RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-06-0069 (RCT)
The Project at Sixth & Congress – East

P. C. DATE: 08-26-2008

ADDRESS: 120 E. 5th Street

AREA: .338 acres

APPLICANT: Walton Stacy Office Partners IV, L. P. (Tom Stacy)

AGENT: Armbrust & Brown, L. L. P. (Lynn Ann Carley)

NEIGHBORHOOD PLAN AREA: None

CAPITOL VIEW: No

T.I.A.: Waived – See the Transportation Reviewer's comments and Restrictive Covenant.

HILL COUNTRY ROADWAY: No

WATERSHED: Town Lake

DESIRED DEVELOPMENT ZONE: Yes

ZONING: CBD – Central Business District, CBD-Cure – Central Business District – Central Urban Redevelopment District.

SUMMARY STAFF RECOMMENDATION:

Staff recommends termination of the Restrictive Covenant with the requirement that the applicant enter into a new Restrictive Covenant that replaces and modifies the Restrictive Covenant terminated under case # C14-06-0069 (RCT). This Restrictive Covenant would be applicable to both zoning cases C14-2008-0143 and C14-2008-0144.

The Restrictive Covenant would have three parts - 1. That the applicant participate in the City of Austin Great Streets program for any new development on the property. 2. That the applicant submit an Access Study to the Transportation Review Section of Watershed Protection & Development Review Department for any proposed project on the property and 3. That the development be restricted to 17,193 vehicle trips per day.

PLANNING COMMISSION RECOMMENDATION:

The motion to approve staff's recommendation for the restrictive covenant termination; was approved on the Consent Agenda by Commissioner Jay Reddy, Commissioner Mandy Dealey second the motion on a vote of 7-0. Commissioners Paula Hui and Perla Cavazos were absent.

DEPARTMENT COMMENTS:

This Restrictive Covenant was executed in conjunction with a zone change request with case number C14-06-0069. There was also a companion zoning case, C14-06-0071 for adjacent properties that the applicant owns. The purpose of the zone change request was to utilize the CURE overlay for the subject properties. The staff recommendation was to approve the zone change request with the stipulation that the applicant enter into a Restrictive Covenant (RC) on the property.

The RC had three parts to it – 1. That the applicant participate in the City of Austin Great Streets program for any new development on the property. 2. That the applicant submit an Access Study to the Transportation Review section of Watershed Protection & Development Review Department for any proposed project on the property and 3. That the development be restricted to 14,221 vehicle trips per day. The RC was agreed to by the applicant and a single RC was executed that covered both zoning cases, C14-06-0069 & C14-06-0071.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
SITE	CBD/CBD-CURE	Office Building
NORTH	CBD	Hotel/Restaurant
SOUTH	CBD-H	Office/Retail
EAST	CBD-H/CBD	Bank
WEST	CBD-CURE	Office Building

CASE HISTORIES:

CASE NUMBER	REQUEST	PLANNING COMMISSION	CITY COUNCIL
C14-01-0029	From CBD to CBD-CURE	Approved CBD-CURE [Vote: 8-1]	Approved CBD-CURE [Vote: 7-0]
C14-06-0071	From CBD-CURE to CBD-CURE	Approved CBD-CURE [Vote: 8-0]	Approved CBD-CURE [Vote: 5-0]
C14-06-069	From CBD to CBD-CURE	Approved CBD-CURE [Vote: 8-0]	Approved CBD- CURE [Vote: 5-0]

NEIGHBORHOOD ORGANIZATION:

- Homeless Neighborhood Assn.
- Downtown Austin Neighborhood Coalition
- Pecan Street Owner's Association
- Downtown Austin Alliance
- Austin Warehouse District Assoc.
- Old Pecan Street Association
- Sentral Plus East Austin Koalition
- Austin Neighborhood Council
- Downtown Austin Neighborhood Association

