

**RESTRICTIVE COVENANT TERMINATION REVIEW SHEET**

**CASE:** C14-84-346(RCT1) – Loyola Landing **Z.A.P. DATE:** March 20, 2018  
**ADDRESS:** 5601 Durango Pass **AREA:** 3.79 acres  
**DISTRICT:** 1  
**OWNERS/ APPLICANT:** Harold K. Kaemerle, Jr., Sharie Kaemerle, and Patrick T. Kaemerle; 3 S & D Interest (David Kalisz)  
**AGENT:** A. Glasco Consulting (Alice Glasco)  
**ZONING:** MF-3 and SF-3

**SUMMARY STAFF RECOMMENDATION:**

Staff recommends the restrictive covenant termination.

**ZONING AND PLATTING COMMISSION RECOMMENDATION:**

March 20, 2018:

**ISSUES:**

The proposed restrictive covenant termination (RCT) would eliminate requirements tied to a 1984 zoning case (City File #C14-84-346). Please refer to *Exhibit A (Restrictive Covenant)*. Several other RCTs and one restrictive covenant amendment (RCA) are also being processed concurrently with this RCT request. Removing/modifying these restrictive covenants (RCs), would allow consolidation of the parcels for redevelopment. These are being processed under the following City File numbers: C14-75-042(RCT1), C14-75-042(RCT2), C14-76-083(RCA2), and C14-84-346(RCT2). Please note that C14-84-346(RCT2) is for a separate RC that was attached to the same 1984 zoning ordinance and applies the same property. Using multiple RCs with a single zoning case is no longer standard City of Austin practice. Please refer to *Exhibit B (RCT Map Exhibit)*.

A rezoning request is also being processed concurrently with this request; the request would rezone the tracts affected by these restrictive covenants to GR-MU and CS. (City File #C14-2008-0006).

By terminating the restrictive covenant (RC), the Applicant proposes removing the following requirements:

1. Lots 1-7 of Block A, lots 1-7 of Block B, and lots 1-28 of Block C of the Northeast Territory Subdivision, shall contain one duplex on each lot.
2. The street identified as “Durango Pass” on the Northeast Territory Subdivision, plat, C8-14-84-158.1(85) shall be completed prior to construction of the duplexes mentioned in condition 1 above.
3. Each of the lots mentioned in condition 1 above, (Lots 1-7 in Block A, Lots 1-7 in Block B, and Lots 11-28 in Block C) shall be sodded in its entirety only with St. Augustine grass; each of these lots shall be landscaped with two(2) trees and eight (8) shrubs.

The subdivision referenced above has expired, and the proposed redevelopment of this area is for multifamily housing, not duplexes. Durango Pass is not adjacent to the RC tract and is already constructed. All future development will be required to comply with current City Code, including subdivision and landscaping requirements. Please see *Exhibit C (Applicant Correspondence)*.

**DEPARTMENT COMMENTS**

The 1984 rezoning case included 24.24 acres of land. The RC includes only 3.79 acres out of the 24.24 acres. The proposed restrictive covenant termination (RCT) would eliminate requirements tied to a 1984 zoning case and a subdivision (City Files C14-84-346 and C84.158.1(85)). The subdivision plat has expired.

The land affected by this RC is located at the terminus of Lazy Creek Drive, south of Purple Sage Drive. To the north is a residential neighborhood that is zoned SF-3. This neighborhood is primarily developed with duplex residences and LBJ High School. Immediately to the east is a small tributary to Walnut Creek that has 100-year floodplain and a 200' wide creek buffer centered on the tributary. Any site development in this floodplain/buffer area would be extremely limited. East of the tributary is undeveloped land zoned SF-2-CO. Further east, across Millrace Drive, is more of the residential neighborhood, which is mostly zoned SF-2, with a few SF-3 properties as well. This area is developed with duplexes and single family residences. Southeast of the property are tracts that are under the same ownership as the subject property; these undeveloped tracts are the subject of the related cases referenced in the Issues Section. These are zoned SF-3, LO, and GR. To the west is undeveloped property zoned GR. Staff has received correspondence from LBJ Neighborhood Association supporting the rezoning, RCTs and RCA. *Please see Exhibit D (Neighborhood Correspondence).*

**STAFF RECOMMENDATION:**

Staff recommends the restrictive covenant amendment.

*1. The proposed zoning should promote consistent and orderly planning.*

The conditions of the 1984 are outdated and have been replaced by more appropriate and effective development regulations under current code. The existing restrictive covenants are a patchwork of outdated requirements that make cloud the property title and make regulatory application confusing. Moving forward with redevelopment of the property is significantly impacted by the existing RC.

*2. The proposed rezoning does not grant an unequal benefit to the landowner.*

Removal and/or modification of the restrictive covenant will make the property subject to current City codes and regulations, which is more consistent with other properties.

**EXISTING ZONING AND LAND USES:**

	ZONING	LAND USES
<i>Site</i>	MF-3, SF-3	Undeveloped
<i>North</i>	SF-2, SF-3	Duplex, Single family, LBJ High School
<i>South</i>	GR, LO, SF-3	Undeveloped
<i>East</i>	SF-2-CO, SF-2, SF-3	Undeveloped, Duplex, Single family
<i>West</i>	GR	Undeveloped

**NEIGHBORHOOD ORGANIZATIONS:**

Senate Hills Homeowners' Association  
Austin Innercity Alliance  
Del Valle Community Coalition  
East MLK Combined Neighborhood Contact Team  
University Hills Neighborhood Association  
LBJ Neighborhood Association  
Homeless Neighborhood Association  
Claim Your Destiny Foundation

Friends of Austin Neighborhoods  
Neighbors United for Progress  
East Austin Conservancy  
University Hills Neighborhood Plan Contact Team  
Austin Neighborhoods Council  
Friends of Northeast Austin  
SELTexas  
Black Improvement Association

**CITY COUNCIL DATE/ACTION:**

April 12, 2018:

**ORDINANCE READINGS:** 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup>

**ORDINANCE NUMBER:**

**CASE MANAGER:** Heather Chaffin  
e-mail: heather.chaffin@austintexas.gov

**PHONE:** 974-2122

C14-84-346(RCT1) 9/6/87

Zoning Case No. C14-84-346  
4 18 3315

RESTRICTIVE COVENANT

THE STATE OF TEXAS  
COUNTY OF TRAVIS

§  
§ KNOW ALL PERSONS BY THESE PRESENTS  
§

1000 109655 9.00 RTEA

1 02/06/87

WHEREAS, Northeast Territory Joint Venture of Travis County, Texas, is the owner of the following described property, to-wit:

All that property in the Northeast Territory Subdivision, Lots 1-7 of Block A and Lots 1-7 of Block B and Lots 1-28 of Block C as described in City of Austin final subdivision plat number C8-84-158.1 (85). Field notes describing this property are attached as Exhibit "A".

WHEREAS, the City of Austin and Owners 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, Owners 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 proeprty 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. Lots 1-7 of Block A, Lots 1-7 of Block B, and Lots 1-28 of Block C of the Northeast Territory Subdivision, described above, shall contain one duplex on each lot.

2. The street identified as "Durango Pass" on the Northeast Territory Subdivision plat, described above, shall be completed prior to construction of the duplexes mentioned above in 1.

3. Each of the lots mentioned above in 1 (Lots 1-7 in Block A, Lots 1-7 in Block B, and Lots 1-28 in Block C) shall be sodded in its entirety only with St. Augustine grass; each of these lots shall be landscaped with two (2) trees and eight (8) shrubs.

4. 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

C(4-84-346(CR011))

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.

5. 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.

6. 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.

7. This agreement may be modified, amended or terminated only by joint action of both (a) the 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 21st day of August, 1985.

Kim W. Kirkman  
Kim W. Kirkman

THE STATE OF TEXAS           S  
  S  
COUNTY OF TRAVIS           S

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared KIM W. KIRKMAN, 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.

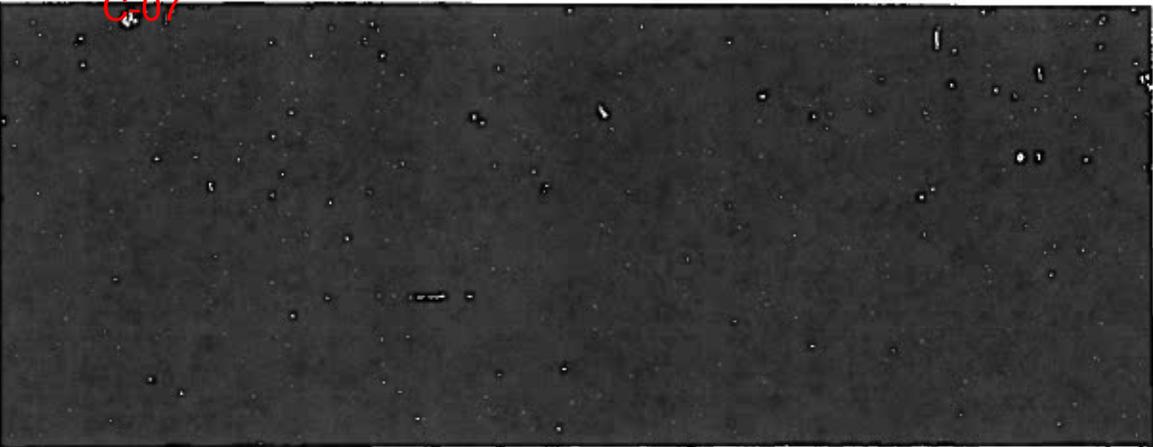
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 21st day of August, 1985.

NOTARY SEAL

Dianne Odeard  
Notary Public in and for Travis County, Texas

DIANNE ODEARD  
Typed or Printed Name of Notary

My commission expires: 2-18-86



ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND OUT OF THE J. C. TANNEHILL LEAGUE NO. 29, TRAVIS COUNTY, TEXAS, AND BEING A PORTION OF THAT SAME 24.24 ACRE TRACT OF LAND AS CONVEYED TO THE CITY NATIONAL BANK OF AUSTIN BY DEED RECORDED IN VOLUME 5478, PAGE 2232 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point in the Northeast line of the said 24.24 acre tract, being the Northeast corner of Lot 1, Block C of M & G Estates Section II, a subdivision in Travis County, Texas, as recorded in Plat Book 77, Page 31 of the Plat Records of Travis County, Texas, and being a point in the Southwest line of Lot 2, Block 8, LAS CIMAS Section One, a subdivision in Travis County, Texas, as recorded in Plat Book 65, Page 88 of the Plat Records of Travis County, Texas, for the Northwest corner hereof;

THENCE with the Northeast line of the said 24.24 acre tract, being the Southwest line of Las Cimas Section One, S 59° 39' E for a distance of 1312.88 feet to an iron stake found at the Northeast corner of the said 24.24 acre tract, being the Southeast corner of Lot 4, Block 7 of Las Cimas Section One, and being a point in the Northwest line of Lot 2, Block 7, Las Cimas Section One for the Northeast corner hereof;

THENCE with the Southeast line of the said 24.24 acre tract, being a Northwest line of the said Las Cimas Section One, S 30° 06' W at a distance of 162.59 feet pass an iron stake found and continue on for a total distance of 457.71 feet to an iron stake found at the Southeast corner of the said 24.24 acre tract, being a point in the Northwest line of Lot 1, Block 1 of Las Cimas Section One and being a Northeast corner of a tract of land as conveyed to L. D. Turner by Deed recorded in Volume 611, Page 253 of the Deed Records of Travis County, Texas, for the Southeast corner hereof;

