

04/19/07 Council

Items 2 & 4

4D 4T

Zoning Case No C14 06 0203

Zoning Case No C14 06 0204

RESTRICTIVE COVENANT

OWNER Weldon J Schmidt

ADDRESS 9006 Cullen Lane Austin Texas 78748

OWNER A King Enterprises Management Ltd a Texas limited partnership

ADDRESS 9605 Orchid Hill Dallas, Texas 75243

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 Lot 6 Block A Tom F Dunnahoo Subdivision a subdivision in the City of Austin Travis County Texas as described in a deed of record in Volume 683 Page 1 of the Deed Records of Travis County Texas and

Lot 2 Block A Tom F Dunnahoo Subdivision replat of a portion of Lot 8 Tom F Dunnahoo Subdivision a subdivision in the City of Austin Travis County Texas as described in a deed of record in Volume 96 Pages 11 and 12 of the Deed Records of Travis County Texas

WHEREAS the Owners 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 Owners 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 These covenants and restrictions shall run with the land and shall be binding on the Owners of the Property its successors and assigns

- 1 Hours of construction are limited to 7 00 a m to 7 00 p m
- 2 A building for a single tenant shall not exceed 25 000 square feet
- 3 A 24 hour business shall not operate within 200 feet of a single family residential property line
- 4 Outdoor containers used for storage or display of merchandise are prohibited
- 5 Dumpster placement shall be the more restrictive of i) a minimum of 150 feet from the west property line or ii) that required under the Commercial Design Standards in Chapter 25.2 Subchapter E (*Design Standards and Mixed Use*) of the City Code

- 6 Loading dock placement shall be the more restrictive of i) a minimum of 100 feet from the west property line or ii) that required under the Commercial Design Standards in Chapter 25.2 Subchapter E (*Design Standards and Mixed Use*) of the City Code
- 7 A loading dock located within 100 to 200 feet of the west property line may not be located on the west wall of a building
- 8 Delivery hours are limited to 7:00 a.m. to 10:30 p.m.
- 9 The noise level of mechanical equipment including outdoor speakers may not exceed 70 decibels at the west property line. Any outdoor speakers shall either be oriented away from the single family residential neighborhood to the west or be screened by a device wall, fence, structure, or other screening device.
- 10 Outdoor lighting shall be limited to 20 feet in height and all fixtures shall be fully shielded with full cut-off light fixtures.
- 11 At the time an application for approval of a site plan is submitted for development of the Property or any portion of the Property, an Integrated Pest Management (IPM) plan shall be submitted to the Watershed Protection and Development Review Department for review and approval. The IPM plan shall comply with the guidelines in Section 16.9.2 (D) and (F) of the Environmental Criteria Manual that are in effect on the date of this covenant.
- 12 At the time an application for approval of a site plan is submitted for development of the Property or any portion of the Property, a landscape plan shall be submitted to the Watershed Protection and Development Review Department for review and approval. Ninety percent of the total plant material used, exclusive of turf, shall be native to Central Texas or on the Grow Green Native and Adapted Landscape Plants list attached as Exhibit A. Plants on the Invasive Species/Problem Plants list attached as Exhibit B may not be included.
- 13 If any person or entity shall violate or attempt to violate this agreement and covenant, 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 or covenant to prevent the person or entity from such actions and to collect damages for such actions.
- 14 If any part of this agreement or covenant 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.
- 15 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.

- 16 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 subject to the modification amendment or termination at the time of such modification amendment or termination

EXECUTED this the _____ day of _____ 2007

OWNER

Weldon J Schmidt

OWNER

**A King Enterprises Management, Ltd ,
a Texas limited partnership**

By A King Enterprises Inc
a Texas corporation
General Partner

By _____
Alma King
President

APPROVED AS TO FORM

Assistant City Attorney
City of Austin

COUNTY OF TRAVIS §

Notary Public State of Texas

COUNTY OF _____ §

Notary Public State of Texas

**After Recording, Please Return to
City of Austin
Department of Law
P O Box 1088
Austin, Texas 78767
Attention Diana Minter, Paralegal**

