



March 28, 2018

**VIA EMAIL:** [REDACTED]

Robert Kleeman  
Sneed, Vine & Perry  
900 Congress Avenue, Suite 300  
Austin, Texas 78701

**Re: LifeAustin Church, the Hill Country Estates Home Owners Association and the Covered Bridge Property Owners Association**

Dear Robert:

The purpose of this letter is to invoke Paragraph 6d of the Agreement Regarding the Use of LifeAustin Property and LifeAustin Amphitheatre, dated December 12, 2016 (“the Agreement”). As you know, the Church has been working diligently to complete the Sound Mitigation Improvements by the agreed deadline of April 4, 2018. Despite making every effort to complete installation of the Sound Mitigation Improvements by the deadline, the Church will be unable to do so due to force majeure—circumstances beyond its control related to construction delays.

The only Sound Mitigation Improvement that remains to be installed is the West Sound Screen. The Church had anticipated delivery of the West Sound Screen louvers from the manufacturer this week. Yesterday, the Church learned that they will not be available for shipment until April 4, 2018. While the fabrication of the louvers is complete, the manufacturer has been unable to complete painting of the louvers. Due to this manufacturer delay, over which the Church had no control, the Church now anticipates delivery of the louvers on April 6, 2018. Once the Church has received the West Sound Screen Louvers, they estimate three days for installation. The Church is committed to completing installation of the sound mitigation measures as quickly as is reasonably possible, given the manufacturing delay.

Again, this delay is beyond the Church’s control, despite their tireless attempt to complete construction and installation of the Sound Mitigation Improvements on time. As such, the Church is invoking the force majeure provision of the Agreement. *See* Agreement ¶ 6d. The Agreement contemplates extensions of the deadline to complete the Sound Mitigation Improvements for force majeure. For purposes of the Agreement, “force majeure” includes “delays . . . for the purposes of . . . construction.” Agreement ¶ 2i.

Obviously, this development is disappointing to our respective clients. All parties had hoped that the appeals currently pending before the Austin Board of Adjustment could be



March 28, 2018  
Page 2

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dismissed at the upcoming meeting on April 9, 2018. It now seems unavoidable that we must ask for one more postponement.

It has also come to my attention that you would like to address the Board of Adjustment regarding the City of Austin's CodeNext project, in the context of assisting the Board of Adjustment in offering comments to the City of Austin on certain portions of the City Code that may be rewritten. To be clear, we see any testimony you might offer to the Board of Adjustments on the CodeNext project as unrelated to your clients' currently pending appeals regarding the Church's Amphitheatre. The parties have reached a settlement agreement and are continuing to operate according to the terms of that settlement agreement. We trust that you have no desire to put the settlement agreement in jeopardy. Further, we do not believe that anything you might say to the Board of Adjustment would be binding on the Board of Adjustment, the City of Austin, or a court of law. For these reasons, the Church has no issue with you offering your comments to the Board of Adjustment regarding the CodeNext project.

In light of these circumstances, the Church makes the following proposal:

1. Your clients accept the Church's assertion of force majeure, subject to the expectation that the West Sound Screen louvers will be delivered to the Church on or before April 11, 2018 and with the understanding that the Church will diligently pursue completion of the sound mitigation measures as quickly as is reasonably possible under the circumstances, subject to any further delays for force majeure that may arise;
2. The parties agree to postpone the appeals currently pending before the Board of Adjustment to the May 14, 2018 Board of Adjustment meeting; and
3. Council for the Church will notify Board of Adjustment staff that it has no objection to your public presentation regarding CodeNext related issues, with the understanding that it is not your intent to relitigate issues resolved by the Agreement or seek any ruling in your favor with respect to your currently pending appeals related to the Church's use of the Amphitheatre, dog park and disk golf course.

If this proposal is agreeable to your client, please sign below where indicated, return your signature to me, and this letter can serve as our Rule 11 agreement. Please do not hesitate to call Nicole or me if you have any questions regarding this letter or the Church's construction progress.

Sincerely,

A handwritten signature in black ink, appearing to read 'Geoffrey D. Weisbart', written over a horizontal line.

Geoffrey D. Weisbart



March 28, 2018

Page 3

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Agreed:

A handwritten signature in cursive script that reads 'Robert Kleeman'.

Robert Kleeman

- c: Steve Metcalfe (*Via Email* – [REDACTED])
- Michele Rogerson Lynch (*Via Email* – [REDACTED])
- Nicole LeFave (*Firm*)

**From:** [REDACTED]  
**Subject:** RE: C15-2015-0147 and C15-2015-0168  
**Date:** Tuesday, April 03, 2018 12:33:54 PM  
**Attachments:** [image001.png](#)

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Leane:

This email will confirm the Appellants are in agreement with postponing the BOA hearing on the above referenced cases to the May BOA meeting.

Please let me know if you have any questions.

Thanks.

