

# **SITE INVESTIGATION REPORT**

## **BERKMAN TERRACE**

**City of Austin**  
**Travis County, Texas**

**Berkman Terraces, LLC**  
6203-6207 Berkman Drive and 6210 Hickman Drive  
Austin, Travis County Texas 78729

Prepared For:  
**Pierre Fay**  
**2407 South Congress Ave Suite E107**  
**Austin, Texas 78704**

Prepared By:



**5508 Highway 290 West**  
**Austin, TX 78735**  
**Firm #: 16384**

**April 2021**

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## Project Overview

The Berkman Terrace project is a proposed high-density infill development project, with potential multifamily, office and retail uses within the Fort Branch watershed. The project is located along Berkman Drive, on the east side of the intersection of Berkman Drive and Glencrest Drive. The proposed property is approximately 1.29 acres composed of three (3) separate properties consisting of 6203-6207 Berman Drive and 6210 Hickman Avenue, and five (5) TCAD parcels 223387, 881852, 881853, 882867 and 882868, respectively. A site location map, boundary survey and title commitment have been provided in **Appendix 1** of this report.

## Zoning

These properties are currently located within the City of Austin full purpose jurisdiction. A zoning case was processed through the CoA under Case Number C14-2018-0037 (Ordinance No. 20181213-062) and the site is currently zoned Community Commercial – Mixed Use Combining District – Conditional Overlay Combining District – Neighborhood Plan Combining District (GR-MU-CO-NP). The site development standards for the community commercial (GR) are as follows:

Minimum Lot Size	5,750 sq ft
Minimum Lot Width	50 ft
Maximum Building Coverage	75 %
Max Impervious Cover	90%
Maximum Floor Area Ratio	1:1
Maximum Height	40 ft*
Minimum Setbacks	
Front Yard	10 ft
Street Side Yard	10 ft

\*Based on the approved Zoning Case for this site, the conditional overlay combining district reduces the maximum height for these site(s) from 60-feet to 40-feet.

- The Zoning Profile Report, which includes all site development standards for each zoning category, as well as the zoning case can be found within **Appendix 2** of this report.

## Compatibility

Compatibility is a component of zoning that is triggered if you have a property adjacent to a lot that is zoned or used as single family and based on the adjacent roadway type(s). This property is adjacent to properties zoned single family and a roadway defined as Urban requiring the site to meet the compatibility standards set forth in the Land Development Code (LDC) 25-2, specifically 25-2-10 and Subchapters E and F. A Zoning Map of the site and adjacent properties are provided within **Appendix 2** of this report.

## Service Availability

Water and wastewater will be provided by the City of Austin. Service Extension Request's (SER) were submitted to Austin Water Utility (AWU) to determine adequate capacity of the public system adjacent to the site. The calculations were based on the conceptual site plan provided by Levy Architects of approximately 60 units. The concept plan has been provided in **Appendix 3** of the report.

The water service will be allowed to connect to the 8-inch waterline located within Berkman Drive with an appropriately sized water connection per the water SER-4936 (see **Appendix 3**). This connection will need to be determined at the time of site design however can be assumed to be a minimum 8-inch connection.

The wastewater service will be allowed to connect to the 8-inch wastewater line located in Berkman Drive or the 8-inch wastewater line located within Hickman Drive with an appropriately sized connection per wastewater SER-4937 (see **Appendix 3**). This connection will need to be determined at the time of site design however can be assumed to be a minimum 6-inch connection. Please note that either service connection will require offsite improvements to upsize either a 12-inch or 24-inch wastewater line. Through correspondence with AWU, any improvements to this site will require the offsite improvements. Since these improvements are not located adjacent to the site, and the limits of construction would not be able to be contiguous to the site development permit (SDP), the CoA will require a separate permit application to approve these improvements.

Electrical service will be provided by Austin Energy (AE). The service letter has been attached within **Appendix 3**. The electric line is an overhead line that runs along Berkman Drive. Through correspondence with AE, the property owner does have the option of installing the electrical line underground. (Email correspondence provided in **Appendix 3**). The underground portion across the site would require two (2) risers on each end of the property connected with four (4) - four-inch conduit. Additional information will be required by AE, in order to complete their design, at the time of your service request.



There is a ONEGas gas line that is located adjacent to the property within Berkman Drive. A gas service request and application would need to be submitted to provide service. The ONEGas map has been enclosed in **Appendix 3** of this report.

## Topography

The subject property has a flat existing terrain that slopes gently at approximately 1% across the site from Berkman Drive (west) to Hickman Avenue (east). A topographic survey of the site has been provided and is located within **Appendix 4**.

## Floodplain

The site is not located within the 100-year floodplain as defined by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) for Travis County, Texas Panel No. 48453C0455J, dated January 1, 2016. A copy of the FEMA FIRM panel is included in this report as **Appendix 5**.

## Drainage

### Existing Drainage Conditions

The site currently has no water quality or detention ponds treating or limiting runoff from the site. All drainage currently flows from west to east draining toward Hickman Ave.

There is an existing drainage easement at the south east corner of the land conveyed to Windsor Park Assets, LLC. A detention pond is located within the drainage easement, and under a Subdivision Construction Agreement (Document Number 2016201418), a small portion of the proposed subject tract is entitled to drain to this detention pond. This includes up to 0.26 Acres of impervious cover. Please refer to **Appendix 6** for the agreement and the construction plans of the offsite detention

### Proposed Drainage Conditions

Additional improvements exceeding the amount of impervious cover noted above may be required to detain the storm water runoff within an on-site detention facility. The proposed drainage infrastructure will collect and detain runoff from the site in accordance with the CoA Drainage Criteria Manual (DCM).

Stormwater flows for each design event (2-yr, 10-yr, 25-yr, 100-yr) in the proposed condition will need to be analyzed and compared to existing runoff rates. Any increases in storm water runoff will be attenuated through the use of on-site, private detention facilities, which will be required by the City. Due to the limited space of the lot, the proposed detention facility may be underground and would be designed at the time of site plan application.

Although not required, it is recommended to use the existing detention facility referenced above as a point of discharge, in order to limit additional flows to the street.

## Water Quality

The site is located within the Fort Branch Watershed which is classified by the City of Austin as an Urban Watershed. The site is not located within the Edwards Aquifer Recharge Zone per the City of Austin or the Texas Commission on Environmental Quality (TCEQ).

