ZONING CHANGE REVIEW SHEET

<u>CASE</u>: C14-00-2195(RCA) (Formerly known as <u>DISTRICT</u>: 9 C14-00-2195 (RCT)) Waterline

ADDRESS: 92 Red River Street

ZONING FROM: CBD-CURE

TO: Amendment to Restrictive Covenant

SITE AREA: approximately 3.26 acres (approximately 142,005 sq. ft.)

PROPERTY OWNER: Waller Creek Owner, LLC

AGENT: Armbrust & Brown, PLLC (Richard Suttle, Jr.)

CASE MANAGER: Jonathan Tomko (512) 974-1057, jonathan.tomko@austintexas.gov

STAFF RECOMMEDATION:

Staff recommends granting the amendment to the restrictive covenant.

PLANNING COMMISSION ACTION / RECOMMENDATION:

November 14, 2023: Case approved by Planning Commission on consent. Motion by Commissioner Azhar, seconded by Commissioner Maxwell (12-0).

<u>CITY COUNCIL ACTION</u>: December 14, 2023: Case is scheduled to be heard by City Council.

ORDINANCE NUMBER: N/A

ISSUES: N/A

DEPARTMENT COMMENTS:

The applicant is requesting to remove an item pertaining to outdoor amplified music within a restrictive covenant recorded in 2000 (please see Applicant's Request Letter in *Exhibit C*). This covenant places restrictions on the hours in which outdoor amplified music can (please see the Draft Redlined Public Restrictive Covenant in *Exhibit D*). If this restriction is removed outdoor amplified music will be regulated under chapter 9-2 the City Code: *Noise and Amplified Sound*. The standard allowances for amplified sound at this property would be Sunday through Wednesday 10:00 am through 10:30 pm; Thursday 10:00 am through 11:00 pm; Friday and Saturday 10:00 am through midnight.

The staff recommends the applicant's request to delete the conditions of this public restrictive covenant. Since this restrictive covenant was executed and recorded in 2000, the area the property in question is in has changed substantially and has become a thriving entertainment district within Downtown Austin. Staff supports the deletion of this public restrictive covenant because items listed in this public restrictive covenant will now be regulated under chapter 9-2 of the City Code: *Noise and Amplified Sound*.

The applicant agrees with the staff's recommendation.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
Site	CBD-CURE	An approximately 1,000-foot-tall skyscraper, The
		Waterline, is currently under development that will
		include retail, hotel, multifamily and office.
North	CBD	Iron Works BBQ an approximately 3,000 sqft restaurant
		built in 1935 and the Austin Convention Center
South	CBD	The Travis an approximately 50 story high-rise
		multifamily building with approximately 414 units is
		currently under development.
East	CBD and CBD-CURE	The Quincy a 30-story residential building with
		approximately 350 multifamily units and an
		approximately 1.08-acre surface parking lot
West	CBD and CS (across	Lakeside Apartments (HACA) with approximately 164
	Waller Creek)	affordable residential units, built in 1967, and an
		approximately 15,000 sqft vacant industrial building built
		in 1970.

NEIGHBORHOOD PLANNING AREA: Downtown is a not a neighborhood planning area

WATERSHED: Waller Creek Watershed

<u>SCHOOLS</u>: A.I.S.D. Matthews Elementary School O Henry Middle School Austin High School

COMMUNITY REGISTRY LIST:

Austin Independent School District, Austin Lost and Found Pets, Austin Neighborhoods Council, City of Austin Downtown Commission, Downtown Austin Alliance, Downtown Austin Neighborhood Assn. (DANA), Friends of Austin Neighborhoods, Friends of the Emma Barrientos MACC, Greater East Austin Neighborhood Association, Homeless Neighborhood Association, Lower Waller Creek, Neighborhood Empowerment Foundation, Preservation Austin, Rainey Neighborhood Association, Inc., SELTexas, Sierra Club, Austin Regional Group, The Shore Condominium Association, Inc., Waller District Staff Liaison, Waterloo Greenway

Number	Request	Commission	City Council
C14-04-0079	Applicant seeks	09.14.2004 PC:	04.07.2005:
(Rainey Street	rezoning from CS	Approved staff	Approved CBD (7-
Neighborhood	and SF-3 to CBD	recommendation of	0) on 2^{nd} & 3^{rd}
Rezoning Tract B)		CBD (8-0)	readings. Ordinance
			No. 20050407-052
			was approved

