

(P)

RESTRICTIVE COVENANT

copy

OWNER: JPMorgan Chase Bank, N.A., a national banking association,
Co-Trustee of The Karl B. Wagner Testamentary Trust for the benefit of
Karl B. Wagner, Jr., and
The Karl B. Wagner Testamentary Trust for the benefit of
Mary Ella Wagner Jones

ADDRESS: 2200 Ross Avenue, 7th Floor, Dallas, Texas 75201

OWNER: Karl B. Wagner, Jr., Individually and as Co-Trustee of The Karl B.
Wagner Testamentary Trust for the benefit of Mary Ella Wagner Jones

ADDRESS: 7 Berkshire Drive, Richmond, Texas 23229-8218

OWNER: Mary Ella Wagner Jones, Individually and as Co-Trustee of
The Karl B. Wagner Testamentary Trust for the benefit of Karl B. Wagner

ADDRESS: 33 Pine Island Road, Hilton Head Island, South Carolina 29928

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 73.465 acre tract of land, more or less, out of the L.C. Cunningham
Survey No. 68, Abstract No. 163, in Travis County, the tracts 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, generates traffic that exceeds the
total traffic generation for the Property as specified in that certain Traffic Impact Analysis
("TIA") prepared by Alliance Texas Engineering Company, dated June 2004, or as
amended and approved by the Director of the Watershed Protection and Development
Review Department. 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 March 7, 2005. The TIA shall be
kept on file at the Watershed Protection and Development Review Department.
2. 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.

3-24-05

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3. 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.
4. 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.
5. 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 14th day of March, 2005.

OWNER:

JPMorgan Chase Bank, N.A.,
a national banking association
Co-Trustee of The Karl B. Wagner Testamentary
Trust, fbo Karl B. Wagner, Jr., and
The Karl B. Wagner Testamentary Trust
Fbo Mary Ella Wagner Jones

By: Terry W. Anderson
Terry W. Anderson,
Vice President

Date: 3/14/05

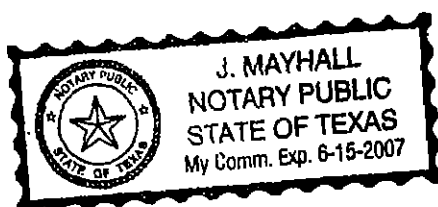
THE STATE OF TEXAS

§

COUNTY OF DALLAS

§

This instrument was acknowledged before me on this the 14th day of March, 2005, by Terry Anderson, Vice President of JPMorgan Chase Bank, N.A., a national banking association, on behalf of the association, and the association acknowledged this instrument as Co-Trustee of the Karl B. Wagner Testamentary Trust fbo Karl B. Wagner, Jr., and The Karl B. Wagner Testamentary Trust fbo Mary Ella Wagner Jones.



J. Mayhall
Notary Public, State of Texas

EXECUTED this the 14th day of March, 2005.

OWNER:

Karl B. Wagner, Jr.

Karl B. Wagner, Jr.,
Individually and as
Co-Trustee of the Karl B. Wagner Testamentary
Trust fbo Mary Ella Wagner Jones

Date: _____

THE STATE OF Virginia §
COUNTY OF Richmond §
City

This instrument was acknowledged before me on this the 14th day of March, 2005, by Karl B. Wagner, Jr., Individually and as Co-Trustee of the Karl B. Wagner Testamentary Trust fbo Mary Ella Wagner Jones.

Debra A. Stoss

Notary Public, State of Virginia

My commission expires
March 31, 2005

EXECUTED this the 14th day of March, 2005.

OWNER:

Mary Ella Wagner Jones
Mary Ella Wagner Jones
Individually, and as
Co-Trustee of the Karl B. Wagner Testamentary
Trust fbo Karl B. Wagner, Jr.

Date: 3.14.05

THE STATE OF South Carolina §
COUNTY OF Beaufort §

This instrument was acknowledged before me on this the 14 day of March
2005, by Mary Ella Wagner Jones, Individually and as Co-Trustee of the Karl B. Wagner
Testamentary Trust fbo Karl B. Wagner, Jr.

[Signature]
Notary Public Signature, State of South Carolina

APPROVED AS TO FORM:

Commission Expires
July 21, 2006

[Signature]
Assistant City Attorney
City of Austin

FIELD NOTES
FOR
KARL WAGNER, JR.

EXHIBIT A

73.465 ACRE TRACT

PAGE 1 OF 2

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND, BEING A PORTION OF THE L.C. CUNNINGHAM SURVEY NO. 68, ABSTRACT NO. 163, TRAVIS COUNTY, TEXAS, BEING A PORTION OF TRACT ONE AND ALL OF TRACT TWO CONVEYED TO KARL B. WAGNER BY DEED RECORDED IN VOLUME 2249, PAGE 409 AND VOLUME 2249, PAGE 413, DEED RECORDS, TRAVIS COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron pipe found at the Northeast corner of the said Tract 1 as conveyed to Karl B. Wagner by deed recorded in Volume 2249, Page 409, Deed Records, Travis County, Texas, being the Northwest corner of a 31.192 acre tract of land as conveyed to Capital Parks Land Investment, Inc. by deed recorded in Volume 9555, Page 325, Real Property Records, Travis County, Texas, being in the South line of that tract of land conveyed to Capital Parks Land Investments, Inc., by deed recorded in Volume 9511, Page 261, Real Property Records, Travis County, Texas, for the Northeast corner hereof;