EXHIBIT A

Grow Green Native and Adapted Landscape Plants

Trees

Ash Texas <i>Fraxinus texensis</i>	Oak Escarpment Live <i>Quercus fusiformis</i>
Arizona Cypress <i>Cupressus arizonica</i>	Oak Lacey <i>Quercus glaucoides</i>
Big Tooth Maple <i>Acer grandidentatum</i>	Oak Monterey (Mexican White) <i>Quercus polymorpha</i>
Cypress Bald <i>Taxodium distichum</i>	Oak Shumard <i>Quercus shumardii</i>
Cypress Montezuma <i>Taxodium mucronatum</i>	Oak Texas Red <i>Quercus texana</i> (<i>Quercus buckleyi</i>)
Elm Cedar <i>Ulmus crassifolia</i>	Pecan <i>Carya illinoensis</i>
Elm Lacebark <i>Ulmus parvifolia</i>	Soapberry <i>Sapindus drummondii</i>
Honey Mesquite <i>Prosopis glandulosa</i>	
Oak Bur <i>Quercus macrocarpa</i>	
Oak Chinquapin <i>Quercus muhlenbergii</i>	
Oak Southern Live <i>Quercus virginiana</i>	

Small Trees/Large Shrubs

Anacacho Orchid Tree <i>Bauhinia congesta</i>	Persimmon Texas <i>Diospyros texana</i>
Buckeye Mexican <i>Ungnadia speciosa</i>	Pistachio Texas <i>Pistacia texana</i>
Buckeye Rec <i>Aesculus pavia</i>	Plum Mexican <i>Prunus mexicana</i>
Carolina Buckthorn <i>Rhamnus caroliniana</i>	Pomegranate <i>Punica granatum</i>
Cherry Laurel <i>Prunus caroliniana</i>	Redbud Mexican <i>Cercis canadensis mexicana</i>
Crape Myrtle <i>Lagerstroemia indica</i>	Redbud Texas <i>Cercis canadensis</i> var <i>texensis</i>
Desert Willow <i>Chilopsis linearis</i>	Retama Jerusalem Thorn <i>Parkinsonia aculeata</i>
Dogwood Roughleaf <i>Cornus drummondii</i>	Senna Flowering <i>Cassia corymbosa</i>
Escarpment Black Cherry <i>Prunus serotina</i> var <i>eximia</i>	Smoke Tree American <i>Cotinus obovatus</i>
Eve's Necklace <i>Sophora affinis</i>	Sumac Flameleaf <i>Rhus lanceolata</i>
Goldenball Leadtree <i>Leucaena retusa</i>	Viburnum Rusty Blackhaw <i>Viburnum rufidulum</i>
Holly Possumhaw <i>Ilex decidua</i>	Viburnum Sandankwa <i>Viburnum suspensum</i>
Holly Yaupon <i>Ilex vomitoria</i>	
Mountain Laurel Texas <i>Sophora secundiflora</i>	

Shrubs

Abelia Glossy <i>Abelia grandiflora</i>	Nandina <i>Nandina domestica</i> <i>Compacta</i>
Agarita <i>Berberis trifoliata</i>	<i>nana</i> <i>Gulf Stream</i>
Agave (Century Plant) <i>Agave sp</i>	Oleander <i>Nerium oleander</i>
American Beautyberry <i>Callicarpa americana</i>	Palmetto <i>Sabal minor</i>
Artemisia <i>Artemisia</i> <i>Powis Castle</i>	Prickly Pear <i>Opuntia engelmannii</i> var <i>lindheimeri</i>
Barbados Cherry <i>Malpighia glabra</i>	Rose Belinda s Dream <i>Rosa Belinda s Dream</i>
Barberry Japanese <i>Berberis thunbergii</i>	Rose Lamarne <i>Rosa Lamarne</i>
<i>Atropurpurea</i>	Rose Livin Easy <i>Rosa Livin Easy</i>
Basket Grass (Sacahuista) <i>Nolina texana</i>	Rose Marie Pavie <i>Rosa Marie Pavie</i>
Black Dalea <i>Dalea frutescens</i>	Rose Martha Gonzales <i>Rosa Martha Gonzales</i>
Bush Germander <i>Teucrium fruticans</i>	Rose Mutabilis <i>Rosa Mutabilis</i>
Butterfly Bush <i>Buddleia davidii</i>	Rose Nearly Wild <i>Rosa Nearly Wild</i>
Butterfly Bush Woolly <i>Buddleia marrubifolia</i>	Rose Old Blush <i>Rosa Old Blush</i>
Coralberry <i>Symphoricarpos orbiculatus</i>	Rose Perle d or <i>Rosa Perle d or</i>
Cotoneaster <i>Cotoneaster sp</i>	Rock Rose <i>Pavonia lasiopetala</i>
Eleagnus <i>Eleagnus pungens</i>	Rosemary <i>Rosmarinus officinalis</i>
Esperanza/Yellow Bells <i>Tecoma stans</i>	Sage Mountain <i>Salvia regia</i>
Flame Acanthus <i>Anisacanthus quadrifidus</i> var <i>wrightii</i>	Sage Texas (Cenizo) <i>Leucophyllum frutescens</i>
Fragrant Mimosa <i>Mimosa borealis</i>	Senna Lindheimer <i>Cassia lindheimeriana</i>
Holly Burford <i>Ilex cornuta</i> <i>Burfordii</i>	Southern Wax Myrtle <i>Myrica cerifera</i>
Holly Dwarf Chinese <i>Ilex cornuta Rotunda nana</i>	Sumac Evergreen <i>Rhus virens</i>
Holly Dwarf Yaupon <i>Ilex vomitoria Nana</i>	Sumac Fragrant (Aromatic) <i>Rhus aromatica</i>
Jasmine Primrose <i>Jasminum mesnyi</i>	Texas Sotol <i>Dasylirion texanum</i>
Kidneywood <i>Eysenhardtia texana</i>	Turk s Cap <i>Malvaviscus arboreus</i>
Lantana Native <i>Lantana horrida</i>	Yucca Paleleaf <i>Yucca pallida</i>
Mistflower Blue (Blue Boneset) <i>Eupatorium coelestinum</i>	Yucca Red <i>Hesperaloe parviflora</i>
Mistflower White (Shrubby White Boneset) <i>Ageratina havanense</i>	Yucca softleaf <i>Yucca recurvifolia</i>
Mock Orange <i>Philadelphus coronarius</i>	Yucca Twistleaf <i>Yucca rupicola</i>

