

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-86-015(RCT) – Westminster

DISTRICT: 10

EXISTING ZONING: CS-MU-CO

ADDRESS: 4100 Jackson Avenue

SITE AREA: 0.1999 acres (8,707 square feet)

PROPERTY OWNER: Westminster Manor Health Facilities Corp (Charles Borst)

AGENT: Land Use Solutions, LLC (Michele Haussmann)

CASE MANAGER: Wendy Rhoades (512-974-7719, wendy.rhoades@austintexas.gov)

STAFF RECOMMENDATION:

Staff recommends granting a Termination of the Restrictive Covenant.

ZONING AND PLATTING COMMISSION ACTION / RECOMMENDATION:

September 4, 2019:

CITY COUNCIL ACTION:

October 3, 2019:

RESTRICTIVE COVENANT TERMINATION RECORDING NUMBER:

ISSUES:

None at this time.

CASE MANAGER COMMENTS:

The proposed Restrictive Covenant Termination area is comprised of a 0.1999 acre tract that contains a portion of the Westminster Manor facility and driveway, and was rezoned to the limited office (LO) district in 1986. The rezoning case included a public Restrictive Covenant that limited use of this tract to vehicular parking. At the time, the City's zoning map showed a planned extension of Mueller Avenue through the Westminster property to connect MoPac Expressway with Bull Creek Road. However, the Mueller Ave right-of-way does not exist and the road was never constructed. *Please refer to Exhibits A (Zoning Map), A-1 (Aerial View), B (1986 Rezoning Ordinance and Restrictive Covenant) and C (Applicant's Correspondence).*

A 2009 site plan review for expansion of the facility did not identify the recorded Restrictive Covenant that limited use of this tract. However, the 2019 site plan that is currently in

process for an expansion of the facility on its north side identified the applicable Restrictive Covenant through a title search. The Applicant proposes to terminate the Restrictive Covenant in order to resolve the issue between the improvements on the property and the limitation of vehicular parking.

BASIS OF RECOMMENDATION:

Staff supports the Termination request. The Restrictive Covenant was created in 1986 which showed a planned extension of a roadway that was subsequently not dedicated as right-of-way or constructed. In addition, MoPac Expressway is a limited access highway and there is not an existing or planned off-ramp at this location. The area covered by the Restrictive Covenant contains a portion of an existing building and an adjacent private driveway.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	CS-MU-CO	Congregate living facility (Retirement Housing)
<i>North</i>	CS-MU-CO	Congregate living facility
<i>South</i>	CS-MU-CO	Congregate living facility
<i>East</i>	CS-MU-CO	Congregate living facility
<i>West</i>	Not Applicable	Northbound MoPac Expressway

AREA STUDY: Not Applicable

TIA: Is not required

WATERSHEDS: Johnson Creek; Shoal Creek – Urban

CAPITOL VIEW CORRIDOR: No

SCENIC ROADWAY: Yes, MoPac Expressway

SCHOOLS:

Bryker Woods Elementary School

O. Henry Middle School

Austin High School

NEIGHBORHOOD ORGANIZATIONS:

63 – Ridgelea Neighborhood Association

105 – Highland Park West Balcones Area Neighborhood Association

120 – Brentwood Neighborhood Association

185 – Oakmont Heights Neighborhood Association

283 – North Austin Neighborhood Alliance

384 – Save Barton Creek Association

511 – Austin Neighborhoods Council

677 – Westminster Manor Residents' Association

742 – Austin Independent School District

1363 – SEL Texas

1424 – Preservation Austin

1497 – Shoal Creek Conservancy

1528 – Bike Austin

1530 – Friends of Austin Neighborhoods

1532 – Bull Creek Road Coalition

1550 – Homeless Neighborhood Association

1552 – Friends of the Grove

1596 – TNR BCP – Travis County Natural Resources

1616 – Neighborhood Empowerment Foundation

AREA CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-99-0080 – Congregation Agudas Achim – 4200 Jackson Ave	LO and SF-3 to GO-MU-CO	06-15-1999 – Apvd staff rec of GO- MU-CO	09-09-1999 – Apvd GO-MU-CO w/CO for 2,000 trips/day and list of prohibited uses
C814-2015-0074 – The Grove at Shoal Creek Planned Unit Development (PUD) – 4205 Bull Creek Rd	Unzoned to Planned Unit Development	07-14-2016 – Apvd PUD, with conditions	12-15-2016 – Apvd PUD zoning, with amendments

RELATED CASES:

The subject Restrictive Covenant Termination area and the approximate 9 acre remainder of the Westminster Manor facility received CS-MU-CO zoning on March 28, 2019 (City File C14-2018-0111, Ord. 20190328-069). The Conditional Overlay is for a list of prohibited uses and development standards for minimum setbacks, maximum building coverage (60%) and maximum impervious cover (80%).

The northern portion of the property was rezoned from SF-3 and LO to GO-MU-CO in 1999 (C14-99-0080). The conditional overlay was for a set of prohibited uses, and a limit of 2,000 vehicle trips per day

EXISTING STREET CHARACTERISTICS:

Street	ROW	Pavement	Classification	Sidewalks	Bike Route	Capital Metro (within ¼ mile)
Bull Creek Drive	55 feet	40 feet	Collector	Yes	Yes, bike lane	Yes
Jackson Avenue	40-50 feet	30 feet	Collector	Yes	No	Yes
MoPac / Loop 1	220 feet	175 feet	Highway	No	Yes, wide shoulder	No



Created: 7/30/2019

$$1'' = 400'$$

MF-4

SF-3

NMOPAC EXPY SB

C14-86-015(RCT)

H26

CS-MU-CO

JESSIE HEIGHTS DR
PUD

BULL CREEK RD

JACKSON AVE

LO

SF-3

W 42ND ST

SF-3

UNZ

Copyright nearmap 2015

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SUBJECT TRACT



ZONING BOUNDARY



PENDING CASE



CREEK BUFFER

1" = 150'

WESTMINSTER

Exhibit A - 1

ZONING CASE#: C14-86-015(RCT)
LOCATION: 4100 JACKSON AVE.
SUBJECT AREA: 0.1999 Acres
GRID: H26
MANAGER: Wendy Rhoades



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.

CITY OF AUSTIN, TEXAS

ORDINANCE NO. 86 0403-M

JUL 01 1986

AN ORDINANCE ORDERING A REZONING AND CHANGING THE ZONING MAP ACCOMPANYING CHAPTER 13-2A OF THE AUSTIN CITY CODE OF 1981 AS FOLLOWS: 0.1999 OF ONE ACRE OF LAND, LOCALLY KNOWN AS 4300 BULL CREEK, FROM "SF-3" FAMILY RESIDENCE (LARGE LOT) TO "LO" LIMITED OFFICE; SAID PROPERTY BEING LOCATED IN AUSTIN, TRAVIS COUNTY, TEXAS; SUSPENDING THE RULE REQUIRING THE READING OF ORDINANCES ON THREE SEPARATE DAYS; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. CHAPTER 13-2A of the Austin City Code of 1981 is hereby amended to change the base zoning district from "SF-3" Family Residence (Large Lot) to "LO" Limited Office on the property described in File C14-86-015, to-wit:

A tract of land containing 0.1999 of one acre of land, same being a portion of that certain tract of land described in a deed to Congregation Agudas Achim of record in Volume 1949, Page 191, Deed Records of Travis County, Texas and a portion of vacated Mueller Drive as said drive is vacated in Volume 4833, Page 1141, Deed Records of Travis County, Texas; said 0.1999 of one acre of land being more particularly described in Exhibit "A", attached hereto and incorporated herein for all purposes,

locally known as 4300 Bull Creek in the City of Austin, Travis County, Texas.


PART 2. It is hereby ordered that the Zoning Map accompanying Chapter 13-2A of the Austin City Code of 1981 and made a part thereof shall be changed so as to record the change ordered in this ordinance.

PART 3. WHEREAS, an emergency is apparent for the immediate preservation of order, health, safety and general welfare of the public, which emergency requires the suspension of the rule providing for the reading of an ordinance on three separate days, and requires that this ordinance become effective immediately upon its passage; therefore, the rule requiring the reading on three separate days is hereby suspended and this ordinance shall become effective immediately upon its passage as provided by the Charter of the City of Austin.

PASSED AND APPROVED

§
§
§
§

April 3, 1986


Frank C. Cooksey
Mayor

APPROVED

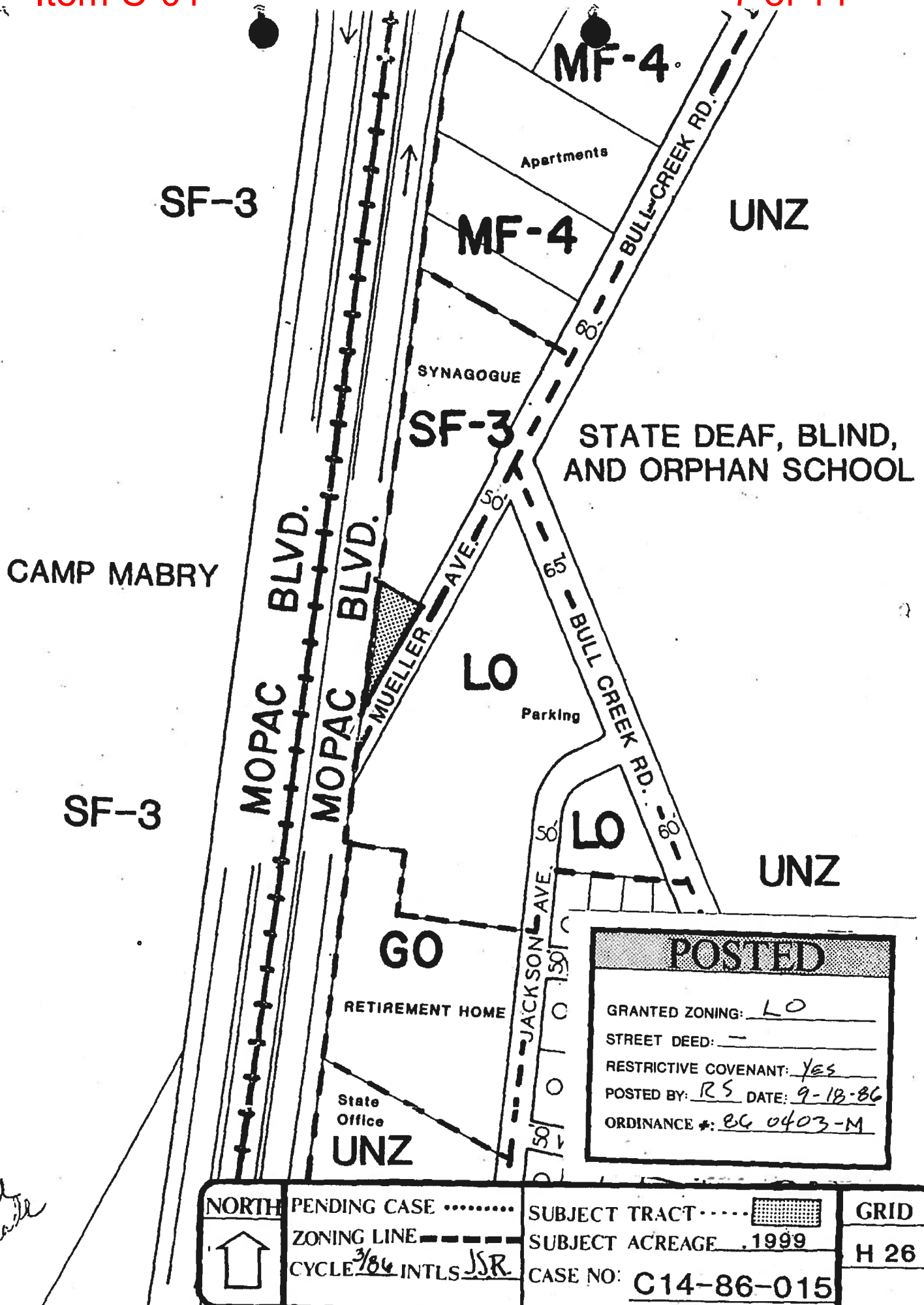

Paul C. Isham
City Attorney

ATTEST:


James E. Aldridge
City Clerk

SJS:saf

EXHIBIT B-1986 ZONING ORDINANCE
AND RESTRICTIVE COVENANT



C14-86-015

04 07 2330

RESTRICTIVE COVENANT

STATE OF TEXAS §
 §
 COUNTY OF TRAVIS §

WHEREAS, CONGREGATION AGUDAS ACHIM, County of Travis and State of Texas, is the owner of the following described property, to-wit:

A TRACT OF LAND CONTAINING 0.1999 OF ONE ACRE OF LAND, SAME BEGINNING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO CONGREGATION AGUDAS ACHIM OF RECORD IN VOLUME 1949, PAGE 191, DEED RECORDS OF TRAVIS COUNTY, TEXAS AND A PORTION OF VACATED MUELLER DRIVE OF SAID DRIVE IS VACATED IN VOLUME 4833, PAGE 1141, DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 0.1999 OF ONE ACRE OF LAND SURVEYED BY MCGRAY & MCGRAY LAND SURVEYORS, INC. AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 5/8 inch iron rod found at the most southerly point of this tract, same being in the east right-of-way line of Mopac Expressway, same also being an angle point in the west line of Lot, Presbyterian Addition 2, a subdivision of record in Book 75, Page 345, same also being in the centerline of said vacated Mueller Drive;

THENCE, with the west line of this tract, same being the west line of the remaining portion of said Congregation Agudas Achim tract (1949/191), same also being the east line of Mopac Expressway and crossing a portion of said vacated Mueller Drive, N07°45'48"E 221.64 feet to a 1/2 inch iron rod set at the most northerly corner of this tract;

THENCE, crossing said Congregation Agudas Achim tract and a portion of said vacated Mueller Drive with the northeast line of this tract, S59°56'26"E 84.90 feet to a 1 inch iron pipe found at the east corner of this tract, same being a point in the centerline of said vacated Mueller Drive, same also being the north corner of said Lot 1 and the west corner of that certain tract of land described in a deed to Congregation Agudas Achim, of record in Volume 5942, Page 1590, Deed Records of Travis County, Texas, same also being the west corner of Lot 2 of said Presbyterian Addition 2;

THENCE, with the southeast line of this tract, same being the northwest line of said Lot 1, same also being the centerline of said vacated Mueller Drive, S30°17'15"W 205.07 feet to the POINT OF BEGINNING.

WHEREAS, the City of Austin and CONGREGATION AGUDAS ACHIM 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, CONGREGATION AGUDAS ACHIM, 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 property 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. The property shall be used for vehicular parking and no other purposes.

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 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 violation 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, whether any violations hereof are 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 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 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 2nd day of ^{April}~~March~~, 1986.

CONGREGATION AGUDAS ACHIM

By: Richard E. Kammerman
RICHARD E. KAMMERMAN
Its Vice President

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

BEFORE ME, the undersigned Notary Public in and for the State of Texas, on this date personally appeared RICHARD E. KAMMERMAN, vPresident of CONGREGATION AGUDAS ACHIM, 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, and in the capacity therein stated.

END GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the day of April, 1986.

NOTARY SEAL

Victoria J. Welsh
Notary Public in and for the
State of Texas

My commission expires: _____

Typed or printed name of
Notary



VICTORIA J. WELSH
MY COMMISSION EXPIRES 10-9-89

FILED

1986 MAY 28 PM 2:34

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

MAY 28 1986



Donna S. Anglin
COUNTY CLERK
TRAVIS COUNTY, TEXAS



LAND USE
SOLUTIONS, LLC

LandUseSolutionsTX.com

Michele Haussmann
PRINCIPAL

July 26, 2019

Mr. Jerry Rusthoven
City of Austin
Planning and Zoning Department
Greg.Guernsey@AustinTexas.gov

VIA HAND DELIVERY

Re: Restrictive Covenant Termination Application – 0.1999 acre portion of a 9.26 acre property located at 4100 Jackson Avenue in the City of Austin (“City”), Travis County, Texas (“Property”).

Dear Mr. Rusthoven:

As representatives of the owner of the above stated Property, Westminster Manor Health Facilities Corporation (“Westminster”), I respectfully submit the enclosed Restrictive Covenant Termination application submittal package. Westminster is requesting a termination of the public Restrictive Covenant recorded in Volume 9712, and Page 771 (“Restrictive Covenant”). A copy of the Restrictive Covenant, Zoning Ordinance 860403-M and exhibits showing the location of the Property are enclosed for your review.

Westminster owns the 9.26-acre property located at 4100 Jackson Avenue where the existing Westminster facility is located. The Westminster facility is a continuing care retirement community, which is defined as Congregate Living in the City Code. The Westminster facility was originally constructed in 1967 and expanded in 2011. In 2019, Westminster received rezoning approval that allows for the planned conversion of the units in the original 1967 building, a small addition to the 2011 expansion building and a new expansion building on the northern portion of the property. This will allow for approximately 50 additional

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Austin, Texas 78701
OFFICE 512.212.4114

10003 NW Military Hwy, Suite 2215
San Antonio, Texas 78231
OFFICE 210.812.2222

EXHIBIT C
APPLICANT'S CORRESPONDENCE



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assisted living/memory care/skilled nursing units and 0-22 additional independent living units for a total of 72 new units. Please see the enclosed site plan exhibit showing the expansion areas in dark blue. A City Site Plan application for the conversion and expansion of the building was submitted April 2019 and currently under review with the City of Austin.

The public Restrictive Covenant to be terminated was recorded as part of a rezoning case approved in 1986, City File Number C14-86-015, when a portion of Westminster's property was rezoned from Family Residence ("SF-3") to Limited Office ("LO"). Please see the attached City zoning map from 1986 showing the location of the Property. The Restrictive Covenant restricts the use of the Property to vehicular parking. There are no records of the purpose of the restriction to vehicular parking only and the City file cannot be located. The City zoning map for case number C14-86-015 shows the proposed Mueller Avenue roadway cutting through Westminster's property to connect Mopac Boulevard to Bull Creek Road. The Mueller Avenue roadway was not constructed. It is possible that the purpose was to not construct buildings close to the roadway. There is no right-of-way and the roadway does not exist.

The Restrictive Covenant document was not included as a related case file in the City records, so it was not available for review during the site plan or rezoning processes over the years. In 2009, the City approved a site plan, City File Number SP-2008-0219C, to allow for the expansion of the Westminster facility that was constructed in 2011. The expansion allowed for a portion of the building and a fire lane to be constructed on the Property. Please see the enclosed aerial photograph showing these built improvements. The termination of the Restrictive Covenant will clear up the conflict between the City approved and built improvements on the Property and the restriction of land use to vehicular parking only.

The council approved the rezoning of the Westminster's property in March of 2019. During the rezoning process, I worked with neighborhood associations in the area and closely with the surrounding Oakmont and Ridgelea neighborhood associations, and I will continue working with them regarding the requested Restrictive Covenant Termination. If community members call regarding the request, I'm happy to answer questions and provide information.



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Please let me know if you have any questions or need additional information. Thank you for your time and assistance with this request.

