

A U S T I N C I T Y C O U N C I L

**AGENDA****Thursday, June 22, 2006**

+ Back

**Zone Hearings/App Ordinances/Restrictive Covenants  
RECOMMENDATION FOR COUNCIL ACTION**

**Subject: C14R-82-006(RCT) - Austin Auto Park, Lot 1 - Conduct a public hearing and approve a restrictive covenant termination for the property locally known as 13553 Research Boulevard (Lake Creek Watershed). Zoning and Platting Commission Recommendation: To approve the request to terminate the restrictive covenant. Applicant: Asbury Automotive Texas Real Estate Holding (J. Gordon Smith). Agent: Hill, Ward & Henderson, LLP (M. Kristen Hyatt). City Staff: Sherri Sirwaitis, 974-3057.**

**Additional Backup Material**

(click to open)

Staff Report

**For More Information: Sherri Sirwaitis, 974-3057**



## MEMORANDUM

\*\*\*\*\*

TO: Will Wynn, Mayor and Members of the  
City Council

FROM: Greg Guernsey  
Director, Neighborhood Planning and Zoning Department

DATE: June 5, 2006

RE: C14r-82-006(RCT) Postponement Request

\*\*\*\*\*

The Neighborhood Planning and Zoning Department would like to request a postponement of the above mentioned case until July 27, 2005. The staff is requesting an additional postponement of this case so that we can work with the applicant to draft the appropriate legal documents for this case to be heard by the City Council.

The postponement request was made in a timely manner and meets the City Council's policy.

## **RESTRICTIVE COVENANT TERMINATION REVIEW SHEET**

**CASE:** C14R-82-006 (RCT)

**Z.A.P. DATE:** April 18, 2006

**ADDRESS:** 13553 Research Boulevard (U.S. HWY 183 North)

**OWNER/APPLICANT:** Asbury Automotive Texas Real Estate Holding (J. Gordon Smith)

**AGENT:** Hill, Ward & Henderson, LLP (M. Kristen Hyatt)

**ZONING:** GR, GR-CO

**AREA:** 3.191 acres

### **SUMMARY STAFF RECOMMENDATION:**

The staff recommends the applicant's request to terminate the restrictive covenant to eliminate the restrictions placed upon the property in question.

### **ZONING AND PLATTING COMMISSION:**

4/18/06: Motion to postpone to May 2, 2006 (5-4); J. Martinez-1<sup>st</sup>, T. Rabago-2<sup>nd</sup>.

Approved staff recommendation to terminate the public restrictive covenant (7-1, J. Martinez-No; B. Baker-abstain); K. Jackson-1<sup>st</sup>, J. Gohil-2<sup>nd</sup>.

### **DEPARTMENT COMMENTS:**

The applicant is requesting to terminate the public restrictive covenant for this property (Attachment A) that states, "In the event that said, property is not at any time in the future used for Small Engine Sales & Service, the then owner of the property will not object to filing of an application for the rezoning of the said property to "O" Office." This tract of land was zoned from I-RR, Interim-Rural Residence District, zoning to GR-CO, Community Commercial-Conditional Overlay District, zoning on January 10, 2002 through zoning case C14-01-0155. This zoning case was filed in 2001 to bring the existing legal nonconforming automotive sales dealership on this site into conformance with the zoning regulations in the City of Austin Land Development Code. The applicant would like to terminate the covenant because they are concerned that, in the event that there is some sort of casualty which causes significant damage or the destruction of the improvements on the property, that the City would initiate a case to rezone the property to an office zoning category, which would not allow the continued use of the property as an automobile dealership.

The staff recommends the applicant's request to terminate the restrictive covenant because the intent of the covenant is no longer viable. This tract of land is located adjacent to existing commercial uses, including automotive sales and repair uses located to the north, and fronts onto a recently improved major arterial roadway, U. S. Highway 183 North. The termination of this public restrictive covenant will allow the applicant to clear the title to the property in question.

