

**RESTRICTIVE COVENANT TERMINATION REVIEW SHEET**

CASE: C14-72-032 (RCT) – 7113 Burnet

DISTRICT: 7

EXISTING ZONING: LO-CO-NP

ADDRESS: 7113, 7115 Burnet Road

SITE AREA: 1.1166 acres (48,638 square feet)

PROPERTY OWNER: CSW Cart, Inc., (Robert O'Farrell)

AGENT: Armbrust & Brown PLLC (Michael J. Gaudini, Michael J. Whellan)

CASE MANAGER: Mark Graham (512)-974-3574, [mark.graham@austintexas.gov](mailto:mark.graham@austintexas.gov)

STAFF RECOMMENDATION:

**Staff recommends granting a Termination of the Restrictive Covenant.**

PLANNING COMMISSION ACTION / RECOMMENDATION:

**June 8, 2021:**

**May 25, 2021: *APPROVED CLOSING THE PUBLIC HEARING AND CONTINUING TO JUNE 8, 2021.***

***[J. SHIEH, G. COX 2<sup>ND</sup>] (10-0) COMMISSIONERS CONNOLLY, FLORES, LLANES PULIDO - ABSENT***

**May 11, 2021: *APPROVED A POSTPONEMENT REQUEST BY THE NEIGHBORHOOD TO MAY 25, 2021, BY CONSENT***

***[G. COX, A. AZHAR 2<sup>ND</sup>] (12-0) CHAIR SHAW - ABSENT***

CITY COUNCIL ACTION:

**To be scheduled**

RESTRICTIVE COVENANT TERMINATION RECORDING NUMBER:

### ISSUES

There are three related land use cases: The Neighborhood Plan Amendment, case NPA-2021-0017.01 to change the FLUM from Commercial to Multi-family residential land use; The Rezoning case C14-2021-0044 requesting MF-6-CO-NP zoning; and this case requesting termination of the Restrictive Covenant that established a 20 foot building setback on the LO-CO-NP zoned tract;

### CASE MANAGER COMMENTS:

The subject Restrictive Covenant is less restrictive than current compatibility standards in the Austin Land Development Code. At the time that the subject property zoning was changed from residential to office in 1973, Restrictive Covenants were used to provide an increased setback between the office and the houses on Hardy Circle. The City has since changed to using a conditional overlay (CO) to make development standards more restrictive through the zoning ordinance instead of Restrictive Covenants.

Applicant is requesting the termination of the Restrictive Covenant which established a twenty-foot building setback from the north property line of the 48,638 square foot tract of land that was rezoned from residential to office in 1973 (Ordinance No. 73 0628-D).

The Restrictive Covenant is recorded in volume 4674, page 2281 of the Deed Records of Travis County, Texas. Paragraph number 1. *“No Building or any part thereof shall be located within twenty (20) feet of the north property line of said property”*. Please refer to Exhibit “C”.

Compatibility Standards in Article 10 (LDC 25-2-1063) apply to the subject site because it is located next to SF-3-NP zoning and the development site is bigger than 20,000 square feet. The minimum setback is 25 feet from SF-5 or more restrictive zoned land and it applies to the new building, the drive aisle and parking lots. There are also requirements for landscape buffering and screening (LDC 25-2-1066) in the area between multi-family buildings and buildings in the SF-5 or more restrictive districts.

### BASIS OF RECOMMENDATION:

Staff supports the Termination request. The Restrictive Covenant was created in 1973 before the City Code had adopted Compatibility Standards. The current Land Development Code, with Compatibility Standards for setbacks, building heights and screening requirements provides better transitions between detached residences and other uses including the proposed multi-family residential use.

### EXISTING ZONING AND LAND USES:

	Zoning	Land Uses
Site	LO-CO-NP	vehicle storage

	Zoning	Land Uses
North	SF-3-NP	detached residences
South	MF-3-NP	Townhouse/Condo Residences: Allendale Condos, The Park at Crestview
East	SF-3-NP	Detached residences
West	CS-1-CO-NP, CS-CO-NP (across Burnet Road) CS, SF-2	Bar/Restaurant, coffee shop, personal services. (Across Burnet Rd) Car rental and sales, personal services, detached residences

NEIGHBORHOOD PLANNING AREA: Crestview/Wooten Combined Neighborhood Plan Ordinance No. 040401-328

TIA: Deferred to site plan.

