

ZONING CHANGE REVIEW SHEET

CASE: C14-85-244, Part 7(RCA)
(10010 N. Capital of Texas Hwy)

P.C. DATE: November 12, 2019

ADDRESS: 10010 North Capital of Texas Highway

DISTRICT AREA: 7

OWNER/APPLICANT: H and M Austin Management, Inc. (Richard Hardin)

AGENT: The Drenner Group, P.C. (Leah M. Bojo)

ZONING: NBG-NP

AREA: 1.7141 acres

REQUEST: The applicant is requesting an amendment of the restrictive covenant conditions for this property (please see Applicant's Amendment Request Letter - Attachment A).

SUMMARY STAFF RECOMMENDATION:

Staff recommends the proposed amendment of the public restrictive covenant.

PLANNING COMMISSION RECOMMENDATION:

DEPARTMENT COMMENTS:

The applicant is requesting to amend a public restrictive covenant associated with zoning case C14-85-244 (Part 7) and executed on July 1, 1986 that prohibits new development on the Property from exceeding a maximum floor to area ratio (FAR) of 0.9:1, requires a public site plan review, requires that any development comply with the roadway map on page 40 of the Golden Triangle Area Study and states that at the time of subdivision approval the applicant will dedicate right-of-way to the City. The applicant's request letter is included as Attachment A to this report.

The staff recommends the applicant's request to delete the conditions of this public restrictive covenant for this 1.7141 acre site as the applicant is currently proposing to redevelop this property in accordance with the site development regulations approved in the North Burnet/Gateway Regulating Plan that allow for a 2:1 FAR on the property. The lot under consideration is currently developed with a restaurant use (North by Northwest). This property was rezoned from CS-NP to NBG-CMU-NP, North Burnet/Gateway-Commercial Mixed Use-Neighborhood Plan Combining District, through case zoning C14-2008-182 (North Burnet/Gateway Neighborhood Plan Rezonings), in 2009.

The applicant agrees with the staff's recommendation.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	NBG-NP	Restaurant (North by Northwest)
<i>North</i>	NBG-NP	Restaurant (Iron Cactus)
<i>South</i>	NBG-NP	Multifamily (The Arboretum at Stonelake Apartments)
<i>East</i>	NBG-NP	Hotel (Townplace Suites Marriott)
<i>West</i>	NBG-NP	Automotive Sales (Lexus of Austin)

AREA STUDY: North Burnet/Gateway NP**TIA:** N/A**WATERSHED:** Shoal Creek Watershed**CAPITOL VIEW CORRIDOR:** N/A**HILL COUNTRY ROADWAY:** N/A**NEIGHBORHOOD ORGANIZATIONS:**

Austin Independent School District
 Austin Neighborhoods Council
 Friends of Austin Neighborhoods
 Homeless Neighborhood Association
 Neighborhood Empowerment Foundation
 North Burnet/Gateway Neighborhood Plan Staff Liaison
 Northwest Austin Coalition
 Sierra Club, Austin Regional Group
 TNR BCP -Travis County Natural Resources

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-85-244, Part 7(RCA) (10001 Stonelake)	The applicant requested to amend the restrictive covenant to remove conditions as they apply to this specific 2.0974 acre property	6/11/19: Motion to approve staff's recommendation for the restrictive covenant amendment by consent (11-0); C. Kenny-1 st , A. Azhar-2 nd .	6/20/19: Approved restrictive covenant amendment by consent on all 3 readings (13-0); L. Pool-1 st , N. Harper-Madison-2 nd .
C14-2008-0182 (North Burnet /Gateway NP Rezoning: Metric Boulevard)	Add NP designation to existing zoning	9/09/08: Approved rezoning of certain tracts to NBG-NP or NBG-H-NP, with conditions (8-0)	10/16/08: Approved NBG-NP or NBG-H-NP (7-0); 1 st reading 3/12/09: Approved NBG-NP or NBG-H-NP (6-0); 2 nd /3 rd readings

C14-2007-0157 (North Burnet /Gateway Neighborhood Plan Rezoning)		9/25/07: Approved staff rec. with amendments (8-0)	10/18/07: Approved 1 st reading of Phase 1 of NP (6-0) 11/01/07: Approved Phase 1 of NP zonings (5-0); 2 nd /3 rd readings
C14-2007-0141 (Crescent Stonelake: 10011-100015 Stonelake Blvd)	CS to MF-4	10/23/07: Approved staff rec. of MF-4-CO by consent (9-0)	11/13/07: Approved Ordinance No. 20071108-097 for MF-4-CO (7-0); all 3 readings
C14-04-0146 (The Shops at Arbor Walk: 10515 North Mopac Expressway)	P to CH	11/9/04: Approved staff's recommendation of CH zoning with conditions (9-0)	12/2/04: Approved CH zoning (7-0); all 3 readings

RELATED CASES:

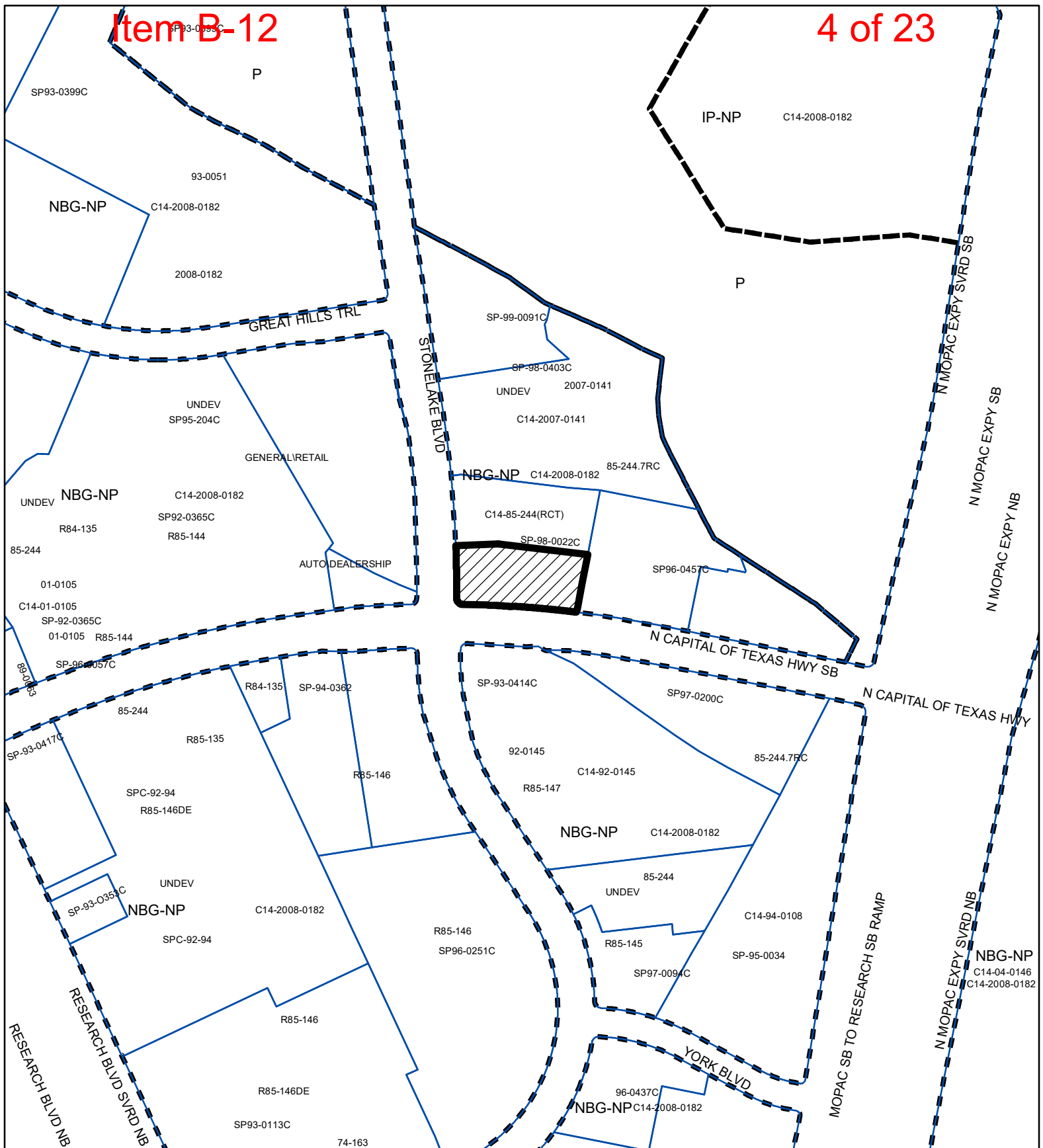
C14-85-224 (Previous Zoning Case)




C8-98-0022C (Subdivision Case): Lot 1, Block A, Morse Commercial Subdivision

ABUTTING STREETS:

STREET	RIGHT-OF-WAY	PAVEMENT WIDTH	CLASSIFICATION	DAILY TRAFFIC
Stonelake Boulevard			6-lane divided roadway	9,600
MoPac (Loop 1)	500'	Varies	Freeway	91,000

CITY COUNCIL DATE: December 5, 2019**ACTION:****CASE MANAGER:** Sherri Sirwaitis**PHONE:** 512-974-3057,
sherri.sirwaitis@austintexas.gov



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

Restrictive Covenant Amendment

CASE#: C14-85-244(RCA2)

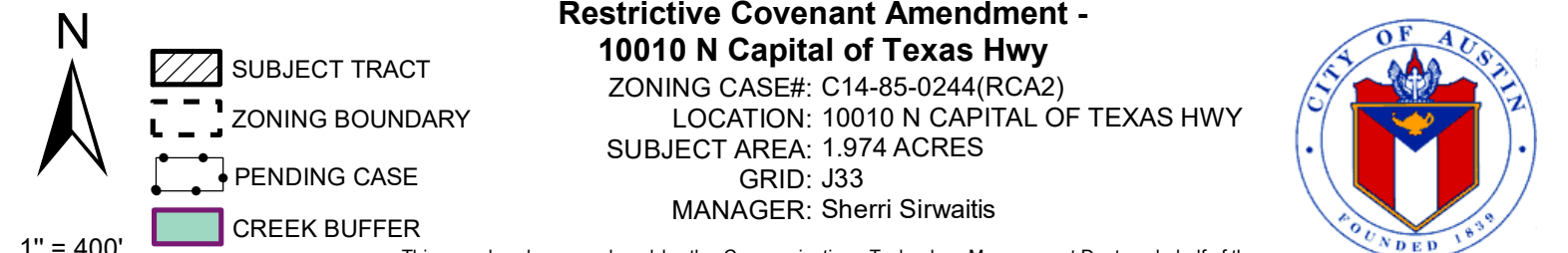
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



Created: 10/2/2019

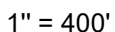
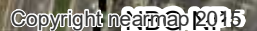
1" = 400'



MANAGER: Sherri Sirwaitis



This map has been produced by the Communications Technology Management Dept. on behalf of the Planning Development Review Dept. for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



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DRENNER GROUP

September 27, 2019

Planning Commission
City of Austin
301 W. 2nd Street
Austin, TX 78701

Via Hand Delivery

Re: 10010 N. Capital of Texas Hwy. – Restrictive covenant amendment application for the 1.7141 acre piece of property located at 10010 N. Capital of Texas Hwy. in Austin, Travis County, Texas (the “Property”)

Dear Commissioners:

As representatives of the owner of the Property, we respectfully submit the enclosed restrictive covenant amendment application package. The project is titled 10010 N. Capital of Texas Hwy., consists of 1.7141 acres, and is located between Hwy 183 and MOPAC Expressway, on the northeast corner of N. Capital of Texas Highway and Stonelake Boulevard in the North Burnet Gateway Planning Area. The Property is zoned NBG-CMU, North Burnet Gateway – Commercial Mixed Use.

We are proposing to amend the restrictive covenant on the Property executed July 1, 1986 in Volume 9839, Page 566 of the Travis County Deed Records. This restrictive covenant prohibits a new development from exceeding a maximum Floor Area Ratio (FAR) of 0.9:1.

We respectfully request approval to release the Property from the restrictive covenant so that the Property can be developed in adherence to the site development regulations in the North Burnet Gateway regulating plan, which allows 2:1 FAR on the Property. This FAR restriction predates the North Burnet Gateway Plan and undermines the design regulations within the regulating plan which are intended to produce a dense, walkable environment.

Please let me know if you or your team members require additional information or have any questions. Thank you for your time and attention to this project.

Sincerely,



Leah M. Bojo

cc: Sherri Sirwaitis, Planning and Zoning Department (*via electronic delivery*)
Joi Harden, Planning and Zoning Department (*via electronic delivery*)
Jerry Rusthoven, Planning and Zoning Department (*via electronic delivery*)

Location Map



4 10 8616

Zoning Case No. C 14-85-244 (Part 7)

RESTRICTIVE COVENANT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS the ESTATE OF FRED MORSE, DECEASED, and ESTELLE K. MORSE, individually, are the owners of the following described property ("Property") located in Travis County, Texas:

TRACT 1

71.91 acres of land lying within and being a part of the James Rogers Survey in Travis County, Texas and being the several tracts of land in said Rogers Survey conveyed by C.R. Puckett and wife, Lottie Puckett, to Tully L. Witter and wife, Ermine Witter, by warranty deed dated October 15, 1946, of record in Vol. 816, Pages 571-573, of the Travis County Deed Records, and more particularly described by metes and bounds as follows:

BEGINNING at an iron stake at the southwest corner of Tract No. 4 of 41.75 acres as described in the aforementioned deed;

THENCE N. 24 degrees 36' E. 771.74 feet to an iron stake set by a leaning Live Oak tree for an ell corner of this tract;

THENCE N. 60 degrees 13' W. 1120.00 feet to an iron stake set in the east line of Charlie Hamilton's land for the most westerly southwest corner of this tract;

THENCE along the east line of Charlie Hamilton's land N. 33 degrees 14' E. 963.07 feet to an iron stake set for the northwest corner of this tract;

THENCE S. 57 degrees 41' E. 513.54 feet to an iron stake and rock mound for a corner of this tract;

THENCE S. 26 degrees 31' W. 220.02 feet to an iron stake by a dead Live Oak for a corner of this tract;

THENCE S. 13 degrees 17' E. 62.89 feet to an iron stake and a six inch elm for a corner of this tract;

THENCE S. 36 degrees 32' E. 131.95 feet to an iron stake for a corner;

THENCE S. 27 degrees 10' W. 203.62 feet to an iron stake for a corner;

THENCE S. 58 degrees 21' E. 2009.99 feet to an iron pipe found in a root of a 12 inch elm for a corner of this tract;

THENCE S. 2 degrees 20' W. 247.85 feet to an iron pipe for a corner of this tract;

THENCE S. 25 degrees 34' E. 356.29 feet to an iron stake by a 14 inch Live Oak;

THENCE S. 52 degrees 28' E. 552.18 feet to an iron stake at the end of a rock wall;

THENCE S. 28 degrees 50' W. 543.40 feet to a cedar post in the middle of a rock wall for the southeast corner of this tract;

THENCE N. 59 degrees 13' W. 2063.95 feet to an iron stake in the fence line;

THENCE N. 73 degrees 50' W. 489.54 feet to the place of beginning and being the same land conveyed by Tully Witter and wife, Ermine Witter, to E. H. Nelle and wife, Lula Belle Nelle, by deed dated November 1, 1948, of record in Vol. 2046, Page 440, of the Travis County Deed Records;

is surveyed by O. P. Schoelfield, Registered Public Surveyor, in June, 1953.

TRACT 2

Two (2) acres of land out of the James Rogers Survey No. 19, in Travis County, Texas, being out of a tract of land conveyed to Emma F. Elliott by Walter Williams by deed dated February 14, 1926, recorded in Vol. 317, Page 21, of the Travis County Deed Records, and more particularly described by metes and bounds as follows:

BEGINNING at an iron stake in the east line of U.S. Highway No. 183, same being the northwest corner of a 0.94 acre tract conveyed to W. M. Robinson by deed recorded in Vol. 2017, Page 49, of the Travis County Deed Records;

THENCE S. 84 deg. 25' E. along the north line of said Robinson tract 193.38 feet to an iron stake;

THENCE N. 28 deg. 50' E. 166.40 feet to a point;

THENCE N. 31 deg. 39' E. 194.60 feet to an iron stake for the northeast corner of this tract;

THENCE N. 84 deg. 25' W. 344.90 feet to an iron stake set in the east line of U.S. Highway No. 183;

THENCE S. 5 deg. 35' W. along the said east line of said U.S. Highway No. 183, 327.50 feet to the place of beginning.

WHEREAS, the City of Austin, Texas, and the Owners of the Property have agreed that the Property should be impressed with certain covenants and restrictions running with the land, and desire to set forth such agreement in writing;

NOW, THEREFORE, in consideration of One and no/100 Dollars (\$1.00) and other good and valuable consideration paid by the City of Austin in hand to the Owners, the receipt and sufficiency of which is acknowledged, the Owners do hereby impress upon the Property shown on Exhibit A attached hereto and incorporated herein by reference, the following covenants and conditions which shall be considered to be covenants running with the land, and which shall be binding on the Owners, their heirs, legal representatives, successors and assigns, as follows:

TRACT 1

1. Use of the Property shall be limited to a maximum floor area ratio of .9 to 1.0, as described in sections 3150 through 3152 of Chapter 13-2A of the Austin City Code of 1981, and shall comply with site development regulations applicable to "GR" Community Commercial uses, as described in section 2504 of Chapter 13-2A of the Austin City Code of 1981.
2. Any development of the Property shall be subject to public site plan review.
3. Any development of the Property shall comply with the staff proposed roadway map on page 40 of the Golden Triangle Area Study [conducted by OLDS] (as existing at the date of this covenant and as amended at any time).
4. At any time subdivision approval is sought for the Property, Owner agrees to dedicate whatever right-of-way is needed by the City of Austin for MoPac Boulevard (Loop 1).

TRACT 2

1. Use of the Property shall be limited to a maximum floor area ratio of .9 to 1.0, as described in sections 3150 through 3152 of Chapter 13-2A of the Austin City Code of 1981, and shall comply with site development regulations applicable to "GR" Community Commercial uses, as described in section 2504 of Chapter 13-2A of the Austin City Code of 1981.
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3. Any development of the Property shall comply with the staff proposed roadway map on page 40 of the Golden Triangle Area Study [conducted by OLDS] (as existing at the date of this covenant and as amended at any time).

TRACTS 1 AND 2

1. If any person or entity 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 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.
2. If any part of this agreement or covenant shall be declared invalid, by judgement 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.
3. If at any time the City of Austin, its successors or assigns, 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.
4. 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 owner(s) of the Property at the time of such modification, amendment or termination.

EXECUTED this the 1st day of July, 1986.

ESTATE OF FRED MORSE

By Fred C. Morse, Jr.
FRED C. MORSE, JR.
INDEPENDENT EXECUTOR OF THE ESTATE
OF FRED MORSE, DECEASED

Estelle K. Morse
ESTELLE K. MORSE,
INDIVIDUALLY AND AS INDEPENDENT
EXECUTRIX OF THE ESTATE OF FRED
MORSE, DECEASED

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 FRED C. MORSE, JR., INDEPENDENT EXECUTOR OF THE ESTATE OF FRED MORSE, DECEASED, 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 purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30th day of June, 1986.

NOTARY SEAL

Catherine E. Jennings
Notary Public, State of Texas

CATHERINE E. JENNINGS
Type or Print Name of Notary Public

My Commission Expires: 12/17/89

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 ESTELLE K. MORSE, INDIVIDUALLY AND AS INDEPENDENT EXECUTRIX OF THE ESTATE OF FRED MORSE, DECEASED, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed and in the capacity therein stated.

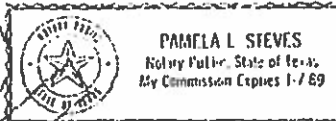
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 1st day of July 1986.

