

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-79-081 (RCT)

P.C. DATE: 2/24/2009, 3/10/2009, 3/24/2009

ADDRESS: 900-908 West Ben White Blvd.

OWNER/APPLICANT: Twin Oaks Associates LTD

AGENT: Urban Design Group (Laura Toupes)

AREA: 1.864 acres (81195.84 ft²)

SUMMARY STAFF RECOMMENDATION: The staff's recommendation is to approve the termination of the restrictive covenant associated with this property.

PLANNING COMMISSION RECOMMENDATION: 3/24/09 - The motion to approve staff's for termination of the restrictive covenant; was approved by Commissioner Jay Reddy's motion, Commissioner Sandra Kirk second the motion on a vote of 9-0.

DEPARTMENT COMMENTS: This property is a 1.864 acre tract currently undeveloped and zoned CS (Commercial Services) district zoning. The applicant wishes to add a mixed-use designation to the zoning. A restrictive covenant exists on this property that limits the allowable zoning to GR (Community Commercial) or CS (Commercial Services) district zoning. The applicant would like to terminate the restrictive covenant to allow for MU (Mixed Use Combining District) zoning to be added to the site in order to develop a multi-family and retail project on the site. City staff supports the termination of the restrictive covenant and rezoning of the property to CS-MU (Commercial Services Mixed-Use) district zoning.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS	Undeveloped
<i>North</i>	MF-2	Multi-family
<i>South</i>	Ben White Boulevard	Commercial Highway
<i>East</i>	MF-3, SF-3, GR	Multi-family, Single Family, Condominiums
<i>West</i>	LO, GR	Multi-family

AREA STUDY: Galindo Planning Area

TIA: Yes

WATERSHED: Slaughter Creek, West Bouldin Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

HILL COUNTRY ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

800 Bannister Place Association
Homeless Neighborhood Association
Home Builders Association
Austin Neighborhoods Council
League of Bicycling Voters
Far South Austin Community Association
Southwood Neighborhood Association
South Lamar Neighborhood Association
Austin Parks Foundation
Barton Springs/Edwards Aquifer Conservation District
Galindo Elementary Neighborhood Association
North Southwood Neighborhood Association
Onion Creek Homeowners Association

SCHOOLS:

Galindo Elementary School
Fulmore Middle School
Travis High School

CASE HISTORIES:

NUMBER	REQUEST	PLANNING COMMISSION	CITY COUNCIL
C14-84-508	SF-3 to MF-2	2/5/1985 - APVD MF-2 AS AMENDED (6-0)	3/7/1985 - APVD MF-2; ALL 3 RDGS, EMERG. PASS.
C14-73-119	SF to GR	N/A	APVD GR; 3RD RDG
C14-79-081	GR to CS	N/A	APVD CS, 1ST H&A; 3RD RDG

BASIS FOR RECOMMENDATION

1. Zoning changes should promote compatibility with adjacent and nearby uses.

The zoning change will promote a transition between adjacent and nearby zoning districts, land uses, and development intensities

2. The zoning change will promote the policy of locating retail and more intensive zoning near the intersections of arterial roadways or at the intersections of arterials and major collectors.

The subject property will locate a mix of retail and residential along frontage of a major commercial highway.

EXISTING CONDITIONS

ENVIRONMENTAL

The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the West Bouldin Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.

Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.

This site is required to provide on-site structural water quality controls (or payment in lieu of) for all development and/or redevelopment when 5,000 s.f. cumulative is exceeded, and detention for the two-year storm. At this time, no information has been provided as to whether this property has any pre-existing approvals which would preempt current water quality or Code requirements.

According to flood plain maps, there is no flood plain within the project area.

Numerous trees will likely be impacted with this rezoning case. Please be aware that an approved rezoning status does not eliminate the requirements to meet the intent of the tree ordinances. If further explanation or specificity is needed, please contact the City Arborist at 974-1876. At this time, site specific information is unavailable regarding other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

Water and Wastewater

If the landowner intends to serve the site with City of Austin water and wastewater utilities. The landowner, at own expense, will be responsible for providing the water and wastewater utility improvements, offsite main extensions, system upgrades, utility relocations and or abandonments required. The water and wastewater plan must be in accordance with the City of Austin utility design criteria. The water and wastewater utility plan must be reviewed and approved by the Austin Water Utility. All water and wastewater construction must be inspected by the City of Austin. The

landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.

Stormwater Detention

At the time a final subdivision plat, subdivision construction plans, or site plan is submitted, the developer must demonstrate that the proposed development will not result in additional identifiable flooding of other property. Any increase in stormwater runoff will be mitigated through on-site stormwater detention ponds, or participation in the City of Austin Regional Stormwater Management Program if available.

