

ZONING CHANGE REVIEW SHEET

CASE: C14-97-0044(RCT) / 1500 S Pleasant Valley **PC DATE:** October 28, 2014

ADDRESS: 1500 S Pleasant Valley

AREA: 26,399 square feet (parent tract: 4.0016 acres)

NEIGHBORHOOD PLAN AREA: East Riverside Corridor
(East Riverside/Oltorf Combined Neighborhood Plan Area)

OWNER: 1500 SPV LLC (Colin Brothers)

AGENT: Drenner Group, P.C. (Stephen Rye)

REQUEST: To terminate a 1997 Restrictive Covenant

SUMMARY STAFF RECOMMENDATION:

To terminate the 1997 Restrictive Covenant

PLANNING COMMISSION ACTION:

Scheduled for consideration October 28, 2014

October 14, 2014

Pulled - No Action Taken; Re-noticed for October 28, 2014

DEPARTMENT COMMENTS:

The subject tract of this request (see Exhibits A) is a footprint portion of the tract recently brought to the Planning Commission and City Council with an application for amendments to the East Riverside Corridor Regulating Plan (C14-2014-0099). The Planning Commission did not make a recommendation in regards to those proposed amendments; the City Council is scheduled to conduct its public hearing and consider the application on October 23, 2014.

Termination of this public restrictive covenant (RC) is a cleanup item only and has no impact on the previous application. Likewise, the disposition of that application has no impact on the requested termination of this RC. Regulation of the subject tract and the larger parent tract is regulated by the East Riverside Corridor Regulating Plan.

HISTORY:

In July 1997, approximately 0.606 acres (26,399 square feet) of the 4-acre tract was rezoned (in Case C14-97-0044) from GR, community commercial, to CS-1-CO, commercial liquor sales-conditional overlay. The conditions contained within the rezoning ordinance were adherence to the 2,000 vehicle trip per day limit and the prohibition of adult oriented business and liquor sales as uses.

As part of granting the request, the City Council also required a rollback provision that if the site was not developed with a cocktail lounge use within one year, or if so established ceased to operate for one year, the owner would not object to the City rezoning the property back to GR. This rollback provision is the subject of the public RC (see Exhibit B).

In the fall of 2000, a rezoning of the CS-1 footprint back to GR commenced (C14-00-2231). It is unclear if this was wholly or solely City-initiated, as indicated in the current application tracking system. Per the staff report of the case, the property owner sought GR zoning to

develop the property with a convenience store, a restaurant, and retail space. Staff comments continue that the reason for the change in zoning was due to the 2,000 vtd limit of the Conditional Overlay. At this time, a Site Plan (SP-00-2475C) had been submitted by the property owner and was under review. A traffic impact analysis, required because the proposal would generate more than 2000 vtd, was waived because the owner had agreed to post a fiscal bond to provide for a portion of the construction of a left-hand turn lane from Pleasant Valley Road onto Elmont.

Regardless of who initiated the rezoning, the owner concurred with the GR recommendation and Council adopted a new ordinance in January 2001 that rezoned the property back to GR, on consent and with no conditions.

At that point, the terms of the public RC had been satisfied; it effectively expired. Though satisfied, the RC was not terminated at the time. It remains a meaningless encumbrance on the property. Termination of the covenant simply removes, nullifies, and terminates this encumbrance from the public record and the property. It is a cleanup item.

Of course, that is not the end of the zoning story with this property. As part of the November 2006 adoption of the East Riverside Neighborhood Plan (C14-05-0112), part of the larger East Riverside/Oltorf Combined Neighborhood Plan, the property, which was all GR once again, was rezoned from GR to GR-NP. In May 2013 the ERC Regulating Plan (C14-2012-0112) was adopted, and that changed the zoning from GR-NP to ERC.

With the adoption of the ERC Regulating Plan, the tract was identified as a Neighborhood Mixed Use subdistrict. One of the amendments proposed with the previous application was to amend the subdistrict designation to Corridor Mixed Use. Subdistrict specification determines the uses and site development standards for a given property. A cocktail lounge use is a Conditional Use in either subdistrict, but must meet certain distance requirements.