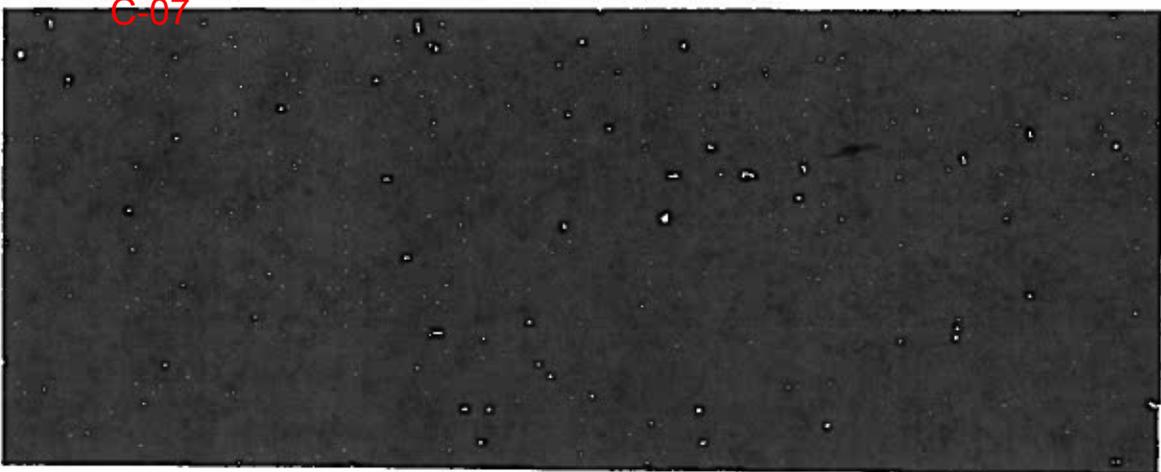
THENCE with the Southwest line of the said 24.24 acre tract, being the Northeast line of the said L. D. Turner Tract, N 59° 56' W for a distance of 1,382.30 feet to a concrete monument found in the Southwest line of the said 24.24 acre tract, being the Southeast corner of the said Lot 1, Block C, for the Southwest corner hereof;

THENCE with the Northwest line of the herein described tract, being the Southeast line of the said Lot 1, Block C, the following courses:

- N 32° 56' E for a distance of 77.30 feet to an iron stake found
- N 41° 03' E for a distance of 148.67 feet to an iron stake found
- N 42° 58' E for a distance of 123.21 feet to an iron stake found
- N 34° 50' E for a distance of 121.67 feet to the PLACE OF BEGINNING and containing 14.265 acres of land, more or less.

ANTHONY RICHARDSON  
WAS: 40-1-1984  
PAGE 08 OF 09  
SUBMITTED BY: J. D. MURPHY

EXHIBIT "A"



AUSTIN, TEXAS 78767-8828  
P. O. BOX 1088  
DEPT. OF LAW  
CITY OF AUSTIN

PLEASE RETURN TO:

**FILED**

1987 FEB -6 PM 2:56

COUNTY CLERK  
TRAVIS COUNTY, TEXAS

STATE OF TEXAS COUNTY OF TRAVIS  
I hereby certify that this instrument was FILED on  
the date and at the time stamped herein by me and  
was duly RECORDED, in the Volume and Page of the  
named RECORDS of Travis County, Texas as