The proposed water quality controls will need to be designed and constructed onsite with the site development improvements. The water quality facilities will need to be designed and constructed in accordance with the CoA Environmental Criteria Manual (ECM). The ECM provides multiple options based on proposed site use to provide treatment of the stormwater runoff however most of them are required to be located at surface level. As previously mentioned for the detention pond, due to limited surface area on the site the water quality facility can be provided underground but will limit the available options for treatment.

A fee-in-lieu of water quality may be applied for but according to ECM 1.6.4 the proposed site would qualify as a Type II participant due to the existing site having no or minimal existing impervious cover. Most Type II cases are required to satisfy the water quality requirements through the use of onsite water quality controls instead of fee-in-lieu.

## Site Constraints

### Height Limitations

As noted previously in the report, the site is required to meet compatibility standards of the LDC. The height compatibility setbacks allow for a height up to 50-feet between the setback distance of 50 to 100 feet, however based on the current zoning regulations the building height for this site is set at forty (40) feet or/ three (3) stories. A height compatibility exhibit has been provided within **Appendix 7** of this report.

A variance can be applied for through the Board of Adjustments (BoA) to request additional building height. The BoA is a board based on hardships. The applicant has to demonstrate a hardship that is unique to the property which prohibits the owner from having a reasonable “conforming use(s)” if he/she is required to comply with the City of Austin’s development regulations. Whether there is a hardship is a determination for the Board members to make on a case-by-case basis. Hardships are typically based on features like the geometric configurations of a lot, the existing lot topography, flooding, saving trees, drainage easement, other unique physical feature of the property.

Based on the current site, two hardships that may be considered by the BoA would be the irregular property shape of the parcel and the requirement to preserve existing trees. The application, as well as the process for this review, has been included within **Appendix 7** of this report.

### Parking Setbacks and Requirements

The site is adjacent to properties zoned as single family. Zoning requires parking setbacks as well as screening requirements from the adjacent single-family properties zoned SF-5 or more restrictive and for properties used as single-family use. Parking setbacks for these properties are set to twenty-five (25)-feet and require screening approved by the ordinance. The parking setbacks for properties zoned greater than SF-5 and multifamily are required to have a parking set back of five (5)-feet. Please note if a property is zoned multifamily but has a single-family residential use, the setback defaults to the SF-5 or more restrictive setback of twenty-five (25)-feet. A drive is allowed adjacent to a property zoned SF-5 or more restrictive but will be required to be screened. A parking setback variance can be applied for through Zoning with the site plan review case manager if you are able to provide at least five (5)-feet of setback or would need to be reviewed by the BoA if closer than five (5)-feet. A parking setback exhibit has been provided within **Appendix 7**.

The site will need to provide adequate parking based on the current Off-Street Parking table located within the LDC 25-6-501 Appendix A. Currently, office and retail parking requirements

are at 1 space per 275 square feet and residential parking requirements are at one (1) space per efficient units, 1.5 space per one (1) bedroom and 0.5 spaces per each additional bedroom unit.

Per the LDC 25-6-478, the site is allowed parking reductions up to 40% of the total parking requirement. Reduction request over 40% would require approval by the director. According to this section of the code, this site may qualify for a 20% reduction being located within the CoA Urban Corridor limits, and up to another 10% to preserve significant stands of trees or protected trees in addition to those required to be preserved by the Code. The site may also seek further reduction by entering into a car-sharing vehicle program which would reduce the parking requirements by 20 spaces for every car-share spot provided. This program would not be through the CoA, but through a private program such as Zipcars or Enterprise. An executed contract would need to be provided to the CoA during application review.

### Existing Trees

A tree site walk was performed with the CoA arborist in December 2020 which was used to investigate what trees could potentially be removed due to health and which trees would need to remain due to the tree status defined as either protected or heritage. The preliminary report concluded that 4 heritage trees, numbered 6002, 6003, 6011 and 6013 within the arborist report, will need to be preserved or relocated onsite. There is a fifth heritage tree, tree number 6014, that may be able to be removed pending a Tree Risk Assessment Qualification (TRAQ) performed by a qualified a 3<sup>rd</sup> party arborist. The arborist report and tree locations have been included within **Appendix 7** of this report.

### Affordable Housing

The property has restrictions through an Affordable Housing Restrictive Covenant (Document Number 2018198366), which requires the property to provide at least ten percent (10%) of the total number of owner-occupied dwelling units on the property be reserved for affordable housing. The requirements and constraints associated with the Restrictive Covenant has been included within **Appendix 7** of this report.

This concludes the Site Investigation Report. Please contact our office if you require any additional information or assistance with the site development processes outlined in this report.

