



Zoning
CITY OF AUSTIN
RECOMMENDATION FOR COUNCIL ACTION

AGENDA ITEM NO.: Z-8
AGENDA DATE: Thu 03/04/2004
PAGE: 1 of 1

SUBJECT: C14r-86-068 (RCA) - Cedar Elm - Conduct a public hearing and approve a restrictive covenant amendment for the property locally known as 13205 Burnet Road (Walnut Creek Watershed) . Zoning and Platting Commission Recommendation: To grant restrictive covenant amendment. Applicant: Austin Bay Inc. (Henry W. Branson, III). Agent: Bennett Consulting (Jim Bennett). City Staff: Sherri Gager, 974-3057.

REQUESTING Neighborhood Planning
DEPARTMENT: and Zoning

DIRECTOR'S
AUTHORIZATION: Greg Guernsey

RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET

CASE: C14R-86-068 (RCA)

Z.A.P. DATE: February 3, 2004

ADDRESS: 13205 Burnet Road

OWNER/APPLICANT: Austin Bay Inc.
(Henry W. Branson, III)

AGENT: Jim Bennett

EXISTING ZONING: GR

AREA: 0.722 acres

SUMMARY STAFF RECOMMENDATION:

Staff recommends the applicant's request to amend the restrictive covenant to eliminate a condition that allows for a rollback provision to GO, General Office District, zoning.

DEPARTMENT COMMENTS:

The property in question is currently undeveloped. The applicant is requesting to amend the public restrictive covenant for this tract of land because this covenant consists of a provision that states that if a restaurant use is discontinued on the property for 90 consecutive days, the Owner of the property will not object to the City of Austin rezoning the property to General Office (GO) zoning (Original Restrictive Covenant – Attachment A). The applicant would like to amend the restrictive covenant because they propose to develop the site with commercial uses (a retail center). The remainder of the property in the restrictive covenant (2.429 acres) has been acquired by Travis County as right-of-way to be used for the roadway expansion of Loop 1/Burnet Road.

The staff recommends the applicant's request to amend the restrictive covenant for this property because this tract of land has frontage on a major arterial roadway, Burnet Road/FM1325, and would be suitable to provide a variety of commercial services. In addition, the property is adjacent to commercial and industrial land uses located to the northeast, south and west.

The site under consideration is in the North Lamar Area Study. The future land use map in the area study recommends commercial land use for this tract of land.

ZONING AND PLATTING COMMISSION RECOMMENDATION:

2/3/04: Approved staff's recommendation, by consent (9-0); J. Martinez-1st, J. Gohil-2nd.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	GR	Undeveloped
<i>North</i>	GO	Retail/ Office/ Industrial/ Warehouse
<i>South</i>	GO	Undeveloped
<i>East</i>	GO	Undeveloped
<i>West</i>	GR	Undeveloped

AREA STUDY: North Lamar Area Study

TIA: N/A

WATERSHED: Walnut Creek**DESIRED DEVELOPMENT ZONE:** Yes**CAPITOL VIEW CORRIDOR:** N/A**HILL COUNTRY ROADWAY:** No**NEIGHBORHOOD ORGANIZATIONS:**

- 52 - Northwood Neighborhood Association
- 64 - River Oaks Lakes Estates Neighborhood Association
- 114 - North Growth Corridor Alliance