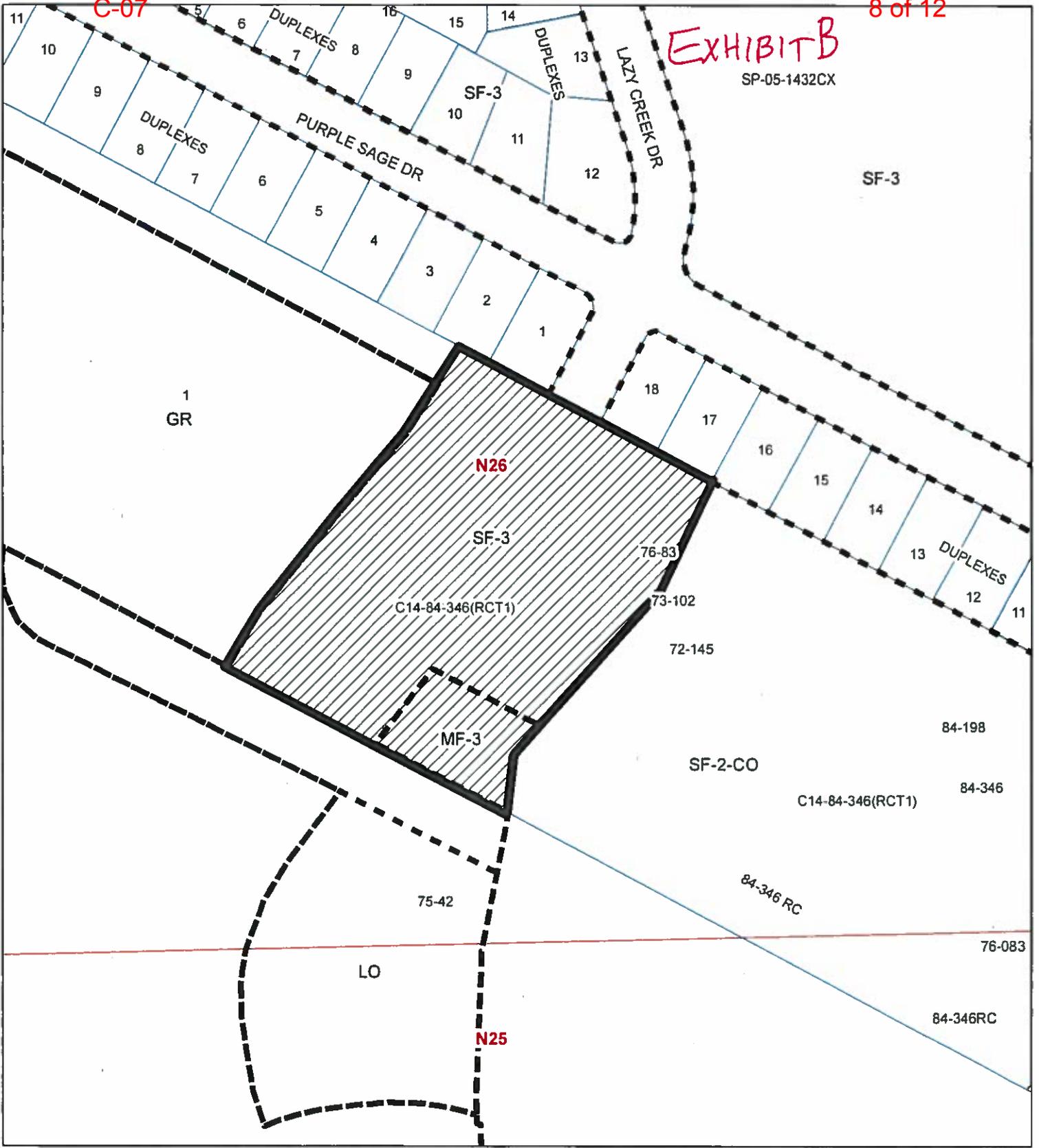
FEB 6 1987



COUNTY CLERK  
TRAVIS COUNTY, TEXAS

EXHIBIT B

SP-05-1432CX



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

ZONING CASE#: C14-84-346 (RCT)1

MANAGER: HEATHER CHAFFIN



1" = 150'

This map has been produced by the Communications Technology Management Dept. on behalf of the Planning Development Review Dept. for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

EXHIBIT C

**ALICE GLASCO CONSULTING**  
3571 Far West Blvd., PMB 61  
Austin, Texas 78731  
512-231-8110 Office

January 11, 2018

Mr. Greg Guernsey, Director  
Planning and Zoning Department  
505 Barton Spring Road, Suite 500  
Austin, Texas 78704

RE: Restrictive Covenant Termination - C14-84-346(RCT1)

Dear Greg:

I am representing 3S&D Interests (David Kalisz) as it relates to the termination of this 1984 restrictive covenant. My client has the subject property under contract with the intent of developing multifamily family housing.

**Background:**

Under zoning case number C14-84-346 (ordinance no. 870101-O), the area that was rezoned from SF-3 to MF-3 comprised 2.29 acres. However, the recorded restrictive covenant covered 24.24 acres. Two restrictive covenants were recorded – document 10094, page 0938 covers lots 1-7, of Block A, lots 1-7 of Block B, and lots 1-28 of Block C of the Northeast Territory Subdivision; while document 10094, page 0946 covers lots 8-20.

