENHOLDER OR MORTGAGEE)

APPROVED AS TO FORM:  
THOMAS P. PERKINS, JR., City Attorney

By: Stacy Zibelich  
Assistant City Attorney

[Attach an acknowledgment for each signer]

Approved As To Form  
Legal Department  
e. p.

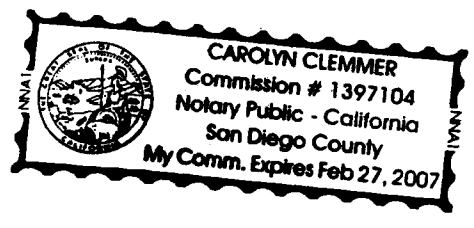
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }  
County of San Diego } ss.

On June 13, 2006 before me, Carolyn Clemmer, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Michael R. Pfeiffer  
Name of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.  
Carolyn Clemmer  
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

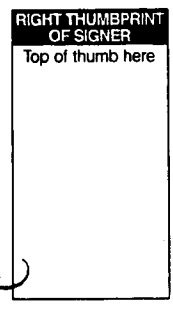
Description of Attached Document

Title or Type of Document: Amendment to Deed Restrictions  
Document Date: 6/13/06 Number of Pages: 4  
Signer(s) Other Than Named Above: \_\_\_\_\_

Capacity(ies) Claimed by Signer

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): EVP, General Counsel
  - Partner —  Limited  General
  - Attorney-in-Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_

Signer Is Representing: Realty Income Corporation



## Exhibit A

BEING a 5.2569 acre tract of land out of City of Dallas, Block No. 7437; said 5.2569 acre tract being the North part of a 15.242 acre tract designated as "Tract Number 111" in the Deed to Mrs. Alma McCutchin, recorded in Volume 4358, Page 11, Deed Records of Dallas County, Texas; said 5.2569 acre tract being more particularly described as follows:

BEGINNING at a found 1 inch iron pipe in the East Right-of-Way line of State Highway 289 (Preston Road) as widened by Deed to the State of Texas, recorded in Volume 2201, Page 554, Deed Records of Dallas County, Texas, said point of beginning being the Northwest corner of said McCutchin "Tract Number 111", and the most Southwesterly corner of the Preston Hills Tennis Club 10 acre tract as recorded in Volume 3760, Page 331, Deed Records of Dallas County, Texas; said beginning point being South 00 degrees 39 minutes 51 seconds East, 337.74 feet from a found wood highway monument;

THENCE North 89 degrees 51 minutes 00 seconds East, with the South line of said Tennis Club tract 704.51 feet to a found 1 1/2 inch iron pipe for corner; said point being the Northwest corner of Prestonshire Estates, an Addition to the City of Dallas, recorded in Volume 22, Page 45, Plat Records of Dallas County, Texas;

THENCE South 00 degrees 22 minutes 45 seconds East, with the West line of said addition, 325.01 feet to a found 5/8 inch iron rod;

THENCE South 89 degrees 50 minutes 01 seconds West, 704.74 feet to a found iron rod for corner in the said East line of State Highway 289;

THENCE North 00 degrees 10 minutes 55 seconds West, with the said East right-of-way line, 188.22 feet to a found "X" in concrete for an angle point;

THENCE North 00 degrees 33 minutes 18 seconds West, continuing with said East right-of-way line, 136.89 feet to the POINT OF BEGINNING, containing 228,993 square feet or 5.2569 acres of land, more or less.

NOTE: The Company is prohibited from insuring the area or quantity of the land described herein. Any statement in the above legal description of the area or quantity of land is not a representation that such area or quantity is correct, but is made only for informational and/or identification purposes and does not override Item 2 of Schedule B hereof.

# Beautification Easement

06-13-54 270378 45-50 150

THE STATE OF TEXAS  
COUNTY OF DALLAS

ACCORDANCE

WHEREAS, on March 30, 1954, the City Council of the City of Dallas, by its official action adopted a motion in which it approved the recommendation of the City Planning Commission that the hereinafter described property be rezoned under a special permit for local retail-3 uses providing the owner thereof would execute an agreement erecting a fifty (50) foot buffer strip on the east side of said property with a masonry wall of brick face or decorative masonry, six feet high and that the owner of said property agree to maintain said buffer strip, the property to be rezoned being particularly described as follows:

Block all of City Block 7437 fronting approximately 800 feet on the east line of Preston Road and approximately 725 feet on the north line of Valley View Lane and containing 13.896 acres of land.

