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**RESTRICTIVE COVENANT TERMINATION REVIEW SHEET**

**CASE:** C14-83-307(RCT) 4020 Airport

**P. C. DATE:** 05/22/12

**ADDRESS:** 4020 Airport Boulevard

**AREA:** 2.79 acres

**APPLICANT:** Airport Boulevard Trustee  
(Betty Terrell)

**AGENT:** Jim Bennett Consulting  
(Jim Bennett)

**NEIGHBORHOOD PLAN AREA:** Upper Boggy Creek

**CAPITOL VIEW:** No

**T.I.A.:** No

**HILL COUNTRY ROADWAY:** No

**DESIRED DEVELOPMENT ZONE:** Yes

**WATERSHED:** Boggy Creek

**EXISTING ZONING:** LO-V-NP – Limited Office, Vertical Mixed Use Building, Neighborhood Plan

**SUMMARY STAFF RECOMMENDATION:**

Staff recommends termination of the existing restrictive covenant.

**PLANNING COMMISSION RECOMMENDATION:**

**DEPARTMENT COMMENTS:**

This parcel of property is currently undeveloped. The zoning on the property was changed in 1983 from SF-3, Family Residence to LO, Limited Office with case number C14-83-307 (see attached). At the time of the zone change request, the owners of the property agreed to enter into a Public Restrictive Covenant (RC) which further restricted the property. This RC included such provisions as prohibited land uses, placement of structures on the property, window placement, a requirement for terra cotta tile roofs and hours of operation to name just a few. Basically the RC became a defacto "zoning site plan". The City stopped using zoning site plans in the 1980's because they proved to be a burden on the property to which it was associated with. If an owner of a property wanted to move a building, say one foot to the north, you could not do that without a zone change. It became apparent that zoning was a land use issue, not a site plan issue. After the zoning was approved on the subject tract and RC was signed and recorded at the Court House, the proposed project never came to fruition. The RC has kept this property from being developed for almost thirty years.

**EXISTING ZONING AND LAND USES:**C18/2<sup>2</sup>

	ZONING	LAND USES
SITE	LO-V-NP	Undeveloped
NORTH	P-NP	City Park
SOUTH	SF-3-NP	Single Family residence
EAST	PUD	Mueller PUD open space
WEST	SF-3-NP	Single family residence

**CASE HISTORIES:**

CASE NUMBER	REQUEST	PLANNING COMMISSION	CITY COUNCIL
C814-04-0055	From AV to PUD	Approved PUD [Vote: 7-0]	Approved PUD [Vote: 7-0]

**NEIGHBORHOOD ORGANIZATION:**

- Austin Neighborhood Council
- Del Valle Community Assoc.
- Anberly Airport Assoc.
- Cherrywood Neighborhood Assoc.
- PODER

**SCHOOLS:**

Campbell Elementary School   Kealing Middle School   McCallum High School

**CITY COUNCIL DATE:** June 28th, 2012

**ACTION:**

**ORDINANCE READINGS:** 1<sup>ST</sup>      2<sup>ND</sup>      3<sup>RD</sup>

**ORDINANCE NUMBER:**

**CASE MANAGER:** Clark Patterson  
[Clark.patterson@ci.austin.tx.us](mailto:Clark.patterson@ci.austin.tx.us)

**PHONE:** 974-7691

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RESTRICTIVE COVENANT

C14-83-307

THE STATE OF TEXAS

COUNTY OF TRAVIS

03918188

WHEREAS, Willie J. Kopecky, Jr., Gustavo L. Garcia, and Pedro Tress Hernandez, all of Travis County, Texas, are co-owners of the following described property, to wit:

2.79 acres more or less, out of the THOMAS HAWKINS SURVEY NO. 9, Abstract No 346, Travis County, Texas, further described by metes and bounds in Exhibit "A", attached hereto, incorporated by reference herein and made a part hereof for all purposes.

WHEREAS, the City of Austin and Willie J. Kopecky, Jr., Gustavo L. Garcia and Pedro Tress Hernandez 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, Willie J. Kopecky, Jr., Gustavo L. Garcia and Pedro Tress Hernandez, for and in consideration of One and No/100 Dollar (\$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, do 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 them, their successors and assigns, as follows, to-wit:

1. No building or portion thereof shall be used and no building or portion thereof shall be constructed except for one or more of the uses allowed under the "O-1" Office District zoning and first height and area of the City of Austin Zoning Ordinance Sec. 13-2-61.1 and Sec. 13-2-62, except that no building or portion thereof shall be used and no building or portion thereof shall be constructed for any of the following uses:

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- a. Hotels
- b. An office for the conduct of the occupations of physical therapist, barber, cosmetologist, hairdresser or manicurist.
- c. Studios for art, dance, drama, music, photography.
- d. A rental library or book shop.
- e. A prescription pharmacy or dental or medical laboratory.
- f. Community buildings or art galleries.
- g. Clubs and fraternal organizations.
- h. Dental and medical clinics, children's homes, convalescent homes, maternity homes and homes for the aged.
- i. Business machines display, sales and rental, and instant printing-copy duplicating service.
- j. Service and repair of office or business machines.
- k. Employee or customer training facilities.
- l. Any and all uses permitted by special permit only.
- m. Meeting or union halls.