Robert Kleeman  
Sneed, Vine & Perry, P.C.  
900 Congress Avenue, Suite 300  
Austin, Texas 78701  
(512) 476-6955 – main  
(512) 494-3135 - direct  
(512) 476-1825 – fax

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**From:** [REDACTED]  
**Sent:** Tuesday, April 3, 2018 12:31 PM  
**To:** Heldenfels, Leane <Leane.Heldenfels@austintexas.gov>  
**Cc:** [REDACTED]  
Blair [REDACTED]  
[REDACTED]-2015-0168

Dear Leane:

The Church and Mr. Kleeman are jointly requesting that the appeals referenced above be postponed to the May 14, 2018 Board of Adjustment hearing. The Church is in the final stages of installing the proposed sound mitigation improvements and needs additional time to complete installation. We believe that we will have everything installed by the May meeting. For the Board's reference, I have attached photos reflecting the Church's progress. All that remains is the installation of louvers on the west sound wall. We have had manufacturer-caused delays in receiving the louvers, but hope to have them by next week's meeting. I will be in attendance on Monday night to answer any questions the Board Members might have.

Additionally, it has been brought to our attention that Mr. Kleeman would like to address the BOA regarding CodeNext and that certain BOA Members feel that this is inappropriate due to the pending appeals. The Church is unopposed to Mr. Kleeman addressing the BOA regarding CodeNext issues. It is our understanding that Mr. Kleeman is not seeking to relitigate issues that have been resolved by binding settlement agreement between the Church and his clients or to seek any ruling in his favor with respect to the above-referenced appeals.

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

**NICOLE LEFAVE**

direct 512.652.5789 toll-free 888.844.8441 fax 512.682.2074

 **WEISBART SPRINGER HAYES LLP**

212 Lavaca St., Suite 200, Austin, TX 78701

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**From:** [REDACTED]  
**To:** [Heldenfels, Leane](#)  
**Cc:** [REDACTED]  
**Subject:** C15-2015-0147 and C15-2015-0168  
**Date:** Tuesday, April 03, 2018 12:31:37 PM  
**Attachments:** [image001.png](#)

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Dear Leane:

The Church and Mr. Kleeman are jointly requesting that the appeals referenced above be postponed to the May 14, 2018 Board of Adjustment hearing. The Church is in the final stages of installing the proposed sound mitigation improvements and needs additional time to complete installation. We believe that we will have everything installed by the May meeting. For the Board's reference, I have attached photos reflecting the Church's progress. All that remains is the installation of louvers on the west sound wall. We have had manufacturer-caused delays in receiving the louvers, but hope to have them by next week's meeting. I will be in attendance on Monday night to answer any questions the Board Members might have.

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

**NICOLE LEFAVE**

direct 512.652.5789 toll-free 888.844.8441 fax 512.682.2074  
[REDACTED]



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**From:** [REDACTED]  
**Subject:** RE: Request from BOA chair  
**Date:** Tuesday, April 03, 2018 11:52:56 AM  
**Attachments:** [image001.png](#)  
[Rule 11 Agreement 03292018.pdf](#)

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Leane:

Attached is a copy of the letter agreement between the appellants and Life Austin regarding postponing the cases to the May BOA hearing.

I think the letter is self-explanatory but let me know if you have any questions.

I will check with Life Austin's counsel to see when they intend to send the postponement request to you.

Robert Kleeman  
Sneed, Vine & Perry, P.C.  
900 Congress Avenue, Suite 300  
Austin, Texas 78701  
(512) 476-6955 – main  
(512) 494-3135 - direct  
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**From:** Heldenfels, Leane <Leane.Heldenfels@austintexas.gov>  
**Sent:** Tuesday, April 3, 2018 11:15 AM  
**To:** [REDACTED]  
**Subject:** Request from BOA chair

Hi Mr. Kleeman –if you have the letter referred to by the Chair in message below, can you provide in an reply email and I'll include it in the Board's late back up for Monday's hearing.

Also, if you're ready to withdraw the pending cases a separate email with that request can also go in the late back up if received by 10am Monday (sorry if you've already sent this, I'm working my way through emails after having been out a few days helping my mom at hospital – recovering from hip surgery.....can't I press pause on the aging button?)

Thanks –

**Leane Heldenfels**

*Planner Senior – Board of Adjustment Liaison*

City of Austin Development Services Department

One Texas Center, 505 Barton Springs Road, 1st Floor, Development Assistance Center

Walk-in hours 9a-12p M-F

Office: 512.974.2202 Cell: 512.567.0106 (*personal, for meeting day & after hours emergency use only*)



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**From:** William Burkhardt  
**Sent:** Monday, April 02, 2018 10:40 AM  
**To:** Heldenfels, Leane  
**Subject:** Kleeman letter

Hi Leane –

I'm told Robert Kleeman has a letter from Life Austin Church authorizing him to speak regarding our New Business item A0-2, and I'd like it in the backup for the item should objections be raised by any Board member – could you make contact with him and be sure it's included, please?

Thank you!

William