

RESTRICTIVE COVENANT AMENDMENT REVIEW SHEET

CASE: C14R-85-149.100 (RCA)
(Scofield Farms Phase 3 Section 2)

Z.A.P. DATE: July 2, 2013
August 6, 2013

ADDRESS: 13103 Wingate Way

OWNER/APPLICANT: James E. McCarn

AGENT: Coats Rose Yale Ryman & Lee, PC (John M. Joseph)

EXISTING ZONING: SF-2

AREA: 10.0922 acres

SUMMARY STAFF RECOMMENDATION:

Staff recommends the proposed amendment to the restrictive covenant to amend the specified requirements under Paragraph 1 and Paragraph 5(e)-please see below.

ZONING AND PLATTING COMMISSION RECOMMENDATION:

7/02/13: Postponed to August 6, 2013 at the neighborhood's request (5-0, B. Baker, S. Compton-absent); C. Banks-1st, G. Rojas-2nd.

8/03/13: Approved restrictive covenant amendment by consent (5-0, B. Baker & C. Banks-absent); R. McDaniel-1st, S. Compton-2nd.

DEPARTMENT COMMENTS:

The applicant is requesting an amendment to the restrictive covenant associated with zoning case C14-85-149.100, the North Lamar Area Study, to amend Paragraph 1 of the document as it refers to a conceptual land use plan. Specifically, the applicant would like to amend the language that states, "...that the number of units to be constructed on each Area designated as Residential on the Plan shall not exceed the density set forth on the Plan (As so amended). In the event that any Area is subdivided, the FAR or unit density, as pertinent, on any subdivided lot within such Area may exceed such specified limit so long as the total FAR or unit density within such Area does not exceed such specified limit." The Plan allows for an approved density of 42 units and the applicant requests that the restrictive covenant be modified to allow for a total of 46 single-family Residential units for Area 11. In addition, the applicant would like to amend Paragraph 5 of the restrictive covenant to delete the reference to "Area 11" in Section (e). Paragraph 5(e) states, "All lots in Areas 11, 15, 16 and 17 shall have lots width at the front building setback line of not less than sixty-five feet (65')." The applicant would like to remove Area 11 from this section so that they can comply with standard subdivision requirements of the City of Austin that include a minimum lot width of 50 feet. The applicant's request letter is included as Attachment A to this report.

The staff is recommending the applicant's request to amend Paragraph 1 and Paragraph 5, Section (e) of the restrictive covenant as this request is consistent with the density and size of residential lots to directly to the south and east of this property in this area of the City. The North Lamar Area Study designated this property for residential land use and since this study was adopted in 1985, the City Council approved SF-2, Single Family Residence-Standard Lot District zoning for this tract of land.

The staff believes that the applicant's request is consistent with the surrounding zoning/land uses adjacent to this tract of land.

The applicant agrees with the staff's recommendation.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	SF-2	Undeveloped
<i>North</i>	GR, MF-2-CO	Undeveloped Tract, Multifamily
<i>South</i>	SF-1, I-SF-2	Single-Family Residential (North Shields Neighborhood)
<i>East</i>	SF-6	Single-Family Residential, Detention
<i>West</i>	GR, LO	Undeveloped

AREA STUDY: North Lamar Area Study

TIA: N/A

WATERSHED: Walnut Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: N/A

HILL COUNTRY ROADWAY: No

NEIGHBORHOOD ORGANIZATIONS:

Austin Heritage Tree Foundation
 Austin Independent School District
 Austin Monorail Project
 Austin Northwest Association
 Bike Austin
 Homeless Neighborhood Organization
 North Growth Corridor Alliance
 Pflugerville Independent School District
 SELTEXAS
 Sierra Club, Austin Regional Group
 The Real Estate Council of Austin, Inc.
 The Ridge @ Scofield Homeowners Association

CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-05-0055 (Tomanet Estates Zoning #5: 12700-12702 Tomanet Trail)	I-RR to SF-1	5/17/05: Approved staff's recommendation of SF-1 district zoning by consent (9-0); J. Martinez-1 st , J. Gohil-2 nd .	6/09/05: Approved SF-1 by consent (6-0, McCracken-off dais); all 3 readings
C14-03-0188 (Cedar Elm-BWL: 13201-13205 Burnet Road)	GO to GR	4/3/04: Approved staff's recommendation of GR zoning, by consent (9-0); J. Martinez-1 st , J. Gohil-2 nd .	3/04/04: Granted GR zoning (6-0, McCracken-absent); all 3 readings

C14-00-2179	IP to SF-2, SF-3, MF-1	10/17/00: Approved staff rec. of SF-2 (TR1), SF-3 (TR 2), and MF-1 (TR3) by consent (8-0)	11/30/00: Approved SF-2-CO (TR1), SF-3-CO (TR2); MF-1-CO (TR3) w/condition of 2,000 vehicle trip per day limit (7-0); all 3 readings
C14R-85-149.70 (RCA- Parmer Lane Baptist Church: 1601-1605 West Parmer Lane, 12400-12436 Scofield Farms Drive)	An amendment to the public restrictive covenant to delete the requirement under Section 8 that prohibits an access driveway to Parmer Lane.	1/6/04: Approved staff's recommendation to amend the North Lamar Area Study restrictive covenant by consent (9-0); J. Martinez-1 st , J. Donisi-2 nd .	2/05/04: Approved the restrictive covenant amendment (7-0)

RELATED CASES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-85-0149.70	RR to GR, MF-2, LO, and SF-2	Approved LO (Tracts a, b, &d), SF-2 (Tract c & e)	9/18/86: Approved LR (Tract 1), MF-2 (Tracts 2 & 3), LO (Tract 4), and SF-2 (Tract 5) 3/19/89: Corrective Ordinance changes original Tract 2 (7.930 acres) to LR (Ordinance No. 890406-G)

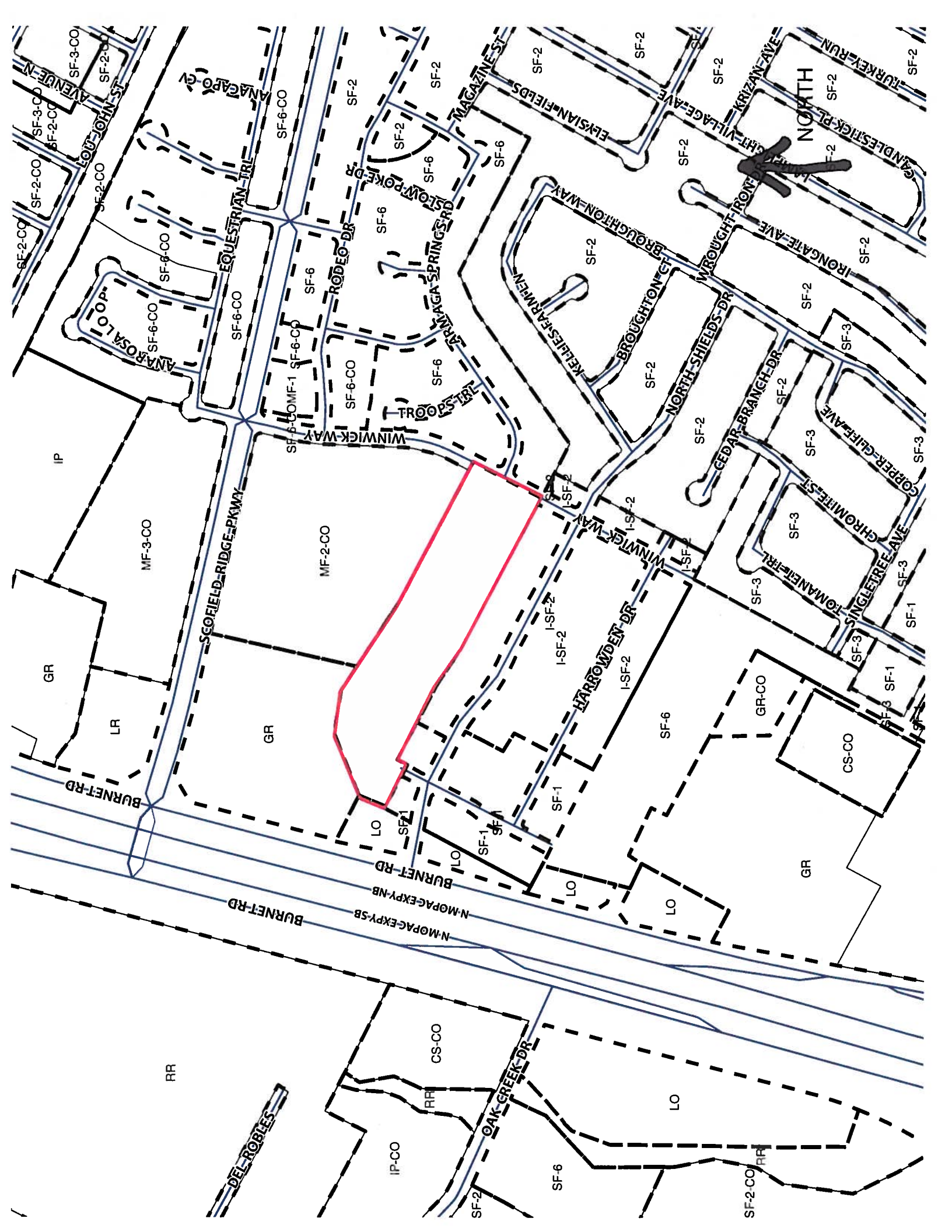
ABUTTING STREETS:

Name	ROW	Pavement	Classification	Daily Traffic City of Austin traffic counts:
Wingate Way	50'	26'	Local Street	Not Available
Scofield Ridge Parkway	120'	Varies	Arterial	N/A

CITY COUNCIL DATE: August 8, 2013**ACTION:** Postponed to August 29, 2013 on consent at the staff's request (7-0); M. Martinez-1st, B. Spelman-2nd.

August 29, 2013

ACTION:**CASE MANAGER:** Sherri Sirwaitis**PHONE:** 974-3057
sherri.sirwaitis@austintexas.gov





COATS | ROSE

A Professional Corporation

Attachment A

JOHN M. JOSEPH

jmjoseph@coatsrose.com
Direct Dial
512.541.3593

April 30, 2013

VIA HAND DELIVERY

Ms. Betty Baker, Chair
Zoning and Platting Commission
City of Austin
P.O. Box 1088
Austin, Texas 78767

Re: Request to Amend Restrictive Covenant for Scofield Farms, Phase 3,
Section 2

Dear Ms. Baker,

On behalf of The Brohn Group, LLC ("Brohn"), enclosed please find the attached Application to Amend a Restrictive Covenant for consideration by the City Council.

The property subject to this request (the "Property") is an approximately 10-acre tract of land in Travis County, Texas, as shown on the map attached as Exhibit A. The Property lies just east of North Mopac Expressway and just south of its intersection with Scofield Ridge Parkway. Brohn intends to develop the Property, which is currently undeveloped.

The Property comprises Phase 3, Section 2 of the concept plan for Scofield Farms, an approximately 749-acre development generally located between what is now North Mopac Expressway to the west, Howard Lane to the north, Parmer Lane to the south, and North Lamar Boulevard on the east. The concept plan is set forth in the Restrictive Covenant, attached as Exhibit B, which was filed of record on April 11, 1986 at Volume 9647, Pages 11-21 of the Travis County property records. The Covenant provides that it may be modified, amended or terminated "only by the 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 such City Council, and (b) the owner(s) of the portion of the Property affected by the proposed modification, amendment or termination at the time of such action." The application includes the signature of James McCarn, the current owner of the Property affected by the modification, amendment or termination sought. *See Restrictive Covenant, Exhibit B, ¶ 14.*

The area within the Scofield Farms plan was annexed in 1984 and given interim zoning. The area was rezoned on January 9, 1986 by Ordinance No. 860109-V, City of Austin Case No.