AREA CASE HISTORIES:

C14-00-2197 (Waller Creek Zoning)	Applicant seeks rezoning from CS and MF-4 to CBD- CURE.	11.14.2000 PC: Approved staff recommendation of CBD-CURE (8-0)	12.14.2000: Approved CBD- CURE (7-0) on all 3 readings, Ordinance No. 001214-104 was approved on Council Member Thomas' motion, Council Member Griffith's second by a 7-0 vote.
C14-2011-0113 (Block 11– Convention Center Hotel	The applicant is requesting to rezone the property from CBD to CBD- CURE.	10.25.2011 PC: Approved staff recommendation with added conditions of: room limit; Parking developed underground; Great Streets on all 4 sides; That it meets design guidelines; on Com. Mandy Dealey's motion, Com. Saundra Kirk seconded the motion on a vote of 6-0; Com.s Richard Hatfield, Jean Stevens and Dave Anderson was absent.	05.24.2012: Approved Ordinance # 20120524-115 for (CBD-CURE) on consent on CM Spelman's motion, CM Martinez' second on a 7-0 vote, 2nd & 3rd rdgs, 1st rdg on 11- 10-2011 on CM Martinez' motion, CM Riley's second on a 7-0 vote.
C14-79-065(RCT) (Earl M. McClure)	The Applicant is requesting a Restrictive Covenant Termination	09.13.2016 PC: Approved Motion by Commissioner Tom Nuckols, seconded by Commissioner Patricia Seeger to grant staff's recommendation to Terminate the Restrictive Covenant on a unanimous vote. Commissioners Karen McGraw,	10.20.2016: Approved termination of the RC, approved on Council Member Gallo's motion, Council Member Zimmerman's second on a 10-0 vote. Council Member Troxclair was absent.

	James Schissler and	
	Jose Vela absent.	

RELATED CASES:

SP-2013-0449C(R1) - The applicant is proposing to revise a previously approved site plan C14-00-2195 – Rezoning from CBD and GR to CBD-CURE and established restrictive covenant. Approved unanimously (7-0) all 3 readings 12.14.2000.

ADDITIONAL STAFF COMMENTS:

Comprehensive Planning

The creation, termination or amending of a Restrictive Covenant is not under the purview of the policies of the Imagine Austin Comprehensive Plan and therefore an Imagine Austin compliance report has not been provided for this case.

<u>Environmental</u> No comments on rezoning

<u>Fire</u> No comments on rezoning

PARD – Planning & Design Review

PR1: There are no additional parkland dedication requirements resulting from this restrictive covenant modification.