TRANSPORTATION:

Existing Street Characteristics:

Name	ROW	Pavement	Classification	Daily Traffic
US 290 West (Ben White Boulevard)	varies	varies	Arterial (FWY6)	145,000 (TXDOT, 2007)
Banister Lane	50'	43'	Collector	5510 (TXDOT, 2007)
South 2 nd Street	70'	44'	Collector	Not available

The Austin Metropolitan Area Transportation Plan calls for a total of 400 feet of right-of-way for Ben White. TxDOT may request the reservation of additional right-of-way in accordance with the Transportation Plan when the site is redeveloped [LDC, Sec. 25-6-51 and 25-6-55].

If the requested zoning is granted, it is recommended that access to Banister Lane be prohibited as a condition of zoning because a neighborhood traffic analysis was not performed based on the assumption that no access is proposed on Banister Lane.

A traffic impact analysis was not required for this case because the traffic generated by the proposed zoning does not exceed the threshold of 2,000 vehicle trips per day [LDC, 25-6-113].

A traffic impact analysis is not required but has been received [LDC, Sec. 25-6-142]. Comments have been provided to the traffic consultant.

There are existing sidewalks along US 290 West (Ben White Boulevard) and along the north right-of-way line of Banister Lane.

There are no existing sidewalks along the south right-of-way line of Banister Lane.

Banister Lane is classified in the Bicycle Plan as a Priority 1 bike route, and US 290 West (Ben White Boulevard) is classified in the Bicycle Plan as a Priority 2 bike route.

Capital Metro bus service (route nos. 5 and 328) is available along Banister Lane and US 290 West (Ben White Boulevard).

SITE PLAN

Any development which occurs in an SF-6 or less restrictive zoning district which is located 540-feet or less from property in an SF-5 or more restrictive zoning district will be subject to compatibility development regulations.

The site is subject to compatibility standards. Along the north property line, the following standards apply:

- No structure may be built within 25 feet of the property line.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line
- For a structure more than 100 feet but not more than 300 feet from property zoned SF-5 or more restrictive, 40 feet plus one foot for each 10 feet of distance in excess of 100 feet from the property zoned SF-5 or more restrictive.
- No parking or driveways are allowed within 25 feet of the property line.
- In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.

Additional design regulations will be enforced at the time a site plan is submitted.

- An intensive recreational use, including a swimming pool, tennis court, ball court, or playground, may not be constructed 50 feet or less from adjoining SF-3 property.

CITY COUNCIL DATE: 6/11/2009

ACTION:

ORDINANCE READINGS: 1st

2nd

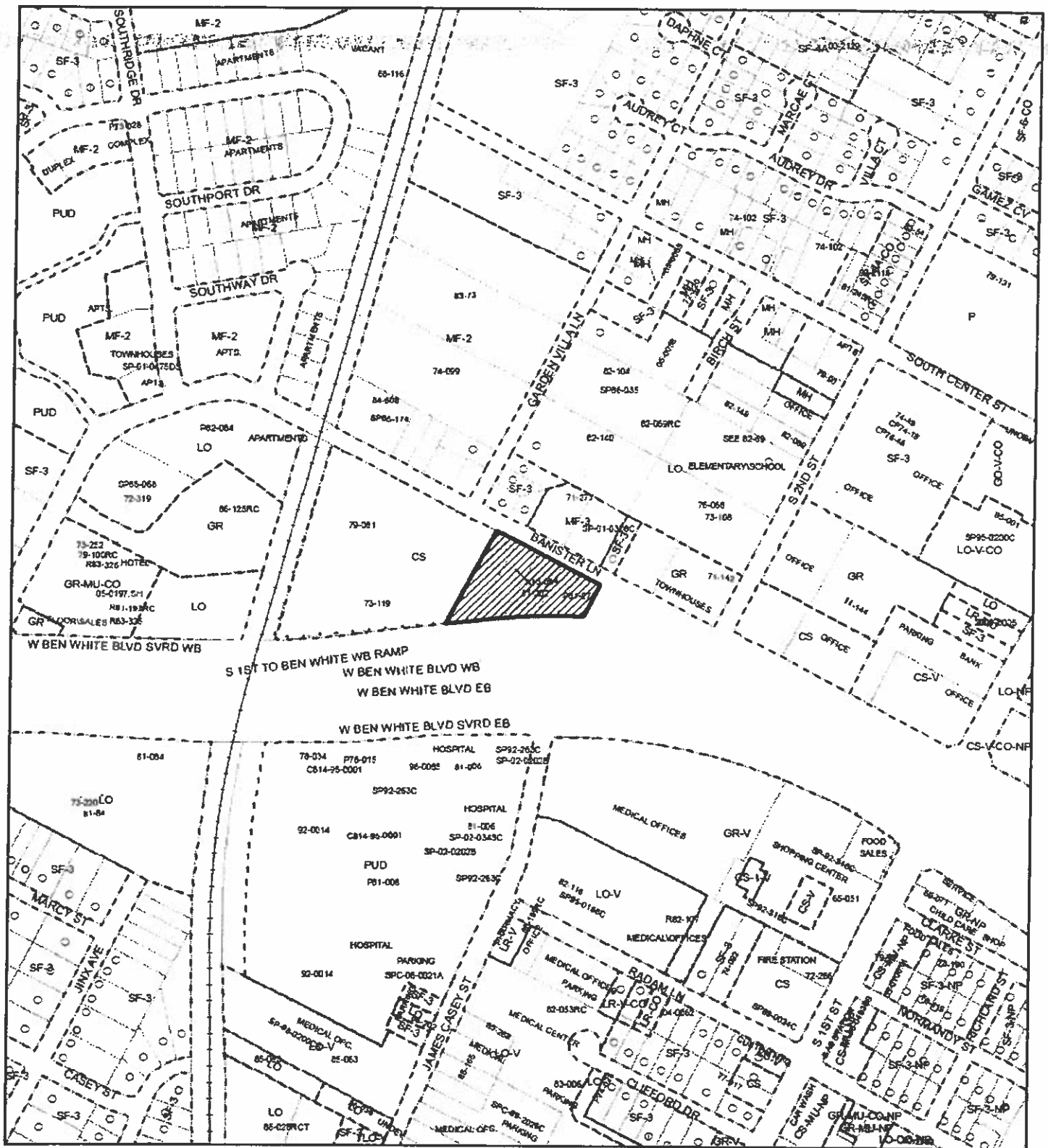
3rd

ORDINANCE NUMBER:




CASE MANAGER: Stephen Rye

PHONE: 974-7604

stephen.rye@ci.austin.tx.us



1" = 400'

-  SUBJECT TRACT
-  ZONING BOUNDARY
-  PENDING CASE

OPERATOR: S. MEEKS

ZONING

ZONING CASE# C14-79-081(RCT)
 ADDRESS: W BEN WHITE BLVE EB
 SUBJECT AREA: 1.864 ACRES
 GRID: G19
 MANAGER: S. RYE



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.

RESTRICTIVE COVENANT

THE STATE OF TEXAS ~~advised~~ ~~that~~ ~~the~~ ~~City~~ ~~of~~ ~~Austin~~ ~~has~~ ~~agreed~~ ~~to~~ ~~extend~~ ~~the~~ ~~term~~ ~~of~~ ~~the~~ ~~above~~ ~~described~~ ~~restrictive~~ ~~covenant~~ ~~for~~ ~~an~~ ~~additional~~ ~~five~~ ~~years~~ ~~beginning~~ ~~December~~ ~~30,~~ ~~1979~~ ~~or~~ ~~until~~ ~~the~~ ~~permitted~~ ~~use~~ ~~is~~ ~~discontinued,~~ ~~whichever~~ ~~is~~ ~~sooner.~~

COUNTY OF TRAVIS S

2-19-2050

WHEREAS, Odas Jung, of Travis County, Texas, is the owner of the following described property, to-wit:

Lots 7 through 13, Ben White Commercial Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to a map or plat of record in Book 37, at Page 30, of the Plat Records of Travis County, Texas; and

WHEREAS, in July of 1974, the City of Austin and Odas Jung impressed the above described property with a Restrictive Covenant of record in Volume 4976, Page 2289, Deed Records of Travis County, Texas, whereby a mobile home sales operation shall be the only use permitted within the classification of "C" Commercial, First Height and Area for a period of five (5) years, after which period of time, only uses falling within the "GR" General Retail classification of the City of Austin shall be permitted; and

WHEREAS, the City of Austin and Odas Jung have agreed that the above described Restrictive Covenant should be extended and desire to set forth such agreement in writing;

NOW, THEREFORE, Odas Jung, for and in consideration of One and No/100 Dollars (\$1.00) and other good and valuable consideration in hand to the undersigned, paid by the City of Austin, the receipt of which is hereby acknowledged, does hereby agree with respect to said property described above, such agreement to be deemed and considered as a covenant running with the land, and which shall be binding on him, his successors and assigns, as follows, to-wit:

1. The Restrictive Covenant of record in Volume 4976, Page 2289, Deed Records of Travis County, Texas shall be extended for a period of five (5) years beginning December 30, 1979, or until the permitted use is discontinued, whichever is sooner.