EXISTING ZONING AND LAND USES:

	ZONING	SUB-DISTRICT	LAND USES	Pre-ERC ZONING
<i>Site</i>	ERC	NMU	Specialty Retail	GR-NP
<i>West</i>	ERC	NMU	Multifamily Residential	MF-4-NP
<i>East/Northeast</i>	ERC	NMU; UR	Pleasant Valley ROW; Multifamily Residential	MF-2-CO-NP, MF-3-CO-NP, GR-CO-NP and CS-NP
<i>South</i>	ERC	CMU	Automotive Sales; Vacant; Grocery Store	GR-NP and CS-1-NP
<i>North</i>	ERC; PUD-NP	NMU; n/a	Convenience Retail; Cocktail Lounge; Lake Shore District PUD (Residential-Commercial Mixed Use)	GR-NP & CS-1-NP; PUD-NP

ERC Subdistricts: CMU: Corridor Mixed Use; NMU: Neighborhood Mixed Use UR: Urban Residential NR: Neighborhood Residential;

ABUTTING STREETS & TRANSIT:

Street Name	ROW Width	Pavement Width	Classification	Bicycle Plan	Bus Service	Sidewalks
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C22/3

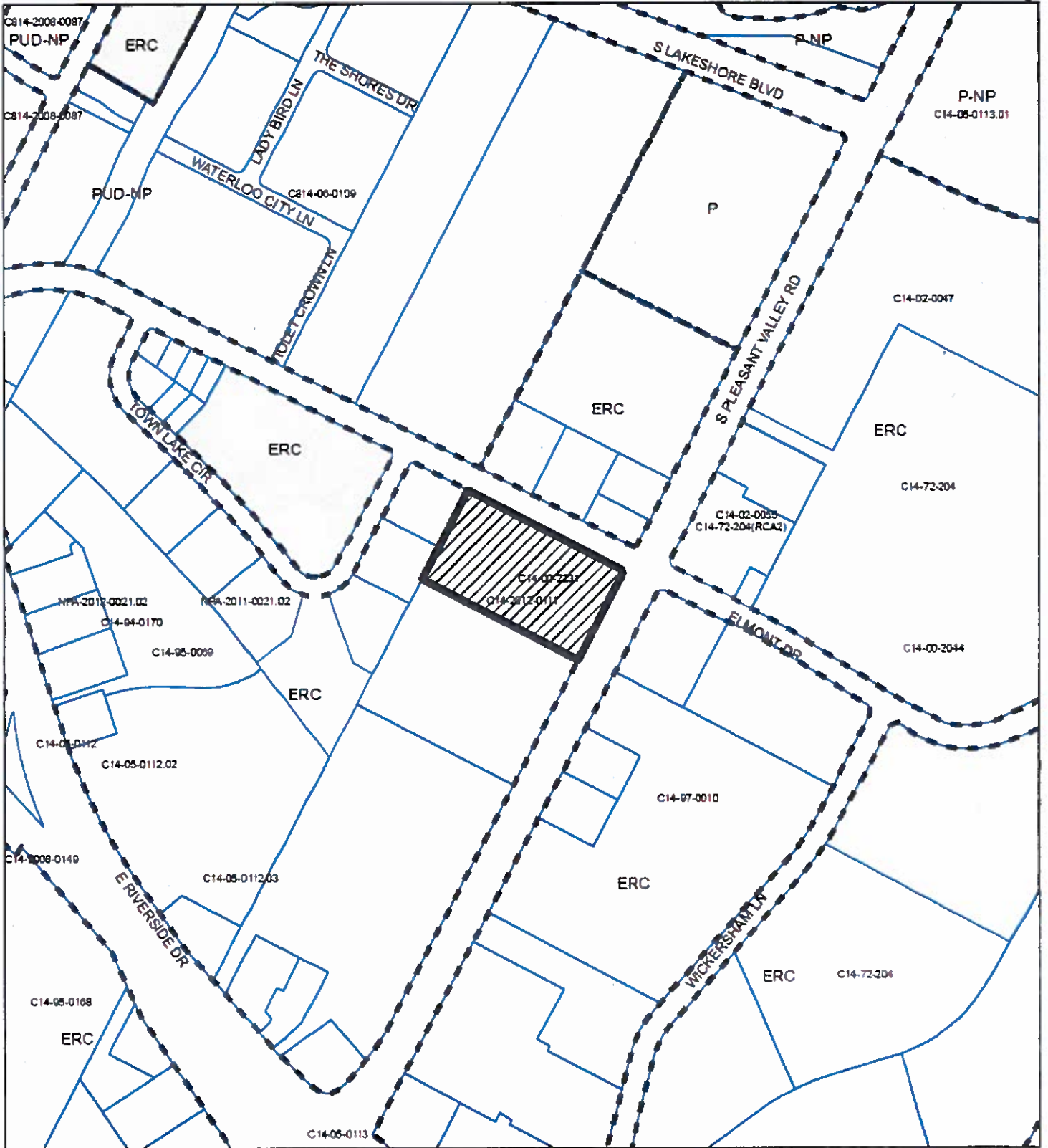
Pleasant Valley Road	118'	54'	Arterial	Yes (east side only)	Yes	Yes
Elmont Drive	80'	45'	Collector	Yes	No	Yes