Pamela L. Steves
Notary Public, State of Texas

NOTARY SEAL

Type or Print Name of Notary Public

My Commission Expires: _____



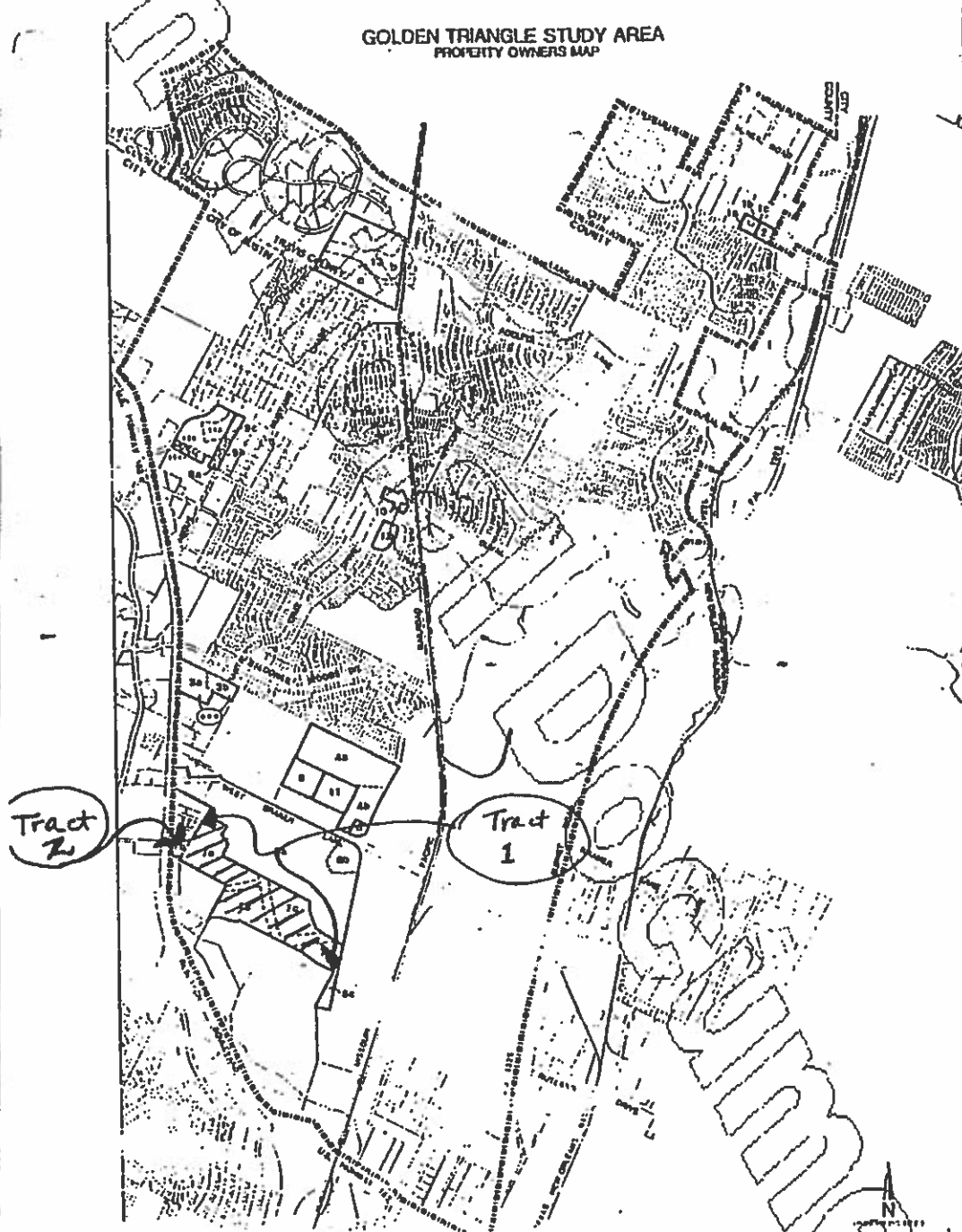


EXHIBIT "A"

09839 0571

CITY OF AUSTIN
DEPT. OF LAW
P. O. BOX 1088
AUSTIN, TEXAS 78767-8828

Original Document

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

STATE OF TEXAS, COUNTY OF TRAVIS
I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the named RECORDS of Travis County, Texas on

AUG 19 1986



Kyle Applegate
COUNTY CLERK
TRAVIS COUNTY, TEXAS

Kyle Applegate
COUNTY CLERK
TRAVIS COUNTY, TEXAS
Aug 19 10 51 AM '86

FILED

09839 0572

132
4 10 8616

Zoning Case No. C 14-85-244 (Part 7)

C.R.