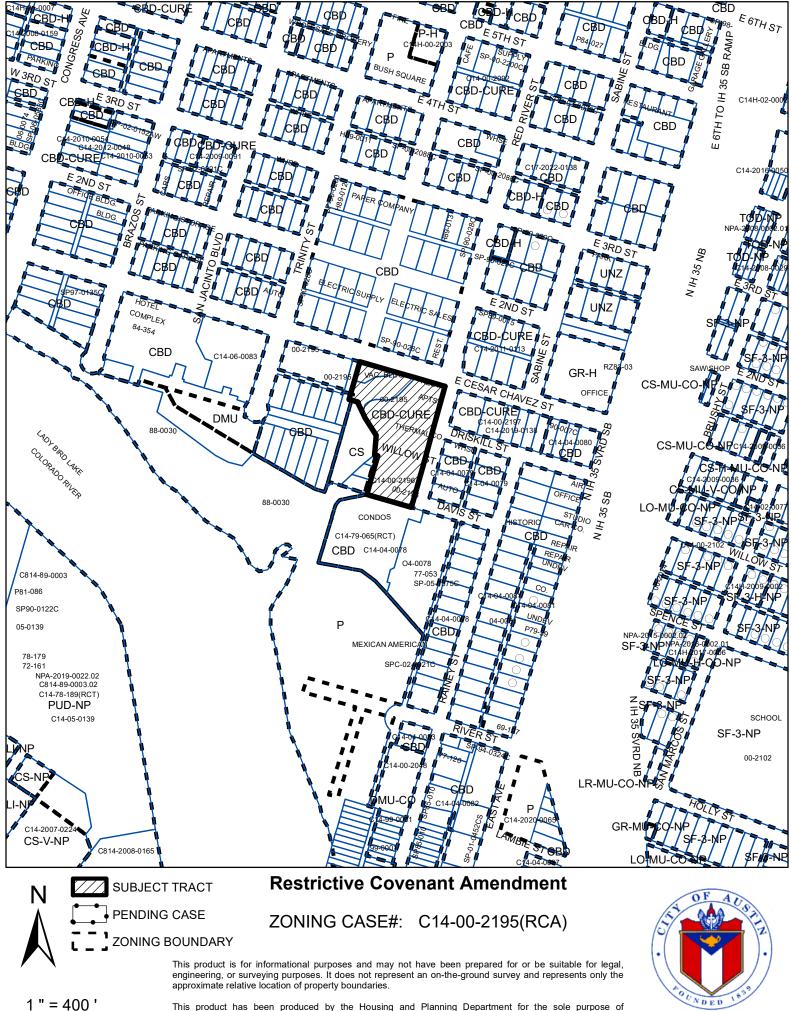
Site Plan

No SP comments at this time. SP comments will be provided at time of site plan submittal

<u>Transportation and Public Works Department – Engineering Review</u> No Review Required <u>Austin Water Utility</u> No Review Required

INDEX OF EXHIBITS AND ATTACHMENTS TO FOLLOW:

- A. Zoning Map
- B. Aerial Map
- C. Applicant's Summary Letter
- D. Draft Redlined Restrictive Covenant



This product has been produced by the Housing and Planning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or

ARMBRUST & BROWN, PLLC

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300 AUSTIN, TEXAS 78701-2744 512-435-2300

FACSIMILE 512-435-2360

Amanda Morrow (512) 435-2368 amorrow@abaustin.com

August 9, 2023

Lauren Middleton-Pratt Director, Planning and Zoning Department City of Austin 1000 E. 11th Street, Suite 200 Austin, Texas 78702

Re: Restrictive Covenant Amendment Application C14-00-2195 (the "Application")

Dear Mrs. Middleton-Pratt:

This Application is submitted to amend the restrictive covenant recorded in Document No. 2001007406 (the "Covenant") of the Official Public Records of Travis County, Texas and associated with zoning case C14-00-2195.

The Covenant encumbers approximately 3.26 acres of land located at 92 Red River Street in Austin, Travis County, Texas (the "Property"). A site plan has been approved for the Property under City of Austin (the "City") Case No. SP-2013-0449C(R1) for the construction of a mixed use project with outdoor pedestrian space (the "Project"). In 2001 when the Covenant was recorded the Rainey Street area, where the Property is located, was vastly different consisting of single-family homes and few high-rise developments. Over the course of 22 years those same single-family homes have been converted to bars and restaurants, or otherwise replaced with high-rise mixed use towers transiting the area into a robust outdoor entertainment district.

The purpose of this Application is to remove Item 1. which sets forth a limitation on outdoor amplified music. In lieu of the prescribed limitation set forth by the Covenant the Property will adhere to the Title 9 of the City Code regarding the use of outdoor amplified sound.

A redline of the changes proposed to the Covenant as well as the required application material is included with this Application.

ARMBRUST & BROWN, PLLC Page 2

Thank you in advance for your consideration of this request. Should you have any questions or require additional information, please do not hesitate to contact me.