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-00-2179	IP to SF-2, SF-3, MF-1	10/17/00: Approved staff rec. of SF-2 (TR1), SF-3 (TR 2), and MF-1 (TR3) by consent (8-0)	11/30/00: Approved SF-2-CO (TR1), SF-3-CO (TR2); MF-1-CO (TR3) w/condition of 2,000 vehicle trip per day limit (7-0); all 3 readings
C14-00-2112	IP to MF-3	9/19/00: Approved staff alternate rec. of MF-3-CO by consent (9-0); conditions as follows: 1) 2,000 vehicle trip per day limit 2) Maximum of 23 residential units per acre 3) A residential structure or portion of a residential structure may not be constructed within 100 ft of the north property line between Ida Ridge and Orchid Lane	10/26/00: Approved MF-3-CO (7-0); 1 st reading 12/7/00: Approved MF-3-CO (7-0); 2 nd /3 rd readings
C14-95-0051	GO to CS-CO	5/23/95: Approved staff alternate rec. of CS-CO w/conditions (7-0)	6/22/95: Approved CS-CO w/conditions (5-0); all 3 readings
C14-92-0109	IP to MF-3	11/24/92: Approved MF-3	12/3/92: Approved MF-3-CO; with following conditions: 1) Limit of 23 units per acre for multifamily development 2) Parkland dedication shall apply at site plan approval (6-0-1, RR-abstain); 1 st reading 4/7/94: Approved MF-3-CO (5-0-1, RR-abstain); 2 nd reading 4/21/94: Approved MF-3-CO (5-0-1, RR-abstain); 3 rd reading
C14-95-0051	GO to CS-CO	5/23/95: Approved staff alternate rec. of CS-CO w/conditions (7-0)	6/22/95: Approved CS-CO w/ conditions (5-0); all 3 readings
C14-94-0056	LO, LR to MF-3	9/27/94: Approved MF-2-CO (TR1), MF-3-CO (TR2) w/ conditions (9-0)	11/3/94: Approved MF-2-CO (TR1), MF-3-CO (TR2) w/conditions (5-0); all 3 readings

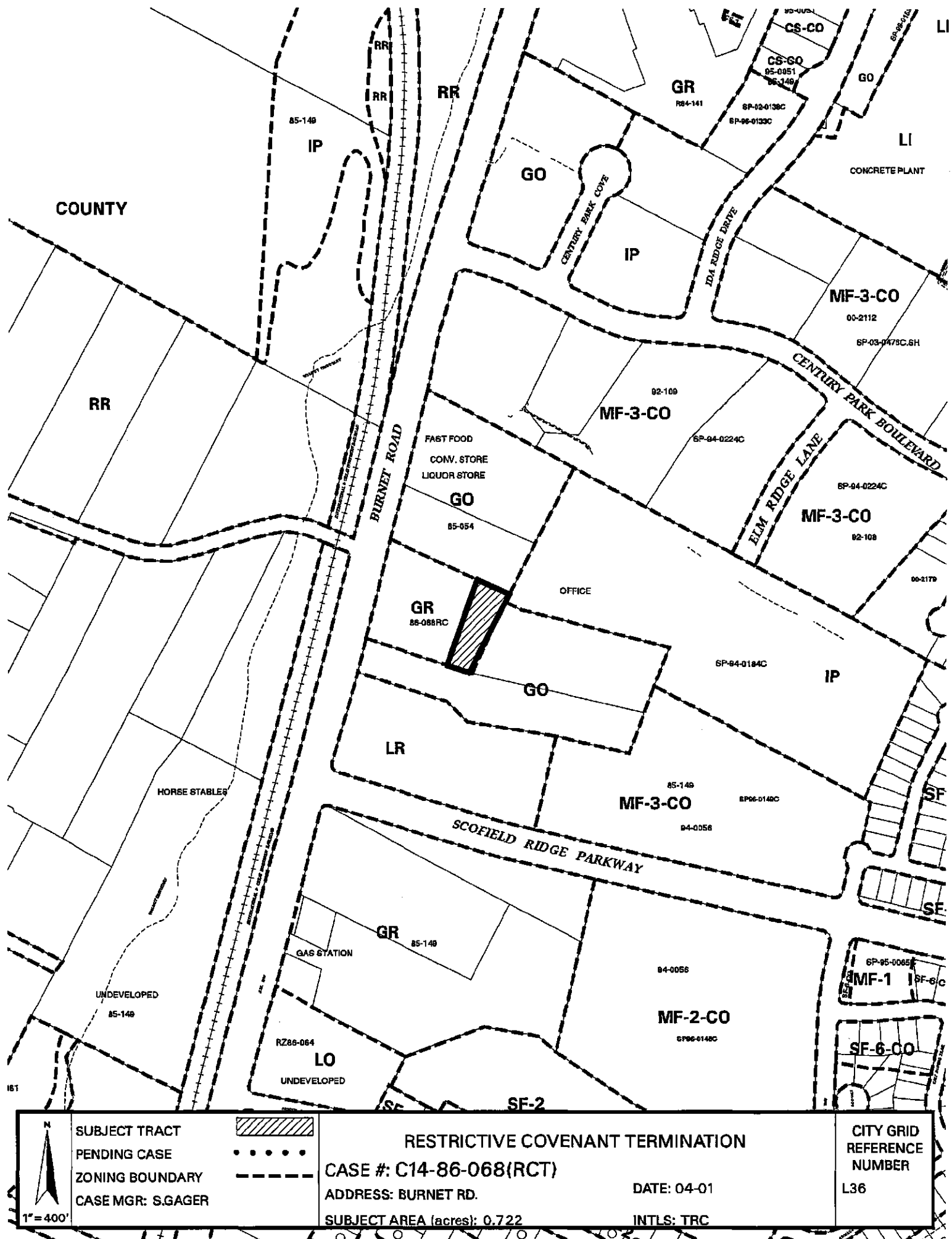
C14-92-0135	GR to CS	<p>3/16/93: Approved W/LO as amended w/conditions offered by neighborhood association (7-0)</p> <p>5/23/93: Approved CS w/conditions (6-1)</p>	<p>4/1/93: Approved W/LO w/conditions [Action later recinded]</p> <p>5/13/93: Recind action on 1st reading, refer back to PC for reconsideration (7-0)</p> <p>5/27/93: Approved CS-CO (7-0); 1st reading</p> <p>6/10/93: Approved CS-CO (6-0); 2nd/3rd readings</p>
C14-92-0108	IP to MF-3	11/24/92: Approved MF-3	<p>12/3/92: Approved MF-3-CO; with following conditions: 1) Limit of 23 units per acre for multifamily development 2) Parkland dedication shall apply at site plan approval (6-0-1, RR-abstain); 1st reading</p> <p>4/7/94: Approved MF-3-CO (5-0-1, RR-abstain); 2nd reading</p> <p>4/21/94: Approved MF-3-CO (5-0-1, RR-abstain); 3rd reading</p>