The applicant agrees with the staff's recommendation.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	GR, GR-CO	Automotive Sales
<i>North</i>	I-RR	Automotive Sales
<i>South</i>	GR, I-SF-2, I-RR	Auto Part Sales, Restaurant, Undeveloped Land, Telecommunications Tower, Offices
<i>East</i>	County	City of Austin Water Tower
<i>West</i>	GR	Automotive Sales

**AREA STUDY:** N/A**TIA:** N/A**WATERSHED:** Lake Creek**DESIRED DEVELOPMENT ZONE:** Yes**CAPITOL VIEW CORRIDOR:** N/A**HILL COUNTRY ROADWAY:** N/A**NEIGHBORHOOD ORGANIZATIONS:**

- 2 - Acres west Homeowners Association
- 157 - Courtyard Homeowner Association
- 281 - Anderson Mill Neighborhood Association
- 426 - River Place Residential Community Association, Inc.
- 454 - Neighborhood Association of Southwest Williamson County

**CASE HISTORIES:**

<b>NUMBER</b>	<b>REQUEST</b>	<b>COMMISSION</b>	<b>CITY COUNCIL</b>
C14-03-0180	I-SF-2 to Tract 1: GR-CO, Tract 2: CS-1-CO	1/20/04: Approved staff's recommendation of GR-CO (Tract 1), CS-1-CO (Tract 2) zoning by consent (6-0, J. Cortez, J. Donisi, K. Jackson-absent); the CO will prohibit the following uses: <u>Tract 1:</u> Drop-Off Recycling Collection Facility, Residential Treatment; <u>Tract 2:</u> Drop-Off Recycling Collection Facility, Residential Treatment, Building Maintenance Services, Campground, Cocktail Lounge, Commercial Blood Plasma Center, Construction Sales and Services, Convenience Storage, Electronic Prototype Assembly, Equipment Repair Services, Equipment Sales, Kennels, Laundry Services, Plant Nursery, Vehicle Storage, Veterinary Services, Custom Manufacturing, Limited Warehousing and Distribution,	

		Maintenance and Service, Transitional Housing, Transportation Terminal; and limit the development intensity for the entire site to less than 2,000 vehicle trips per day.	
C14-03-0104	I-RR, SF-2, GR, CS to GR-CO	8/12/03: Approved staff's recommendation of GR-CO zoning by consent (9-0); the CO will limit the development intensity to less than 2,000 vehicle trips per day.	9/25/03: Granted GR-CO (7-0); all 3 readings
C14-02-0059	SF-3 to CS	6/04/02: Approved staff's recommendation of GR-CO zoning on consent, with 2,000 vtpd limit and added condition prohibiting the following uses: Automotive Rentals, Automotive Repair Services, Automotive Sales, and Automotive Washing (8-0, K. Jackson-absent)	7/11/02: Approved ZAP recommendation of GR-CO with conditions (7-0)
C14-02-0020	I-RR to LR	4/9/02: Approved staff's rec. of LR-CO zoning; limit the vehicle trips to 2,000 vehicle trips per day; prohibit Service Stations, Congregate Living, Family Homes, Group Homes, Residential Treatment; require dedication of the appropriate right-of-way (9-0)	8/29/02: Approved ZAP rec. of LR-CO, deleting Right-Of-Way dedication and added Restaurant (Drive-in, Fast Food) use to the list of prohibited uses (7-0); 1 <sup>st</sup> reading  9/26/02: Approved LR-CO (7-0); 2 <sup>nd</sup> /3 <sup>rd</sup> readings
C14-01-0165	CS-CO to CS-CO	12/11/01: Approved staff rec. of CS-CO (7-0); the CO will limit the site to Convenience Storage as the only CS use, allow all LR uses with the exception of a Service Station, limit the site to a maximum building height of 45 feet, and limit the development intensity to less than 2,000 vehicle trips per day.	1/17/02: Approved ZAP rec. of CS-CO (6-0); all 3 readings
C14-01-0155	I-RR to GR	11/21/01: Approved staff rec. of GR-CO by consent (8-0); the CO will limit the development intensity to less than 2,000 vehicle trips per day	1/10/02: Approved GR-CO (6-0, Goodman out of room); all 3 readings
C14-00-2105	I-RR to GR	7/25/00: Approved staff rec. of GR-CO w/height limit of 35 ft. (7-1, BB-Nay)	8/24/00: Approved GR-CO (7-0), all 3 readings

C14-00-2244	I-RR to LR	2/6/01: Approved GR-CO for personal improvement use only & all LR uses w/ conditions (9-0)	7/19/01: Withdrawn by applicant.
C14-00-2054	I-RR to LI-CO	11/14/00: Postponed indefinitely by applicant (re-notification required)	5/14/01: Administrative-Expired (Indefinite PP only good for 6 months)
C14-99-2140	I-RR to CS	3/7/00: Approved CS-CO (5-0-1, RC-abstain); CO would limit to convenience storage as the only CS use and allow all LR uses w/ exception of service stations, limit max height to 40', allow max of 2,000 vehicle trips per day	4/6/00: Approved CS-CO w/ conditions as recommended by PC; all 3 readings (6-0, Lewis out of room)
C14-99-2139	I-RR to CS	3/7/00: Approved W/LO-CO (5-0-1, RC-abstain); CO would limit site to convenience storage as only W/LO use, limit site to 2,000 vehicle trips per day	4/6/00: Approved W/LO-CO w/ conditions as recommended by PC; on all 3 readings (6-0, Lewis out of room)
C14-99-0137	I-RR to LI	8/24/99: Approved LI-CO; agree to rollback zoning to GR if use ceases, limited to 2,000 vehicle trips per day, dedicate ROW at time of subdivision process (5-1, RC-Nay)	12/2/99: Approved LI-CO; limited to 2,000 vehicle trips per day; require RC for to "GR" if use ceases (7-0); 3 <sup>rd</sup> reading
C14-99-0019	I-SF-2 to CS	6/22/99: Approved CS-CO (Southern); GR-CO (Northern) w/conditions (6-0)	7/22/99: Approved PC rec. of CS-CO w/conditions (6-0); 1 <sup>st</sup> reading  8/19/99: Approved CS-CO w/conditions (7-0); 2 <sup>nd</sup> /3 <sup>rd</sup> rdgs.
C14-98-0272	I-RR to LR	2/2/99: Approved staff recommendation of LR by consent (8-0)	3/4/99: Approved LR (7-0); 1 <sup>st</sup> reading  3/25/99: Approved LR (6-0); 2 <sup>nd</sup> /3 <sup>rd</sup> readings
C14-98-0086	SF-2 to GR	8/18/98: Approved GR-CO with conditions by consent (7-0)	10/8/98: Approved PC rec. of GR-CO w/ conditions (6-0); all 3 readings
C14-92-0029	SF-2 to GR	4/14/92: Approved GR	5/7/92: Approved GR on all 3 readings
C14-88-0018	SF-2 to CS-1	5/24/88: Postponed indefinitely (8-0)	Withdrawn by applicant.

**RELATED CASES:** C14-01-0155

**ABUTTING STREETS:**

<b>STREET</b>	<b>RIGHT-OF-WAY</b>	<b>PAVEMENT WIDTH</b>	<b>CLASSIFICATION</b>	<b>DAILY TRAFFIC</b>
US Hwy 183	380'	Varies	Major Arterial	N/A
Pond Springs	100'	20'	Minor Arterial	N/A

**CITY COUNCIL DATE:** May 18, 2006

**ACTION:** Postponed by consent to June 22, 2006 at the staff's request (7-0)

**ORDINANCE READINGS:** 1<sup>st</sup>

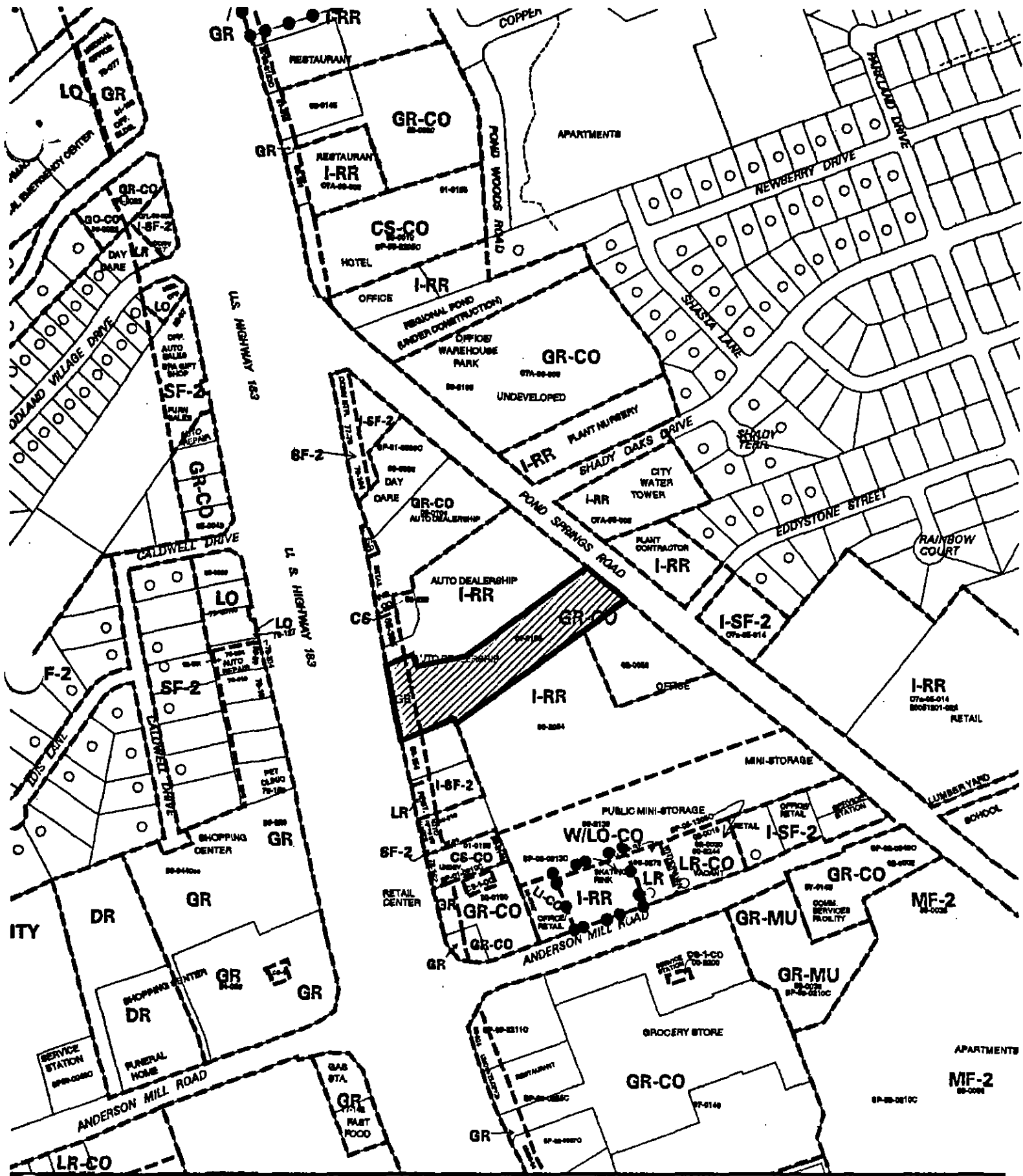
2<sup>nd</sup>

3<sup>rd</sup>

**ORDINANCE NUMBER:**

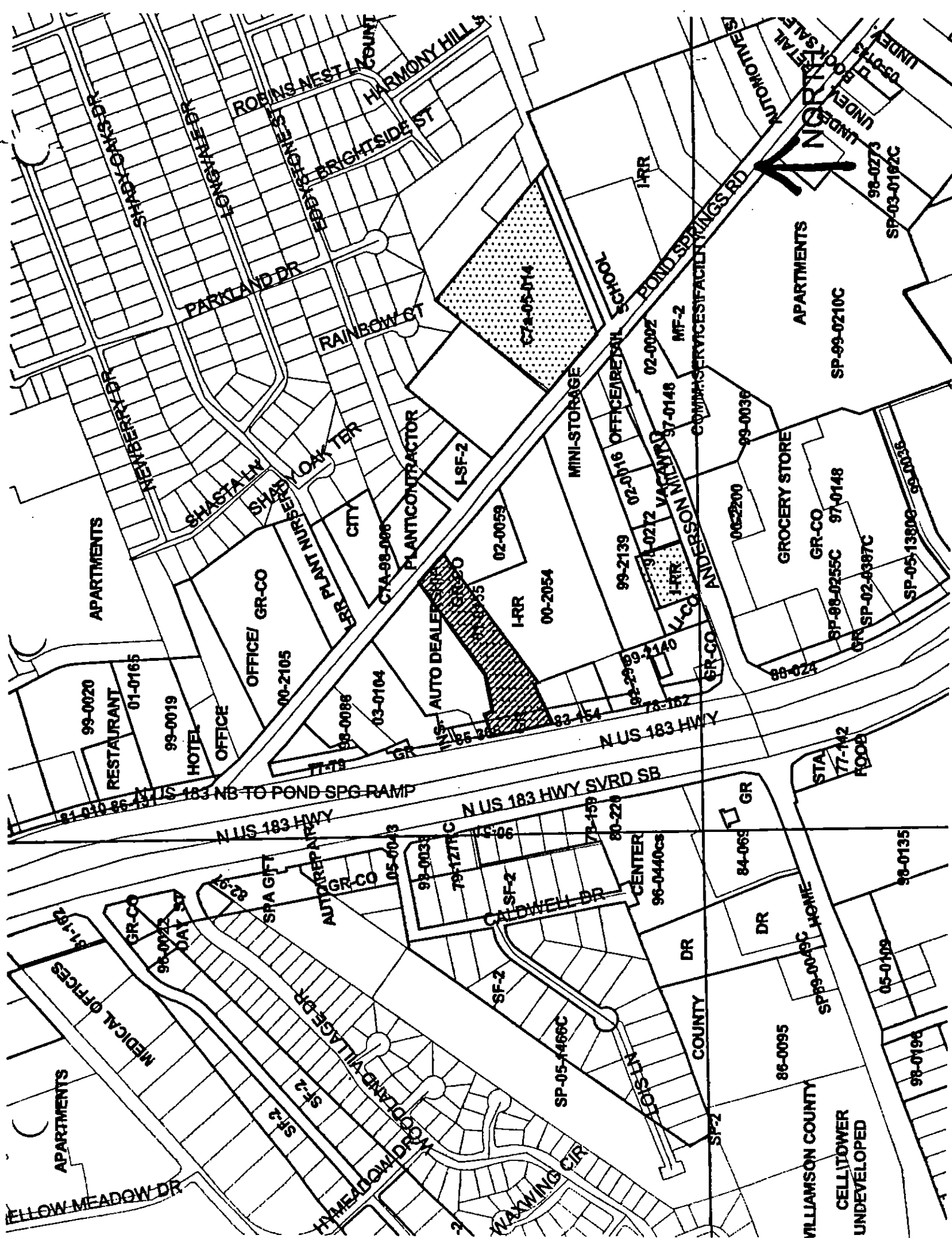
**CASE MANAGER:** Sherri Sirwaitis

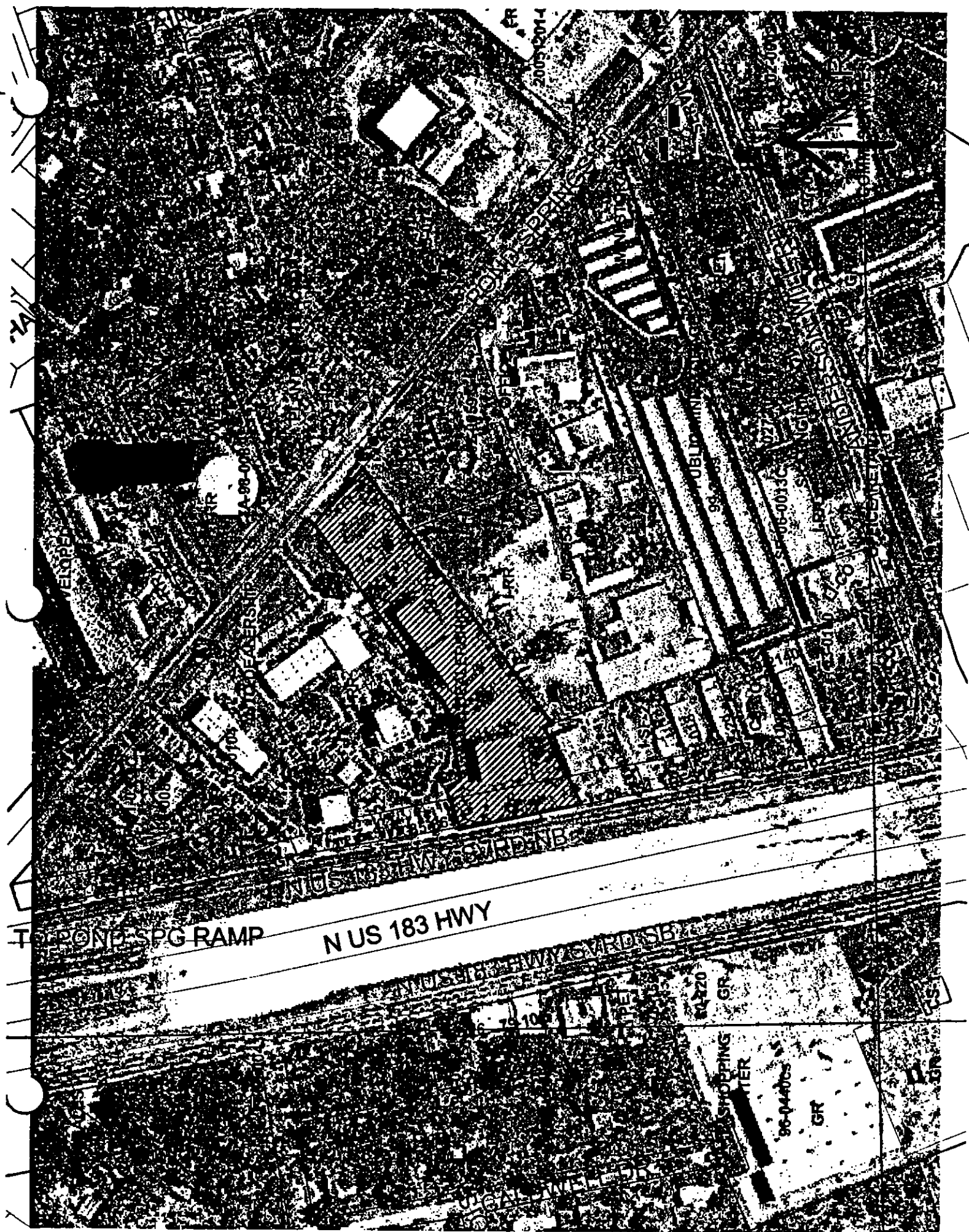
**PHONE:** 974-3057,  
[sherri.sirwaitis@ci.austin.tx.us](mailto:sherri.sirwaitis@ci.austin.tx.us)



	<p>SUBJECT TRACT </p> <p>PENDING CASE </p> <p>ZONING BOUNDARY </p> <p>CASE MGR: S.SIRWAITIS</p>	<p align="center"><b>RESTRICTIVE COVENANT TERMINATION</b></p> <p>CASE #: C14R-82-006(RCT)</p> <p>ADDRESS: RESEARCH BLVD</p> <p>SUBJECT AREA (acres): 3.191</p>		<p>CITY GRID REFERENCE NUMBER</p> <p align="center">G38</p>
		<p>DATE: 06-02</p> <p>INTLS: SM</p>		







2/2

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Property # Attachment A

B  
#1

Case# C14r-85-006

RESTRICTIVE COVENANT

THE STATE OF TEXAS  
COUNTY OF WILLIAMSON

VL 890 619  
1671

WHEREAS, W. D. Brooks of Williamson County, Texas, is  
the owner of the following described property, to-wit:

LOTS 1 & 2 BLOCK C, AREA WEST ADDITION  
CITY OF AUSTIN, WILLIAMSON COUNTY, TEXAS

WHEREAS, the City of Austin and W. D. Brooks  
have agreed that the above described property should be impressed with certain  
covenants and restrictions running with the land and desire to set forth  
such agreement in writing;

NOW, THEREFORE, W. D. Brooks, 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. In the event that said property is not at any time  
in the future used for Small Engine Sales & Service, the then owner  
of the property will not object to filing of an application for the  
re-zoning of the said property to WH Office, 1st Flr, by the City of  
Austin. 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.

APR 8 1982

VOL 890 PAGE 620

4. The failure at any time to enforce this agreement by the City of Austin, its successors and assigns, whether any violations thereof 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 each modification, amendment or termination.

EXECUTED, this the 8 day of June, 1982.

[Signature]  
(owner's signature)

THE STATE OF TEXAS

COUNTY OF WILLIAMSON

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared W.D. Brooks 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 8 day of June, 1982.



[Signature]  
Notary Public in and for  
Williamson County, Texas  
MY COMMISSION EXPIRES 12-5-83

THE STATE OF TEXAS  
County of Williamson

I, James M. Boydston, Clerk of the County Court of said County, do hereby certify that the foregoing instrument in writing, with its certificate of authentication, was filed for record in my office on

the 28th day of Sept., A.D. 1982, at 1:00 o'clock P.M., and duly recorded this

the 28th day of Sept., A.D. 1982, at 1:00 o'clock P.M., in the

Book of said County, in Vol. 890 on page 620.

WITNESS MY HAND and seal of the County Court of said County, at office in Georgetown, Texas, this day and above writing.

[Signature] Deputy

JAMES M. BOYDSTON, CLERK,  
County Court, Williamson County, Texas

LAW OFFICES OF  
**HILL, WARD & HENDERSON**

PROFESSIONAL ASSOCIATION

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P. PRESTIN WEIDNER  
SHERILEE J. WILLIAMS

ANDREW J. LUBRANO  
(1982-1999)

DOUGLAS P. McCLURG  
(1949-2008)

MARTIN L. GARCIA  
OF COUNSEL

DAVID E. WARD, JR.  
OF COUNSEL

December 12, 2005

Director of Watershed Protection &  
Development Review Department  
Watershed Protection & Development  
Review Department  
Austin, Texas 78767

Re: Request for Termination of Restrictive Covenant  
Our File No.: 3568-162

Dear Director:

Our firm represents Asbury Automotive Texas Real Estate Holdings L.P., owner of the premises located at 13553 Research Boulevard (a/k/a U.S. Highway 183 North), Austin, Williamson County, Texas 78750 (the "Property"). The Property is subject to a restrictive covenant placed on the Property by W.D. Brooks, pursuant to an agreement between Mr. Brooks and the City of Austin, which restrictive covenant is recorded in Volume 890, Page 619, Records of Williamson County, Texas (the "Restrictive Covenant"), a copy of which is included in this package.

The Restrictive Covenant provides, in its paragraph number 1, that "in the event that the said property is not at any time in the future used for Small Engine Sales & Service, then the owner of the property will not object to filing of an application for the rezoning of the said property to "O" Office.....". Our client is concerned that, in the event that there is some sort of casualty which causes significant damage or the destruction of the improvements on the Property, that the City could attempt to rezone the Property to Office, which would interfere with

Director of Watershed Protection &  
Development Review Department  
December 12, 2005  
Page 2

the continued use of the Property as an automobile dealership. Accordingly, we hereby request that the City of Austin consider terminating the Restrictive Covenant.

Further, as the area is most likely more fully developed than it was at the time of the placement of the Restrictive Covenant on the Property, we feel that the conditions that caused Mr. Brooks and the City of Austin to place the Restrictive Covenant on the Property may no longer exist.

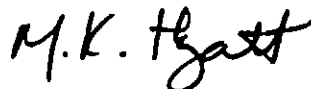
Please find the following materials in support of this request enclosed herein:

1. Application;
2. Tax Certificate;
3. Submittal Verification Form;
4. Acknowledgement Form;
5. Copy of Restrictive Covenant to be terminated;
6. Check in the amount of \$495.00;
7. Plat of property: Book 4, Page 65.

Thank you for your attention to this matter.

Sincerely yours,

HILL, WARD & HENDERSON, P.A.



M. Kristen Hyatt, Esq.

MKH/sgk  
Enclosures