## **END REPORT**

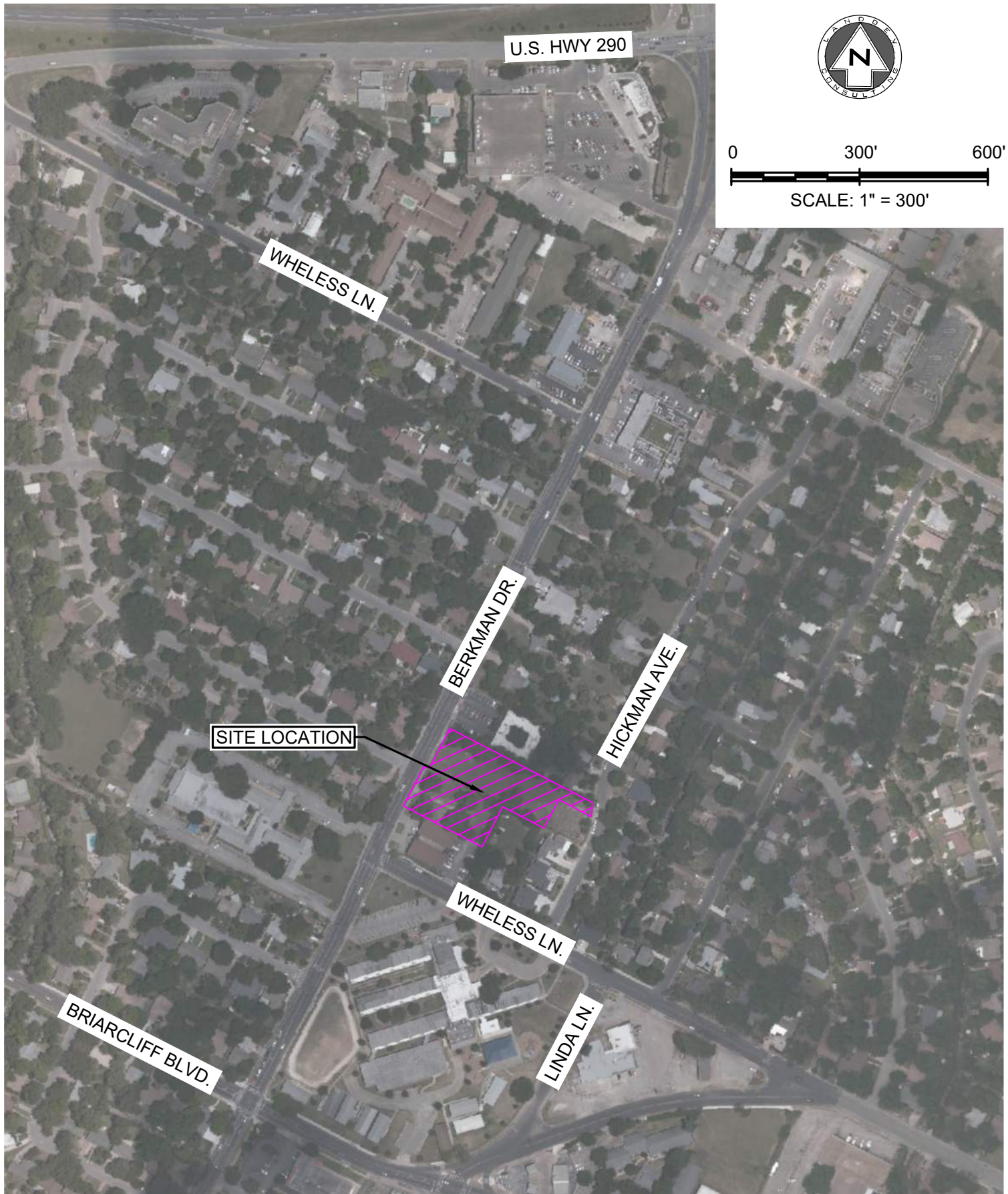
## **APPENDICES**

# **APPENDIX 1**

## **PROPERTY OVERVIEW**

## **1A SITE LOCATION MAP**





**LAND DEV**

CONSULTING, LLC  
4201 WEST PARKER LN., SUITE C-100  
AUSTIN, TX 78727  
OFFICE: 512.872.6696  
FIRM NO. 16384

LOCATION MAP EXHIBIT  
6203-6207 BERKMAN DR.  
AUSTIN, TEXAS 78723



## **1B BOUNDARY SURVEY**

LOTS 2 AND 3, BLOCK A, HICKMAN OAKS, DOCUMENT NO. 201600305,  
LOTS 1 AND 2, BLOCK A, BERRMAN TERRACE, DOCUMENT NO. 201600264 AND  
A CALLED 0.50 ACRE TRACT CONVETED IN DOCUMENT NO.2017061605, LAST DESCRIBED IN DOCUMENT NO. 2014061714  
ALL OF THE OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS.

■	X" SCRUB IN CONCRETE FOUND
▲	12" IRON ROD WITH "HOLIT CARSON" CAP FOUND
●	"MAG" NAIL FOUND
○	12 INCH IRON ROD FOUND
⊗	WASTEWATER MANHOLE
⊙	OVERHEAD TITANIUM POLE
⊕	GAS VALVE
⊖	WATER METER
⊗	BENCHMARK
⊙	OVERHEAD UTILITY
⊕	WOOD FENCE
⊖	CHAINLINK FENCE
⊗	OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS
⊙	PLAT RECORDS, TRAVIS COUNTY, TEXAS
⊕	PLAT RECORDS, HARRIS COUNTY, TEXAS
⊖	RECORD INFORMATION
⊗	POINT OF BEGINNING

ALSO SUBJECT TO THE FOLLOWING RESTRICTIONS:

SEE FIELD NOTES OF SAME DATE

TRACT 1:  
LOTS 2 AND 3, BLOCK A, HICKMAN OAKS, ACCORDING TO THE MAP OR PLAT THEREOF,  
RECORDED IN DOCUMENT NO. 2016090305, OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY,  
TEXAS.

TRACT 2:  
LOTS 1 AND 2, BLOCK A, BERKMAN TERRACE, ACCORDING TO THE MAP OR PLAT  
THEREOF, RECORDED IN DOCUMENT NO. 2016062604, OFFICIAL PUBLIC RECORDS, TRAVIS  
COUNTY, TEXAS.

TRACT 3:  
LOT 37, ACRES OF LAND, MORE OR LESS, OUT OF THE DYNMORE SIMPSON  
SURVEY NO. 27, ABSTRACT NO. 694, TRAVIS COUNTY, TEXAS, BEING THAT SAME TRACT  
OF LAND CONVEYED TO BERKMAN TERRACES, LLC AND DESCRIBED IN SPECIAL  
ORDER NO. 2016080101, FILED AND RECORDED IN DOCUMENT NO. 2017091605, OFFICIAL PUBLIC RECORDS,  
TRAVIS COUNTY, TEXAS.

LOTS 2 AND 3, BLOCK A, HICKMAN OAKS, DOCUMENT NO. 201600303,  
LOTS 1 AND 2, BLOCK A, BERKMAN TERRACE, DOCUMENT NO. 201600264 AND  
THE TRACT CONVETED IN DOCUMENT NO.2017061605, LAST DESCRIBED IN DOCUMENT NO. 201600264, ALL OF THE OFFICIAL PUBLIC RECORDS, TRAVIS COUNTY, TEXAS.

EXCLUSIVELY TO LEGACY DCS,LLC., BERKMAN TERRACES, LLC., AND OTHER PARTIES INVOLVED IN TITLE RESOURCES GUARANTY COMPANY'S COMMITMENT G.F. NO. 1942143-ROL, DATED OCTOBER 2, 2019;

JOHN E. BRATTIGAM, A REGISTERED PROFESSIONAL AND SURVEYOR, DO HEREBY CERTIFY THAT THIS SURVEY WAS MADE ON THE GROUND OF THE PROPERTY SHOWN HEREON DURING APRIL 2018, UNDER MY DIRECTION AND SUPERVISION; THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF; THAT THERE ARE NO APPARENT ENCROACHMENTS OR OVERLAPPING OF IMPROVEMENTS WITH THE DEED LINES SHOWN EXCEPT AS SHOWN HEREON; THAT THERE ARE NO APPARENT DISCREPANCIES OR DEED LINE CONFLICTS WITH THE DEEDS SHOWN EXCEPT AS SHOWN HEREON; THAT THERE ARE NO VISIBLE UTILITY LINES EXCEPT AS SHOWN HEREON; THAT THIS PROPERTY ADDS A DEDICATED RIGHT-OF-WAY, TO BE USED FOR THE EXCLUSIVE USE OF THE PROPERTY SHOWN HEREON, TO THE SURVEY OF PROFESSIONAL SURVEYORS' STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1A CONDITION SURVEY.

11-14-19  
DATE



**JEWELL**  
 JAWN BRAUTHAM  
 REGISTERED PROFESSIONAL  
 NO. 5057 - STATE OF TEXAS  
 FIRM No. 110047-00

**Delta Survey Group Inc.**

8213 Brodie Lane Ste. 102 Austin, TX 78745  
office: (512) 282-5200 fax: (512) 282-5230  
WWW.DELTASURVEYGROUP.COM  
TBPLS FIRM No. 10004700

QUAD AUSTIN EAST  
PROJECT BERKMAN TERRACE AT BERKMAN DR.  
DWG. GF#142143-ROI.

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## **1C TITLE COMMITMENT**



## COMMITMENT FOR TITLE INSURANCE (Form T-7)

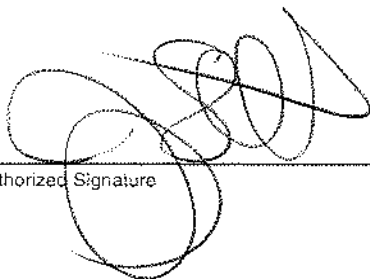
Issued by

### TITLE RESOURCES GUARANTY COMPANY

We, Title Resources Guaranty Company, will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule C. Our Policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, and expedited delivery expenses.

This Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

**THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN SCHEDULE A, AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.**

  
An Authorized Signature



*Title Resources Guaranty Company*

By:

Executive Vice President

Secretary

## TEXAS TITLE INSURANCE INFORMATION

Title insurance insures you against loss resulting from certain risks to your title.	El seguro de título le asegura en relación a pérdidas resultantes de ciertos riesgos que pueden afectar el título de su propiedad.
The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.	El Compromiso para Seguro de Título es la promesa de la compañía aseguradora de títulos de emitir la póliza de seguro de título. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transacción.

Your Commitment for Title Insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

**Minerals and Mineral Rights** may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your Policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

- **EXCEPTIONS** are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.
- **EXCLUSIONS** are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.
- **CONDITIONS** are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at 1-800-526-8018 or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.
- Allow the Company to add an exception to "rights of parties in possession." If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

#### **CONDITIONS AND STIPULATIONS**

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment, that is not shown in Schedule B, you must notify us in writing. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.
2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements, or to acquire the interest in the land. Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations.

**DELETION OF ARBITRATION PROVISION**  
(Not applicable to the Texas Residential Owner's Policy)

Arbitration is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company.

The arbitration provision in the Policy is as follows:

"Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction."

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

<b>FACTS</b>	<b>WHAT DOES INDEPENDENCE TITLE DO WITH YOUR PERSONAL INFORMATION?</b>	
<b>Why?</b>	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.	
<b>What?</b>	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> <li>• Social Security number and account balances</li> <li>• Payment history and credit card or other debt</li> <li>• Checking account information and wire transfer instructions</li> </ul> <p>When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p>	
<b>How?</b>	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Independence Title chooses to share; and whether you can limit this sharing.	
<b>Reasons we can share your personal information</b>	<b>Does Independence Title share?</b>	<b>Can you limit this sharing?</b>
For our everyday business purposes – such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes- to offer our products and services to you	No	We don't share
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes- information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes- information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For nonaffiliates to market to you	No	We don't share
<b>Questions?</b>	Go to <a href="https://www.trgc.com/privacypolicy">https://www.trgc.com/privacypolicy</a>	



Who we are	
Who is providing this notice?	Independence Title
What we do	
How does Independence Title protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does Independence Title collect my personal information?	<p>We collect your personal information, for example, when you</p> <ul style="list-style-type: none"> <li>• Apply for insurance or pay insurance premiums</li> <li>• Provide your mortgage information or show your driver's license</li> <li>• Give us your contact information</li> </ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.</p>
Why can't I limit all sharing?	<p>Federal law gives you the right to limit only</p> <ul style="list-style-type: none"> <li>• Sharing for affiliates' everyday business purposes –information about your creditworthiness</li> <li>• Affiliates from using your information to market to you</li> <li>• Sharing for nonaffiliates to market to you</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing.</p>
Definitions	
Affiliates	<p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• <i>Our affiliates include companies that are owned in whole or in part by Realogy Holdings Corp., such as Better Homes and Gardens® Real Estate, CENTURY 21®, Coldwell Banker®, Coldwell Banker Commercial®, The Corcoran Group®, ERA®, Sotheby's International Realty®, ZipRealty®, NRT LLC, Cartus and Title Resource Group.</i></li> </ul>
Nonaffiliates	<p>Companies not related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• <i>Independence Title does not share with nonaffiliates so they can market to you.</i></li> </ul>
Joint Marketing	<p>A formal agreement between nonaffiliated financial companies that together market financial products or service to you.</p> <ul style="list-style-type: none"> <li>• <i>Independence Title does not share with nonaffiliated financial companies for joint marketing purposes.</i></li> </ul>
Other Important Information	
For European Union Customers	<p>Please see our Privacy Policy located at <a href="https://www.trgc.com/privacypolicy">https://www.trgc.com/privacypolicy</a></p>

**For our California Customers**

Please see our notice about the California Consumer Protection Act located at <https://www.trgc.com/privacypolicy>



### IMPORTANT NOTICE

To obtain information or make a complaint:

You may call Title Resources Guaranty Company's toll-free telephone number for information or to make a complaint at:

**1-800-526-8018**

You may also write to Title Resources Guaranty Company at:

Attention: Claims Department  
8111 LBJ Freeway, Suite 1200  
Dallas, TX 75251

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights, or complaints at:

**1-800-252-3439**

You may write the Texas Department of Insurance:

P. O. Box 149104  
Austin, TX 78714-9104  
Fax: (512) 490-1007  
Web: [www.tdi.texas.gov](http://www.tdi.texas.gov)  
E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

#### **PREMIUM OR CLAIM DISPUTES:**

Should you have a dispute concerning your premium or about a claim, you should contact the company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

#### **ATTACH THIS NOTICE TO YOUR POLICY:**

This notice is for information only and does not become a part or condition of the attached document.