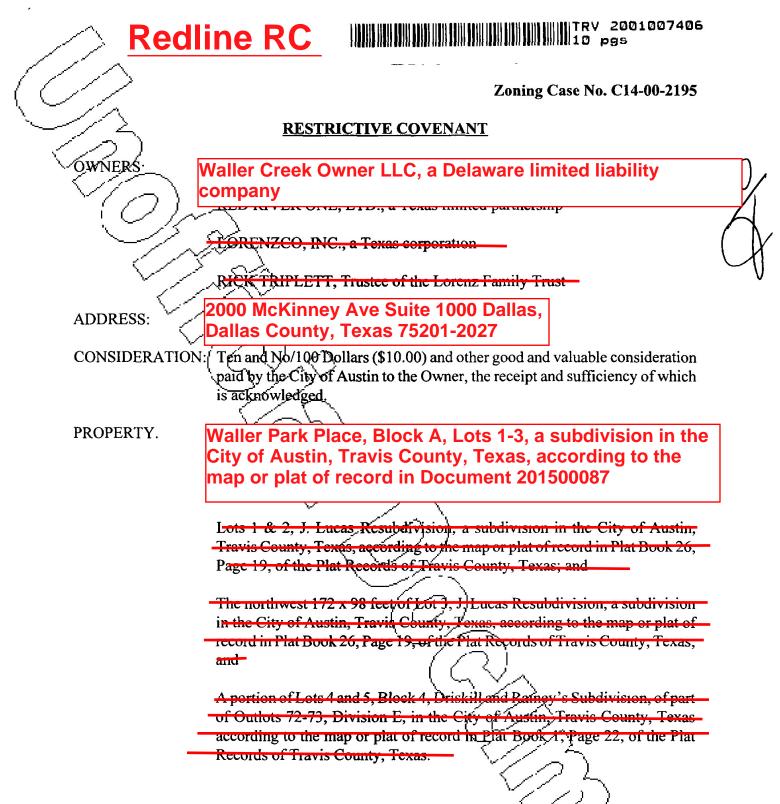
Respectfully,

ARMBRUST & BROWN, PLLC

1 Amanda Morrow

Director of Land Use and Entitlements

cc: Richard T. Suttle, Jr. Chris Jessee



WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors; and assigns.

Outdoor amplified music is prohibited between 11.00p m. and 9.00a m on Fridays and Saturdays and between 10:00p.m. and 9:00a m on Sunday through Thursday.

Prior to the issuance of a building permit, the Owner shall apply for a license agreement with the City of Austin to provide streetscape enhancements for those portions of the Red River and Cesar Chavez street frontages. These enhancements could include special paving, lighting, benches and landscaping. The City is under no obligation to approve such application.

- 2.3. Prior to site plan approval Owner shall dedicate easements for pedestrian access to Waller Creek and bicycle and pedestrian easements along both sides of Waller Creek with access from Red River at Cesar Chavez. Under the easements, the City of Austin may construct hike and bike trails for public use along the bank of Waller Creek. The hike and bike trails shall be no less than 10 feet in width and no more than 20 feet in width and shall be located entirely within the 100 year floodplain.
- 3. 4. The Owner shall maintain the Waller Creek greenway adjacent to the Property generally in accordance with the trail management and maintenance provisions in Exhibit A.
- 4. 5. On completion of permanent improvements shown on the site plan for the Setback Area described in Exhibit B, Owner shall establish a public pedestrian easement on the Setback Area. Owner is responsible for construction, repair, replacement and maintenance of the permanent improvements.
- 5. 6. At the request of the City of Austin, the Owner shall dedicate an easement to the City to construct a pedestrian crossing bridge within the 100 year floodplain of Waller Creek in accordance with sound engineering practices and in a location that does not unreasonably interfere with permanent improvements or uses on adjacent tracts.
- 6. 7. Owner shall install and maintain 20 four inch caliber trees in the Setback Area upon completion of the permanent improvements constructed in the Setback Area.
- 7. 8. Parked vehicles within a garage structure may not be visible from Waller Creek,
- 8. 9. Except for aerial passageways and pedestrian bridges, a 60-foot wide setback is required on both sides of Waller Creek measured from the center of the Waller Creek channel so that an open space of 120 feet between buildings is maintained.
- 9. 10. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.

If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.

If at any time the City of Austin fails to enforce this agreement, whether or not any volations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

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, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED this the 15th day of December, 2000.

OWNERS:

Waller Creek Owner LLC, a Delaware limited liability company

By: Waller Creek JV LLC, A Delaware limited liability company, its sole member

By:_____ Name: _____ Title:

Red River One, Ltd., a Texas limited partnership By: Perry Lorenz, an individual residing ounty, Texas. -its general partner 1040 By:_ Perry Lorenz minal I itle: Towne 200 Date: 机 Address: 13/1-A Cont 6 China 1

