

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

Thursday, July 27, 2006

[Back](#) [Print](#)**Zoning and Neighborhood Plan Amendments
(Public Hearings and Possible Action)
RECOMMENDATION FOR COUNCIL ACTION****ITEM No. 145**

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](#)
- ☐ [Restrictive Covenant Termination](#)

For More Information: Sherri Sirwaitis, 974-3057.

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-1st, T. Rabago-2nd.

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

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:

	ZONING	LAND USES
<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:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
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 st reading 9/26/02: Approved LR-CO (7-0); 2 nd /3 rd 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 rd 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 st reading 8/19/99: Approved CS-CO w/conditions (7-0); 2 nd /3 rd 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 st reading 3/25/99: Approved LR (6-0); 2 nd /3 rd 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:

STREET	RIGHT-OF-WAY	PAVEMENT WIDTH	CLASSIFICATION	DAILY TRAFFIC
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)

June 22, 2006

ACTION: Postponed by consent to July 27, 2006 at the staff's request (7-0)

July 27, 2006

ACTION:

ORDINANCE READINGS:1st

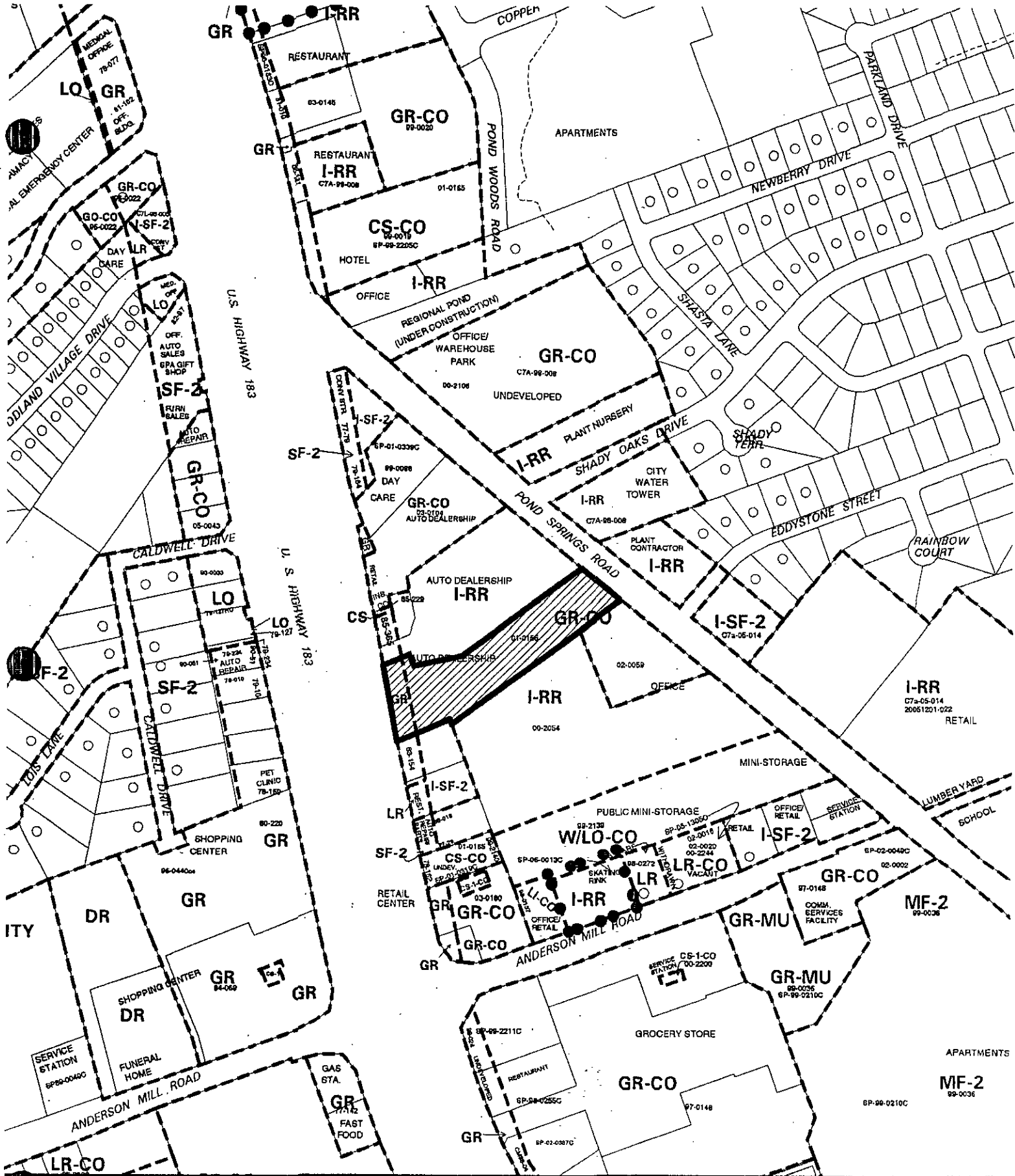
2nd

3rd

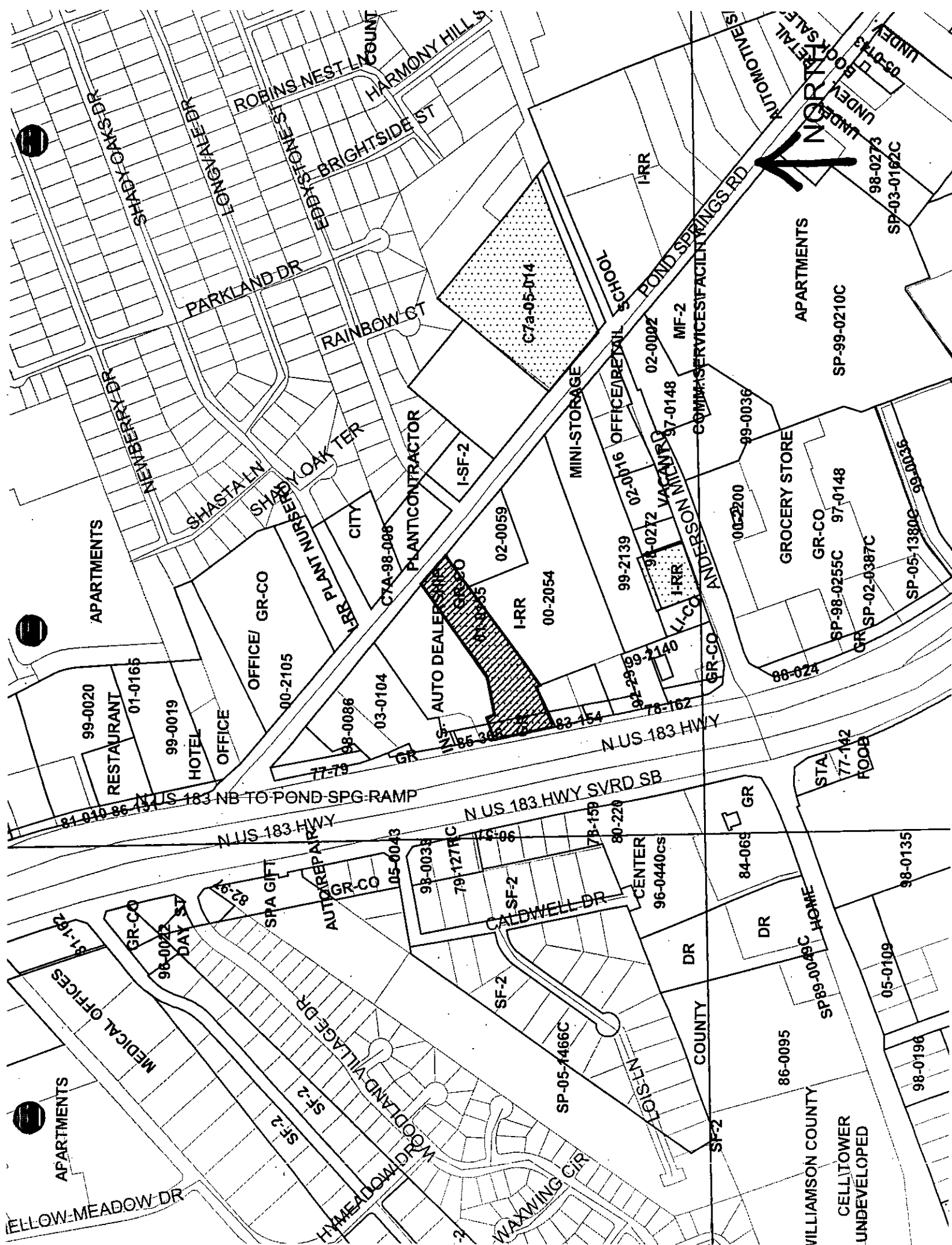
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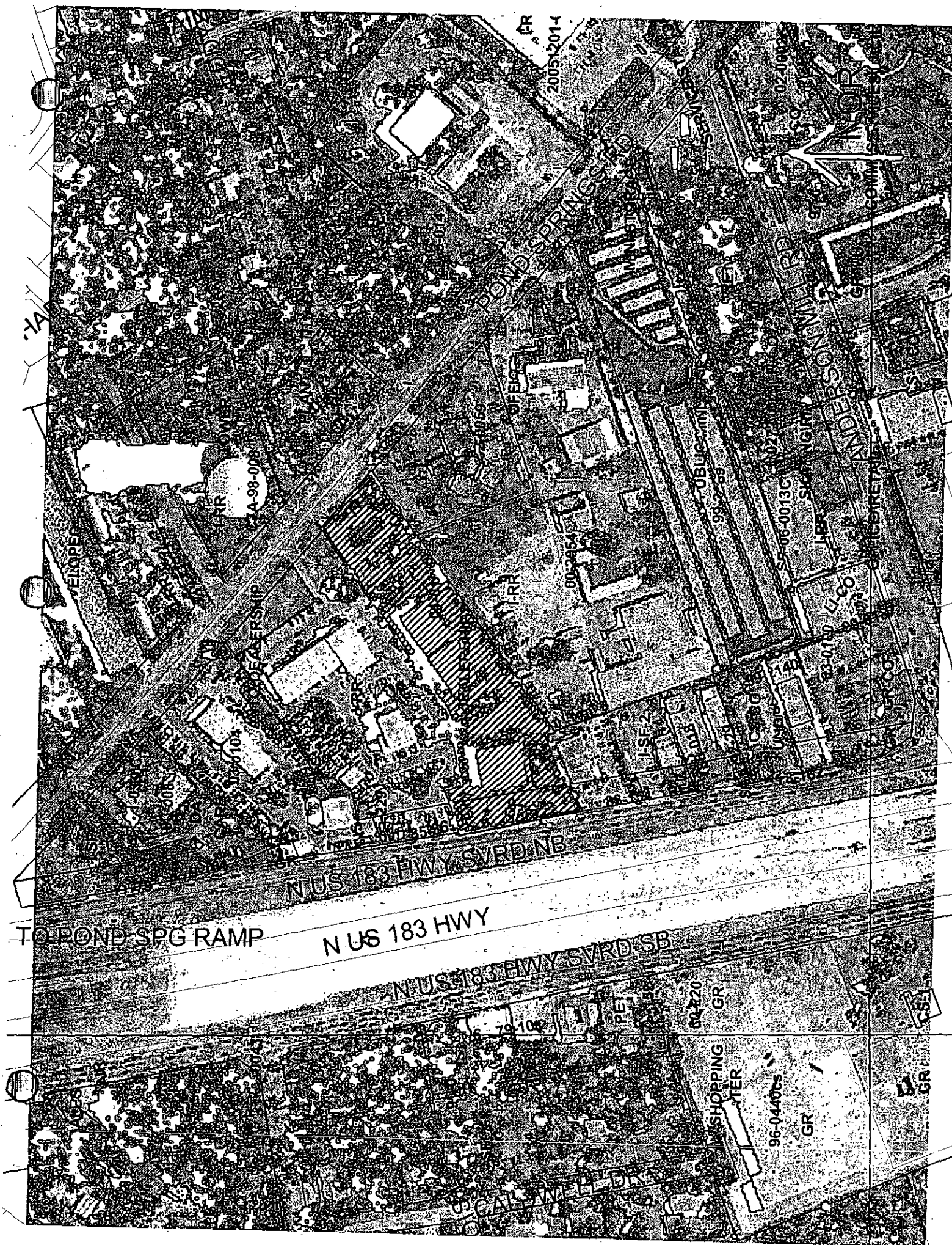
CASE MANAGER: Sherri Sirwaitis