Perennials

Black eyed Susan <i>Rudbeckia hirta</i>	Lantana Trailing <i>Lantana montevidensis</i>
Bulbine <i>B. frutescens</i> or <i>caulescens</i>	Marigold, Mexican Mint <i>Tagetes lucida</i>
Bush Morning Glory <i>Ipomoea fistulosa</i>	Obedient Plant Fall <i>Physostegia virginiana</i>
Butterfly Weed <i>Asclepias tuberosa</i>	Oregano Mexican <i>Poliumantha longiflora</i>
Butterfly Weed Mexican <i>Asclepias curassavica</i>	Penstemon <i>Penstemon</i> sp
Cast Iron Plant <i>Aspidistra elatior</i>	Phlox, Fragrant <i>Phlox pilosa</i>
Chile Pequin <i>Capsicum annuum</i>	Pink Skullcap <i>Scutellaria suffrutescens</i>
Cigar Plant <i>Cuphea micropetala</i>	Plumbago <i>Plumbago auriculata</i>
Columbine Red <i>Aquilegia canadensis</i>	Poinciana Red Bird of Paradise Pride of Barbados
Columbine Yellow <i>Aquilegia chrysantha</i> Texas Gold	<i>Caesalpinia pulcherrima</i>
Coreopsis <i>Coreopsis lanceolata</i>	Primrose Missouri <i>Oenothera macrocarpa</i>
Daisy Blackfoot <i>Melampodium leucanthum</i>	Purple Coneflower <i>Echinacea purpurea</i>
Daisy Copper Canyon <i>Tagetes lemmonii</i>	Ruellia <i>Ruellia brittoniana</i>
Damiantha <i>Crysactina mexicana</i>	Sage Cedar <i>Salvia roemeriana</i>
Fall Aster <i>Aster oblongifolius</i>	Sage Jerusalem <i>Phlomis fruticosa</i>
Fern River <i>Thelypteris kunthii</i>	Sage Majestic <i>Salvia guaranitica</i>
Firebush <i>Hamelia patens</i>	Sage Mealy Blue <i>Salvia farinacea</i>
Gaura <i>Gaura lindheimeri</i>	Sage Mexican Bush <i>Salvia leucantha</i>
Gayfeather <i>Liatris mucronata</i>	Sage Penstemon Big Red Sage <i>Salvia penstemonoides</i>
Giegg Dalea <i>Dalea greggii</i>	Sage Russian <i>Perovskia atricapsifolia</i>
Hibiscus Perennial <i>Hibiscus moscheutos</i> <i>Hibiscus coccineus</i>	Sage Scarlet or Tropical <i>Salvia coccinea</i>
Honeysuckle Mexican <i>Justicia spicigera</i>	Salvia Gregg (Cherry Sage) <i>Salvia greggii</i>
Hymenoxys (Four Nerve Daisy) <i>Tetrameuris scaposa</i>	Shrimp Plant <i>Justicia brandegeana</i>
Indigo Spires <i>Salvia Indigo Spires</i>	Texas Betony <i>Stachys coccinea</i>
Iris Bearded <i>Iris albicans</i>	Verbena Prairie <i>Verbena bipinnatifida</i>
Iris Butterfly/Bicolor (African) <i>Dietes</i> sp	Yarrow <i>Achillea millefolium</i>
Lamb's Ear <i>Stachys byzantina</i>	Zexmenia <i>Wedelia texana</i>
Lantana <i>Lantana x hybrida</i> (many varieties)	

