

Z-10

RESTRICTIVE COVENANT

OWNER: John Fish

ADDRESS: 303 West 12th Street, Austin, Texas 78703

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: A 145.53 acre tract of land, more or less, out of the Alexander Walters Survey No. 67 and the Samuel Cushing Survey No. 70, Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this covenant.

WHEREAS, the Owner 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 Owner 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 Owner of the Property, its heirs, successors, and assigns.

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property as specified in that certain Traffic Impact Analysis ("TIA") prepared by Robert J. Halls and Associates, dated September 13, 2004, or as amended and approved by the Director of the Watershed Protection and development Review Department. All development on the Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Watershed Protection and Development Review Department, dated October 13, 2004. The TIA shall be kept on file at the Watershed Protection and Development Review Department.
2. A sound barrier fence shall be constructed and maintained along the west property line of the portion of the Property identified as Tract 6 Block A that abuts Tract 1 Block A, the tracts being more particularly identified on Exhibit "B" incorporated into this covenant.
3. 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.
4. 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.

5. 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.
6. 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 _____, 2004.

OWNER:

John Fish

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____, 2004, by John Fish.

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, Legal Assistant

METCALFE & SANDERS, INC./LAND SURVEYORS

4800 SOUTH CONGRESS
AUSTIN, TEXAS 78745
(512) 442-5363

SURVEYS & RECORDS SINCE 1904

EXHIBIT A

METES AND BOUNDS DESCRIPTION OF A SURVEY OF 145.53 ACRES OF LAND, A PORTION OF THE ALEXANDER WALTERS SURVEY NO. 67, ABSTRACT NO. 791 AND A PORTION OF THE SAMUEL CUSHING SURVEY NO. 70, ABSTRACT NO. 164, IN TRAVIS COUNTY, TEXAS, SAID 145.53 ACRES OF LAND BEING COMPOSED OF THE FOLLOWING TRACTS: ALL OF THAT 16.000 ACRE TRACT, A PORTION OF THE SAID ALEXANDER WALTERS SURVEY NO. 67, IN TRAVIS COUNTY, TEXAS, AS DESCRIBED IN WARRANTY DEEDS FROM JANET LONG FISH TO JOHN COLBERT FISH CONVEYING UNDIVIDED ONE-HALF INTERESTS IN VOLUME 10842, PAGE 401; AND VOLUME 10904, PAGE 181, REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; ALL OF THAT 15.000 ACRE TRACT, A PORTION OF THE SAID ALEXANDER WALTERS SURVEY NO. 67, IN TRAVIS COUNTY, TEXAS, AS DESCRIBED IN WARRANTY DEEDS FROM JANET LONG FISH TO JOHN COLBERT FISH AND HIS WIFE, DANA H. FISH CONVEYING UNDIVIDED ONE-THIRD INTERESTS IN VOLUME 11591, PAGE 128; VOLUME 11608, PAGE 565; AND VOLUME 11855, PAGE 92, REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS; AND A PORTION OF THAT 122.63 ACRE TRACT, MORE OR LESS, A PORTION OF THAT SAID ALEXANDER WALTERS SURVEY NO. 67 AND A PORTION OF THE SAMUEL CUSHING SURVEY NO. 70, ABSTRACT NO. 164, IN TRAVIS COUNTY, TEXAS, AS DESCRIBED IN A WARRANTY DEED FROM JANET LONG FISH TO JOHN COLBERT FISH AND HIS WIFE, DANA H. FISH IN VOLUME 11903, PAGE 280, REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, AS SURVEYED FOR JOHN COLBERT FISH BY METCALFE & SANDERS, INC., LAND SURVEYORS, 4800 SOUTH CONGRESS AVENUE, AUSTIN, TEXAS, SAID 145.53 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Beginning at a Texas Department of Transportation brass disk found in concrete (Type II monument) at the intersection of the curving west line of Dessau Road and the north line of Fish Lane, said brass disk found in concrete being also the most northerly southwest corner of that 3.783 acre tract, a portion of the Alexander Walters Survey No. 67, Abstract No. 791 and a portion of the Samuel Cushing Survey No. 70, Abstract No. 164, in Travis County, Texas, designated as Parcel 14, Part II, and described in Cause No. 2217, Proceedings in Eminent Domain in the Probate Court No. One of Travis County, Texas, styled Travis County, Texas v. John C. Fish and Dana H. Fish, of record in Volume 13327, Page 522, Real Property Records of Travis County, Texas and in a south line of that 122.63 acre tract, more or less, a portion of the said Alexander Walters Survey No. 67 and a portion of the said Samuel Cushing Survey No. 70, in Travis County, Texas, as described in a Warranty Deed from Janet Long Fish to John Colbert Fish and wife, Dana H. Fish in Volume 11903, Page 280, Real Property Records of Travis County, Texas, for the POINT OF BEGINNING and most southerly southeast corner of the herein described tract;