### AVISO IMPORTANTE

Para obtener información o para presentar una queja:

Usted puede llamar al número de teléfono gratuito de Title Resources Guaranty Company's para obtener información o para presentar una queja al:

**1-800-526-8018**

Usted también puede escribir a Title Resources Guaranty Company:

Attention: Claims Department  
8111 LBJ Freeway, Suite 1200  
Dallas, TX 75251

Usted puede comunicarse con el Departamento de Seguros de Texas para obtener información sobre compañías, coberturas, derechos, o quejas al:

**1-800-252-3439**

Usted puede escribir al Departamento de Seguros de Texas a:

P. O. Box 149104  
Austin, TX 78714-9104  
Fax: (512) 490-1007  
Web: [www.tdi.texas.gov](http://www.tdi.texas.gov)  
E-mail: [ConsumerProtection@tdi.texas.gov](mailto:ConsumerProtection@tdi.texas.gov)

#### **DISPUTAS POR PRIMAS DE SEGUROS O RECLAMACIONES:**

Si tiene una disputa relacionada con su prima de seguro o con una reclamación, usted debe comunicarse con la compañía primero. Si la disputa no es resuelta, usted puede comunicarse con el Departamento de Seguros de Texas.

#### **ADJUNTE ESTE AVISO A SU PÓLIZA:**

Este aviso es solamente para propósitos informativos y no se convierte en parte o en condición del documento adjunto.

**COMMITMENT FOR TITLE INSURANCE T-7**

**ISSUED BY**

*TITLE RESOURCES GUARANTY COMPANY*

**SCHEDULE A**

Effective Date: **March 18, 2021, 08:00 am**

GF No. **2118892-ROL**

Commitment No. \_\_\_\_\_, issued **March 31, 2021, 08:00 am**

1. The policy or policies to be issued are:

- a. OWNER'S POLICY OF TITLE INSURANCE (Form T-1)  
(Not applicable for improved one-to-four family residential real estate)  
Policy Amount: **\$2,750,000.00**  
PROPOSED INSURED:
- b. TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE  
ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)  
Policy Amount:  
PROPOSED INSURED:
- c. LOAN POLICY OF TITLE INSURANCE (Form T-2)  
Policy Amount:  
PROPOSED INSURED:  
Proposed Borrower:
- d. TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)  
Policy Amount:  
PROPOSED INSURED:  
Proposed Borrower:
- e. LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)  
Binder Amount:  
PROPOSED INSURED:  
Proposed Borrower:
- f. OTHER  
Policy Amount:  
PROPOSED INSURED:

2. The interest in the land covered by this Commitment is: **Fee Simple**

3. Record title to the land on the Effective Date appears to be vested in:  
**Berkman Terraces, LLC**

4. Legal description of land:

**Tract 1: Lots 2 and 3, Block A, HICKMAN OAKS, according to the map or plat thereof, recorded in Document No. 201600305, Official Public Records, Travis County, Texas.**

**Tract 2: Lots 1 and 2, Block A, BERKMAN TERRACE, according to the map or plat thereof, recorded in Document No. 201600264, Official Public Records, Travis County, Texas.**

**Tract 3: Being 0.5 of an acre of land, more or less, out of the DINSMORE SIMPSON SURVEY NO. 27, ABSTRACT NO. 694, Travis County, Texas, being that same tract of land conveyed to Berkman Terraces, LLC and described in Special Warranty Deed recorded in Document No. 2017061605, Official Public Records, Travis County, Texas.**

*The Company is prohibited from insuring the area or quantity of the land described herein. Therefore, the Company does not represent that the acreage or square footage calculations are correct and references to the quantity are for informational purposes only.*

**SCHEDULE B**  
**EXCEPTIONS FROM COVERAGE**

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):

**B documents**

**Document No. 201600305 (plat), Official Public Records, Travis County, Texas, but omitting any covenant or restriction based on race, color, religion, sex, disability, handicap, familial status or national origin. (Tract 1)**

**Document No. 201600264 (plat), Official Public Records, Travis County, Texas, but omitting any covenant or restriction based on race, color, religion, sex, disability, handicap, familial status or national origin. (Tract 2)**

**Document No. 2018198366, Official Public Records, Travis County, Texas, but omitting any covenant or restriction based on race, color, religion, sex, disability, handicap, familial status or national origin. (All Tracts)**

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Homestead or community property or survivorship rights, if any of any spouse of any insured. (Applies to the Owner's Policy only.)
4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
  - a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
  - b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
  - c. to filled-in lands, or artificial islands, or
  - d. to statutory water rights, including riparian rights, or
  - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.(Applies to the Owner's Policy only.)
5. Standby fees, taxes and assessments by any taxing authority for the year **2021**, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year \_\_\_\_ and subsequent years.")
6. The terms and conditions of the documents creating your interest in the land.
7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a binder is issued.)