Ornamental Grasses

Bluestem Big *Andropogon gerardii*
 Bluestem Bushy *Andropogon glomeratus*
 Bluestem Little *Schizachyrium scoparium*
 Fountain Grass Dwarf *Pennisetum alopecuroides*
 Indian Grass *Sorghastrum nutans*
 Inland Sea Oats *Chasmanthium latifolium*

Mexican Feathergrass (Wiregrass) *Stipa tenuissima*
 Muhly Bamboo *Muhlenbergia dumosa*
 Muhly Big *Muhlenbergia lindheimeri*
 Muhly Deer *Muhlenbergia rigens*
 Muhly Gulf *Muhlenbergia capillaris*
 Muhly Seep *Muhlenbergia reverchonii*
 Sideoats Grama *Bouteloua curtipendula*
 Wild Rye *Elymus canadensis*

Vines

Asian Jasmine *Trachelospermum asiaticum*
 Carolina Jessamine *Gelsemium sempervirens*
 Coral Vine *Antigonon leptopus*
 Crossvine *Bignonia capreolata*
 Fig Vine *Ficus pumila*

Honeysuckle Coral *Lonicera sempervirens*
 Lady Banksia Rose *Rosa banksiae*
 Passion Vine *Passiflora incarnata*
 Trumpet Vine *Campsis radicans*
 Virginia Creeper *Parthenocissus quinquefolia*

Groundcover

Aztec Grass *Ophiopogon japonicus*
 Frogfruit *Phyla incisa*
 Horseherb *Calyptocarpus vialis*
 Leadwort *Plumbago Ceratostigma plumbaginoides*
 Liriope *Liriope muscari*
 Monkey Grass (Mondo Grass) *Ophiopogon japonicus*
 Oregano *Origanum vulgare*
 Periwinkle Littleleaf *Vinca minor*
 Pigeonberry *Rivina humilis*

Purple Heart *Secreasea pallida*
 Santolina (Lavender Cotton) *Santolina chamaecyparissus*
 Sedge Berkeley *Carex tumulicola*
 Sedge Meadow *Carex perdentata*
 Sedge Texas *Carex texensis*
 Sedum (Stonedrop) *Sedum nuttallianum*
 Silver Ponyfoot *Dichondra argentea*
 Woolly Stemodia *Stemodia lanata* (*Stemodia tomentosa*)

Turf Grasses

Bermuda 71419 Sahara Baby Common
 Buffalo 609 Stampede Prairie
 St Augustine Baby Common
 Raleigh Delmar

Zoysia Fine Leaf Matrella Emerald Zorro
 Zoysia Coarse Leaf Japonica Jamui
 El Toro Palis

EXHIBIT B

Invasive Species/Problem Plants

PLANTS TO AVOID

INVASIVES

(Plants that are non native to the Central Texas ecosystem and tend to out compete native species)

Do Not Plant

(Travel by seeds berries and spores so can be transported long distances They have already invaded preserves and greenbelts)

- Arizona Ash
- Chinaberry
- Chinese Pistache
- Chinese Tallow
- Chinese Privet
- Elephant Ear
- Holly Fern
- Japanese Honeysuckle
- Ligustrum Wax Leaf
- Mimosa
- Mulberry Paper
- Nandina (large berrying varieties)
- Photinia Chinese
- Pyracantha
- Tamarisk
- Tree of Heaven

Do Not Plant Near

Parks/Preserves/Greenbelts

(travel by runners rhizomes and stems so only invade neighboring areas)

- Bamboo
- English Ivy
- Vinca (Periwinkle)

PROBLEM TREES AND SHRUBS

(Typically fast growing highly adaptable but often have weak wood and are short-lived Most are susceptible to insect and disease problems)

- Arizona Ash
- Azalea (not adapted to Austin soils)
- Boxelder
- Camellia
- Chinaberry
- Chinese Privet
- Chinese Tallow
- Cottonwood
- Ligustrum
- Lombardy Poplar
- Mimosa
- Mulberry Paper
- Photinia Chinese
- Siberian Elm
- Silver Maple
- Sweetgum
- Sycamore
- Tree of Heaven