Barton Oaks Plaza, 901 South MoPac Expressway, Building 1 Suite 500, Austin, Texas 78746

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Web: www.coatsrose.com

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C14-85-149.¹ In conjunction with that rezoning, the Property was zoned SF-2. The Property is designated as “Area 11” in the concept plan and, consistent with its SF-2 zoning, is reserved for single-family dwellings. Most of the area within Scofield Farms, unlike the Property, has now been developed.²

Brohn does not seek to change the permitted single-family use for the Property, which is established both by zoning and by the Restrictive Covenant. Rather, Brohn requests Council to amend two provisions of the Restrictive Covenant in order to allow a slight increase in the number of homes and to provide slightly more flexibility in configuring the lots within the subdivision.

The Restrictive Covenant adopts various design and subdivision standards for the commercial, multi-family and single-family development contemplated in the plan. One of these standards places a limitation on the density of units within the Property. Paragraph 1 of the Restrictive Covenant provides:

[T]he number of units to be constructed on each Area designated as Residential on the Plan shall not exceed the density set forth on the Plan (as so amended). In the event that any Area is subdivided, the FAR or unit density, as pertinent, on any subdivided lot within such Area may exceed such specified limit so long as the total FAR or unit density within such Area does not exceed such specified limit.

As noted above, the Property is identified as “Area 11” in the land use plan attached to and incorporated in the Restrictive Covenant. The land use plan includes a table setting forth the density restrictions applicable to each area within the plan. *See* Restrictive Covenant at Vol. 9647, p. 19. The table set forth in the land use plan – including the copy filed of record with Travis County – is partially illegible. A more legible copy of the plan is on file electronically within attachment ZON-C14-85-149_0~020 under the main case file folder for Case No. C14-85-149. *See* Exhibit D. The plan reflects an approved density of 42 units. Brohn requests that the Restrictive Covenant be modified to allow a total of 46 single-family units for Area 11.

The Restrictive Covenant also adopts some heightened subdivision standards for certain areas within the concept plan. Paragraph 5(e) imposes a minimum residential lot width of 65 feet, measured at the front setback line, for single-family Areas 11, 15, 16 and 17. Brohn requests that Paragraph 5(e) of the Restrictive Covenant be amended to delete the reference to “Area 11.” (The subdivision of the Property, of course, will remain subject to the City’s ordinary subdivision standards, which include a standard minimum lot width of 50 feet. *See* Austin City Code, Section 25-4-174(B)(2)(a).)

¹ A copy of the ordinance as it appears in the City’s electronic filing system is attached as Exhibit C. The ordinance on file attaches the Restrictive Covenant, and incorporates the Restrictive Covenant’s land use plan by reference. The ordinance and Restrictive Covenant are stored electronically under the master case number C14-85-149 in attachment ZON-C14-85-149_0~004 of folder “1985-000149 ZC (North Lamar Area Study).”

² The Restrictive Covenant has been amended and/or terminated with respect to most of the area within the original land use plan. *See* City of Austin Case Nos. C14-85-149.100.01, C14-85-149.100.02, C14-85-149.100.03, and C14-85-149.100.04.

April 30, 2013

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This modest increase in proposed density falls within the range of the density approved in contemporaneous planning documents. According to a Planning Commission memorandum, on September 24, 1985, the Planning Commission approved a preliminary plan with an approved density of 44 lots for Scofield Farms, Phase 3, Section 2 under Case No. C8-85-104. See Exhibit E. The approved preliminary plan actually on file with the City under Case No. C8-85-104 shows a configuration of 50 lots. See Exhibit F.