(() -	Lorenzco, Inc.,
1 - L	-a Texas corporation
$\overline{\langle}$	- 12 y
	By: Perry Lorenz
$(O) \sim$	Title: <u>file 15</u> 2004
	Address: 13/1-A East 6th
	Rick Triplett , as Trustee of the Lorenz Family Trust
	Pour And Annata
(4%	By: North Prustee Price Triplett, as Trustee of the Lorenz Family Trust
	Address _ 19112 Back on RT 515 Congress And Suit 2300
	Durin Tx 18701
APPROVED AS TO FORM: $\langle \langle \rangle \rangle$	
Deroug Thomas	()
Assistant City Attorney City of Austin	
	(\mathcal{O})
THE STATE OF TEXAS § §	
COUNTY OF TRAVIS §	
	/, on this day personally appeared, er Creek JV LLC, a Delaware limited liability company
sole member of Waller Creek Own	er LLC, a Delaware limited liability company, known to
	e the person whose name is subscribed to the edged to me that the person executed the instrument
	the purposes and consideration expressed in the
Given under my hand and seal of o	office on
	Notary Public, State of Texas

THE STATE OF TEXAS Ş § **COUNTY OF TRAVIS** Ş This instrument was acknowledged before me on this the S day of December , 2000, an individual residing in Travis County, Texas, general partner of Red River One, fexes limited partnership, on behalf of the general partner and limited partnership. LISA MCTIERNAN NOTARY PUBLIC STATE OF TELAS IMIO M COMMISSION ELPIRES UGUST 11, 2004 Notary Public Signature THE STATE OF TEXAS **COUNTY OF TRAVIS** This instrument was acknowledged before me on this the 13 day of RECEIVING, 2000, of Korenzce, Inc., a Texas corporation, on behalf of the marident hy Perry Lorenz corporation. LISA MCTIERNAN NOTARY PUBLIC STATE OF TEXAS Dan COMMISSION EXPINES AUGUST 11, 2004 Notary Rublic Signature THE STATE OF TEXAS § § **COUNTY OF TRAVIS** § **December**, 2000, This instrument was acknowledged before me on this the 1 by Rick Triplett, as Trustee of the Lorenz Family Trust. LISA MCTIERNAN NOTARY PUBLIC STATE OF TEXAS an TKI o -----AUGUST 11, 2004 Notary Public Signature Diano Minter City of Austin Law D.D 1546 Austin Tx 78763 96284 1/12150



Frait Management and Maintenance

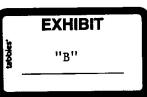
The DAA and the Austin Parks and Recreation Department shoud develop a specific action plan for maintenance and management of the Waller Creek Greenway corridor. The priprary objective of this maintenance and management plan would be to assure that the public's health and safety are protected during normal use of the facility. The greenway should be formally maintained in a clean, safe, and usable condition like all other parks and greenways in the City. Greenway lands should be maintained in a natural condition to the largest extent possible, so that they may fulfill multiple functions — passive recreation, alternative transportation, stormwater management and wildlife habitat. Vegetation management will require close-coordination with public and private utility companies which hold leases over the corridor for the maintenance of telephone, power, water, sewer, stormwater and natural gas lines.

Routine maintenance should include the removal of debris, trash, litter, incompatible human-made structures, and other foreign matter. Removal of native vegetation should be done with discretion; removal of exotic species should be accomplished in a systematic and thorough manner. The objective in controlling the growth of vegetation should be to maintain clear and open lines of sight along the edge of the trail, and eliminate over hanging vegetation that could occur due to natural growth, severe weather or other unacceptable conditions.

All vegetation should be clear cut a minimum distance of three (3) feet from each edge of the trail. Selective clearing of vegetation should be conducted within a zone that is defined as being between three (3) to ten (10) feet from each edge of the trail. At any point

along the trail, a user should have a clear, unobstructed view, along the centerline of the trail, 200 feet ahead and behind his/her position. (The only exception to this policy should be where terrain or curves in the trail serve as the limiting factor. Appropriate agencies should be responsible for the cutting and removal of vegetation. Removal of vegetation by individuals other than those persons employed by designated agencies should be deemed unlawful and subject to fines and/or prosecution.