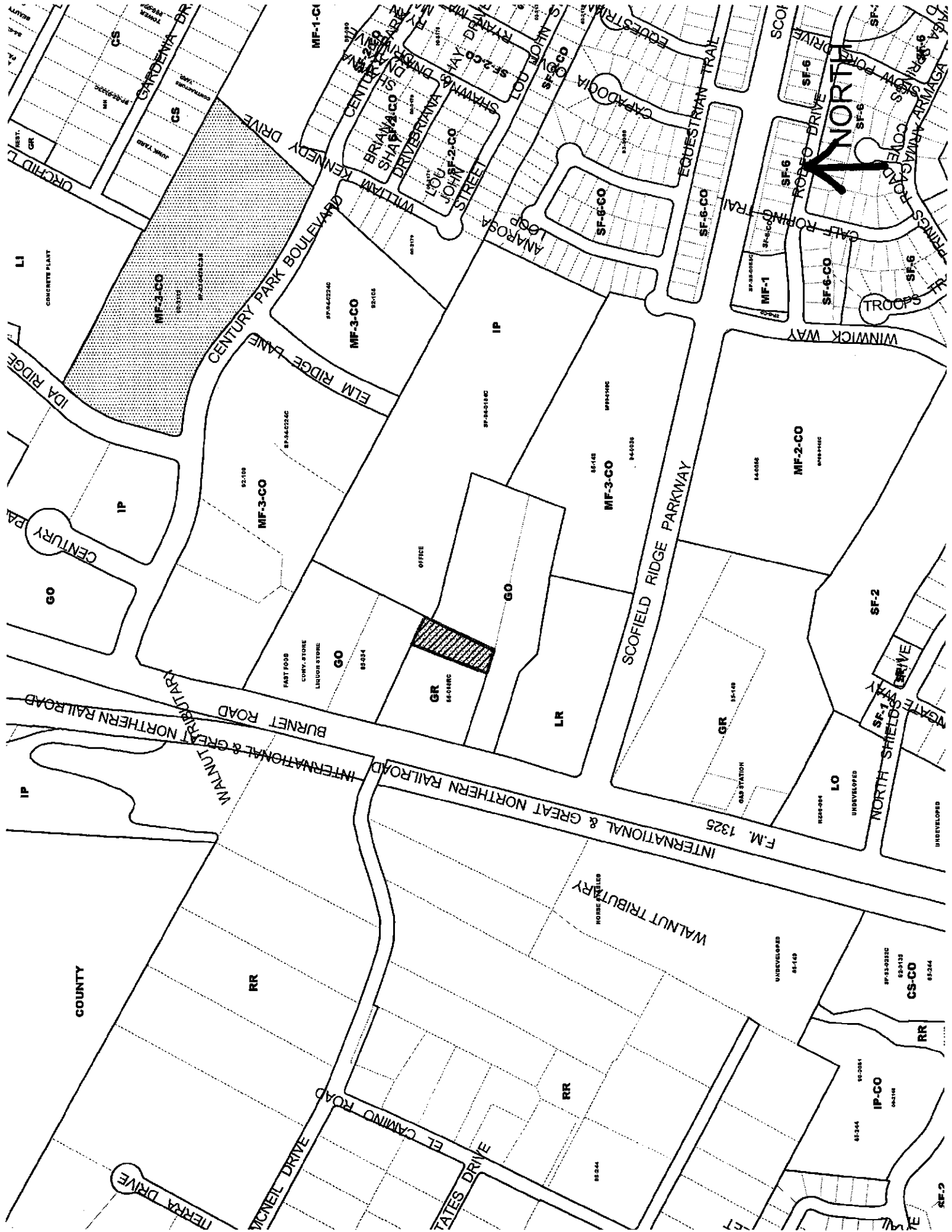
RELATED CASES: C14-03-0188

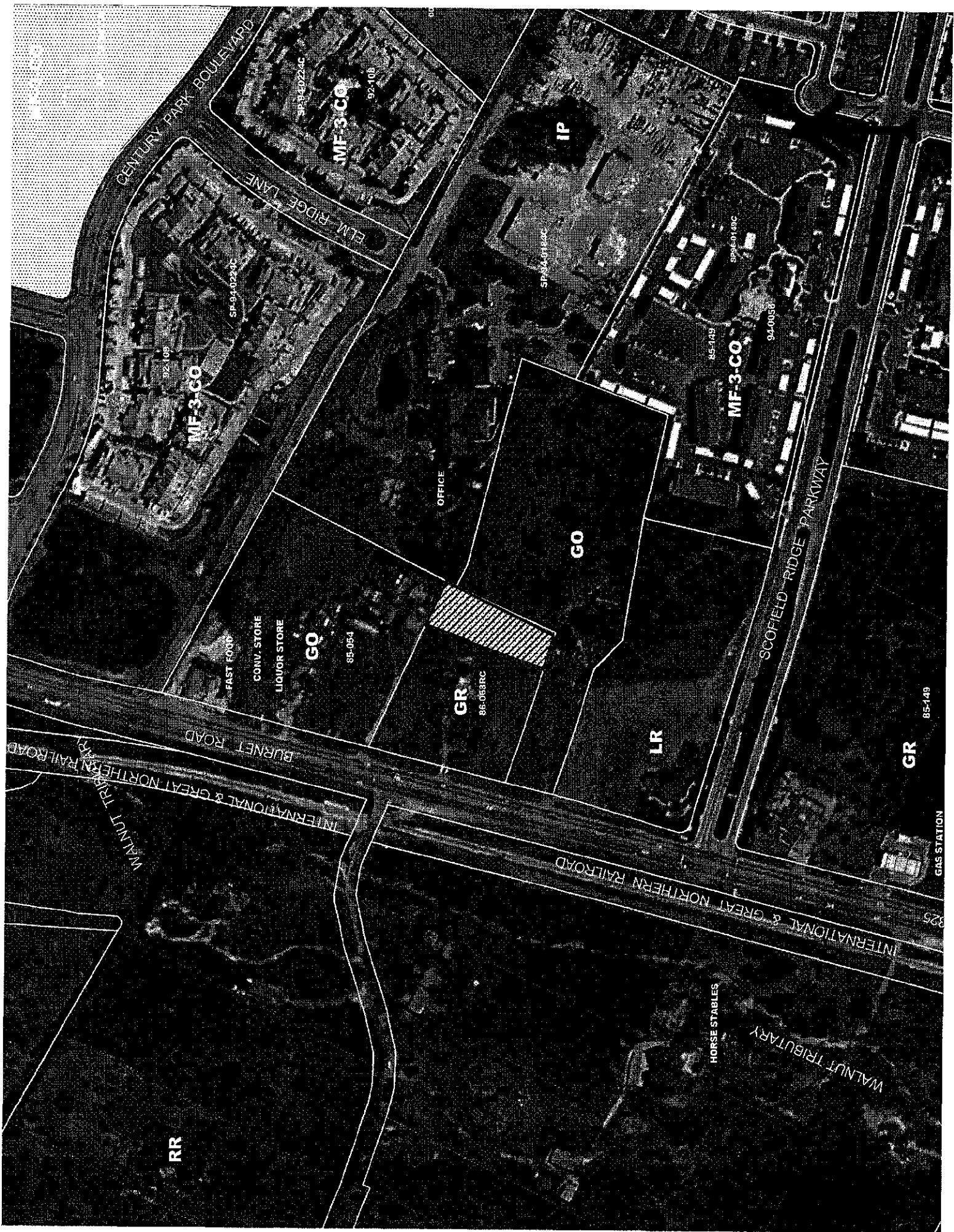
NAME	ROW	PAVEMENT	CLASSIFICATION	DAILY TRAFFIC
FM 1325	Varies	Varies	Major Arterial	N/A