There shall be constructed a six foot high fence designed and placed as indicated by the attached site plan (see EXHIBIT A, T.K.G. PROPERTIES SITE PLAN). The undersigned owners, their heirs and assigns, will properly maintain the fence as well as all grounds within the above-described property.

All building windows facing adjacent private residential property shall be designed so that a person of average height (5'10"), sitting or standing in a normal posture, cannot see neighboring yards or windows of nearby homes. This shall be accomplished by the use of louvres, placement above normal eye level, or any other effective means. Any fixtures installed for this purpose shall be permanent and shall not be adjusted or removed by building tenants or owners.

No building or land shall be used for any purpose that requires 24-hour a day activity or for any purpose that requires

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other than normal hours of operation. For the purpose of this agreement normal hours of operation are defined as from 7:00 a.m. to 7:00 p.m., Monday through Friday.

Any and all outside lighting constructed on said property shall be directed away from the adjoining residences, shall be low level lighting, and no high pressure sodium lighting shall be used.

No portable structures or structures of a temporary nature shall be constructed on said property.

No building or land shall be used and no building shall be erected or structurally altered for any use that will require the on-site storage of heavy equipment including, but not limited to drilling rigs, generators, trucks, tractors, and construction equipment or for any use which will generate excessive noise, dust or air pollutants.

No improvements shall be constructed on the above-described property except those indicated on a site plan approved by the Austin City Council.

Exterior walls shall be constructed of brick and roofs shall be pitched and of clay or concrete tile similar to mission or spanish tile. No building shall have more than two (2) stories nor shall it exceed City of Austin first height and area requirements. The gross building area, based on outside wall measurements of all buildings shall not exceed 40,000 square feet.

All site trash receptacles shall be placed behind fences, wall, or screens so that they will not be visible.

No signs shall be erected which are in violation of the City of Austin Sign Ordinance.

The owners of the property shall provide for periodic security patrols of the building premises as required to ensure the peace and tranquility of the adjoining property owners.

The site plan for the described property is attached to this

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Restrictive Covenant and labeled "EXHIBIT A, T.K.G. PROPERTIES SITE PLAN." That site plan is hereby incorporated into this document by reference as if copied and set forth in full. All restrictions, requirements and designs appearing on that site plan are hereby mandated by this Covenant.

All zoning ordinances, building codes, or any other requirements referred to in this Restrictive Covenant or in the Site Plan, are those which were in effect on September 1, 1984, provided, however, that this provision does not relieve owner of its obligation to meet new code and ordinance requirements which may be in effect at the time of any new construction. Owner shall comply with the terms of this Covenant or the requirements of applicable codes or zoning restrictions, whichever may be stricter.

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 any person owning property within 200 feet of said property, his successors and assigns, and 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 nowise 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, or by any person owning property within 200 feet of the above described property, his successors and assigns whether any violations hereof are

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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 action of three-fourths 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, after notice and opportunity for hearing before such governing body has been given to the owners of property within 200 feet of the described property. A condition precedent to the consideration by the Austin City Council, or its successors, of any proposed modification, amendment or termination of this agreement, shall be the requirement that the owners of the subject property shall first exhaust all administrative remedies and avenues available through the City of Austin Planning Commission, City Planning Department and related or successor offices.

EXECUTED, this the 15<sup>th</sup> day of OCTOBER, 1984.

Willie J. Kopecky  
WILLIE J. KOPECKY

Gustavo L. Garcia  
GUSTAVO L. GARCIA

Pedro Tress Hernandez  
PEDRO TRESS HERNANDEZ

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 WILLIE J. KOPECKY, GUSTAVO L. GARCIA, and Pedro Tress Hernandez known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they have executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 15<sup>th</sup> day of October, 1984.

NOTARY SE

Luttrell

Notary Public in and for  
the State of Texas

My commission expires: 1/28/87

Printed Name of Notary Public in the  
State of Texas for the County of Travis.  
My Commission Expires January 28, 1987.