WATERSHED: Shoal Creek - Urban                      70% Impervious coverage maximum in MF-4  
80% Impervious coverage maximum in MF-6

OVERLAYS: ADU Approximate Area Reduced Parking Neighborhood Planning Areas:  
CRESTVIEW Residential Design Standards: LDC/25-2-Subchapter F

SCHOOLS:

Brentwood Elementary

Lamar Middle

McCallum High

#### NEIGHBORHOOD ORGANIZATIONS

Allandale Neighborhood Association  
Austin Independent School District  
Austin Lost and Found Pets  
Austin Neighborhoods Council  
Bike Austin  
Crestview Neighborhood Assn.  
Crestview Neighborhood Plan Contact Team  
Friends of Austin Neighborhoods

Homeless Neighborhood Association  
NW Austin Neighbors  
Neighborhood Empowerment Foundation  
North Austin Neighborhood Alliance  
SELTexas  
Shoal Creek Conservancy  
Sierra Club, Austin Regional Group

#### AREA CASE HISTORIES:

Number	Request	Commission	City Council
C14-04-0004  The area bounded by Anderson Lane on the north, Lamar Blvd. on the east, Burnet Road on the	Add a NP to the base zoning districts on approximately 650.5 acres of land generally known as the Crestview Neighborhood Plan and to change the base zoning district on 43 tracts of land.	To Grant	Apvd. 04/01/2004 Ord. #040401-328

Number	Request	Commission	City Council
west, Justin Lane on the south.			
C14-2009-0065  The area bounded by Anderson Lane/US Highway 183 on the north, Justin Lane on the south, North Lamar Boulevard on the east and Burnet Road on the west.	Crestview Vertical Mixed Use Bldg (V) Zoning/ Opt-in / Opt-out process. 62.70 Acres. (City Initiated)  Ordinance 20090924-091 is for 29.70 acres. Part 4. Excludes Tract 8 that includes 7113 Burnet Rd.	To Grant	Apvd. 9/24/2009

RELATED CASES:

NPA-2021-0017-01 – Request for Neighborhood Plan Amendment from commercial land use to multifamily residential land use. Neighborhood meeting held March 18, 2021.

C14-2021-0044 – Request to rezone from CS-1-CO-NP, CS-CO-NP, LO-CO-NP to MF-6-CO-NP for multi-family residences.

Cases NPA-2020-0017.01, C14-2020-0016, & C14-72-032(RCT) were reviewed by Planning Commission and City Council in 2020 and withdrawn by Applicant on October 7, 2020.

EXISTING STREET CHARACTERISTICS:

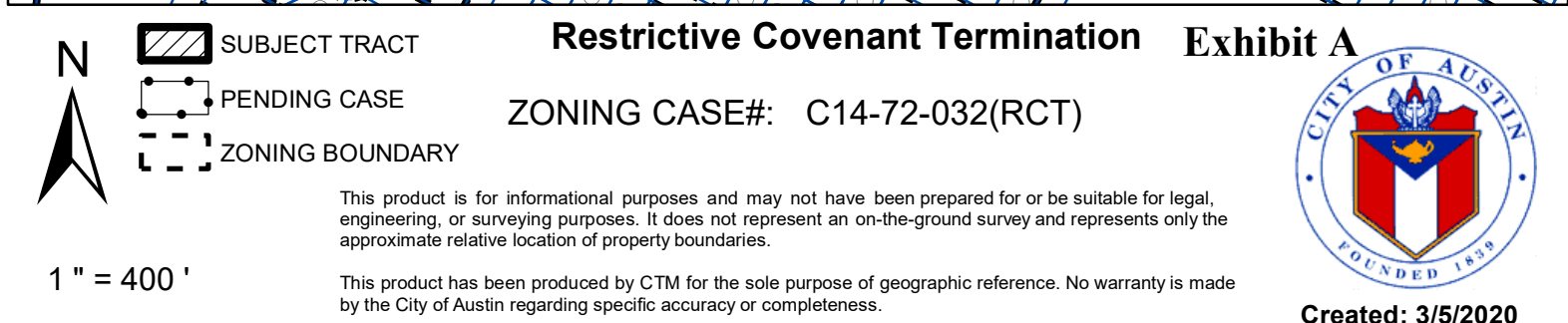
Name	Existing ROW	ASMP Required ROW	Pavement	ASMP Classification	Sidewalks	Bicycle Route	Capital Metro (within ¼ mile)
Burnet Rd.	~122'	120'	55'	Level 4	Yes	Yes	Yes