Trail surfaces should be maintained in a safe and usable manner at all times. Rough edges, severe bumps or depressions, cracked or uneven pavement, and vegetation occurring in the tread of the trail should be removed and replaced in such a manner that the trail surface is maintained as a continuous, even, and clean surface. The City should strive to minimize the number of areas where ponding water occurs, however, the City should not be held liable for public use through areas of casual or ponded water. 0 196 Acres (8,541 Sq. Ft) Plaza Outlots 72 and 189, Div. E City of Austin, Travis County, Texas



LAI Job No 000821 FN0116(wdo) Page 1 of 3

FIELD NOTES DESCRIPTION

DESCRIPTION OF 0 196 ACRE (8,541 SQUARE FEET) OF LAND IN OUTLOT 189, DIVISION E AND OUTLOT 72, DIVISION E, OF THE GOVERNMENT TRACT ADJOINING THE ORIGINAL CITY OF AUSTIN, TRAVIS COUNTY, TEXAS AS SHOWN ON THE MAPS ON FILE IN THE GENERAL LAND OFFICE OF THE STATE OF TEXAS: BEING APORTION OF LOT 3, J. LUCAS SUBDIVISION, A SUBDIVISION ACCORDING TO THE PLAP OF RECORD IN PLAT BOOK 26, PAGE 19, PLAT RECORDS OF TRAVIS COUNTY, TEXAS, SAID PORTION OF LOT 3 DESCRIBED IN A DEED TO LORENZCO. INC. OF RECORD IN VOLUME 11093, PAGE 1571, REAL PROPERTY RECORDS OF TRAVÍS COUNTY, TEXAS, AND BEING A PORTION OF A CALLED 12,160 SQUARE FEET TRACT DESCRIBED IN A DEED TO PERRY LORENZ, AKA H PERRY LORENZ OF RECORD IN VOLUME 7977, PAGE 513, DEED RECORDS OF TRAVIS COUNTY, TEXAS, SAID CALLED 12,160 SOUARE FEET TRACT BEING A PORTION OF LOTS 4 AND 5. BLOCK 4, DRISKILL'S AND RAINEY'S SUBDIVISION, A SUBDIVISION ACCORDING TO THE PLAT OF RECORD IN PLAT BOOK 1, PAGE 22, PLAT RECORDS OF TRAVIS COUNTY, TEXAS, SAID 0 196-ACRE TRACT, AS SHOWN ON THE ACCOMPANYING SKETCH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2-inch iron rod with plastic cap stamped "LAI" set for the southwest corner of said Outlot 189, Division E, same being the southwest corner of said Lot 3, J Lucas Resubdivision, and the southwest corner of said Lorenzco Inc tract, and being the southeast corner of the terminus of the Neckes Street, an 80-feet wide right-of-way (ROW),

THENCE S 73° 28' 15" E, with the south line of said Outlot 189, Division E, same being the south line of said Lot 3, J. Lucas Resubdivision, and the south line of said Lorenzco, Inc. tract, a distance of 3 95 feet to a calculated point for the most northern northwest corner and the **POINT OF BEGINNING** of the tract described herein;

THENCE leaving the south line of said Outlot 189, Drvision E, and crossing said Outlot 189, with the arc of a curve to the right an arc distance of 96.12 feet, having a radius of 71.28 feet and a chord bearing N 65° 35' 15" E a distance of 89.00 feet to a calculated point for the northeast corner of the tract described herein,

THENCE S 16° 41' 28" W, crossing said Outlot 189, Division E, at a distance of 58 32 feet pass the south line of said Outlot 189, same being the north lime of said Outlot 72, Division E, continuing across said Outlot 72, and said Lots 4 and 5, Driskill's and Ratney's Subdivision, for a total distance of 170.25 feet to a calculated point in a line of the prolongation of the north line of Willow Street, an 80-feet wide ROW dedicated by the plat of said Driskill's and Rainey's Subdivision, and for southeast corner of the tract described herein,

THENCE N 73° 28' 32" W, a distance of 12.99 feet to a calculated point in the west line of said Outlot 72, Division E, for the southwest corner of the tract described herein,

0,196 Acres (8,541 Sq Ft) Plaza Outlots 72 and 189, DIV E City of Austin, Travis County, Texas

3.