THENCE with the East line of the said Wagner tract, being the West line of the said 31.192 acre Capital Parks Land Investments, Inc. tract, S 29°29'00" W for a distance of 2740.08 feet to an iron pipe found at the Southeast corner of the said Tract 2, for the Southeast corner hereof, and from which iron pipe found, an iron pipe found at the Northeast corner of that tract of land conveyed to Memorial Hill Cemetery by deed recorded in Volume 1116, Page 63, Deed Records, Travis County, Texas, bears S 29°25' W at a distance of 16.88 feet;

THENCE, with the South line of the said Wagner Tract 2, N 60°06'55" W for a distance of 455.02 feet to an iron rod set, being in the East line of a 0.731 acre tract of land conveyed to Memorial Hill Cemetery by deed recorded in Volume 1561, Page 371 Deed Records, Travis County, Texas, for an inside corner hereof;

THENCE N 09°58'00" E for a distance of 139.06 feet to a 60-d nail found at an inside corner of the said Wagner Tract 2, being the Northeast corner of the said 0.731 acre Memorial Hill Cemetery tract, for an inside corner hereof;

THENCE N 79°57'26" W for a distance of 320.11 feet to an aluminum capped iron found, stamped Prejean & Co. Inc. #1820, being the Southwest corner of the said Wagner Tract 2, being the Northwest corner of the said 0.731 acre Memorial Hill Cemetery tract, being in the East r.o.w. line of Interstate Highway 35, for the Southwest corner hereof;

THENCE with the West line of the said Wagner tract, being the East r.o.w. line of Interstate Highway 35, N 09°56'18" E for a distance of 2493.54 feet to an iron rod found, being the Southwest corner of a 2.521 acre tract of land as conveyed to SCI Ohio Funeral Services, Inc. by deed recorded in Volume 12709, Page 1344, Deed Records, Travis County, Texas, being the Southwest corner of Lot 1, Block A, Cook-Walden Subdivision, recorded in Plat Book 98, Pages 78-79, Plat Records, Travis County, Texas, for the most Westerly Northwest corner hereof;

THENCE S 60°22'00" E for a distance of 705.55 feet to an iron rod found at the Southeast corner of the said Lot 1, Block A, Cook-Walden Subdivision, also being the Southeast corner of the said 2.521 acre SCI Ohio Funeral Services, Inc. tract, for an inside corner hereof;

THENCE N 29°37'49" E for a distance of 149.90 to an iron pipe found in the East line of the said Lot 1, Block A, Cook-Walden Subdivision, also being the Northeast corner of the said 2.521 acre SCI Ohio Funeral Services, Inc. tract, being the Southeast corner of a 3.994-acre tract of land conveyed to Capital Parks Land Investments, Inc. as described in Volume 11697, Page 1032, Real Property Records, Travis County, Texas;

FIELD NOTES
FOR
KARL WAGNER, JR.

73.465 ACRE TRACT

PAGE 2 OF 2

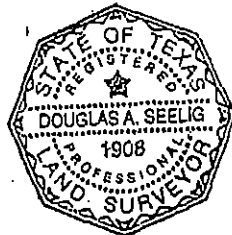
THENCE continuing with the East line of Lot 1, Block A, Cook-Walden Subdivision, N 29°43'49" E for a distance of 123.18 feet, passing an iron rod found at the Southeast corner of Hill Country Garden at Cook-Walden/Capital Parks, as recorded in Plat Book 102, Pages 216-234, Plat Records, Travis County, Texas, and continuing on for a total distance of 217.46 feet to an iron rod found, being the Northeast corner of the said Hill Country Garden at Cook-Walden/Capital Parks, being the Northeast corner of the said Lot 1, Block A, Cook-Walden Subdivision, also being the Northeast corner of the said 3.994 acre Capital Parks Land Investments, Inc. tract, being in the South line of that certain 0.745 acre tract of land as conveyed to Capital Parks, Inc. by deed recorded in Volume 11683, Page 851, Real Property Records, Travis County, Texas for a Northeasterly Northwest corner hereof, and from which corner an iron rod found, bears N 00°06' W for a distance of 0.09 feet, and an iron pipe found bears N 33°48' E for a distance of 0.51 feet;

THENCE with the North line of the said Wagner Tract 1, being the South line of the said 0.745 acre Capital Parks, Inc. tract, S 60°19'53" E at a distance of approximately 479.7 feet pass the Southeast corner of the said 0.745 acre Capital Parks, Inc. tract, and continue on for a total distance of 930.67 feet to the PLACE OF BEGINNING, and containing 73.465 acres of land, more or less.

AS SURVEYED BY
DOUG-SEELIG LAND SURVEYORS P.C.

Douglas A. Seelig
DOUGLAS A. SEELIG
Registered Professional Land Surveyor No. 1908
3802 Manchaca Road
Austin, Texas 78704
November 29, 1999

Work Order No. 16896



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

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2005 Mar 28 04:15 PM 2005052530

BENAVIDESV \$26.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS