

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-75-126(B)(RCT) – Restrictive Covenant Termination - 6111 F.M. 969

DISTRICT: 1

ADDRESS: 6111 F.M. 969

SITE AREA: 6.10 Acres

PROPERTY OWNERS/APPLICANTS: Masoud Arami, Majid Kamalipour, & Mohammed Arami

AGENT: Drenner Group (Amanda Swor)

CASE MANAGER: Heather Chaffin (512-974-2122, heather.chaffin@austintexas.gov)

STAFF RECOMMENDATION:

Staff supports the Applicant’s request to terminate Restrictive Covenant C14-75-126(B).

For a summary of the basis of staff’s recommendation, see case manager comments on page 2.

PLANNING COMMISSION ACTION / RECOMMENDATION:

October 22, 2019:

CITY COUNCIL ACTION:

November 14, 2019:

ORDINANCE NUMBER:

C14-75-126(B)(RCT)

ISSUES:

There are no issues at this time.

CASE MANAGER COMMENTS:

The subject property is located at the southeast corner of the intersection of F.M. 969 and Ed Bluestein Boulevard. The property is zoned CS-NP and is currently undeveloped. The Applicant proposes terminating a restrictive covenant (RC) that was attached to the subject property as part of zoning case C14-75-126(B). The restrictive covenant established the following conditions:

- “1. That the undersigned, or its successors in title, shall not construct any improvements, except access driveways, landscaping, and a perimeter fence within twenty-five (25) feet of its north property line, being approximately 304 feet in length, which is adjacent to the south right of way of F.M. 969, also known as Martin Luther King Boulevard in the City of Austin, County of Travis, State of Texas.
- 2. Prior to development of said property, a site plan shall be submitted to and approved by the City Council of the City of Austin, Texas.”

Please see Exhibits A, B, and C—Zoning Map, Aerial Exhibit, Restrictive Covenant.

Staff supports termination of the RC. The 25-foot setback is outdated and inconsistent with current CS zoning regulations (a 10-foot setback). Other properties in this area are not subject to similar requirements. The requirement for a Council approved site plan is also contrary to current City Code, which allows for administrative approval of site plans. Terminating the RC will make development regulations on the property consistent with current code and surrounding properties.

Please see Exhibit D – Applicant Letter.

BASIS OF RECOMMENDATION:

- 1. *The proposed zoning should promote consistent and orderly planning.*
The conditions of the 1975 RC are outdated and have been replaced by more appropriate development regulations under current code. In 1975, the City used RCs to attach conditions that would now be attached by conditional overlay or applied administratively at time of site plan. Consequently, the RC clouds the property title and makes regulatory application confusing.
- 2. *Granting of the request should result in an equal treatment of similarly situated properties.*
No other properties in the area have similar RCs. Similarly situated properties are subject to the setbacks established by their base zoning categories.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
Site	LI-NP	Undeveloped
North	CS-MU-CO-NP	F.M. 969, gas station, fast food restaurant
South	LI-NP	Undeveloped, Mixed commercial and limited industrial
East	CS-NP, LI-CO-NP, CS-CO-NP	Light manufacturing
West	CS-CO-NP	Religious assembly

NEIGHBORHOOD PLANNING AREA: MLK-183 NP

C14-75-126(B)(RCT)

TIA: N/A

WATERSHED: Walnut Creek

EXISTING STREET CHARACTERISTICS:

CASE HISTORIES:

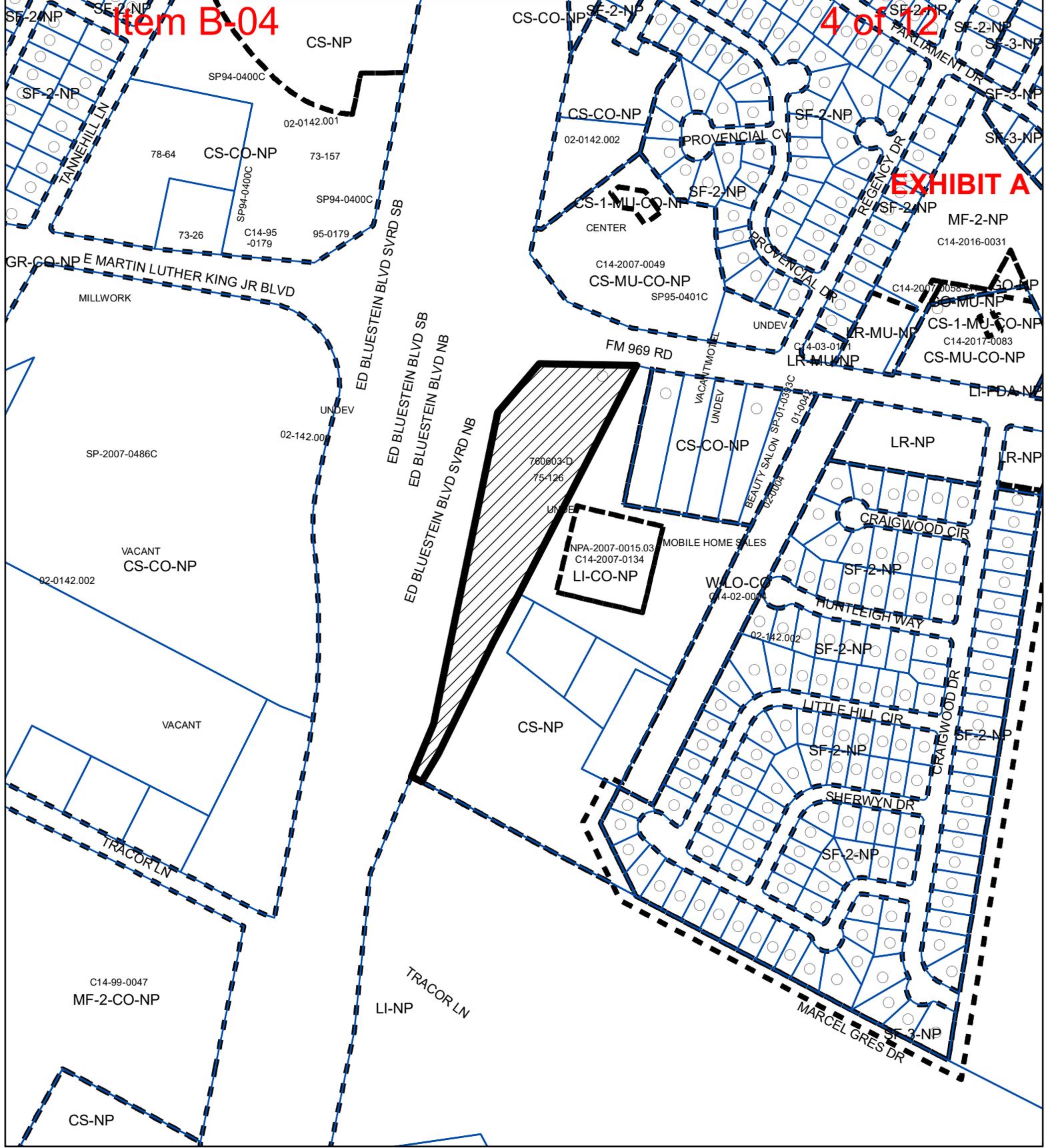
There are no recent rezoning cases in the area. The property was changed from CS to CS-NP at the time of the MLK-183 Neighborhood Planning process.

NEIGHBORHOOD ORGANIZATIONS:

Austin Independent School District	Austin Lost and Found Pets
Austin Neighborhoods Council	Bike Austin
Del Valle Community Coalition	Friends of Austin Neighborhoods
East MLK Combined Neighborhood Plan Contact Team	Friends of Northeast Austin
Homeless Neighborhood Association	Neighbors United for Progress
Neighborhood Empowerment Foundation	Preservation Austin
SELTexas	Sierra Club, Austin Regional Group

INDEX OF EXHIBITS TO FOLLOW

- A: Zoning Map
- B. Aerial Exhibit
- C. Restrictive Covenant
- D. Applicant Letter



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

Restrictive Covenant Termination
ZONING CASE#: C14-75-126(B)(RCT)

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.



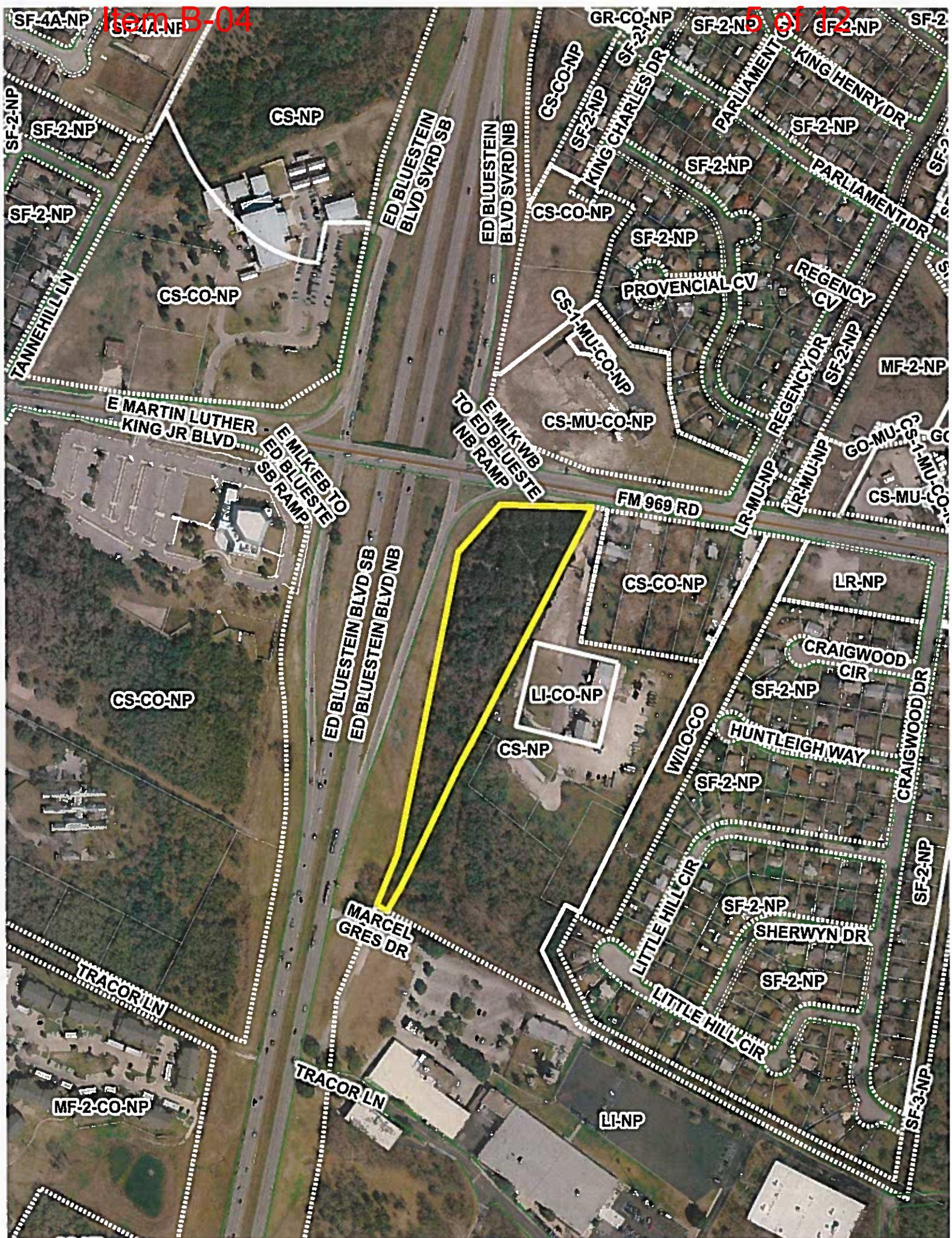


EXHIBIT C

C14-75-126(B) 5,50

STATE OF TEXAS I
COUNTY OF TRAVIS I

AM-1-76-9299 * 5.50

1-31-9941

WHEREAS, the undersigned are the owners of 6.06 acres of land, more or less, out of the J.C. Tannhill League, Survey No. 29 in the City of Austin, County of Travis, more fully described in Exhibit "A" which is attached hereto and made a part hereof for all purposes; and

WHEREAS, the City of Austin and the undersigned have agreed that the property described in Exhibit "A" shall be impressed with certain covenants and restrictions running with the land and desire to set forth such agreement in writing;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, the owners of the property described in Exhibit "A" in the City of Austin, Travis County, Texas, for a full valuable consideration to them in hand paid by the City of Austin, a municipal corporation, the receipt of which is hereby acknowledged, do hereby agree with respect to said property, such agreement to be deemed and considered as a covenant running with the land, and which shall be binding on it, its successors and assigns, as follows, to wit:

1. That the undersigned, or its successors in title, shall not construct any improvements, except access driveways, landscaping, and a perimeter fence within twenty-five (25) feet of its north property line, being approximately 304 feet in length, which is adjacent to the south right of way of F.M. 969, also known as Martin Luther King Boulevard, in the City of Austin, County of Travis, State of Texas.

2. Prior to development of said property, a site plan shall be submitted to and approved by the City Council of the City of Austin, Texas.

3. If any person or persons shall violate or attempt to violate the foregoing agreement and covenant, it shall be

EXHIBIT B

lawful for the City of Austin, a municipal corporation, its successors and assigns, to prosecute proceedings at law or in equity against the person or persons violating or attempting to violate such agreement or covenant, or either to prevent him or them from so doing or to collect damages for such violation.

1-31-9942

4. If any part or provision of the agreement or covenant herein contained shall be declared invalid by a Judge or Court order, the same shall in no wise affect any of the other provisions of this agreement, and such remaining portion of the agreement shall remain in full force and effect.

5. 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.

6. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority vote 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 11th day of May, 1976.

James R. Ross
James R. Ross

Sue Ross Pope
Sue Ross Pope

Dianna Ross Cook
Dianna Ross Cook

ORIGINAL DIM

STATE OF COLORADO I
COUNTY OF E. Paso I

1-31-9943

BEFORE ME, the undersigned authority, on this day personally appeared James R. Ross, 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 11th day of May, 1976.

NOTARY SEAL
My Commission expires March 2, 1980
Vienna M. Fisher
Notary Public in and for
E. Paso County, Colorado

STATE OF TEXAS I
COUNTY OF TARRANT I

BEFORE ME, the undersigned authority, on this day personally appeared Sue Ross Pope, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 19th day of May, 1976.

NOTARY SEAL
CAROL R. SMITH, Notary Public
in and for Tarrant County, Texas
Carol A. Smith
Notary Public in and for
Tarrant County, Texas

STATE OF TEXAS I
COUNTY OF RUSK I

BEFORE ME, the undersigned authority, on this day personally appeared Dianna Ross Cook, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 17 day of May, 1976.

NOTARY SEAL
Ma. Logan
Notary Public in and for
Rusk County, Texas

EXHIBIT "A"

The land that is the subject of the attached covenant is a tract called to contain 6.06 acres more or less and being all of the tract remaining on the east side of U.S. Highway 183, sometimes called the Ed Bluestein Boulevard, out of a tract originally called to contain approximately 49.18 acres more or less surveyed August 28, 1962 by Claude F. Bush, Jr., Registered Public Surveyor No. 202 of the State of Texas and being a part of the tenth tract in Exhibit "A", attached to the Final Judgment in Partition Suit No. 124733 in the 98th District Court of Travis County, Texas, awarded to James R. Ross, et al, in said suit of Judgment dated November 20, 1962, filed of Record in Volume 2542, Pages 305 - 333 of the Deed Records of Travis County, Texas, and consigned to James R. Ross, Zeno C. Ross, Jr., Sue Ross Pope, and Dianna Ross Cook in a deed recorded in Volume 4380, pages 2357, et seq, of the Travis County Deed Records, being designated in said deed as Tract 10, all of which reference is here made, and being the most easterly portion of said tract of 49.18 acres more or less remaining after the taking for the proposed Loop 111, now Highway 183, by the State of Texas of a tract of approximately 16.34 acres more or less out of such 49.18 acre tract, and being a part of the J. C. Tannehill Survey, Abstract 22, Survey 29, Travis County, Texas, more particularly described as follows:

BEGINNING at a point in the former proposed east right of way line of Highway Loop 111, now Highway 183, Travis County, Texas, said point of beginning being N 78°06' W 1.1 feet from a fence corner post on the south right of way line of F.M. Road 969, being former 19th Street extended easterly, at the northeast property corner of the present James R. Ross, et al, tract; and the northeast corner of such 49.18 acre tract;

5472 640

THENCE N 86°27' W 304.14 feet along the said east right of way line of the said proposed Loop 111 to a point 100 feet from and at right angles to Centerline Station 127+00 of said F.M. Road 969;

1-31-9945

THENCE continuing along the east right of way line S 43°05' W 202.49 feet to a point 250.00 feet to the left of and at right angles to Centerline Station 695+00 of said Highway 183 and former proposed Loop 111;

THENCE S 14°04' W 1,000.00 feet with the said east right of way line to a point 250.00 feet to the left of and at right angles to Centerline Station 750+00 of former Loop 111 and now Highway 183;

THENCE continuing S 25°23' W 177.73 feet with the said east right of way line to a point, same being on the south property line of said present James R. Ross, et al, 6.06 acre tract;

THENCE S 59°40' E 37.44 feet to the most south or southeasterly corner of the James R. Ross, et al, tract, to a stake for corner;

THENCE N 29°38' E along the east or easterly property line of the 6.06 acres and of such 49.18 acre tract, 1,473.7 feet to the place of beginning containing 6.06 acres more or less.

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 or the named RECORDS of Travis County, Texas, as Stamped hereon by me, on

JUN 1 1976



Terrie Shapeline
COUNTY CLERK
TRAVIS COUNTY, TEXAS

FILED

JUN 1 8 20 AM '76

Terrie Shapeline
COUNTY CLERK
TRAVIS COUNTY, TEXAS

5472 641

**DRENNER
GROUP**

August 5, 2019

EXHIBIT D

Ms. Denise Lucas
Planning and Zoning Department
City of Austin
505 Barton Springs Road
Austin, TX 78704

Via Hand Delivery

Re: 6111 F.M. 969 – Restrictive covenant termination application for the 6.10-acre piece of property located at 6111 F.M. 969 (also called East Martin Luther King, Jr. Boulevard) in Austin, Travis County, Texas (the “Property”)

Dear Ms. Lucas:

As representatives of the owner of the Property, we respectfully submit the enclosed restrictive covenant termination application package. The project is titled 6111 F.M. 969, consists of 6.10 acres, and is located on the southeast corner of F.M. 969, also called East Martin Luther King, Jr. Boulevard, and U.S. Highway 183 northbound. The Property is currently undeveloped.

The restrictive covenant recorded in the Real Property Records of Travis County, Texas as Volume 5472, Page 637 was put on the Property in 1975 as part of zoning case C14-75-126(B). The restrictive covenant established a building setback line that is inconsistent with existing Subchapter E regulations and stipulated that site plans must be approved by the City Council.

The Property is currently zoned CS-NP, General Commercial Services – Neighborhood Plan. The Property is located within the East MLK Combined Neighborhood Planning Area. The Future Land Use Map shows the Property as Mixed Use. There is no zoning application associated with this restrictive covenant termination application, therefore a Neighborhood Plan Amendment is not required with this rezoning.

The purpose of this restrictive covenant termination is to remove the following regulations that are counter to existing City of Austin code that:

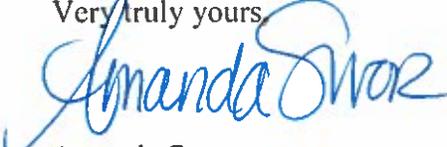
1. Restricts the construction of any improvements, except driveways, landscaping, and a perimeter fence, within 25 feet of the northern boundary fronting F.M. 969 of the Property; and,
2. Requires City Council approval for any site plan submitted to the City of Austin.

Termination of this restrictive covenant will not impact the requirement for the owner to submit a site plan upon development of the Property, nor will it remove any site development regulations established by zoning, watershed, and all other applicable rules of the Land Development Code.

August 5, 2019
Page 2

Please let me know if you or your team members require additional information or have any questions. Thank you for your time and attention to this project.

Very truly yours,

A handwritten signature in blue ink that reads "Amanda Swor". The signature is fluid and cursive, with the first name "Amanda" being larger and more prominent than the last name "Swor".

Amanda Swor

cc: Jerry Rusthoven, Planning and Zoning Review Department (*via electronic delivery*)
Joi Harden, Planning and Zoning Review Department (*via electronic delivery*)
Heather Chaffin, Planning and Zoning Review Department (*via electronic delivery*)