

## **ZONING CHANGE REVIEW SHEET**

**CASE:** C14-85-244, Part 7(RCT) (10001 Stonelake)

**P.C. DATE:** May 14, 2019

**ADDRESS:** 1001 Stonelake Boulevard

**DISTRICT AREA:** 7

**OWNER/APPLICANT:** Mary Elizabeth Notley Morse, Fredrick Clarke Morse, III, Scott Morse  
2012 Family Trust (Scott Notley Morse, Trustee)

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

**ZONING:** NBG-NP

**AREA:** 2.0974 acres

**REQUEST:** The applicant is requesting a termination of the restrictive covenant on the property.

### **SUMMARY STAFF RECOMMENDATION:**

**Staff recommends the proposed termination of the public restrictive covenant.**

### **PLANNING COMMISSION RECOMMENDATION:**

May 14, 2019:

### **DEPARTMENT COMMENTS:**

The applicant is requesting to terminate 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 this public restrictive covenant 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 (Iron Cactus). The applicant is proposing to redevelop the site with a congregate living facility. 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 Rezoning), in 2009.

The applicant agrees with the staff's recommendation.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	NBG-NP	Restaurant (Iron Cactus)
<i>North</i>	NBG-NP	Multifamily (Ascent Arboretum)
<i>South</i>	NBG-NP	Restaurant (North by Northwest)
<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:**

<b>NUMBER</b>	<b>REQUEST</b>	<b>COMMISSION</b>	<b>CITY COUNCIL</b>
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 <sup>st</sup> reading  3/12/09: Approved NBG-NP or NBG-H-NP (6-0); 2 <sup>nd</sup> /3 <sup>rd</sup> 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 <sup>st</sup> reading of Phase 1 of NP (6-0)  11/01/07: Approved Phase 1 of NP zonings (5-0); 2 <sup>nd</sup> /3 <sup>rd</sup> 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
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**RELATED CASES:**

C14-85-224 (Previous Zoning Case)

C8-98-0022C (Subdivision Case): Lot 2, 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:** May 23, 2019