TIA: Not ApplicableWATERSHED: Lady Bird Lake & Country Club WestSCENIC ROADWAY: NoDESIRED DEVELOPMENT ZONE: YesCAPITOL VIEW CORRIDOR: No**NEIGHBORHOOD ASSOCIATIONS & COMMUNITY ORGANIZATIONS:**

COMMUNITY REGISTRY NAME	COMMUNITY REGISTRY ID
Southeast Austin Neighborhood Alliance	189
Crossing Garden Home Owners Association	299
Austin Neighborhoods Council	511
Montopolis Area Neighborhood Alliance	634
Austin Independent School District	742
Del Valle Independent School District	774
East Riverside/Oltorf Neighborhood Plan Contact Team	763
Waterfront Condominium HOA	794
PODER	972
Save Town Lake.Org	1004
Homeless Neighborhood Organization	1037
League of Bicycling Voters	1075
Super Duper Neighborhood Objectors and Appealers Organization	1200
Austin Monorail Project	1224
Sierra Club, Austin Regional Group	1228
The Real Estate Council of Austin, Inc.	1236
Pleasant Valley	1255
Del Valle Community Coalition	1258
Austin Heritage Tree Foundation	1340
SEL Texas	1363
Waterfront Planning Advisory Board	1366
Montopolis Neighborhood Association – El Concilio	1394
Preservation Austin	1424
East Austin Conservancy	1444
Friends of the Emma Barrientos MACC	1447
Waterfront Condominium Homeowners Association	1465

CITY COUNCIL DATE: Scheduled for consideration September 25, 2014**ORDINANCE READING:****ORDINANCE NUMBER:****CASE MANAGER:** Lee Heckman / 512-974-7604 / e-mail: lee.heckman@austintexas.gov