4-7-84

L. J. J. J.
C. 14-85-244

RESTRICTIVE COVENANT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

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TRACT 2

Two (2) acres of land out of the James Rogers Survey No. 19, in Travis County, Texas, being out of a tract of land conveyed to Emma F. Elliott by Walter Williams by deed dated February 14, 1920, recorded in Vol. 317, Page 21, of the Travis County Deed Records, and more particularly described by metes and bounds as follows:

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WHEREAS, the City of Austin, Texas, and the Owners of the Property have agreed that the Property should be impressed with certain covenants and restrictions running with the land, and desire to set forth such agreement in writing;

NOW, THEREFORE, in consideration of One and No/100 Dollars (\$1.00) and other good and valuable consideration paid by the City of Austin in hand to the Owners, the receipt and sufficiency of which is acknowledged, the Owners do hereby impress upon the Property shown on Exhibit A attached hereto and incorporated herein by reference, the following covenants and conditions which shall be considered to be covenants running with the land, and which shall be binding on the Owners, their heirs, legal representatives, successors and assigns, as follows:

Release "the Property"
from Tract 1 section.

TRACT 1

1. Use of the Property shall be limited to a maximum floor area ratio of .9 to 1.0, as described in sections 3150 through 3152 of Chapter 13-2A of the Austin City Code of 1981, and shall comply with site development regulations applicable to "CR" Community Commercial uses, as described in section 2504 of Chapter 13-2A of the Austin City Code of 1981.
2. Any development of the Property shall be subject to public site plan review.
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TRACT 2

1. Use of the Property shall be limited to a maximum floor area ratio of .9 to 1.0, as described in sections 3150 through 3152 of Chapter 13-2A of the Austin City Code of 1981, and shall comply with site development regulations applicable to "CR" Community Commercial uses, as described in section 2504 of Chapter 13-2A of the Austin City Code of 1981.
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Release "the Property"
from Tract 1 and 2
section.

TRACTS 1 AND 2

1. If any person or entity 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 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.
2. If any part of this agreement or covenant shall be declared invalid, by judgement 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.
3. If at any time the City of Austin, its successors or assigns, 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.
4. 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 owner(s) of the Property at the time of such modification, amendment or termination.

EXECUTED this the 1st day of July, 1986.

ESTATE OF FRED MORSE

By James Morse, Jr.
FRED C. MORSE, JR.
INDEPENDENT EXECUTOR OF THE ESTATE
OF FRED MORSE, DECEASED

Estelle K. Morse
ESTELLE K. MORSE,
INDIVIDUALLY AND AS INDEPENDENT
EXECUTRIX OF THE ESTATE OF FRED
MORSE, DECEASED

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 FRED C. MORSE, JR., INDEPENDENT EXECUTOR OF THE ESTATE OF FRED MORSE, DECEASED, 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 purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 30th day of June, 1986.

NOTARY SEAL

Catherine E. Jennings
Notary Public, State of Texas
CATHERINE E. JENNINGS
Type or Print Name of Notary Public
My Commission Expires: 12/17/89

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COUNTY OF TRAVIS §

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Pamela L. Steves
Notary Public, State of Texas

NOTARY SEAL

Type or Print Name of Notary Public

My Commission Expires: _____



09839 0570

-5-



EXHIBIT "A"

09839 0571

AUSTIN, TEXAS 78767-8828
P.O. BOX 1088
DEPT. OF LAW
CITY OF AUSTIN

Let.

RECORDERS MEMORANDUM
At the time of recording, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All discharges, omissions and changes were present at the time the instrument was filed and recorded.

STATE OF TEXAS COUNTY OF TRAVIS
I hereby certify that this instrument was filed on
the date and at the place indicated by me and
was duly RECORDED, in the books and pages of the
county of TRAVIS, State of Texas, on

AUG 19 1988



Lee A. Phillips
COUNTY CLERK
TRAVIS COUNTY, TEXAS

David S. Thompson
COUNTY CLERK
TRAVIS COUNTY, TEXAS

AUG 19 10 51 AM '88

FILED

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