RESTRICTIVE COVENANT - 5  
Kopecky, Garcia, and Tress  
TKG/DOCS1/101184

u. REPRESENTED by Gustavo L. Garcia, HOLDER  
of ATT

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EXHIBIT "A"

FIELD NOTES TO 2.79 ACRES, MORE OR LESS, OUT OF THE THOMAS HAWKINS SURVEY #9, ABST. 346 IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, A PART OF THAT CERTAIN 7.52 ACRE TRACT CONVEYED TO RICHARD SCHIEFFER, ET AL BY DEED RECORDED IN VOLUME 2046, PAGE 15 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS:

BEGINNING at a concrete monument in the South line of Schieffer Avenue and the North line of that certain 7.52 acre tract conveyed to Richard Schieffer, et al by deed recorded in Volume 2046, Page 15 of the Deed Records of Travis County, Texas, said point being the Northeast corner of Lot 14, Block E, Schieffer Place, Section 5, according to the map or plat of said subdivision recorded in Book 12 Page 23 of the Plat Records of Travis County, Texas; said point being the most Westerly corner of a tract of land owned by the City of Austin, for the Northwest corner of the tract herein described;

THENCE with the South line of the said City of Austin tract and the North line of the said Schieffer 7.52 acres, S 60 deg. 09'E. 133.0 ft. to a stake in the West R.O.W. line of Airport Boulevard and the Northeast corner of the said Schieffer 7.52 acres, for the Northeast corner of this tract;

THENCE with the West line of Airport Boulevard and the East line of the said Schieffer 7.52 acres, S 5 deg. 25'E. 732.03 ft. to a concrete monument at the Northeast corner of Lot 1, Block E, Schieffer Place, Section 4, according to the map or plat of said subdivision recorded in Book 7, Page 82 of the Plat Records of Travis County, Texas, for the Southeast corner of this tract;

THENCE with the North line of Lots 1 and 2, Block E, S 84 deg. 38'W. 155.0 ft. to a concrete monument at the Northwest corner of said Lot 2 and the Northeast corner of Lot 3, for a corner of this tract;

THENCE with the Northeast line of said Lot 3 and a 20 ft. drainage and utility easement, N 46 deg. 11'W. 52.98 ft. to a stake at the Northwest corner of the said 20 ft. easement in the East line of Lot 5, Block E, for the Southwest corner of this tract;

THENCE with the East line of said Lot 5, N 43 deg. 49'E. 45.75 ft. to an iron stake at a corner of said Lot 5, for a corner of this tract;

THENCE continuing with the East line of said Lot 5, N 5 deg. 22'W. 18.0 ft. to a concrete monument at the Southeast corner of Lot 6, Block E, Schieffer Place, Section 5, according to the map or plat

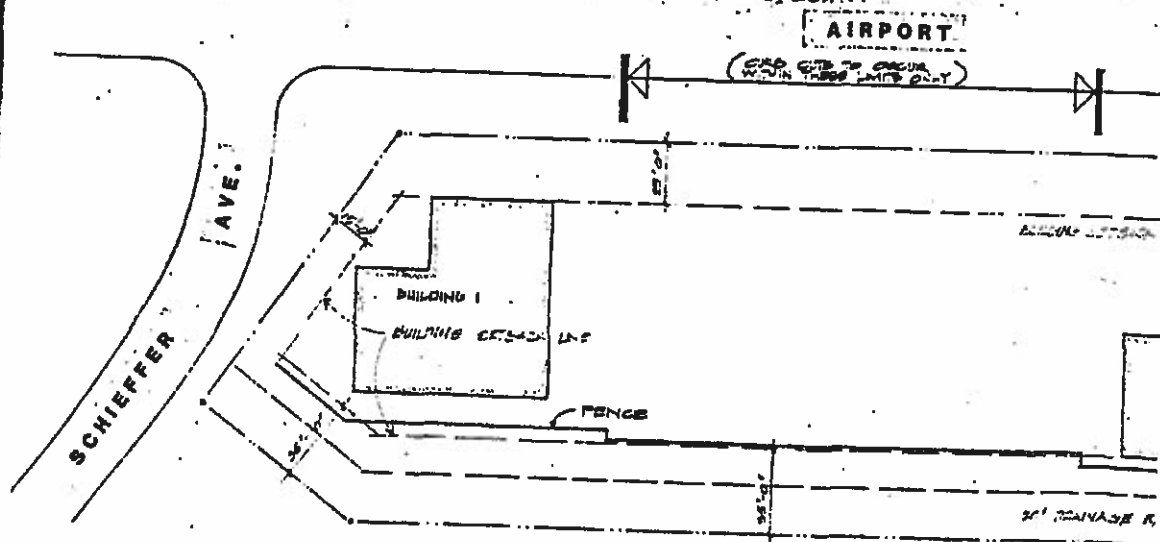
of said subdivision recorded in Book 12, Page 23 of the Travis County Plat Records, for an angle point in this tract;

THENCE with the East line of said Block E of Schieffer Place, Section 5, with the courses and distances as follows: N 6 deg. 05'W. 160.10 ft., N 5 deg. 12'W. 498.51 ft., N 29 deg. 51'E. 77.47 ft. to the place of beginning, containing 2.79 acres of land, more or less.