CITY COUNCIL DATE: March 4, 2004**ACTION:****CASE MANAGER:** Sherri Gager**PHONE:** 974-3057

sherri.gager@ci.austin.tx.us







CENTURY PARK BOULEVARD

ELM RIDGE LANE

SCOTFIELD RIDGE PARKWAY

BURNET ROAD

WALNUT TRIBUTARY

INTERNATIONAL & GREAT NORTHERN RAILROAD

HORSE STABLES

GAS STATION

RR

MF-3-CO

MF-3-CO

IP

MF-3-CO

GO

GO

GR

LR

GR

FAST FOOD

CONV. STORE

LIQUOR STORE

OFFICE

85-054

86-068RC

85-149

93-0050

85-149

CIVIL-96-061

4 12 6253

RESTRICTIVE COVENANT

STATE OF TEXAS

§

COUNTY OF TRAVIS

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2000

279767

9.00 RTEA
2 09/29/86

WHEREAS, 6.7 Burnet Road Joint Venture, a Texas joint venture the "Owner"), of Travis County, Texas, is the owner of that certain tract of land described in Exhibit "A" attached hereto and made a part hereof (the "Property");

WHEREAS, the City of Austin and the Owner 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, Owner, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby agree with respect to the Property, such agreement to be deemed and considered as a covenant running with the land, and which shall be binding on Owner, its successors and assigns, as follows:

1. If the use of the Property as a restaurant is discontinued for 90 consecutive days, the Owner, of the Property will not object to the City of Austin rezoning the Property to General Office ("GO") Zoning. Normal, seasonal cessation of a use, or temporary discontinuance for purposes of maintenance or rebuilding of the Property after damage or destruction shall not be included in calculating the period of discontinuance.

2. 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.

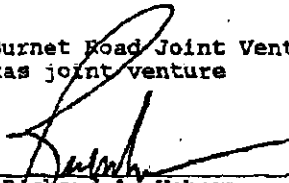
3. If any part or provision of this agreement or covenant herein contained shall be declared invalid, by judgment or court order the same shall in no wise affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full force and effect.