8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage.  
(Applies to Loan Policy (T-2) only.)
9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only.) Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance (T-2R).
10. The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception.):
- a. **Rights of parties in possession. (Owner Title Policy)**
  - b. **Rights of tenants, as tenants only, under any and all unrecorded leases or rental agreements.**  
*(NOTE: This item can be deleted upon receipt of an Affidavit executed by the seller evidencing there are not any outstanding leases or rental agreements. If the Affidavit reveals unrecorded outstanding leases or rental agreements the exception may be modified to make specific exception to those matters.)*
  - c. **Any portion of subject property lying within the boundaries of a dedicated or undedicated public or private roadway.**
  - d. **Easement as shown on the plat and dedication set out in Schedule A hereof:**
    - Purpose:** electric and telecommunications easement
    - Location:** 10 feet along the front lot lines of Lots 1 and 2 (Tract 2)
  - e. **Easement as shown on the plat and dedication set out in Schedule A hereof:**
    - Purpose:** electric and telecommunications easement
    - Location:** 7.5 feet along the southwest property line of Lot 2 , Blk A and Lot 3, Blk A (Tracts 1 and 2)
  - f. **Easement as shown on the plat and dedication set out in Schedule A hereof:**
    - Purpose:** electric and telecommunications easement
    - Location:** 7.5 feet along the east property line of Lot 2, Blk A (Tract 1)
  - g. **Easement as shown on the plat and dedication set out in Schedule A hereof:**
    - Purpose:** joint use access
    - Location:** 10' traversing Lot 2, Blk A (Tract 1)
  - h. **Easement granted to Texas Power & Light Company by instrument recorded in Volume 471, Page 108, Deed Records, Travis County, Texas. (Tracts 1 and 2)**
  - i. **Easement granted to the City of Austin by instrument recorded in Volume 2499, Page 101, Deed Records, Travis County, Texas. (Tracts 1 and 2)**
  - j. **Easement:**
    - Recorded:** Volume 4369, Page 522, Deed Records, Travis County, Texas.
    - To:** City of Austin
    - Purpose:** electric and telephone lines (Tract 3)
  - k. **Terms, conditions and stipulations in the Agreement by and between:**
    - Parties:** Windsor Park Assets, LLC and the City of Austin

**Recorded:** Document Nos. 2016168228 and further affected by Assignment and Assumption dated February 13, 2017 in 2017039320, Official Public Records, Travis County, Texas.

**Type:** Subdivision Construction Agreement (Tracts 1 and 2)

- I. All leases, grants, exceptions or reservation of coal, lignite, oil, gas and other mineral, together with all rights, privileges, and immunities relating thereto appearing in the public records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interest that are not listed.**
  
- m. Any claim, right, or assertion of title by the adjoining land owner in and to that strip of land located between the property line and the fence(s) as shown on that survey dated 11/14/2019, prepared by John E. Brautigan, R.P.L.S. 5057.**



## SCHEDULE C

Your Policy will not cover loss, costs, attorneys' fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
  - a. no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
  - b. all standby fees, taxes, assessments and charges against the property have been paid,
  - c. all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,
  - d. there is legal right of access to and from the land,
  - e. (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.

**5. Recordation of Partial Release of Vendor's Lien retained in Deed:**

**Recorded:** Document No. 2014061714, Official Public Records, Travis County, Texas  
**Grantor:** Troy Hanna  
**Grantee:** Empirico Development, Inc.  
**Dated:** 4/29/2014

**Additionally secured by Deed of Trust:**

**Recorded:** Document No. 2014061715, Official Public Records, Travis County, Texas  
**Grantor:** Empirico Development, Inc.  
**Trustee:** J. Mark Roper  
**Beneficiary:** Frontage Funding LLC, a Texas limited liability company  
**Amount:** \$200,000.00 and \$75,000.00, an aggregate amount of \$275,000.00 (Tract 3)

**6. The above lien having been assumed in Warranty Deed:**

**Recorded:** Document No. 2015110328 corrected in 2015110302, Official Public Records, Travis County, Texas.  
**Grantor:** Empirico Development, Inc., a Texas corporation  
**Grantee:** Windsor Park Assets, LLC  
**Dated:** 7/1/2015

**The above described lien encumbers additional property. (Tract 3)**

**7. In regards to Berkman Terraces, LLC, company must be furnished the following in order to determine the identity of the person(s) with authority to sign documents:**

- a) Copy of the Articles of Formation (formerly Organization), and all amendments thereto.

**b) Copy of the Rules and Regulations or Operating Agreement.**

**c) Copy of proof of registration and evidence of good standing in entity's state or nation of domicile.**

- 8. Please furnish the names of the parties to be insured herein. Upon receipt of said names, additional requirements may be made.**
- 9. Payment of any and all ad valorem taxes which may be due and payable on the subject property.**
- 10. Company requires Owner, Seller and/or Borrower to complete an Affidavit of Debts and Liens prior to the issuance of the Title Insurance Policy.**
- 11. Company must be furnished with a properly executed Waiver of Inspection signed by the Purchaser.**
- 12. Good Funds in an amount equal to all disbursements must be received and deposited before any funds may be disbursed. Partial disbursements prior to the receipt and deposit of good funds are not permitted. Good Funds means cash, wire transfer, certified checks, cashier's checks and teller checks. Company reserves the right to require wired transfer of funds in accordance with Procedural Rule P-27 where immediate disbursement is requested.**
- 13. ARBITRATION: The Owner Policy of Title Insurance (Form T-1) and the Loan Policy of Title Insurance (Form T-2) contain an arbitration provision. It allows the Insured or the Company to require arbitration if the amount of insurance is \$2,000,000 or less. If the insured wants to retain the right to sue the Company in case of a dispute over a claim, the Insured must request deletion of the arbitration provision before the Policy is issued. The Insured may do this by signing the Deletion of Arbitration Provision form and returning it to the Company at or before the closing of the real estate transaction or by writing to the Company. {The Arbitration Provision may not be deleted on the Texas Residential Owner Policy of Title Insurance (Form T-1R).}**
- 14. NOTICE: Title Company is unwilling to issue the Title Policy without the general mineral exception(s) set out in Schedule B hereof pursuant to Procedural Rule P-5.1. Optional endorsements (T19.2 and T19.3) insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase upon request of the Proposed Insured. Neither this Policy, nor the optional endorsements, insure that the purchaser has title to the mineral rights related to the surface estate. The promulgated cost for said endorsement is \$50 per policy.**
- 15. FOR INFORMATIONAL PURPOSES ONLY: Company finds the following Deeds filed of record in the Official Public Records, Travis County, Texas affecting the subject property in the last 24 months: Document Nos. 2017013710 (Tracts 1 and 2) and 2017061605 (Tract 3)**
- 16. ADVISORY NOTICE: Company has approved the land title survey dated 11/14/2019, prepared by John E. Brautigan, R.P.L.S. No. 5057. Upon request, and payment of any promulgated premium, Item No. 2 of Schedule B may be amended on the Title Policy to read: "shortages in area". If the survey being used is not current, Company must obtain an acceptable T.47 Real Property Affidavit to confirm that no improvements or changes have been made to the subject property since the certification date shown on the survey. Please note, the survey plat provided may not reflect or locate each of the dedicated easements or building lines set out as specific exceptions or contained in restrictive covenants set out on Schedule B. Proposed insured Buyer and/or Lender should review prior to closing.**

Countersigned  
**Independence Title**

By

## COMMITMENT FOR TITLE INSURANCE

### SCHEDULE D

GF No. **2118892-ROL**

Effective Date: **March 18, 2021, 08:00 am**

Pursuant to the requirements of Rule P-21, Basic Manual of Rules, Rates and Forms for the writing of Title Insurance in the State of Texas, the following disclosures are made:

1. The following individuals are directors and/or officers, as indicated, of the Title Insurance Company issuing this Commitment

**Title Resources Guaranty Company**, is a corporation whose shareholders owning or controlling, directly or indirectly, 10% or more of said corporation, directors, and officers are listed below:

**Shareholders:**

Realogy Title Group, LLC.