C224



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

ZONING
ZONING CASE#: C14-2014-0099

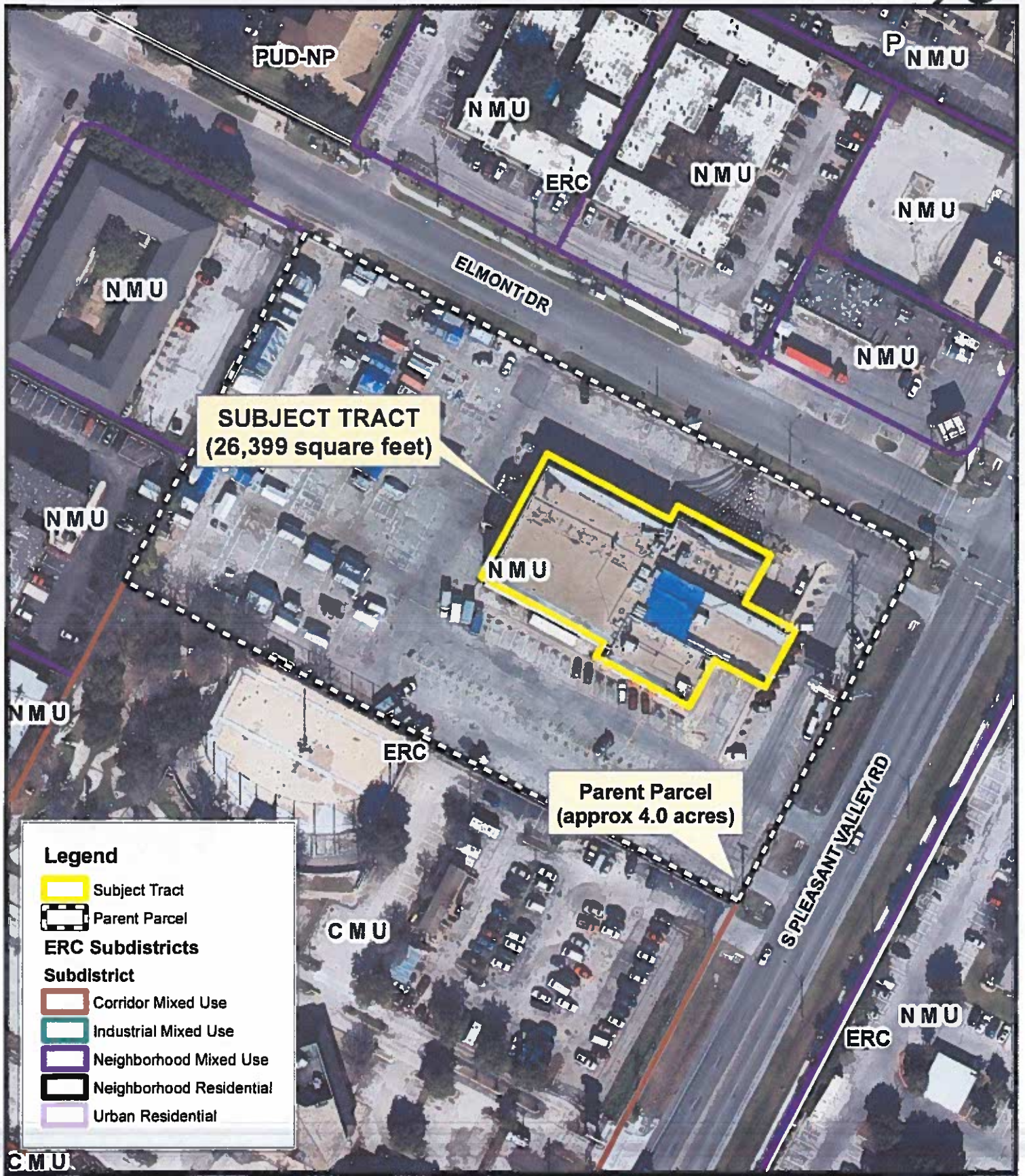


1" = 400'

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.

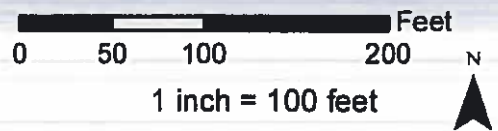
This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness. **Exhibit A - Zoning Map**

CV/B



Imagery: 2012-01

**Exhibit A - 1
Aerial & Zoning**



FILM CODE
00005612853

Zoning Case No. C14-97-0044

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17.00
MPC

RESTRICTIVE COVENANT

OWNER: LENA PODOLNICK
ADDRESS: 8510 Adirondack Trail, Austin, Texas 78759
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.
PROPERTY: 26,399 square foot tract of land out of Tract "A", Earl and Lena Pololnick Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat of record in Plat Book 58, Page 84 of the Plat Records of Travis County, Texas. the tract of land being more particularly described by metes and bounds in Exhibit "A" attached and incorporated into this restrictive covenant for all purposes.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions as conditions of zoning for the Property;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, her heirs, successors, and assigns.