4. 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.

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, 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 10 day of June, 1986.

6.7 Burnet Road Joint Venture,
a Texas joint venture

By: 
Richard A. Haberman,
Managing Venturer

STATE OF TEXAS
COUNTY OF TRAVIS

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This instrument was acknowledged before me on June 10,
1986, by Richard A. Haberman, Managing Venturer on behalf of 6.7
Burnet Road Joint Venture, a Texas joint venture.


Notary Public, State of Texas

NOTARY SEAL

My Commission Expires: 12-23-89

rest cov; misc; haberman; hb

EXHIBIT "A"

3.233 ACRES OF LAND
PORTION OF 6.705 ACRES (VOLUME 8396, PAGE 160)
TRAVIS COUNTY, TEXAS

FN86-030 (GCK)
MARCH 14, 1986
BPI JOB NO. 008-04.00

DESCRIPTION OF A 3.233 ACRE TRACT OF LAND OUT OF THE FRANCISCO GARCIA SURVEY IN TRAVIS COUNTY, TEXAS BEING A PORTION OF THAT CERTAIN 6.705 ACRE TRACT OF LAND CONVEYED TO 6.7 BURNET ROAD JOINT VENTURE BY DEED RECORDED IN VOLUME 8396, PAGE 160, OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, SAID 3.233 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at an iron pipe found in the east right-of-way line of F.M. 1325, a 100 feet wide Public Road, same being the northwest corner of that certain tract of land conveyed to Jack Friedman by deed recorded in Volume 8230, Page 757 of the Deed Records of Travis County, Texas, and being also the southwest corner of said 6.705 acre tract, for the southwest corner hereof;

THENCE, N17°51'15"E, along said east right-of-way line of F.M. 1325 and the west line of said 6.705 acre tract, a distance of 256.91 feet to an iron rod found;

THENCE N17°51'40"E, continuing along said right-of-way line and said west line of 6.705 acre tract, a distance of 99.98 feet to an iron pipe found for the southwest corner of that certain tract of land conveyed to Bob E. Gregory by deed recorded in Volume 9258, Page 694 of the Deed Records of Travis County, Texas, same being the northwest corner of said 6.705 acre tract, for the northwest corner hereof;

THENCE S61°38'10"E, with the north line of said 6.705 acre tract, a distance of 466.15 feet to an iron pipe found in the west line of that certain tract of land conveyed to E.M.W. Venture by deed recorded in Volume 8182, Page 849 of the Deed Records of Travis County, Texas, same being an outside ell corner of said 6.705 acre tract, for the northeast corner hereof;

THENCE S30°22'05"W, with the common line of said 6.705 acre tract and the E.M.W. Venture tract, a distance of 30.09 feet to an iron rod found;

THENCE S30°35'17"W, over and across said 6.705 acre tract, a distance of 274.88 feet to an iron rod found in the north line of said Jack Friedman tract, same being in the south line of said 6.705 acre tract, for the southeast corner hereof;

THENCE N68°23'55"W, with the common line of said Friedman tract and said 6.705 acre tract, a distance of 392.07 feet to the POINT OF BEGINNING, containing 3.233 acres (140,862 square feet) of land, more or less.

STATE OF TEXAS

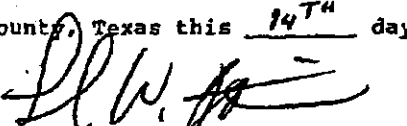
KNOW ALL MEN BY THESE PRESENTS

COUNTY OF TRAVIS

That I, Leslie W. Pittman, a Registered Public Surveyor, do hereby certify that the above description was prepared from Public Record and a partial survey made on the ground under my direction and supervision, and is true and correct to the best of my knowledge and belief.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this 14TH day of MARCH, 1986 A.D.

Bury & Pittman, Inc.
Engineering - Surveying
1601 Rio Grande, Suite 300
Austin, Texas 78701



Registered Public Surveyor
No. 3479, State of Texas



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WAL OF WA
BOSTON
BOSTON TEXAS 78701

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