PHONE: 974-3057,
sherri.sirwaitis@ci.austin.tx.us



<p> SUBJECT TRACT PENDING CASE ZONING BOUNDARY CASE MGR: S.SIRWAITIS 1" = 400' </p>	<p align="center"> RESTRICTIVE COVENANT TERMINATION CASE #: C14R-82-006(RCT) ADDRESS: RESEARCH BLVD SUBJECT AREA (acres): 3.191 </p>	<p> CITY GRID REFERENCE NUMBER G38 </p>
	<p> DATE: 06-02 INTLS: SM </p>	





Property # Attachment A"

B
1

Case# C14r-82-006

RESTRICTIVE COVENANT

THE STATE OF TEXAS

VOL 890 PAGE 619

COUNTY OF WILLIAMSON

1671

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

LOTS 1 & 2 BLOCK C, AREAS 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 rezoning of the said property to "C" Office, 1st H&A, 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.

890 8 1982

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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 the 8 day of June, 1983.

[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, 1983.



[Signature]
Notary Public in and for
Williamson County, Texas
MY COMMISSION EXPIRES 12-15-85

-2-

THE STATE OF TEXAS
County of Williamson

I, James N. 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 8:00 o'clock A. M., and duly recorded this the 28th day of Sept., A.D. 1982 at 2:50 o'clock P. M., in the

Book of said County, in Vol. 890 pp. 619

WITNESS MY HAND and seal of the County Court of said County, at office in Georgetown, Texas, the date last above written.