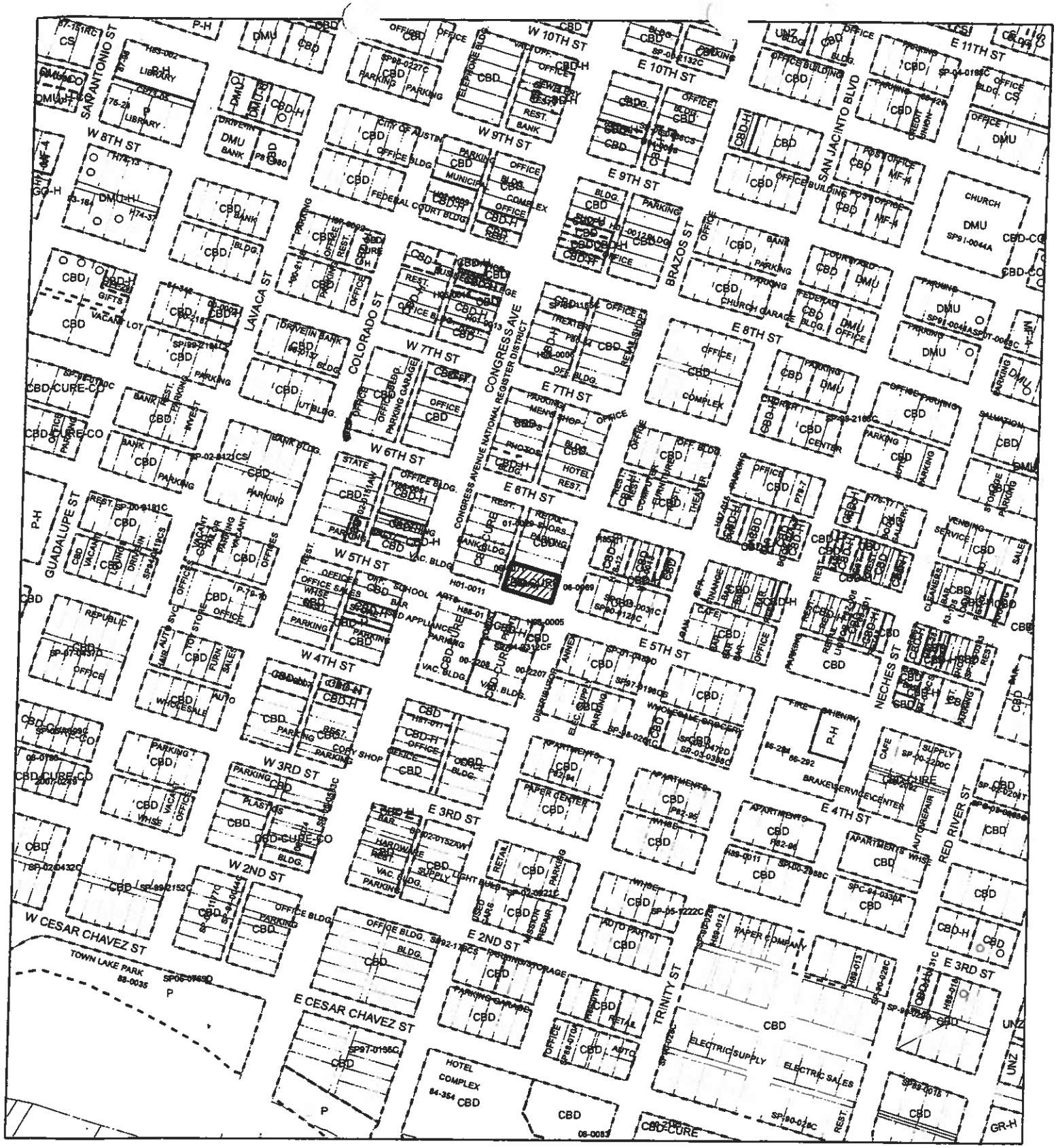
SCHOOLS:

Matthews Elementary School
O' Henry Middle School
Austin High School

CITY COUNCIL DATE: September 25th, 2008 **ACTION:**

ORDINANCE READINGS: 1ST 2ND 3RD **ORDINANCE NUMBER:**

CASE MANAGER: Clark Patterson **PHONE:** 974-7691
Clark.patterson@ci.austin.tx.us



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SUBJECT TRACT

ZONING BOUNDARY

PENDING CASE

OPERATOR: S. MEEKS

1" = 400'

ZONING

ZONING CASE#: **C14-06-0069(RCT)**
ADDRESS: **120 E 5TH ST**
SUBJECT AREA: **0.338 ACRES**
GRID: **J22**
MANAGER: **C. PATTERSON**

CITY OF AUSTIN TEXAS

This map has been produced by G.I.S. Services for the sole purpose of geographic reference.
No warranty is made by the City of Austin regarding specific accuracy or completeness.

RESTRICT 2006113691
3 PGS

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Zoning Case No. C14-06-0069
Zoning Case No. C14-06-0071

RESTRICTIVE COVENANT

OWNER: Walton Stacy Office Partners IV, L.P., a Delaware limited partnership

ADDRESS: 823 Congress Avenue, Suite 1111, Austin, Texas 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: Lots 1, 2, and 3, Block 56, Original City of Austin, Travis County, Texas, according to the map or plat on file at the General Land Office of the State of Texas. (Zoning Case No. C14-06-0071); and

Lots 11 and 12, Block 56, Original City of Austin, Travis County, Texas, according to the map or plat on file at the General Land Office of the State of Texas. (Zoning Case No. C14-06-0069)

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. The Owner shall design and construct streetscape improvements in full compliance with the City of Austin Great Streets design criteria as the criteria existed on June 8, 2006. Design, permitting and construction of streetscape improvements will be at Owner's expense. The Owner shall coordinate the design of the streetscape improvements with the Urban Design Section of the Neighborhood Planning and Zoning Department. The Urban Design Section shall inspect and approve the streetscape improvements prior to issuance of a certificate of occupancy.