**ACTION:**

**ORDINANCE READINGS:** 1st

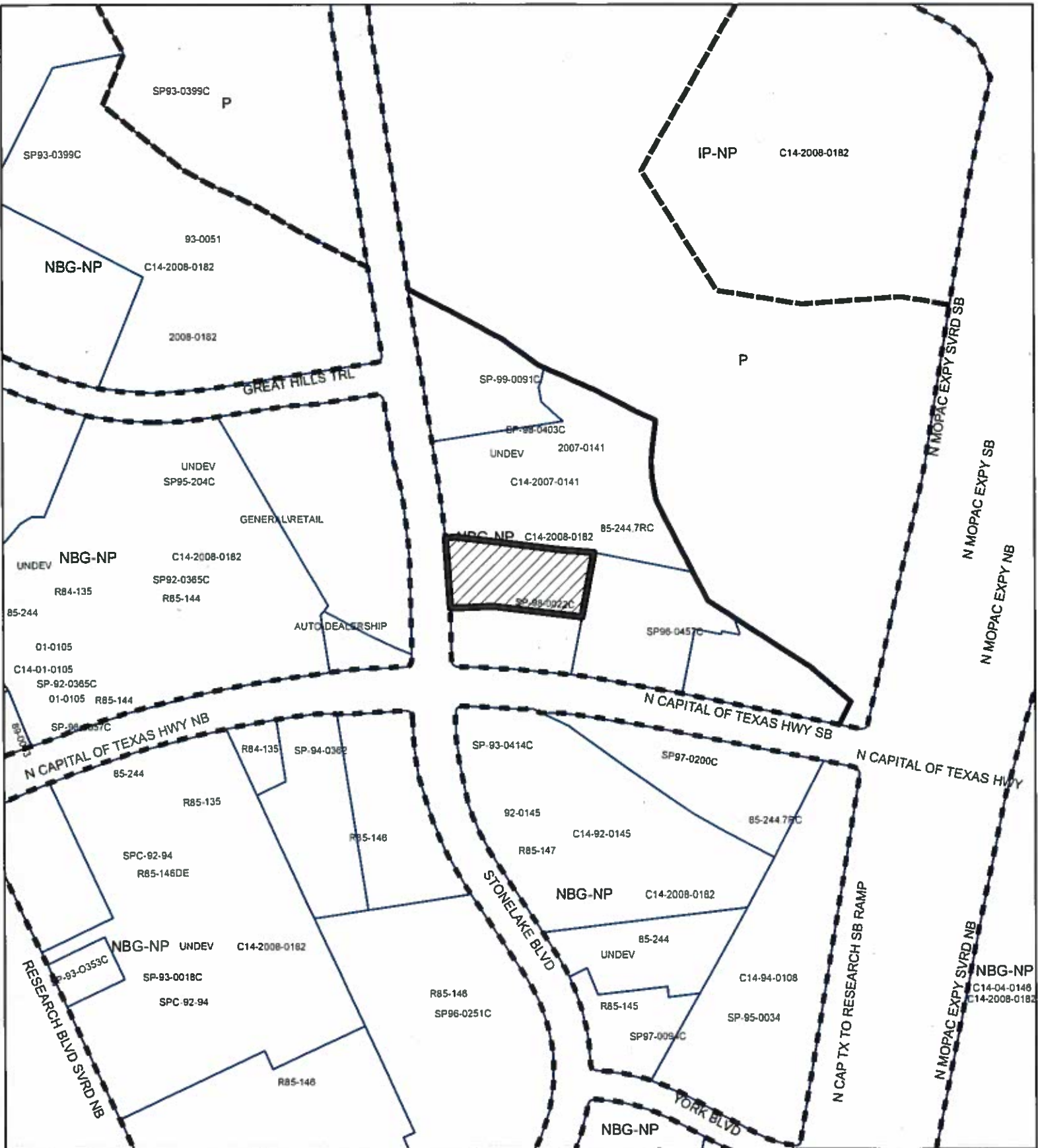
2<sup>nd</sup>

3<sup>rd</sup>

**ORDINANCE NUMBER:**

**CASE MANAGER:** Sherri Sirwaitis




**PHONE:** 512-974-3057,  
[sherri.sirwaitis@austintexas.gov](mailto:sherri.sirwaitis@austintexas.gov)



## ZONING

ZONING CASE#: C14-85-244(RCT)



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

1" = 400'