**Directors:**

Donald J. Casey; Michael P. Gozdan; Sriram Someshwara; J. Scott McCall; Thomas N. Rispoli; Donald W. Evans, Jr.; Marilyn J. Wasser

**Officers:**

J. Scott McCall-President/CEO, E. Paul McNutt, Jr-EVP, Michael P. Gozdan- Secretary, Jeffrey A. Gueiss, Chief Financial Officer

2. The following disclosures are made by the Title Insurance Agent Secured Land Transfers, LLC dba Independence Title issuing this commitment:

- (a) A listing of each shareholder, owner, partner, or other person having, owning or controlling one percent (1%) or more of the Title Insurance Agent that will receive a portion of the premium.

**TRG Maryland Holdings LLC**

- (b) A listing of each shareholder, owner, partner, or other person having, owning or controlling 10 percent (10%) or more of an entity that has, owns or controls one percent (1%) or more of the Title Insurance Agent that will receive a portion of the premium.

**Title Resource Group LLC**

- (c) If the Agent is a corporation: (i) the name of each director of the Title Insurance Agent, and (ii) the names of the President, the Executive or Senior Vice-President, the Secretary and the Treasurer of the Title Insurance Agent are as follows:

Scott Storck, President; Donald J. Casey, Chief Executive Officer; Sriram Someshwara, Senior Vice President and Chief Financial Officer; Michael P. Gozdan, Senior Vice President and Secretary; Marilyn J. Wasser, Executive Vice President and Assistant Secretary; Donald W. Evans, Jr., Senior Vice President ; Robert Fitzpatrick, Senior Vice President; Lynette K. Gladdis, Senior Vice President and Assistant Secretary; Timothy B. Gustavson, Senior Vice President; Deborah Higgins, Senior Vice President; Thomas N. Rispoli, Senior Vice President and Assistant Secretary; Seth I. Truwit, Senior Vice President and Assistant Secretary; Walter Patrick Mullen, Senior Vice President; Brian Alan Pitman, Vice President; Jay Fitzgerald, Vice President.

- (d) The name of any person who is not a full-time employee of the Title Insurance Agent and who receives any portion of the title insurance premium for services performed on behalf of the Title Insurance Agent in connection with the issuance of a title insurance form; and, the amount of premium that any such person shall receive is disclosed in paragraph 3.
- (e) For purposes of this paragraph 2, "having, owning, or controlling" includes the right to receipt of a percentage of net income, gross income, or cash flow of the Agent or entity in the percentage

stated in subparagraphs (a) or (b).

3. You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving a portion of the premium from the settlement of this transaction will be disclosed on the closing or settlement statement.

You are further advised that the estimated title premium\* is:

Owner's Policy	<u><b>\$13,153.00</b></u>
Loan Policy	<u><b>\$0.00</b></u>
Endorsement Charges	<u><b>\$0.00</b></u>
Other	<u><b>\$0.00</b></u>
Total	<u><b>\$13,153.00</b></u>

Of this total amount: 15% will be paid to the policy issuing Title Insurance Company; 85% will be retained by the issuing Title Insurance Agent; and the remainder of the estimated premium will be paid to other parties as follows:

<u>Amount</u>	<u>To Whom</u>	<u>For Services</u>
---------------	----------------	---------------------

"The estimated premium is based upon information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of the premium will be made at closing in accordance with the Rules and Regulations adopted by the Commissioner of Insurance."

### Title Resources Guaranty Company

Premium Amount	Rate Rules	Property Type	County Code	Liability at Reissue Rate			
1 <b>\$13,153.00</b>	2 <b>1000</b>	3 <b>3</b>	4 <b>453</b>	5	6	7	8

## **APPENDIX 2**

### **ZONING**

**2A ZONING CASE 20181213-062\_C14-2018-0037-001**



**ORDINANCE NO. 20181213-062**

**AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE PROPERTY LOCATED AT 6203, 6205, 6207 BERKMAN DRIVE AND 6210 HICKMAN AVENUE IN THE UNIVERSITY HILLS/WINDSOR PARK COMBINED NEIGHBORHOOD PLAN AREA FROM NEIGHBORHOOD COMMERCIAL-MIXED USE-NEIGHBORHOOD PLAN (LR-MU-NP) COMBINING DISTRICT AND TOWNHOUSE AND CONDOMINIUM RESIDENCE-NEIGHBORHOOD PLAN (SF-6-NP) COMBINING DISTRICT TO COMMUNITY COMMERCIAL-MIXED USE-CONDITIONAL OVERLAY-NEIGHBORHOOD PLAN (GR-MU-CO-NP) COMBINING DISTRICT.**

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

**PART 1.** The zoning map established by Section 25-2-191 of the City Code is amended to change the base district from neighborhood commercial-mixed use-neighborhood plan (LR-MU-NP) combining district and townhouse and condominium residence-neighborhood plan (SF-6-NP) combining district to community commercial-mixed use-conditional overlay-neighborhood plan (GR-MU-CO-NP) combining district on the property described in Zoning Case No. C14-2018-0037, on file at the Planning and Zoning Department, as follows:

Lots 2 and 3, Block A, Hickman Oaks subdivision, a subdivision in Travis County, Texas, according to the map or plat of record in Document No. 201600305 of the Plat Records of Travis County, Texas, and

Lots 1 and 2, Block A, Berkman Terrace subdivision, a subdivision in Travis County, Texas, according to the map or plat of record in Document No. 201600264, Plat Records of Travis County, Texas, and

.50 acre tract of land out of the Dinsmore Simpson Survey No. 27, Abstract No. 694 in Travis County, Texas, and being more particularly described by metes and bounds in **Exhibit "A"** incorporated into this ordinance (cumulatively referred to as the "Property"),

locally known as 6203, 6205, 6207 Berkman Drive and 6210 Hickman Avenue in the City of Austin, Travis County, Texas, generally identified in the map attached as **Exhibit "B"**.