2. Upon the sooner to occur of the discontinuance of the permitted use or the passage of five (5) years from December 30, 1979, only uses permitted within the "GR" General Retail classification of the Zoning Ordinance of the City of Austin shall be permitted.

3. Nothing contained herein shall preclude the owner of the property described above from conducting any use permitted within the "GR" General Retail Classification of the Zoning Ordinance of the City of Austin from and at any time after the effective date of the ordinance by the City Council creating the zoning classification of "C" Commercial, First Height and Area District on the property described above.

4. If any person, persons, corporation or entity of any other character shall violate or attempt to violate the foregoing agreement and covenant, it shall be lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law, or in equity, against said person, or entity violating or attempting to violate such agreement or covenant and to prevent said person or entity from violating or attempting to violate such agreement or covenant.

5. If any part or provision of this agreement or covenant herein contained shall be declared invalid, by judgment or court order, the same shall in no wise effect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full force and effect.

6. The failure at any time to enforce this agreement by the City of Austin, its successors and assigns, whether any violations hereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

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, or such other governing body as may succeed the City Council of the City of Austin, and (b) by the owners of the above described property at the time of such modification, amendment or termination.

EXECUTED this the 8th day of June, 1979.

Odas Jung
ODAS JUNG 2-19-2052

THE STATE OF TEXAS ;
COUNTY OF TRAVIS ;

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared ODAS JUNG, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 8th day of June, 1979.

NOTARY SEAL

Edith Thompson
Notary Public in and for
Travis County, Texas
My Commission Expires: _____

EDITH THOMPSON
NOTARY PUBLIC, IN & FOR TRAVIS COUNTY, TEXAS
MY COMMISSION EXPIRES APRIL 30, 1981

NOTARY PUBLIC
I hereby certify that the instrument was filed in the
office of the County Clerk of Travis County, Texas, on the
8th day of June, 1979, at the hour of _____
a.m. and the same is a true and correct copy of the original
as shown to me by the person or persons presenting it for filing.

FILED
Dec 28 8 15 AM '79
David Thompson
COUNTY CLERK
TRAVIS COUNTY, TEXAS

DEC 28 1979
David Thompson
COUNTY CLERK
TRAVIS COUNTY, TEXAS

TERMINATION OF RESTRICTIVE COVENANT
FOR
ZONING CASE: C14-79-081

OWNER: Twin Oaks Associates, Ltd., a Texas limited partnership

ADDRESS: 900-908 West Ben White Blvd., Austin, Texas 78704

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, Odas Jung, of Travis County, as owner of all that certain property described in Zoning Case No. C14-79-081, consisting of Lots 7-13, Ben White Commercial Subdivision, Travis County (the "Property"), as more particularly described in the restrictive covenant recorded in the Deed Records of Travis County, Texas, in Volume 4976, Page 2289, (the "First Restrictive Covenant"), imposed certain restrictions and covenants on the Property by the Restrictive Covenant of record; and,

WHEREAS, the Restrictive Covenant was extended by agreement between the Owner and the City of Austin in Volume 6822, Page 101, (the "Second Restrictive Covenant") of record in the Deed Records of Travis County, Texas; (the First and Second Restrictive Covenants together now referred to as the "Restrictive Covenants"); and

WHEREAS, the Restrictive Covenants 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, Twin Oaks Associate, Ltd., a Texas limited partnership, as sole and current owner (the "Owner") of the Property, now desires to terminate the Restrictive Covenants; and,

WHEREAS, the City Council and the Owner, agree the Restrictive Covenants 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 Covenants are terminated by this termination. Each and every one of the terms, conditions, and provisions of the Restrictive Covenants, as set forth in the Restrictive Covenants, 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 Case No. C14-79-081 (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 documents of record in Volume 4976, Page 2289, and in Volume 6822, Page 101, Deed Records, Travis County, Texas.

EXECUTED this the _____ day of _____, 2009.

OWNER:

**Twin Oaks Associates, Ltd.,
a Texas limited partnership**

By: TOA Management, LLC,
a Texas limited liability company,
its General Partner

By: _____
Joe Charles Jung,
Sole Manager

CITY OF AUSTIN:

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

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____, 2009, by Joe Charles Jung, Sole Manager of TOA Management, LLC, a Texas limited liability company, General Partner of Twin Oaks Associates, Ltd., a Texas limited partnership, on behalf of the company and limited partnership.

Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____, 2009, 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 78767-1088
Attention: Diana Minter, Paralegal