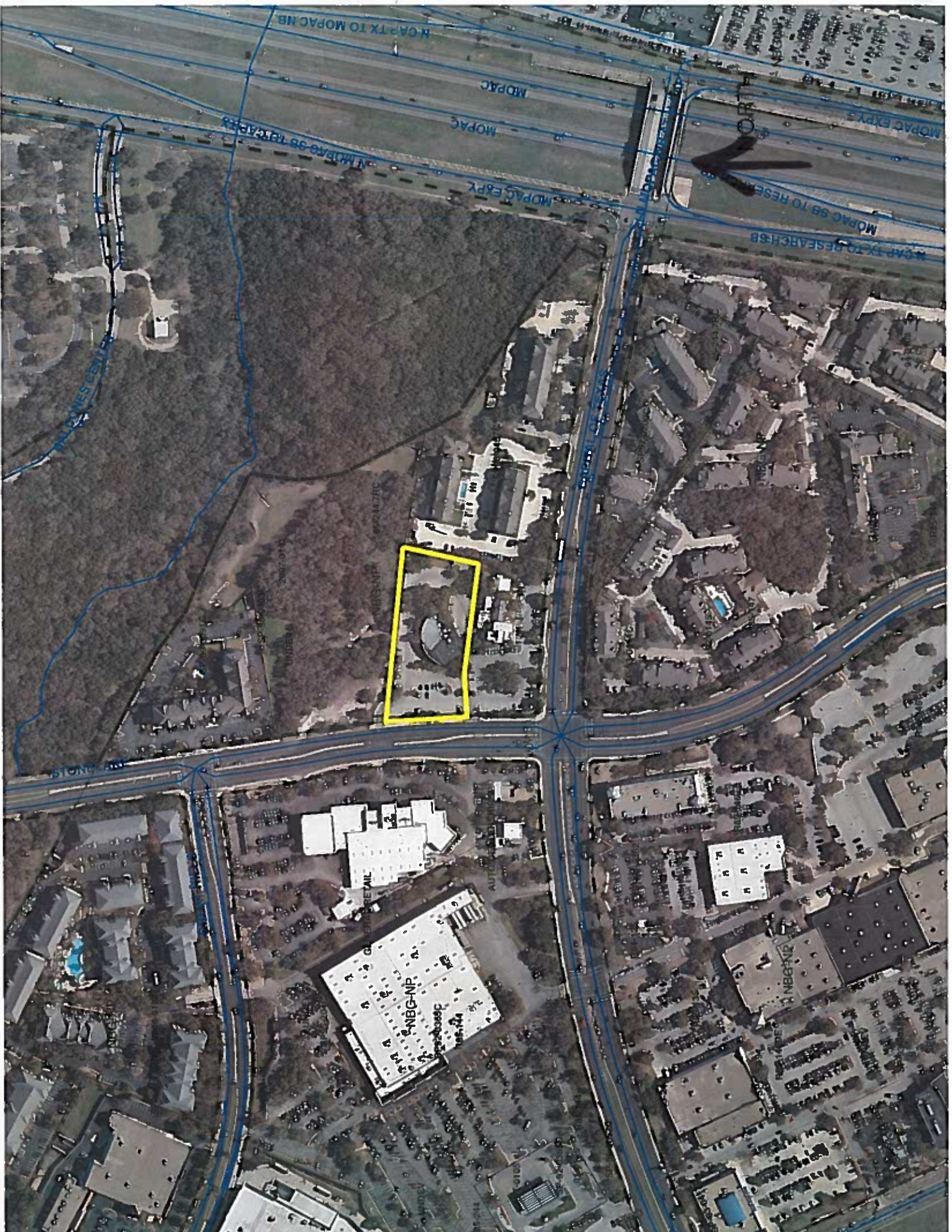
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

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: 2/25/2019







Attachment A

# DRENNER GROUP

February 14, 2019

Planning Commission  
City of Austin  
301 W. 2<sup>nd</sup> Street  
Austin, TX 78701

Via Hand Delivery

Re: 10001 Stonelake – Restrictive covenant termination application for the 2.0974 acre piece of property located at 10001 Stonelake Boulevard in Austin, Travis County, Texas (the “Property”)

Dear Commissioners:

As representatives of the owner of the Property, we respectfully submit the enclosed restrictive covenant termination application package. The project is titled 10001 Stonelake, consists of 2.0974 acres, and is located between Hwy 183 and MOPAC Expressway, north of N Capital of Texas Highway on Stonelake Boulevard in the North Burnet Gateway Planning Area. The Property is intended to be redeveloped as a congregate living facility and is zoned NBG-CMU, North Burnet Gateway – Commercial Mixed Use.

We are proposing to terminate 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 terminate this restrictive covenant so 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: Heather Chaffin, 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*)

152  
4 10 8616

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

224

10764

1000 1110  
7 6/15/86

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. Nello and wife, Lula Belle Nello, by deed dated November 1, 1948, of record in Vol. 2046, Page 440, of the Travis County Deed Records;

as surveyed by O. P. Schofield, Registered Public Surveyor, in June, 1959.

#### 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:

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 "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.
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 "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.
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 Frederic 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.

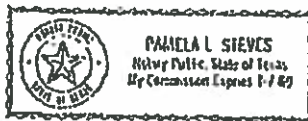
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 1<sup>st</sup> day of July, 1986.