Both restrictive covenants describe the lots as being found in **final plat number C8-84.158.1(85)**, which was never recorded and therefore expired according to city records. My client intends to purchase **ONLY 3.79 acres out of the 24.24 acres described in the recorded restrictive covenant.**

On February 12, 2015, a restrictive covenant for 10.49 acres, under case number C14-84-346(RCA1), was amended by the City Council to remove all restrictions called out in the document.

The conditions listed in the original restrictive covenant are as follows:

1. Lots 1-7 of Block A, lots 1-7 of Block B, and lots 1-28 of Block C of the Northeast Territory Subdivision, shall contain one duplex on each lot.

Mr. Greg Guernsey  
Restrictive Covenant Termination - C14-84-346(RCT1)

2. The street identified as "Durango Pass" on the Northeast Territory Subdivision, plat, C8-14-84-158.1(85) shall be completed prior to construction of the duplexes mentioned in condition 1 above.
3. Each of the lots mentioned in condition 1 above, (Lots 1-7 in Block A, Lots 1-7 in Block B, and Lots 11-28 in Block C) shall be sodded in its entirety only with St. Augustine grass; each of these lots shall be landscaped with two(2) trees and eight (8) shrubs.

**Justification Restrictive Covenant Termination**

- The proposed use is multifamily housing, not duplexes.
- All future development will be required to comply with applicable development regulations and standards, which include subdivision and landscaping requirements.

Please let me know if you have any questions or need additional information.

Sincerely,

Alice Glasco, President  
AG Consulting

Cc: David Kalisz  
Heather Chaffin, Zoning Planner

Attachments

EXHIBIT D

**LBJ Neighborhood Association**

February 10, 2018

Dear Mayor Adler, Mayor Pro-Tem Tovo, Council Members and  
Zoning and Platting Commission Members

Re: Loyola Landing

On Thursday, February 8<sup>th</sup>, 2018, Ms. Glasco attended the LBJ Neighborhood Association meeting to give a presentation about a rezoning request and five restrictive covenant termination applications for 6651 Ed Bluestein Blvd. and 5601 Durango Pass. The LBJ Neighborhood Association supports the applicant's zoning change request and restrictive covenant terminations as follows:

**Rezoning Case no. C14-2018-0006:**

**Tract 1:** from GR/LO/MF-3/SF-3 to GR-MU

**Tract 2:** from GR to CS-MU

**Lazy Creek Road Extension:**

We understand that the City's transportation staff is requiring the extension of Lazy Creek Drive as a condition of rezoning. Since we, as residents, cannot determine what the pros and cons are of extending Lazy Creek Drive to Ed Bluestein Blvd. at this time, the LBJ Neighborhood Association would like to request that the consideration of whether to extend Lazy Creek Drive be deferred to the next stage of development when the developer will have a site plan and a Traffic Impact Analysis submitted to the city.

We are concerned that extending Lazy Creek Drive would encourage drivers from US Highway 290 East to cut through our neighborhoods. Therefore, waiting until the site development stage to look at whether the extension of Lazy Creek Drive makes sense will help the residents of Crystal Brook, Las Cimas, and Northridge determine what the implications are of extending this road to Ed Bluestein Blvd.

Mayor Adler, Mayor Pro-Tem Tovo, Council Members and  
Zoning and Platting Commission Members

Re: Loyola Landing  
Page 2

**Termination of Restrictive Covenants Cases:**

1. C14-84-346 (RCT1)
2. C14-84-346 (RCT2)
3. C14-76-083 (RCA2)
4. C14-75-042 (RCT1)
5. C14-75-042 (RCT2)

We support the termination of the five restrictive covenants because we believe any proposed development should be required to comply with current city regulations. Please feel free to contact me at 512-426-1622 should you have any questions.

Sincerely,

2/10/2018

X Jack Nottingham

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Jack Nottingham  
V/P

Jack J. Nottingham, Vice President  
LBJ Neighborhood Association