1. If use of the Property as a cocktail lounge is not in operation within one year of the effective date of the zoning approval, or if operation as a cocktail lounge is begun and is subsequently discontinued for a period of one year, the Owner of the Property will not object to the City of Austin rezoning the Property to "GR" Community Commercial district as defined in Chapter 13-2 of the City Code. Normal, seasonal cessation of a use, or temporary discontinuance for purpose of maintenance or rebuilding of the Property after damage or destruction may not be included in calculating the period of discontinuance.
2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin 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.
3. If any part of this agreement or covenant is declared invalid, by judgment 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.
4. If at any time the City of Austin 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.
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, and (b) by the owner(s)

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of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the 25th day of June, 1997.

OWNER:

Lena Podolnick
LENA PODOLNICK

THE STATE OF TEXAS
COUNTY OF TRAVIS

This instrument was acknowledged before me on this the 25th day of June, 1997, by
LENA PODOLNICK.

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767
Attention: Diana Minter, Legal Assistant

Renée S. Mokarzel



BUSH SURVEYING, INC.

1904 Fortview Rd.
Austin, TX 78704
Phone (512) 442-0990
Fax (512) 442-1084
June 16, 1997

C22/8

FIELD NOTES TO 26,399 SQUARE FEET OUT OF TRACT "A", EARL AND LENA PODOLNICK SUBDIVISION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 58, PAGE 84 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point in the interior of Tract "A", Earl and Lena Podolnick Subdivision, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 58, Page 84 of the Plat Records of Travis County, Texas, for the most northerly Northeast corner and PLACE OF BEGINNING of the herein described tract and from which a 1/2 inch iron rod found in the south right-of-way line of Elmont Drive for the most northerly Northeast corner of said Tract "A" bears N 84 deg. 59' 33" E 104.35 ft.;

THENCE the following five courses:

- 1) S 30 deg. 02' 27" W 43.00 ft. to a point;
- 2) S 59 deg. 57' 33" E 46.00 ft. to a point;
- 3) S 30 deg. 02' 27" W 51.50 ft. to a point;
- 4) N 59 deg. 57' 33" W 46.00 ft. to a point;
- 5) S 30 deg. 02' 27" W 42.60 ft. to a point for the most southerly Southeast corner of this tract and from which a 1/2 inch iron rod found in the west right-of-way line of Pleasant Valley Road for the Southeast corner of said Tract "A" bears S 10 deg. 35' 53" E 155.28 ft. to a point;

THENCE the following three courses:

- 1) N 59 deg. 57' 33" W 84.51 ft. to a point;
- 2) N 30 deg. 02' 27" E 12.60 ft. to a point;
- 3) N 59 deg. 57' 33" W 111.30 ft. to a point for the Southwest corner of this tract;

THENCE N 30 deg. 02' 27" E 111.80 ft. to a point for the Northwest corner of this tract and from which a 1/2 inch iron rod found in the south right-of-way line of said Elmont Drive for the Northwest corner of said Tract "A" bears N 44 deg. 29' 33" W 266.34 ft.;

THENCE the following three courses:

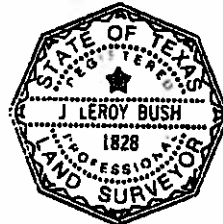
- 1) S 59 deg. 57' 33" E 111.30 ft. to a point;
- 2) N 30 deg. 02' 27" E 12.70 ft. to a point;
- 3) S 59 deg. 57' 33" E 84.51 ft. to the Place of Beginning, containing 26,399 Square feet of land.

SURVEYED June 1997

BY:

J. Leroy Bush

J. Leroy Bush
Registered Professional Land Surveyor No. 1828



538056B

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

12996 0320

15300 0355

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C 530056

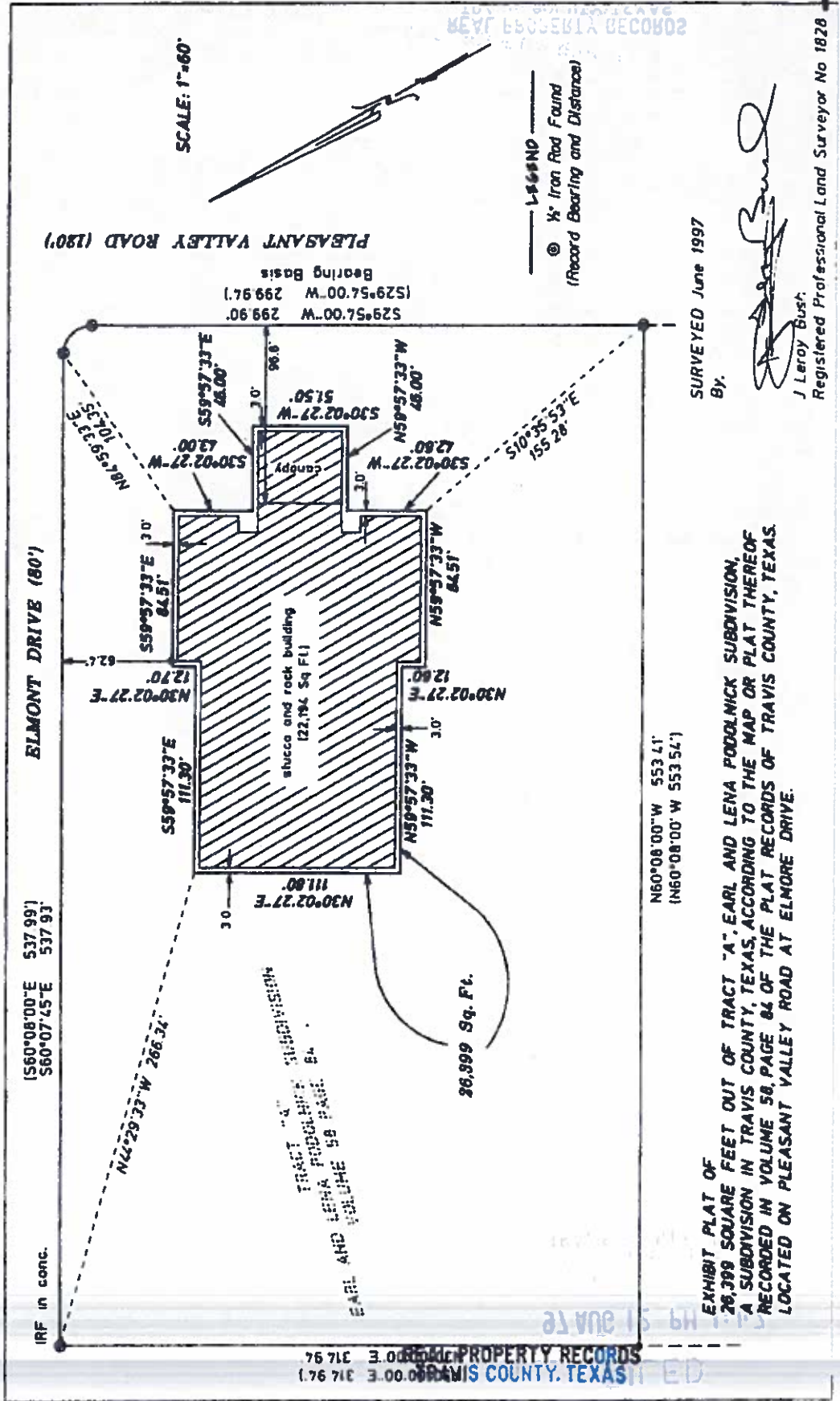


Exhibit B - 4

12996 0321

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FILED

97 AUG 12 PM 1:47

DANA DE BEAUVOIR
COUNTY CLERK
TRAVIS COUNTY TEXAS

RECORDER'S MEMORANDUM-At the time of recordation this instrument was found to be inadequate for the best 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 and at the time stamped hereon by me; and was duly RECORDED, in the Volume and Page of the named RECORDS of Travis County Texas on

AUG 12 1997



Dana De Beauvoir
COUNTY CLERK
TRAVIS COUNTY, TEXAS

REAL PROPERTY RECORDS
TRAVIS COUNTY, TEXAS

Exhibit B - 5

12996 0322

FILE BY: [unclear]