Pamela L. Sieves  
Notary Public, State of Texas

NOTARY SEAL

Type or Print Name of Notary Public

My Commission Expires: \_\_\_\_\_



09839 0570



GOLDEN TRIANGLE STUDY AREA  
PROPERTY OWNERS MAP

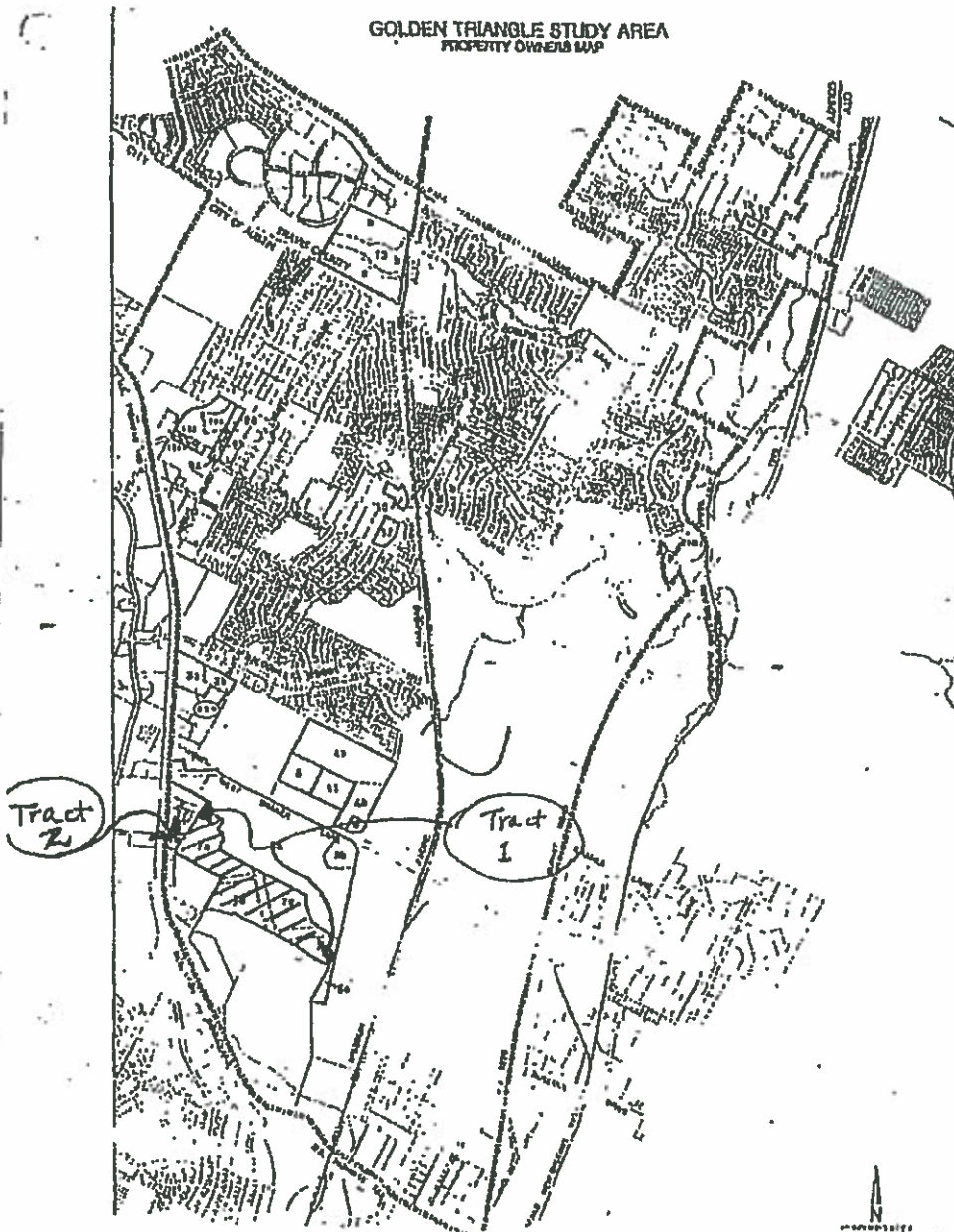


EXHIBIT "A"

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 legal 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 of 1-4-88 at the County Clerk's Office and will be RECORDED in the Public and Private Land Records of Travis County, Texas on

AUG 19 1988



*John S. Hargrett*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

TRAVIS COUNTY, TEXAS  
COUNTY CLERK  
*John S. Hargrett*

AUG 19 10 51 AM '88

FILED

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