THENCE with the west line of said Outlot 72, Division E, the following three (3) courses and distances

N 30° 59' 39" W a distance of 63.05 feet to a calculated point for an angle point hereof,

 \overline{N} 178, 48' 30" W a distance of 18.91 feet to a calculated point for an angle point hereof, and $\left\{\begin{array}{c} \\ \\ \\ \end{array}\right\}$

_____N.42⁵32' 39"-É a distance of 59.80 feet to a calculated point in the north line of said Outlot 1897 Division E, for the northwest corner of said Outlot 72, Division E, and an insuce ell-corner hereof,

THENCE N 73^{*} 28^{*-15} W, a distance of 22.82 feet to the POINT OF BEGINNING and containing 0.196 acres. (8,541 square feet) of land, more or less

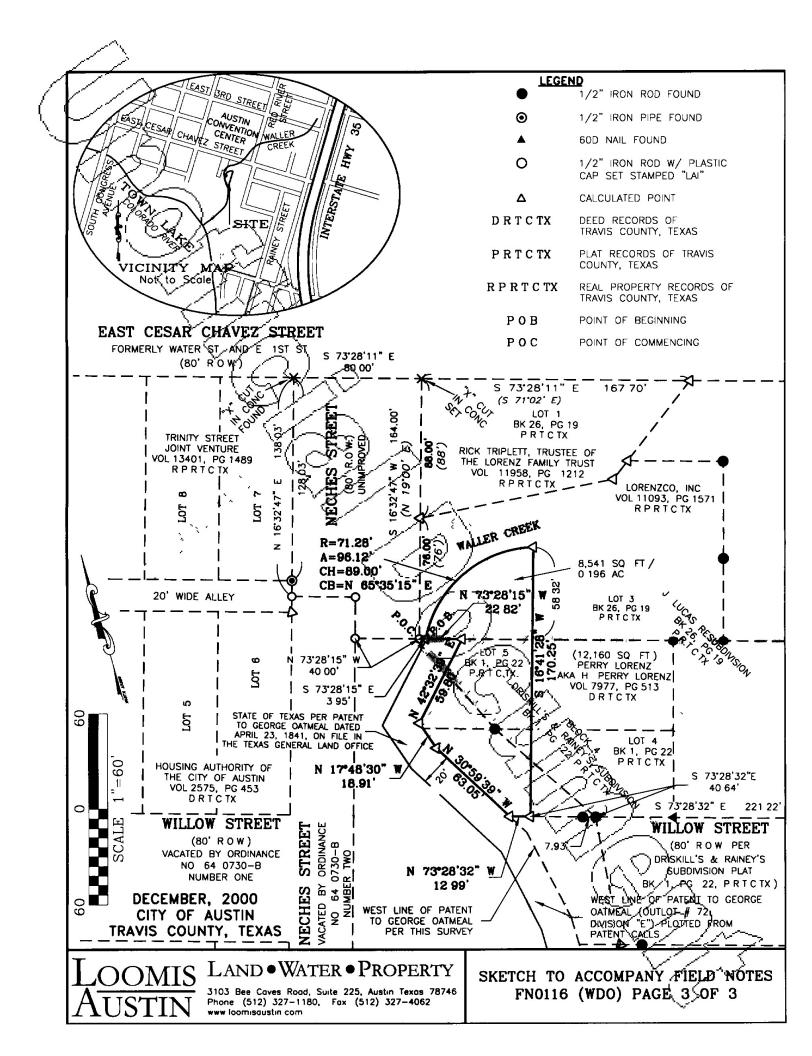
BEARING BASIS. Texas Coordinate System, NAD 83, Central Zone, Grid, based on the City of Austin Monument Reference No J-22-4001, a 4" brass disk found on the top of curb at midpoint of curb at Trinity Street and East 3rd Street and City of Austin Monument Reference No. J-22-3001, a 4" brass disk found at the west edge of the southbound lane of IH-35 at the top of concrete rip rap on the east side of the west frontage road at East 3rd Street and IH-35 intersection The published grid bearing between these monuments is N 74° 26' 55" W. The convergence angle is 1° 20'12.01" The published grid distance is 1,529 98 feet Measured a surface distance of 1,530 07 feet between the monuments. Held published bearing.

I hereby certify that this description was prepared from an actual survey made on the ground during the months of September and October 2000, under my direction and supervision and is true and correct to the best of my knowledge.

4-00

Date

William D. O'Hara Registered Professional Land Surveyor No. 4878 – State of Texas Loomis Austin, Inc 3103 Bee Caves Rd , Suite 225 Austin, TX 78746 512-327-1180



Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded

FILED AND RECORDED

Cana (Reacuti

01-15-2001 02 57 PM 2001007406 BAZANJ \$27 00 DANA DEBEAUVOIR ,COUNTY CLERK TRAVIS COUNTY, TEXAS