THENCE with the north line of Fish Lane and a south line of the said Fish 122.63 acre tract, more or less, courses numbered 1 through 2 inclusive as follows:

(1) N 62°07'10" W 243.59 feet to a 1/2" iron pipe found;
 (2) N 62°15'35" W 1731.91 feet to a 1/2" steel pin found at the southwest corner of the said Fish 122.63 acre tract, more or less, and the southeast corner of that 67.93 acre tract, a portion of the said Alexander Walters Survey No. 67, in Travis County, Texas, as described in an Executor's Deed from Ruth May Mulenex, Independent Executrix of the Estate of Etta B. Smith, deceased to Ruth May Mulenex, Carolyn Barron, James Barron Mulenex and Edward Joe Mulenex in Volume 13082, Page 108, Real Property Records of Travis County, Texas, for the southwest corner of the herein described tract;

(3) THENCE with the west line of the said Fish 122.63 acre tract, more or less, and the east line of the said Mulenex 67.93 acre tract, N 27°36'40" E at 3372.39 feet passing a 60d nail found in a wood fence post at an angle point in the east line of the said Mulenex 67.93 acre tract, in all 3407.45 feet to a 1/2" steel pin with plastic cap set in the south line of that 62.690 acre tract (remainder), a portion of the said Alexander Walters Survey No. 67, in Travis County, Texas, as described in a Special Warranty Deed from Walter Wendlandt and William D. Gaston to Continental Homes of Texas, L.P. in Document Number 1999014086, Official Public Records of Travis County, Texas, for the northwest corner of the said Fish 122.63 acre tract, more or less, and for the northwest corner of the herein described tract, and from which 1/2" steel pin with plastic cap set a 1/2" steel pin found at the northeast corner of the said Mulenex 67.93 acre tract bears N 68°37'10" W 12.25 feet;

(4) THENCE with a north line of the said Fish 122.63 acre tract, more or less, and the south line of the said Continental Homes of Texas, L.P. 62.690 acre tract (remainder) and the south line of Lots 29 and 28, Block G, Gaston-Shelton Subdivision Section One, a subdivision of a portion of the said Alexander Walters Survey No. 67, in Travis County, Texas, of record in Document Number 200100233, Official Public (Plat) Records of Travis County, Texas, S 62°19'50" E 174.20 feet to a 1/2" steel pin found at an angle point in the south line of said Lot 28, Block G, Gaston-Shelton Subdivision Section One;

THENCE with a north line of the said Fish 122.63 acre tract, more or less, and the south line of Lots 28, 27, 26, 25, 24, 16, 15, 14, 11, 10, 9, 8, 7, 6, 5, 4, 3, 2 and 1, Block G of said Gaston-Shelton Subdivision Section One, courses numbered 5 through 7 inclusive as follows:

(5) S 62°30'35" E 674.17 feet to a 1/2" steel pin with plastic cap found, plastic cap inscribed "Austin Surveyors" at an angle point in the south line of said Lot 14, Block G, Gaston-Shelton Subdivision Section One;

(6) S 62°55'00" E 413.28 feet to a 1/2" steel pin with plastic cap found, plastic cap inscribed "Austin Surveyors" at an angle point in the south line of said Lot 5, Block G, Gaston-Shelton Subdivision Section One;

(7) S 62°46'35" E 391.94 feet to a 1/2" steel pin found in the west line of Dessau Road at the southeast corner of said Lot 1, Block G, Gaston-Shelton Subdivision Section One and the northwest corner of that 1.201 acre tract, a portion of the said Alexander Walters Survey No. 67, in Travis County, Texas, designated as Parcel 14, Part I, and described in said Cause No. 2217, Proceedings in Eminent Domain in the Probate Court No. One of Travis County, Texas, styled Travis County, Texas v. John C. Fish and Dana H. Fish, of record in Volume 13327, Page 522, Real Property Records of Travis County, Texas, for the most northerly northeast corner of the herein described tract;

THENCE with the west line of Dessau Road and the west and south line of the said Travis County, Texas Parcel 14, Part I of 1.201 acres, courses numbered 8 through 10 inclusive as follows:

(8) S 26°20'50" W 706.36 feet to a Texas Department of Transportation brass disk found in concrete (Type II monument) at beginning of curve;

(9) with a curve to the left an arc distance of 335.83 feet, said curve having a radius of 2963.37 feet, a central angle of 6°29'36" and a chord of which bears S 23°06'05" W 335.65 feet to a 1/2" steel pin with plastic cap set at a non-tangent end of curve for an angle point in the west line of Dessau Road and for the southwest corner of the said Travis County, Texas Parcel 14, Part I of 1.201 acres, for an interior corner of the herein described tract, and from which 1/2" steel pin with plastic cap set a Texas Department of Transportation brass disk found in concrete (Type II monument) bears S 82°50' W 0.62 of one foot;

(10) S 70°08'00" E 25.30 feet to a 1/2" steel pin with plastic cap set at a non-tangent beginning of curve for an angle point in the west line of Dessau Road and a northwest corner of that 32.666 acre tract, a portion of the said Alexander Walters Survey No. 67, and others, in Travis County, Texas, designated as Parcel No. 2, Part Three and described in a Special Warranty Deed from the Missouri Pacific Railroad Company to the State of Texas in Volume 11339, Page 2005, Real Property Records of Travis County, Texas, for the most southerly northeast corner of the herein described tract;

THENCE with the west line of Dessau Road and a west, north and west line of the said State of Texas Parcel No. 2, Part Three of 32.666 acres, courses numbered 11 through 14 inclusive as follows:

(11) with a curve to the left at an arc distance of 458.37 feet passing a Texas Department of Transportation brass disk found in concrete (Type II monument) 0.26 of one foot east of line, in all a total arc distance of 569.01 feet, said curve having a radius of 2940.00 feet, a central angle of 11°05'20" and a chord of which bears S 14°19'20" W 568.12 feet to a 1/2" steel pin with aluminum cap found, aluminum cap inscribed "SDHPT" at end of curve;

(12) S 8°47'55" W 245.39 feet to a calculated point at an angle point in the west line of Dessau Road and an interior corner of the said State of Texas Parcel No. 2, Part Three of 32.666 acres, for the most northerly southeast corner of the herein described tract;

(13) N 81°11'25" W 15.00 feet to a Texas Department of Transportation brass disk found in concrete (Type II monument) at an angle point in the west line of Dessau Road at a northwest corner of the said State of Texas Parcel No. 2, Part Three of 32.666 acres, for an interior corner of the herein described tract;

(14) S 8°47'40" W at 257.26 feet passing a Texas Department of Transportation brass disk found in concrete (Type II monument) 0.11 of one foot east of line, in all 400.07 feet to a Texas Department of Transportation brass disk found in concrete (Type II monument) at a southwest corner of the said State of Texas Parcel No. 2, Part Three of 32.666 acres and the northwest corner of said Travis County, Texas Parcel 14, Part II of 3.783 acres;

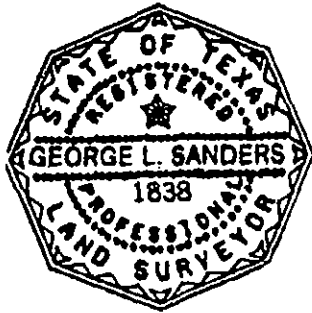
THENCE with the west line of Dessau Road and the most northerly west line of the said Travis County, Texas Parcel 14, Part II of 3.783 acres, courses numbered 15 through 17 inclusive as follows:

(15) S 27°03'15" W 221.72 feet to a 1/2" steel pin with plastic cap set;

(16) S 32°57'25" W 405.86 feet to a 1/2" steel pin with plastic cap set at beginning of curve;

(17) with a curve to the left an arc distance of 589.38 feet, said curve having a radius of 8272.08 feet, a central angle of 4°04'56" and a chord of which bears S 30°54'55" W 589.26 feet to the POINT OF BEGINNING of the herein described tract, containing 145.53 acres of land.

Survey Completed January 14, 2004



METCALFE & SANDERS, INC.
Land Surveyors

By:

A handwritten signature in black ink, appearing to read "George L. Sanders". The signature is written in a cursive, flowing style.

George L. Sanders
Texas Registered Professional
Land Surveyor No. 1838

Note: The plastic caps on the steel pins set are inscribed with "M & S 1838".

Plan 7789
FB 892, P 1-16 & DC
Ref: Plan 7789B
Plan 7789A
Plan 7789

Job No. 03317.01

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