

Item #121
(Revised 7/26/06)

Zoning Case No. C814-89-006.03

RESTRICTIVE COVENANT

OWNER: FM 2222/Jester, L.P., a Texas limited partnership

ADDRESS: 11200 FM 2222, Austin, Texas 78730

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: Lots 2, 3, and 4, Block A, Canyon Ridge Phase B Subdivision, a subdivision in the City of Austin, Travis County, according to the map or plat of record in Plat Book 93, Page 5, of the Plat 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 heirs, successors, and assigns.

1. 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 1.6.9.2 (D) and (F) of the Environmental Criteria Manual that are in effect on the date of this covenant.
2. 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.
3. All required shade trees shall be a minimum 4-inch caliper.
4. A 12-foot wide sidewalk with six-inch caliper trees planted every 30 feet on center and lighting provided at intervals of 50 feet are required along the main internal east/west drive.

5. The owner shall provide a rainwater collection and irrigation system from rooftop areas of at least one building for irrigation of managed landscaped areas. The rainwater collection system shall provide an overall volume of a minimum of 9,000 gallons of storage. The rainwater collection system shall be maintained at least once a year to remove organic debris and to ensure that the system is functioning as designed.
6. A minimum of 40 percent of the material for internal sidewalk construction shall be pervious pavers or similar material as approved by the Watershed Protection and Development Review Department or its successors.
7. The wall of a water quality pond shall be constructed using design elements or features such as stone veneer, colored concrete, and raised flowerbeds to reduce the visual impact of the height of the wall as viewed from FM 2222.
8. Screening shall exceed by 50 percent the screening requirements for the Hill Country Roadway corridor as set forth in the City Code.
9. Unless exempted below, the site shall be divided into blocks no longer than 660 feet by 660 feet from curb to curb. The maximum block length applies both to blocks containing buildings and blocks containing surface parking. This standard shall not require the block front adjacent to a Hill Country Roadway to be divided in a manner inconsistent with state highway access spacing requirements.
10. An individual knowledgeable in erosion controls and tree protection to conduct daily inspections of the site during site development shall be required on site (the "Environmental Reviewer"). The Environmental Reviewer shall be chosen by the Owner in its sole discretion. This person will be responsible for maintaining a daily log to be kept on site and accessible to the City environmental inspector.
11. A fast food restaurant is not permitted on the Property. For purposes of this covenant fast food restaurant means a restaurant that does not offer table service and typically has drive-in or drive-through window service. Table service means that wait staff takes orders at the dining tables and delivers those orders to patrons at the tables, the establishment maintains a full service kitchen, and food is presented to patrons in non-disposable containers.
12. 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.

13. 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.
14. 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.
15. 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 _____, 2006.

OWNERS:

**Fm 2222/Jester, L.P.,
a Texas limited partnership**

By: Pecan Center, Inc.,
a Texas corporation,
its general partner

By: _____
Louis R. Williams,

Title: _____

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 _____, 2006 by Louis R. Williams, _____ of Pecan Center, Inc., a Texas corporation, general partner of FM 2222/Jester, L.P., a Texas limited partnership, on behalf of the corporation and the limited partnership.

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