2. At the time of site plan, the Owner shall submit to the Transportation Review Section of the Watershed Protection and Development Review Department an access study that provides an evaluation of driveway functions for the proposed project on the Property.

3. 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 14,221 trips per day.

6-8-06
102/103

4. 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.

5. 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.

6. 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.

7. 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 8 day of June, 2006.

OWNER:

Walton Stacy Office Partners IV, L.P.,
a Delaware limited partnership

By: Walton Stacy Congress GP IV, L.L.C.,
a Delaware limited liability company,
its General Partner

By: Walton Stacy Congress Investors IV, L.P.,
a Delaware limited partnership,
its Sole Member

By: Tom Stacy
Tom Stacy, Authorized Agent

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 8th day of June, 2006, by Tom Stacy, as authorized agent of Walton Stacy Congress Investors IV, L.P., a Delaware limited partnership, sole member of Walton Stacy Congress GP IV, L.L.C., a Delaware limited liability company, general partner of Walton Stacy Office Partners IV, L.P., a Delaware limited partnership, on behalf of the limited partnerships, and limited liability companies, and as the act and deed thereof.

Roberta Young
Notary Public, State of Texas

ROBERTA YOUNG
MY COMMISSION EXPIRES
November 12, 2009

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

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2006 Jun 16 04:13 PM 2006113691

FERGUSONY $24.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

TERMINATION OF RESTRICTIVE COVENANT
FOR
ZONING CASE: C14-06-0069 and C14-06-0071

OWNER: Walton Stacy Office Partners IV, L.P., a Delaware limited partnership

ADDRESS: 823 Congress Ave., Suite 1111, Austin, Texas 78701

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 City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

WHEREAS, Walton Stacy Office Partners IV, L.P., a Delaware limited partnership, as owner (the "Owner") of all that certain property described in Zoning Cases No. C14-06-0069 and C14-06-0071 consisting of certain lots in Block 56, Original City of Austin, Travis County (the "Property"), as more particularly described in the restrictive covenant recorded in the Real Property Records of Travis County, Texas, in Document No. 2006113691 (the "Restrictive Covenant"), imposed certain restrictions and covenants on the Property by the Restrictive Covenant of record; and,

WHEREAS, the Restrictive Covenant provided that the covenant could be modified, amended, or terminated by joint action of both a majority of the members of the City Council and the Owner of the Property at the time of such modification, amendment or termination; and,

WHEREAS, the Owner of the Property, now desires to terminate the Restrictive Covenant; and,

WHEREAS, the City Council and the Owner, agree the Restrictive Covenant should be terminated;

NOW, THEREFORE, for and in consideration of the premises and mutual promises, covenants, and agreements set forth in this covenant, the City of Austin and the Owner agree as follows:

1. The Restrictive Covenant is terminated by this termination. Each and every one of the terms, conditions, and provisions of the Restrictive Covenant, as set forth in the Restrictive Covenant, shall have no force or effect on and after the effective date of this termination.

2. The City Manager, or his designee, shall execute, on behalf of the City, this Termination of Restrictive Covenant for Zoning Cases No. C14-06-0069 and C14-06-0071 (the "Termination of Restrictive Covenant") as authorized by the City Council of the City of Austin. This Termination of Restrictive Covenant shall be filed in the Official Public Records of Travis County, Texas, which will terminate the document of record in Document No. 2006113691, Official Public Records, Travis County, Texas.

EXECUTED this the _____ day of _____, 2008.

OWNER:

Walton Stacy Office Partners IV, L.P.,
a Delaware limited partnership

By: Walton Stacy Congress GP IV, L.L.C.,
a Delaware limited liability company,
its General Partner

By: Walton Stacy Congress Investors IV, L.P.,
a Delaware limited partnership,
its Sole Member

By: _____
Tom Stacy, Authorized Agent

CITY OF AUSTIN:

By: _____
Sue Edwards,
Assistant City Manager
City of Austin

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 _____, 2008, by Tom Stacy, as authorized agent of Walton Stacy Congress Investors IV, L.P., a Delaware limited partnership, sole member of Walton Stacy Congress GP IV, L.L.C., a Delaware limited liability company, general partner of Walton Stacy Office Partners IV, L.P., a Delaware limited partnership, on behalf of the limited partnerships, and limited liability companies.

_____
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ___ day of _____, 2008, by Sue Edwards, as Assistant City Manager of the City of Austin, a municipal corporation, on behalf of the municipal corporation.

_____
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