The proposed amendments also will allow Brohn slightly more flexibility in configuring the subdivision lots. Housing affordability is a critical issue in Austin, and the high housing cost is driven in part by the high land costs per unit. The requested amendment will allow Brohn to deliver housing units at a slightly lower land cost per unit.

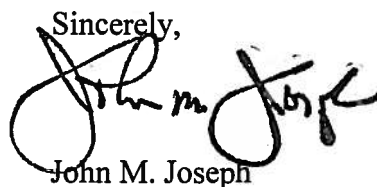
Neither of the requested amendments will cause any perceptible increase in traffic or work any change in quality to the surrounding neighborhoods. In fact, infrastructure improvements in the area would support much higher requested densities. When the land-use plan was adopted in 1986, Mopac had not yet been extended along the area's western edge, and residents were still relegated to Burnet and F.M. 1325. Since then, Mopac has been constructed as a six-lane, controlled access highway, flanked by two, three-lane service roads. More recently, and just to the north, State Highway 45 has been completed, linking Highway 183 and Interstate 35. The effect of these highway improvements in the area has been to dramatically increase the sustainable density within the planning area.

The area around the Property, of course, has seen significant development in the last twenty-five years. This includes the Domain, commercial and office development along Mopac, and homes for the hundreds of thousands of new residents just to the north in Williamson County. The Property no longer lies at the metropolitan area's low-density fringe. The minor amendments proposed to the 25-year-old concept plan are more than warranted by these changed circumstances.

Attached as Exhibit G is a true and correct copy of the Restrictive Covenant with the two specific amendments requested by Brohn noted thereon. Brohn intends to otherwise fully comply with the restrictions set forth in the Restrictive Covenants as well as the regulations applicable to SF-2 zoning.

We request that this application be processed and the proposed amendments be placed on the City Council agenda at the earliest opportunity. If you have any questions or need any additional information in order to process the request, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Joseph". The signature is stylized with a large, looping "J" and a cursive "M".

John M. Joseph

RESTRICTIVE COVENANT

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2000

THE STATE OF TEXAS
COUNTY OF TRAVIS

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§
§

G 4 05 4241
1000 123735
Ordinance Nos. 85-144
and 85-

25.00 RTEA
3 04/11/86

WHEREAS, Nash Phillips/Copus, Inc., a Texas corporation with principal offices in Travis County, Texas ("NPC"), is the record owner of that certain property in Travis County, Texas, more fully described in Exhibit A attached hereto and made a part hereof for all purposes (the "Property"); and

WHEREAS, the City of Austin, a Texas municipal corporation ("City"), and NPC 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, NPC, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand to it paid by City, the receipt of which is hereby acknowledged, does hereby agree with respect to the Property, such agreement to be deemed and considered as a covenant running with the land, and which shall be binding on it and its successors and assigns, as follows.

1. A conceptual land use plan ("Plan"), describing and setting for the Property as various Planning Areas and designating certain development and use information, is attached hereto and made a part hereof for all purposes. NPC and City agree that the permanent zoning classifications for the Property shall be as set forth in the above-referenced Ordinances; that the total floor space (excluding parking and all other areas excluded therefrom under the Zoning Ordinance of City applicable on the date hereof) of all buildings on the Planning Areas designated as Commercial, Office/Professional, and Industrial on the Plan shall not exceed the floor to area ratios ("FARs") set forth on the Plan (as amended pursuant hereto from time to time); and that the number of units to be constructed on each Area designated as Residential on the Plan shall not exceed the density set forth on the Plan (as so amended). In the event that any Area is subdivided, the FAR or

REAL PROPERTY RECORDS
Travis County, Texas

09647 0011

EXHIBIT
"B"

unit density, as pertinent, on any subdivided lot within such Area may exceed such specified limit so long as the total FAR or unit density within such Area does not exceed such specified limit.

2. The existing street located south of the Property and presently known as Willow Wild Drive shall not be extended across Parmer Lane into the Property.

