



**RCA  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.:** 37  
**AGENDA DATE:** Thu 06/10/2004  
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**SUBJECT:** Approve an ordinance amending Ordinance No. 020801-15, and authorize execution of the First Amendment to the Development Agreement and the Second Amendment of the Declaration of Restrictive Covenant (Green Building Agreement), between the City of Austin, Circle C Land, L.P. and Escarpment Village, L.P., which purchased Parcel 103 from Circle C Land, L.P., formerly known as Circle C Land Corp (Stratus). The original ordinance adopted a settlement resolving disputes between the City and Stratus regarding the applicability of the Save Our Springs Initiative Ordinance (SOS) and Chapter 245 of the Local Government Code (also known as HB 1704).

**AMOUNT & SOURCE OF FUNDING:** N/A

**FISCAL NOTE:** There is no unanticipated fiscal impact. A fiscal note is not required.

**REQUESTING** Watershed Protection and **DIRECTOR'S**

**DEPARTMENT:** Development Review **AUTHORIZATION:** Joe Pantalione

**FOR MORE INFORMATION CONTACT:** Patrick Murphy at (512) 974-2821.

**PRIOR COUNCIL ACTION:** Approval of Development Agreement, dated August 15, 2002, between the City of Austin and Circle C Land Corp., a Texas corporation

**BOARD AND COMMISSION ACTION:** Recommended by Environmental Board . Approved by Zoning and Platting Commission.

**PURCHASING:** N/A

**MBE / WBE:** N/A

On August 2, 2002, City Council authorized a settlement agreement with Circle C Land Corp (Stratus). Since then Circle C Land Corp has become Circle C Land, L.P. and sold one of the parcels, Parcel 103, to Escarpment Village, L.P ("Escarpment Village"). Escarpment Village has reached an agreement with H.E.B. to construct a grocery store and additional retail uses on Parcel 103, located on the north side of Slaughter Lane at its intersection with Escarpment Boulevard. Escarpment Village will also construct Escarpment Boulevard as a four-lane divided road, rather than just one-half of the road as required by the settlement agreement.

However, in order to construct the grocery store, several things must happen. First, Escarpment Village has initiated a zoning change that eliminates all residential use on Parcel 103 and converts that to 160,000 net square feet of Retail, including the Large Grocery Store, which was allowed by the settlement agreement. The Zoning and Platting Commission approved this requested zoning change on May 4, 2004. The surrounding neighborhoods strongly support this new use of Parcel 103, and have sent numerous letters in support.

Further, certain sections of the Development Agreement and the Declaration of Restrictive Covenant (Green Building Agreement) must be amended. Those sections include:



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**Exhibit H, Initial Allocation of Development Density**

Parcel 103 was originally allocated 10,000 net square feet of retail and 450 residential units, of which 400 were multi-family.

**Residential Changes.** To accommodate the Single Grocery Store, CCLC has proposed to eliminate all residential use on Parcel 103 and to convert 396 of the residential units, all of which are multi-family, which were originally allocated to Parcel 103 under the Development Agreement to retail square footage. After such conversion, there remain 54 residential units, 4 of which are multi-family units allocated to Parcel 103. Because CCLC has not yet determined where to move these remaining residential units, these units will remain allocated to Parcel 103, but cannot be built on Parcel 103. Accordingly, they will be re-allocated elsewhere pursuant to the terms and conditions of the Development Agreement prior to development.

**Retail Changes.** CCLC has proposed increasing the overall retail allocation under the Development Agreement by 160,000 net square feet of retail by eliminating 396 residential units, all of which additional retail will be allocated to Parcel 103.

**Net Overall Changes:**

	<b>Residential</b>	<b>Multifamily</b>	<b>Retail</b>
<b>From:</b>	<b>1730</b>	<b>900</b>	<b>250,000 NSF</b>
<b>To:</b>	<b>1334</b>	<b>504</b>	<b>410,000 NSF</b>

**Zoning**

Paragraph 4 of Exhibit F will be amended to include the new Zoning Ordinance Reference, if and when adopted by Council. The Zoning item was approved by the Zoning and Platting Commission on May 4, 2004.

**Exhibit M-1, CEF Setbacks**

A portion of the eastern setback of Pipeline Sink on Parcel 107 is increased from 100 to 150 feet as shown on the attached Exhibit M-1. The revised Exhibit M-1 will be substituted for Exhibit M-1 attached to the Development Agreement.

The First Amendment to Green Building Restrictive Covenant attached Appendices A, B, and C, which were inadvertently not attached when the Restrictive Covenant was originally recorded. These Appendices are lists of plants that are recommended and not recommended to be used.

**Second Amendment to Green Building Restrictive Covenant affecting only Parcel 103**

This Second Amendment will be executed by the City of Austin and Escarpment Village, L.P. and includes the following changes:

**Feasibility.** The second sentence of Section 2.1 is amended to include a standard of review of "whether the requirement would have more than a de minimus impact on environmental quality"



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of complying with a mandatory green building requirement.

**Exterior Light Pollution Reduction.** Paragraph 7, Section C, Article III Landscape and Exterior Design/Heat Island Reduction, Exhibit B, is amended to include use of internal illumination for outdoor advertising and limits lamps to 100 watts or less.

**Ozone Depletion.** Paragraph 1, Section G, Article V Energy and Atmosphere, Exhibit B, is amended to allow the reviewer more flexibility in determining what HVAC, refrigeration and fire suppression chemicals may be used to achieve a better environmental result for the goal (i.e., a superior TEWI rating).

**Certified Wood.** Paragraph 1, Section H, Article VI Materials and Resources, Exhibit B, is amended to require that 50% of all new wood be certified, if the cost of the wood exceeds 5% of the original cost of the building.

**Innovation and Design Process.** Paragraph 3 of Part Three, Exhibit B, is amended to add Parcel 103 as an exception to the 35,000 retail square foot cap to allow for a grocery store on Parcel 103. In order to eliminate existing conflicts with the Development Agreement, it clarifies the definition of Affiliated Occupants and that the limitation does not apply to Public Primary Education Facilities, Public Secondary Education Facilities, or Safety Services Usages {all as defined in §25-6(37), (38) and (43), respectively, of the Austin City Code}. Also, to clarify this provision in relation to provisions to the Development Agreement, there is a further stipulation that Parcel 102 is the Single Convenience Store location and that Parcel 103 will be the Single Grocery Store location.

City staff has reviewed all these changes and recommend that the Development Agreement and Green Building Restrictive Covenants be amended as set out above.