By [Signature] Deputy

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

LAW OFFICES OF
HILL, WARD & HENDERSON

PROFESSIONAL ASSOCIATION

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DAVID S. FELMAN
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TIMOTHY C. FORD
S. KATHERINE FRAZIER
TROY A. FUHRMAN
ROBERT M. FULTON
THOMAS J. GOEGLEIN
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GINA K. GRIMES
WILLIAM C. GUERRANT, JR.
LINDA D. HARTLEY
J. MICHAEL HAYES
THOMAS N. HENDERSON, III
HILARY C. HIGH
BENJAMIN H. HILL, III
BENJAMIN H. HILL, IV
K. TYLER HILL
S. GORDON HILL
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R. JAMES ROBBINS, JR.
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LYNN W. SHERMAN
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J. SCOTT SLATER
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LARA J. TIBBALS
DAVID R. TYRRELL
DENNIS P. WAGGONER
MARK M. WALL
P. PRESTIN WEIDNER
SHERILEE J. WILLIAMS

ANDREW J. LUBRANO
(1952-1999)

DOUGLAS P. McCLURG
(1949-2002)

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
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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.

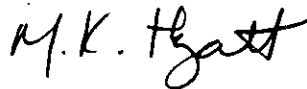
Please find the following materials in support of this request enclosed herein:

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

TERMINATION OF RESTRICTIVE COVENANT
FOR
ZONING CASE: C14R-82-006

OWNER: ASTAR ASB TX1, LP, a Delaware limited partnership

ADDRESS: c/o J. Gordon Smith, Asbury Automotive Group, Inc.,
622 Third Ave., 37th Fl., New York, NY 10021

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, W. D. Brooks, of Williamson County, Texas, as owner of all that certain property described in Zoning Case No. C14R-82-006, consisting of Lots 1 and 2, Block C, Areas West Addition, Williamson County (the "Property"), as more particularly described in the restrictive covenant recorded in the Real Property Records of Travis County, Texas, in Volume 890, Page 619 (the "Restrictive Covenant"), imposed certain restrictions and covenants on the Property by the Restrictive Covenant of record; and,

WHEREAS, the Restrictive Covenant 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, ASTAR ASB TX1, LP, a Delaware limited partnership, as sole and current owner of the Property, now described as a portion of Lot 1, Austin Auto Park Subdivision, in Williamson County, now desires to terminate the Restrictive Covenant; and,

WHEREAS, the City Council and the Owner, agree the Restrictive Covenant 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 Covenant is terminated by this termination. Each and every one of the terms, conditions, and provisions of the Restrictive Covenant, as set forth in the Restrictive Covenant, shall have no force or effect on and after the effective date of this termination.
2. The City Manager, or her designee, shall execute, on behalf of the City, this Termination of Restrictive Covenant for Zoning Case No. C14R-82-006 (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 Records of Williamson County, Texas, which will terminate the document of record in Volume 890, Page 619, Official Records, Williamson County, Texas.

EXECUTED this the 10th day of July, 2006.

OWNER:

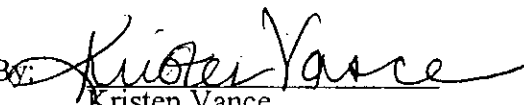
**ASTAR ASB TX1, LP,
a Delaware limited partnership**

By: ASTAR ASB TX1 GENPAR LLC,
a Delaware limited liability company,
its General Partner

By: ASTAR ASB Holdings LLC,
a Delaware limited liability company,
its Sole Member

By: Autostar Realty Operating Partnership, L.P.,
a Delaware limited partnership,
its Sole Member

By: Autostar Realty GP LLC,
a Delaware limited liability
company,
its General Partner

By: 
Kristen Vance
Authorized Representative

CITY OF AUSTIN:

By: _____
Laura J. Huffman,
Assistant City Manager
City of Austin

Georgia
THE STATE OF ~~TEXAS~~ §
Fulton
COUNTY OF ~~TRAVIS~~ §

This instrument was acknowledged before me on this the 10th day of July, 2006, by Kristen Vance, Authorized Representative of Autostar Realty GP LLC, a Delaware limited liability company, General Partner of Autostar Realty Operating Partnership, L.P., a Delaware limited partnership, Sole Member of ASTAR ASB Holdings LLC, a Delaware limited liability company, Sole Member of ASTAR ASB TX1 GENPAR LLC, a Delaware limited liability company, General Partner of ASTAR ASB TX1, LP, a Delaware limited partnership, on behalf of the limited liability companies and limited partnerships.

Kimberly Tewksbury
Notary Public, State of Texas *Georgia*
KIMBERLY TEWKSBURY

NOTARY PUBLIC, CHEROKEE GA

MY COMMISSION EXPIRES 11-19-2008

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____, 2006, by Laura J. Huffman, 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
Attention: Diana Minter, Paralegal