

Late Backup

72

**AMENDMENT OF RESTRICTIVE COVENANT
FOR
ZONING CASE NO. C14-72-015**

Owners: ZIF Holdings, Inc., a Texas corporation, *et.al.*
(see below for remaining Owners)

City: The City of Austin, a home-rule city, municipal corporation and political subdivision of the State of Texas, in Travis County, Texas.

City Council: The City Council of the City of Austin

Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the Owner to the City of Austin, the receipt and sufficiency of which is acknowledged.

WHEREAS, John D. Byrum, as owner of all that certain property described in Zoning File No. C14-72-015, consisting of approximately 31.49 acres of land, more or less, (the "Original Property"), as more particularly described in the restrictive covenant recorded in the Real Property Records of Travis County, Texas, in Volume 4365, Page 149, (the "Restrictive Covenant") imposed certain restrictions and covenants on the Original Property by the Restrictive Covenant of record.

WHEREAS, the Restrictive Covenant provided that the covenant could be modified, amended, or terminated by joint action of both (a) a majority of the members of the City Council, and (b) the owner of the Original Property at the time of such modification, amendment or termination. There now being several owners of the subdivided Original Property, their collective action is required to modify, amend, or terminate the Restrictive Covenant.

WHEREAS, ZIF Holdings, Inc., a Texas corporation, is the current owner of a portion of the Original Property identified as 1517 East Anderson Lane (the "Anderson Lane Property"), and more particularly described by metes and bounds as approximately 3.58 acres of land in Exhibit "A" incorporated into this Amendment of Restrictive Covenant (the "Amendment"), and desires to amend the Restrictive Covenant as to the Anderson Lane Property and to amend the modification provision of the Restrictive Covenant.

WHEREAS, the City Council and the owners ("Owners") of the Original Property agree the Restrictive Covenant should be amended as to the Anderson Lane Property and the modification provision.

NOW, THEREFORE, for and in consideration of the premises and mutual promises, covenants, and agreement hereinafter set forth, the City of Austin and the Owners agree as follows:

1. The following applies to the Anderson Lane Property only:

Paragraph No. 1 of the Restrictive Covenant is amended to remove the following from the list of prohibited uses:

~~(e) Drive-in type cafes use (but not prohibiting restaurants or eating places whereby all customers are served inside a building);~~

All other uses shown in Paragraph No. 1 are to remain as prohibited uses.

2. The Anderson Lane Property may be developed with a drive-in services use provided that development complies with the following standards:

- a) A six-foot high masonry wall shall be constructed along the south property line adjoining Buttermilk Creek as shown on Exhibit "A". Measurement of the wall must use construction elevation grades depicted on an approved City of Austin site plan.
- b) Screening of applicable features as set forth in Section 25-2-1006 (*Visual Screening*) of the City Code is required. Such screening shall incorporate the design elements set forth in Section 2.4.3 (*Buffering*) of the Environmental Criteria Manual ("ECM") and shall be located within the 50 foot non-development buffer zone as delineated on the survey or plat. The screening and design elements requirements outlined under these sections of the City Code and ECM must be exceeded by at least 50 percent.
- c) The noise level of mechanical equipment including outdoor speakers may not exceed 70 decibels at the west property line. Any outdoor speakers shall be oriented away from the single family residential neighborhood to the south, or screened by a device, wall, fence, structure, or other screening device.
- d) Outdoor lighting fixtures shall be fully shielded with full cut-off light fixtures.

3. Paragraph No. 9 of the Restrictive Covenant is amended as follows:

(9) This agreement may be modified, amended, or terminated only after notice and hearing to all adjoining property owners and by joint action of both (a) a majority vote of the members of the City Council of the City of Austin, or such other governing body as may succeed the City Council of the City of Austin, and (b) by the owner(s) of the above described property or portion of the above described property subject to the modification, amendment, or termination, at the time of such modification, amendment, or termination,

4. Except as expressly provided for in this Amendment, each and every one of the terms, conditions, and provisions of the Restrictive Covenant, as set forth in the Restrictive Covenant, shall continue in full force and effect on and after the effective date of this Amendment.
5. The City Manager, or his designee, shall execute, on behalf of the City, this Amendment for Zoning File No. C14-72-015, as authorized by the City Council of the City of Austin. The Amendment shall be filed in the Official Public Records of Travis County, Texas.

6. This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and all of which are identical.

EXECUTED to be effective the _____ day of _____, 2010.

OWNERS

ZIF Holdings, Inc

AAA Fire & Safety Equipment Co Inc

Comerica Bank

Semeia Properties LP

Alliance ES Anderson Springs LLC

183 Apartment Site Ltd

Austin Creekwood Apartments Ltd

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

(SIGNATURE AND ACKNOWLEDGEMENT PAGES TO FOLLOW)