WHEREAS, the undersigned, Mrs. Alma McDruchis, a widow, is the owner of the following described property being a fifty-(50) foot buffer strip off the east side in the above described property, is set aside pursuant to the conditions required in the zoning ordinance rezoning the property for local retail-3 uses, said property being particularly described as follows:

BEGINNING at a point that is 42.36 feet north 0°09' west from the southeast corner of a 15.84 acre tract of land in the Edward Wilburn Survey, Abstr. No. 1523, and being in City of Dallas Block No. 7437, and being described in a deed to Mrs. Alma McDruchis dated 5-20-38 in the Deed Records of Dallas County, Texas, said beginning point is present northerly line of Valley View Lane and is the west line of City Block A-7436;

THENCE north 0°09' west 503.2 feet along the west line of City Block A-7436 to a point (see corner);

THENCE north 69°56' west 30 feet;

THENCE south 0°09' east along a line 30 feet from and parallel to the west line of City Block A-7436 to the northerly line of Valley View Lane;

THENCE south 33°31' west to an angle point in the northerly line of Valley View Lane;

THENCE south 79°53' west to the place of beginning;

BEARING to an easement as described in a deed to the State of Texas dated 6-18-49 and filed 7-18-49 in the Deed Records of Dallas County, Texas.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:**

That I, Mrs. Alma McDruchis, a widow, owner of the above described property do hereby create a fifty (50) foot buffer strip described above, which was required as a condition in order to have other property owned by me adjacent to the above described property and located in block 7437, rezoned for local retail-3 uses, said buffer strip being subject to the following conditions:

1. That the fifty (50) foot buffer strip in its zoning case #13-54-4, required as a condition of the ordinance rezoning my property, and as shown on the site plan shall be left in a natural state as a natural buffer zone and there shall be no development of any kind within this fifty (50) foot buffer strip;

421 1350

Edw. B

b. That the existing trees and shrubs and other landscaping features shall be preserved and kept in a healthy and growing condition with the exception of underbrush which shall be cleared by the owner;

c. That it shall be the responsibility of the owner, her assigns and heirs to maintain this buffer strip keeping it free from brush, keeping it free of underbrush, but preserving the natural trees and shrubbery;

d. The agreement to maintain the thirty (30) foot buffer strip, described above, shall be a covenant running with the land, and shall be binding upon her successors, heirs, administrators, or assigns and shall be filed in the Deed Records of Dallas County, Texas, at my expense.

WITNESS MY HAND this the 20th day of September, A. D. 1999.

*Alma MacGibbon*  
ALMA MACGIBBON, WIFE

THE STATE OF TEXAS

COUNTY OF DALLAS

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared ALMA MACGIBBON, a widow, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 20th day of September, A. D. 1999.



*Janet H. ...*  
Notary Public in and for Dallas County, Texas

Approved in a letter  
H. J. ... CITY ...  
Judge of the County

ENSURE THE AREA IS FINE GRADED PRIOR TO PLANTING. ALLOW NATIVE VEGETATION TO REHABITATE THE AREA.

LANDSCAPE CONTRACTOR IS RESPONSIBLE FOR WATERING AND MAINTAINING (THUS THE WARRANTY) OF THESE PLANT MATERIALS FOR 90 DAYS AFTER SUBSTANTIAL COMPLETION OF THE PROJECT. INSTALL 2 BUBBLERS PER TREE AS PART OF AN AUTOMATIC IRRIGATION SYSTEM.

SPECIES OF TREES IS SUBJECT TO CHANGE BASED UPON AVAILABILITY. EXCEPT THAT 10-12' EASTERN RED CEDARS AND 2-4' EITHER WILLOW OR BALD CYPRESS TREES WILL BE PLANTED. THE LOCATION IS SHOWN ON THIS PLAN IS APPROXIMATE TO WITHIN 30 FEET OF THE LOCATION ON GROUND. EXCEPT THAT THE EASTERN RED CEDAR AND WILLOW ARE PLANTED IN THE 50 FOOT BUFFER STRIP AND THE OTHER BALD CYPRESS TREES MUST BE PROVIDED IN THE DRAINAGE AREA.

- 18-20' TALL, 8" CAL LIVE OAK (TYP)
- 12-14' CADDIS MAPLE
- 20-26' TALL, 8" CAL CEDAR ELM (TYP)
- 20-26' TALL CHINESE PISTACHE
- 20-25' TALL TEXAS ASH
- 10-12' WAX MYRTLE, MULTI-TRUNK
- 5-6' TALL MULTI-TRUNK REDBUD
- 9-10' TALL YALPOM HOLLY, MULTI-TRUNK (TYP)
- 12-15' TALL, 4 1/2" CAL CHOUJAPIN OAK
- 12-14' TALL GRAPE MYRTLE 'NATCHEZ' MULTI-TRUNK (TYP)
- 15-16' TALL ARISTOCRAT PEAR (TYP)
- 5-6' TALL MULTI-TRUNK REDBUD (TYP)
- New Live Oaks (or equivalent species)
- Less Mature (16-18" tall) New Canopy Trees
- New Native White Trees
- New Custom Red Cedars

IF PLOTTED BY COLOR:  
 RED: 8-12' Live Oaks  
 GREEN: 16-18" Live Oaks (or equivalent species)  
 BLUE: 8-12' Live Oaks (or equivalent species)