## INDEX OF EXHIBITS TO FOLLOW

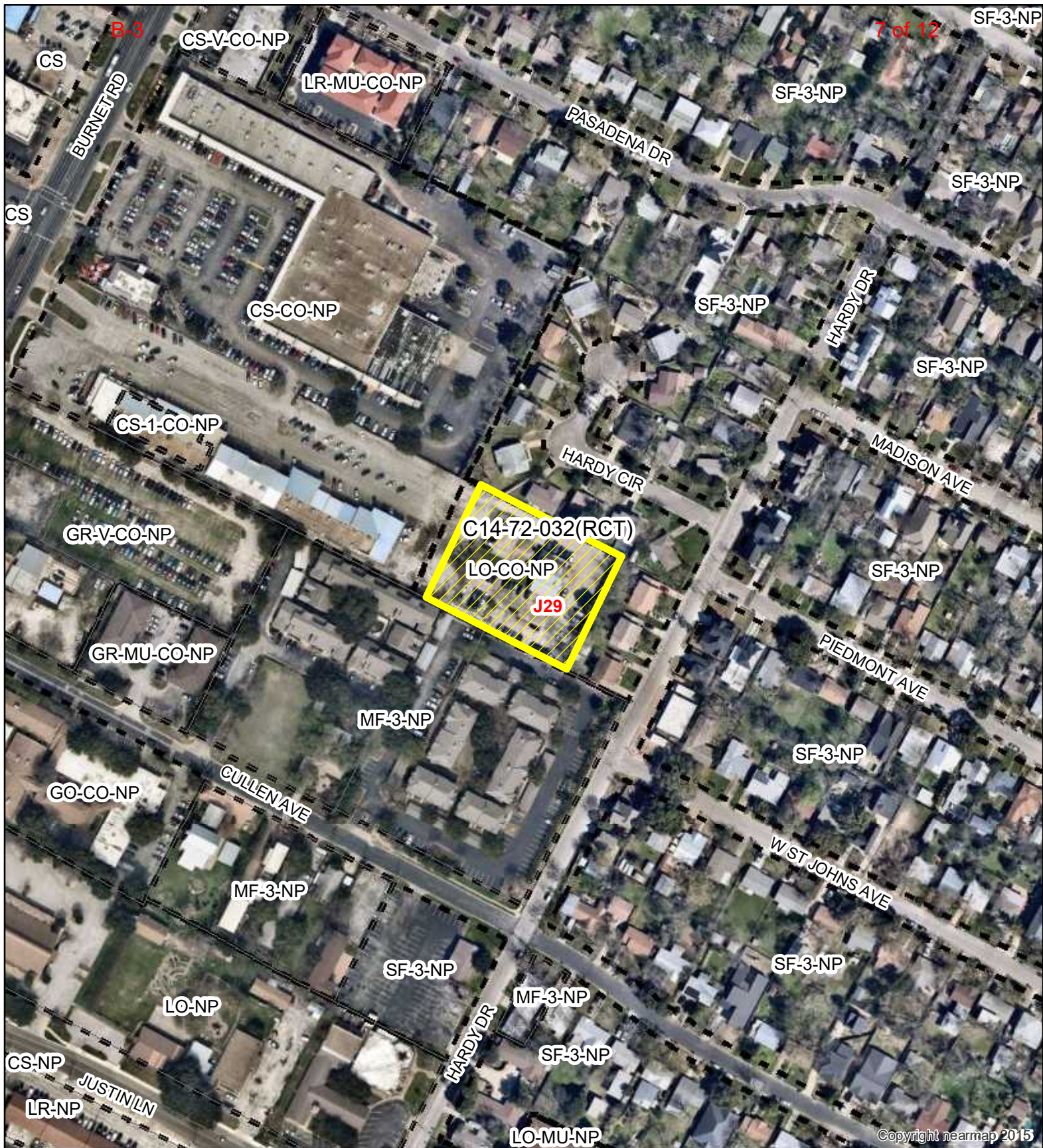
Exhibit A: Zoning Map

Exhibit B: Aerial Map

Exhibit C: Restrictive Covenant







7113 Burnet Rd.

## Exhibit B

ZONING CASE#: C14-72-032(RCT)  
 LOCATION: 7113 Burnet Rd.  
 SUBJECT AREA: ACRES  
 GRID: J29  
 MANAGER: MARK GRAHAM



1" = 200'

- SUBJECT TRACT
- ZONING BOUNDARY
- PENDING CASE
- CREEK BUFFER

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.



