

RESTRICTIVE COVENANT

OWNER: Permanent School Fund of the State of Texas

ADDRESS: 1700 N. Congress Avenue, Room 720, Austin, TX 78701

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 6.453 acre tract of land, more or less, out of the Santiago del Valle Grant Abstract No. 24, in 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 successors and assigns.

1. Site Access and Parking.
 - A. A No Left Turn sign shall be installed at the egress point of the Property and Brandt Road.
 - B. Owner agrees that any automotive sales use will have a policy of no testdriving of vehicles on Brandt Road.
 - C. Owner agrees to provide adequate parking onsite for employees and visitors.
 - D. A neighborhood petition to eliminate parking along Brandt Road shall not be opposed by the Owner.
2. Landscaping and Buffers.
 - A. A landscape plan shall be developed using native plants and materials.
 - B. A landscape plan shall be made available to the Parkside Homeowner's Association for review.
 - C. A 25-foot wide vegetative buffer, that includes an approximately four-foot high vegetative berm, shall be provided along Brandt Road between the driveway on Brandt Road and the southeast corner of the Property.

D. The following provisions shall be addressed at site plan:

1. The site plan shall comply with City of Austin landscape criteria.
2. Tree replacement may be accomplished through relocation of some of the existing trees on the Property. Replacement trees shall include Class 1 native trees.

3. Signs.

Any sign constructed on the Property shall comply with City of Austin sign regulations for the IH-35 corridor.

4. Lighting.

A. A photometric study that shows the maximum, minimum, and average foot candles for the site shall be provided to the Parkside Homeowner's Association.

B. Illumination levels across the entire property shall average:

- 18.3 foot candles during business hours;
- 8.17 foot candles for two hours after closing; and
- 3.87 foot candles at night.

C. Lights along the perimeter of the Property shall be partially-shielded fixtures installed to manufacturing specifications.

D. A minimum of scattered and spill-over lighting shall occur beyond the property line.

E. Searchlights are not allowed to be used on the Property.

5. Site and Building Requirements

A. The service area entrance shall be located on the north side of the building.

B. Water quality pond(s) shall be located in the southeast corner of the Property.

C. Stormwater and water quality ponds shall be of earth or stacked rock construction. Vertical concrete walls are not allowed, except in connection with a control point.

D. "Luxury dealership" construction standards shall be used for the building. These standards shall include a 100 percent masonry façade on part of the building facing

the south elevation. The remaining façade facing the south elevation shall be either masonry or screened with landscaping.

- E. Owner shall participate in the City of Austin Green Building Program, within Owner's budgetary constraints in Owner's sole discretion.
 - F. The use of exterior speakers, paging systems, or other sound devices, is not permitted on the Property, with the exception of security devices.
 - G. Outdoor music or live music from the Property shall conform to City of Austin noise regulations.
 - H. Any vending machines shall be indoors.
 - I. Any onsite body shop repair use shall be an accessory use.
 - J. Site utilities under Owner's control shall be underground.
 - K. Hours of operation for any business on the Property shall conform to State law.
 - L. No vehicle fueling facilities will be constructed on the property in connection with an automotive sales use.
 - M. Trash dumpsters shall be located on the north end of the Property.
 - N. Servicing of trash dumpsters is not permitted between the hours of 10:00 p.m. and 6:00 a.m.
 - O. Refuse, trash, and garbage shall be kept in covered containers at all times. The containers shall be kept in an enclosed structure or screened from public view.
 - P. Mechanical, solid waste, and utility-related equipment shall be screened from public view.
 - Q. Loading docks and service activity areas shall be located on the north and east sides of the building.
 - R. Large inflatable objects or vehicles that are suspended from a crane shall not be displayed above the Property for more than five consecutive days.
6. 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 and to prevent the person or entity from such actions.

7. 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.
8. 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.
9. 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.

Witness my hand and seal of office this 17th day of February, 2005.

The STATE OF TEXAS, on behalf and for the benefit of the PERMANENT SCHOOL FUND

By: 
Jerry E. Patterson, Commissioner,
Texas General Land Office, and Chairman,
School Land Board

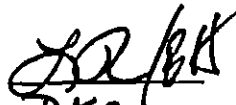
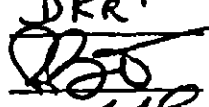

APPROVED:

Contents


Legal Services

Deputy Comm.

Chief Clerk


DKR



APPROVED AS TO FORM:


Assistant City Attorney
City of Austin

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767
Attention: Diana Minter, Legal Assistant