Respectfully,

Michele Haussmann

Enclosures

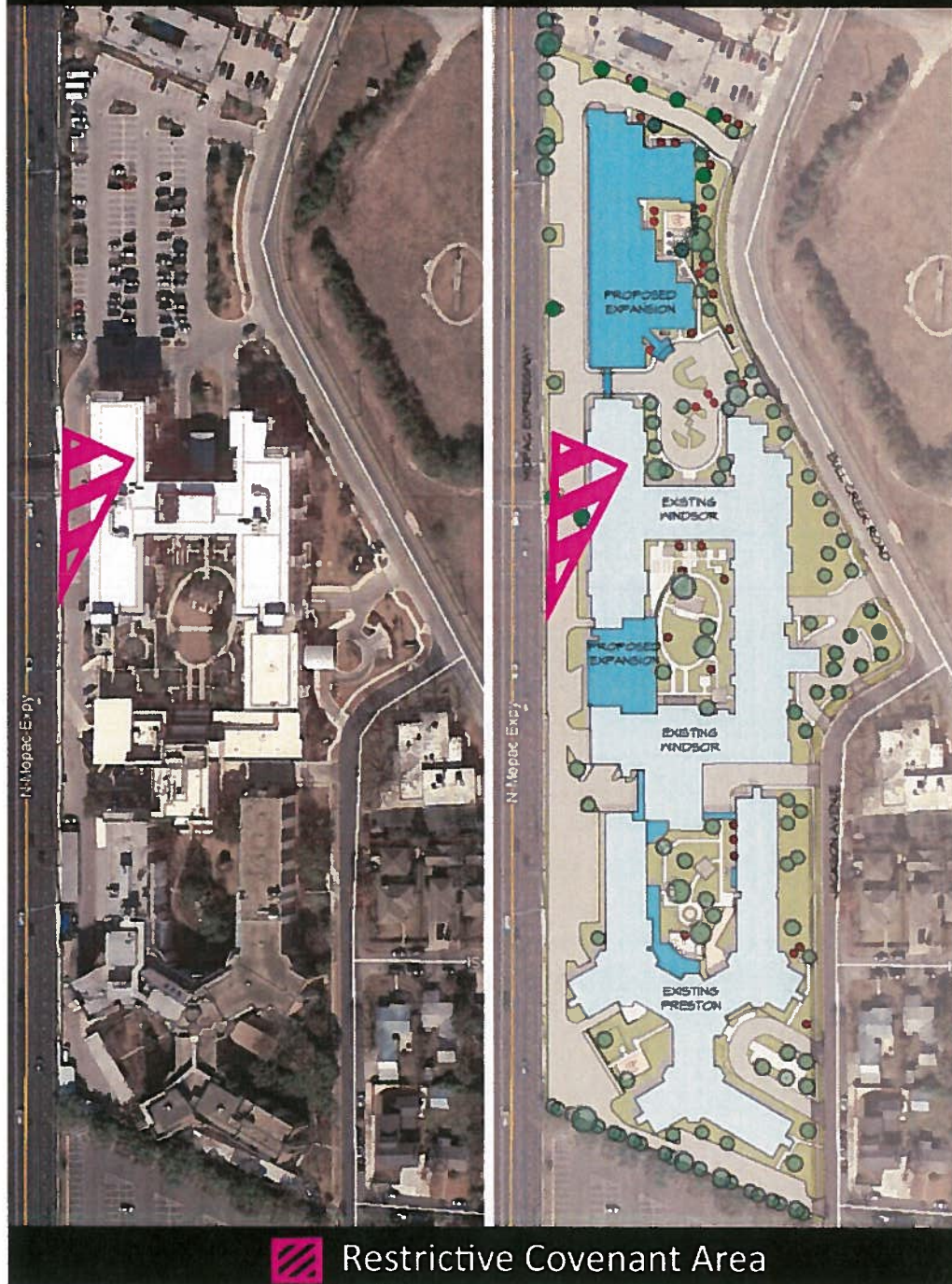
CC: Council Member Alison Alter, *via electronic mail*
Council Member Leslie Pool, *via electronic mail*
Wendy Rhoades, City of Austin, *via electronic mail*
Arten Avakian and Tom Whatley, Oakmont, *via electronic mail*
Steven Hardt, Ridgelea, *via electronic mail*
Charles Borst, Westminster Manor, *via electronic mail*



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Proposed Expansion and Conversion



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