4674-2281

Exhibit C

JUL -2-73 1974 \* 5.50

81-0282

THE STATE OF TEXAS    I  
COUNTY OF TRAVIS    I

WHEREAS, Lee Blocker, James K. Eichelberger, Jr., Leon Howard, and Charles Howard, of Travis County, Texas, are the owners of the following described property, to-wit:

All that certain tract, piece or parcel of land, lying and being situated in the County of Travis, State of Texas, described in EXHIBIT "A" attached hereto and made a part hereof for all purposes, to which reference is here made for a more particular description of said property.

WHEREAS, the City of Austin and Lee Blocker, James K. Eichelberger, Jr., Leon Howard, and Charles Howard, 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, Lee Blocker, James K. Eichelberger, Jr., Leon Howard, and Charles Howard, 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, do 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 them, their successors and assigns, as follows, to-wit:

1. No building or any part thereof shall be located within twenty (20) feet of the north property line of said property.
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 violating 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

4674 2281



81-0283

no wise 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 12 day of June, 1973.

Lee Blocker  
LEE BLOCKER

James K. Etchelberger, Jr.  
JAMES K. ETCHELBERGER, JR.

Leon Howard  
LEON HOWARD

Charles Howard  
CHARLES HOWARD

4674 2282

81-0284

THE STATE OF TEXAS    I  
COUNTY OF TRAVIS    I

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared LEE BLOCKER, 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 the 12<sup>th</sup> day of June, 1973.

NOTARY SEAL

William J. Howard  
Notary Public in and for  
Travis County, Texas

THE STATE OF TEXAS    I  
COUNTY OF TRAVIS    I

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared JAMES K. EICHELBERGER, JR., 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 the 12<sup>th</sup> day of June, 1973.

NOTARY SEAL

William J. Howard  
Notary Public in and for  
Travis County, Texas

4674 2283

81-0285

THE STATE OF TEXAS    I  
COUNTY OF TRAVIS    I

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared LEON HOWARD, 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 the 12th day of

June, 1973.

Wanda L. Howard  
Notary Public in and for  
Travis County, Texas

NOTARY SEAL

THE STATE OF TEXAS    I  
COUNTY OF TRAVIS    I

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared CHARLES HOWARD, 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 the 12th day of

June, 1973.

Wanda L. Howard  
Notary Public in and for  
Travis County, Texas

NOTARY SEAL

1674 2284



## CLAUDE F. BUSH, JR.

REGISTERED PUBLIC SURVEYOR

2013 NO. 1-AMM

AUSTIN, TEXAS 78704

PHONE 148-0880

February 9, 1972

81-0286

FIELD NOTES TO 48,638 SQUARE FEET OF LAND OUT OF THE GEORGE W. SPEAR LGE. IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, A PART OF THAT CERTAIN FIVE(5) ACRE TRACT CONVEYED TO RANGER REALTY, INC. BY DEED RECORDED IN VOLUME 3472, PAGE 83 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS:

BEGINNING at a point in the North line of that certain five(5) acre tract of land conveyed to Ranger Realty, Inc. by deed recorded in Volume 3472, Page 83 of the Deed Records of Travis County, Texas, being also in the South line of Lot 2, Gage Subdivision according to the map or plat of said subdivision recorded in the Plat Records of Travis County, Texas, for the Northeast corner of the tract herein described, from which the Northeast corner of the said Ranger Realty, Inc. tract in the West line of Hardy Drive bears S 59 deg. 40'E. 110.0 ft.;

THENCE S 29 deg. 15'W. parallel to the West line of Hardy Drive and the East line of the said Ranger Realty, Inc. tract, 196.2 ft. to a point in the South line of the said Ranger Realty, Inc. tract and the North line of Lot 1 of the Myrtle J. Jenkins Subd. according to the map or plat of said subdivision recorded in the Plat Records of Travis County, Texas, to the Southeast corner of this tract;

THENCE with the South line of the said Ranger Realty, Inc. tract and the North line of said Lot 1, Myrtle J. Jenkins Subd., N 59 deg. 40'W 247.9 ft. to a point for the Southwest corner of this tract;

THENCE N 29 deg. 15'E. parallel to the East line of this tract, 196.2 ft. to a point in the North line of the said Ranger Realty, Inc. tract and the South line of Lot 5 of the Gage Subdivision, for the Northwest corner of this tract;

THENCE with the North line of the said Ranger Realty, Inc. tract and the South line of the said Gage Subdivision, S 59 deg. 40'E. 217.9 ft. to the place of beginning, containing 48,638 square feet of land.

By

*Claude F. Bush, Jr.*  
Claude F. Bush, Jr.

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, as Stamped hereon by me, on

JUL 2 1973



*Don in Shogard*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

FILED  
JUL 2 8 44 AM '73  
*Don in Shogard*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

4674 2285