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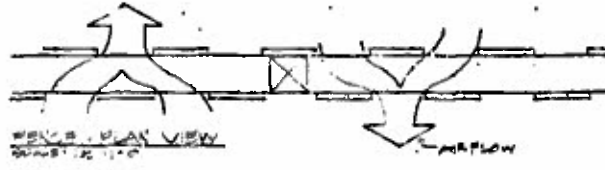
NOTES:

1. BUILDING LOCATIONS ARE APPROXIMATE, HOWEVER, NO OTHER BUILDING WALL SHALL BE SITUATED MORE THAN 25' FROM LOCATION INDICATED ON PLAN, AND NO BUILDING SHALL BE SITUATED BETWEEN THE BUILDING SETBACK LINES AND THE PROPERTY LINES.
2. MAXIMUM CONSTRUCTION WILL NOT EXCEED 40,000 SQ. FT.
3. NO GROUND CUTS WILL BE CONSTRUCTED OTHER THAN WITHIN THE LIMITS INDICATED ON PLAN. NO GROUND CUTS WILL BE CONSTRUCTED FRONTING ON SCHIEFFER AVE.
4. ALL GROUND CUTS WILL MEET CITY OF AUSTIN CODES AND ORDINANCE REQUIREMENTS.
5. FENCE LOCATIONS IS APPROXIMATE, HOWEVER, NO PORTION OF FENCE SHALL BE LOCATED MORE THAN 10' FROM LOCATION INDICATED AND ALL FENCING SHALL BE WITHIN PROPERTY LINES.

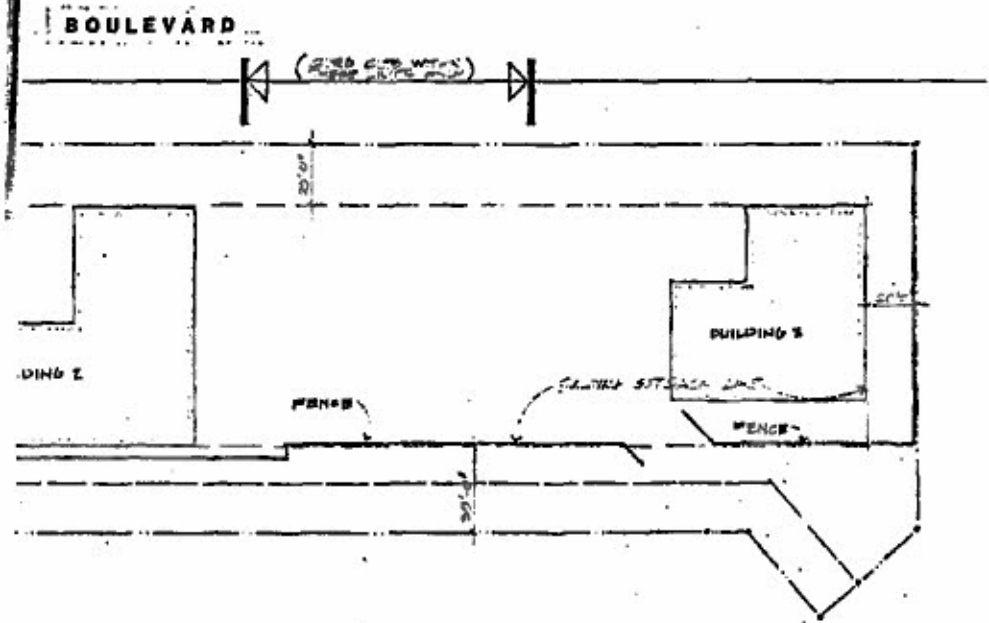


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**EXHIBIT A**  
**T.K.G. PROPERTIES**  
**SITE PLAN**



**VILLALVA-COTERA-KOLAR**

ARCHITECTS AND PLANNERS  
1000 W. 1st St. Suite 1000  
Tucson, AZ 85703 (520) 474-6526

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