3. One driveway access to Area 37 from Parmer Lane, between the existing streets located south of the Property and presently known as Provident Way and Willow Wild Drive, shall be permitted.

4. Prior to the issuance of a certificate of occupancy with respect to any building within an adjacent Area, a landscaped berm shall be constructed between the building set back line and the curb on each side of Metric Boulevard, Scofield Farms Lane and the north side of Parmer Lane. Provided that the location and height do not restrict visibility, drainage, site access or public safety, all landscaped berms shall be up to four feet (4') in height as measured from the crest of such berms to the gutter or pavement low point of the adjacent roadway.

5. As regards single-family Areas, the following shall apply:

- (a) Landscaping shall include two (2) hardwood trees, no less than 1" caliper, 5 gallon and seven feet (7') high, and turf in the street yard (the portion of each lot which lies between the street right-of-way line and the actual front wall line of the building) for all residential lots in Areas 11, 15, 16 and 17.
- (b) The minimum size of homes shall be 1300 square feet in Areas 15, 16 and 17, and 1400 square feet in Area 11.
- (c) The exterior walls of all residences in Areas 11, 15, 16 and 17 shall consist of not less than forty percent (40%) masonry.
- (d) All residences in Areas 11, 15, 16 and 17 shall have two (2) car garages.

(e) All lots in Areas 11, 15, 16 and 17 shall have lot width at the front building setback line of not less than sixty-five feet (65').

6. As regards apartment Areas (presently, Areas 21, 24, 28, 30 and 32), the exterior walls shall consist of not less than forty percent (40%) masonry overall, and not less than sixty percent (60%) on walls facing public streets.

7. As regards all computations hereunder, the exterior wall of any structure shall exclude windows, doors, and garage doors, and masonry shall include brick, rock, and stucco.

8. In Area 24, all buildings shall be set back not less than one hundred feet (100') from the 100-year flood plain. In Area 28, all buildings shall be set back not less than fifty feet (50') from the 100-year flood plain. In all other Areas, buildings shall be set back from all public streets at least the distance required under applicable City ordinances.

9. Area 10 is intended to serve area retail needs and all improvements therein will meet applicable compatibility standards under the City zoning ordinance. It is contemplated that buildings generally will have pitched roofs and masonry exterior walls, and that the development will include a landscaped buffer area at least ten feet (10') wide around the perimeter boundaries.

10. Upon the submission to City of any site plan with respect to any part of the Property, as required by the City zoning ordinance, or upon any proposed amendment to this Restrictive Covenant, notice thereof shall be mailed by the applicant to all neighborhood organizations on the City records whose boundaries are contiguous to the Property.

11. If any person or entity of any character shall violate or attempt to violate the foregoing agreements and covenants, it shall be lawful for the City of Austin, its successors and assigns to prosecute proceedings at law or in equity against any person or entity violating or attempting to violate such agreements or covenants and to prevent said person or entity from violating or attempting to violate such agreements or covenants.

12. If any part or provision of this Restrictive Covenant shall be declared invalid by judgment or court order, the same shall in nowise affect any of the other provisions hereof, and such remaining provisions shall remain in full force and effect.

13. The failure at any time to enforce this Restrictive Covenant 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.

14. This Restrictive Covenant 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 such City Council, and (b) the owner(s) of the portion of the Property affected by the proposed modification, amendment or termination at the time of such action.

EXECUTED, this the 13th day of January, 1986.

NASH PHILLIPS/COPUS, INC.

By: *[Signature]*
Its Executive Vice President

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 13th day of January, 1986 by Dan H. Davidson, Executive Vice-President, on behalf of Nash Phillips/Copus, Inc.

Phillis A. Aaberg
NOTARY PUBLIC, State of Texas
PHILLIS A. AABERG
Print Name
Notary Public
State of Texas
Commission exp. 12-12-87

My Commission Expires:

1/10/86
J17-18

NOTARY SEAL