**PART 2.** The Property within the boundaries of the conditional overlay combining district established by this ordinance is subject to the following conditions:

A. The maximum height, as defined in City Code, of a building or structure on the Property shall be limited to three (3) stories and may not exceed 40 feet.

B. The following uses are prohibited uses on the Property:

Automotive rentals	Automotive repair services
Automotive sales	Automotive washing (of any type)
Bail bond services	Business or trade school
Business support services	Commercial off-street parking
Communications services	Drop-off recycling collection facility
Exterminating services	Food preparation
Funeral services	Hotel-motel
Indoor entertainment	Indoor sports and recreation
Outdoor entertainment	Outdoor sports and recreation
Pawn shop services	Research services
Service station	Short term rental
Theater	Hospital services - general

C. The following uses are conditional uses of the Property:

Alternative financial services	Medical offices – exceeding 5,000 square feet
Community recreation – private	Community recreation – public
Congregate living	Group home class II
Hospital services – limited	Residential treatment

D. The following land uses on the Property are subject to City Code Section 25-2-587 (*Requirements for Certain Uses in a Neighborhood Commercial (LR) District*):

General retail sales-general	Personal improvement services
Restaurant (general)	

**PART 3.** Except as specifically restricted under this ordinance, the Property may be developed and used in accordance with the regulations established for the community commercial (GR) base district, mixed use (MU) combining district and other applicable requirements of the City Code.

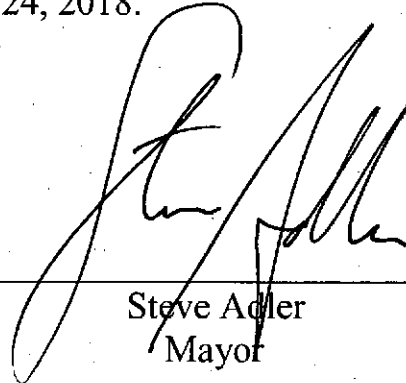
**PART 4.** The Property is subject to Ordinance No. 20070809-057 that established zoning for the Windsor Park Neighborhood Plan.

**PART 5.** This ordinance takes effect on December 24, 2018.

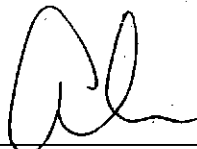
**PASSED AND APPROVED**

\_\_\_\_\_, December 13, 2018

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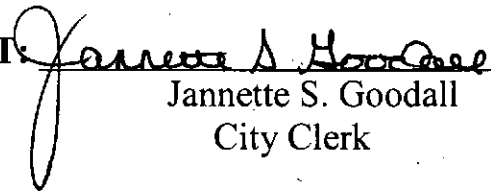
  
\_\_\_\_\_  
Steve Adler  
Mayor

**APPROVED:**



Anne L. Morgan  
City Attorney

**ATTEST:**

  
\_\_\_\_\_  
Jannette S. Goodall  
City Clerk

FIELD NOTES FOR  
0.50 ACRE OUT OF THE  
DINSMORE SIMPSON SURVEY No. 27,  
ABSTRACT No. 694  
TRAVIS COUNTY, TEXAS

### METES AND BOUNDS DESCRIPTION

DESCRIPTION OF A 0.50 ACRE TRACT OF LAND OUT OF THE DINSMORE SIMPSON SURVEY No. 27, ABSTRACT No. 694 IN TRAVIS COUNTY, TEXAS AND BEING THAT CERTAIN TRACT OF LAND CONVEYED TO TROY HANNA BY DEED RECORDED IN DOCUMENT No. 2004150493 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS. SAID TRACT HAVING BEEN SURVEYED ON THE GROUND BY SNS ENGINEERING AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a ½" Iron rod found on the southerly line of a 0.945 acre tract of land conveyed to Anthony V. Monroe by deed recorded in Volume 13090, Page 2879 of the Real Property Records of Travis County, Texas, at the northwest corner of a 0.499 acre tract of land conveyed to Hilda A. Mora by deed recorded in Volume 11801, Page 488 of the Real Property Records of Travis County, Texas, for the northeast corner of the tract herein described;

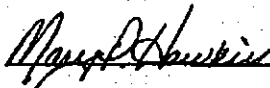
**THENCE**, departing the southerly line of said 0.945 acre tract and along the common line of said 0.499 acre tract and this tract, **S 29°29'00"W**, a distance of **105.27 FEET** to a ½" iron rod found at the northeast corner of a 0.438 acre tract of land conveyed to Carolyn Young, et al by deed recorded in Document No. 2005136650 of the Official Public Records of Travis County, Texas, for the southeast corner of the tract herein described;

**THENCE**, departing the westerly line of said 0.499 acre tract and along the common line of said 0.438 acre tract and this tract, **N 60°01'33"W**, at 181.28 feet pass a P.K. nail found at the northwest corner of said 0.438 acre tract, being in the easterly right-of-way of Berkman Drive, continuing with the easterly right-of-way of Berkman drive and the southerly line of this tract for a total distance of **206.75 FEET** to a punchhole set for the southwest corner of the tract herein described;

**THENCE**, along the easterly right-of-way of Berkman Drive, **N 29°28'58"E**, a distance of **105.39 FEET** to a P.K. nail set at the southwest corner of the aforementioned 0.945 acre tract, for the northwest corner of the tract herein described;

**THENCE**, departing the easterly right-of-way of Berkman Drive and along the common line of said 0.945 acre tract and this tract, **S 59°59'35"E**, a distance of **206.75 FEET** to the **POINT OF BEGINNING** and containing 0.50 acre of land, more or less.

See SNS Engineering "Plat of Survey" No. 051272, page 2 of 2 attached hereto and made a part hereof.



Mary P. Hawkins  
Registered Professional Land Surveyor No. 4433  
State of Texas

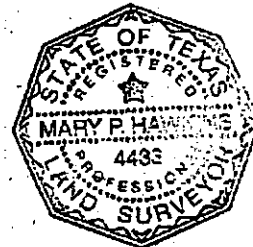


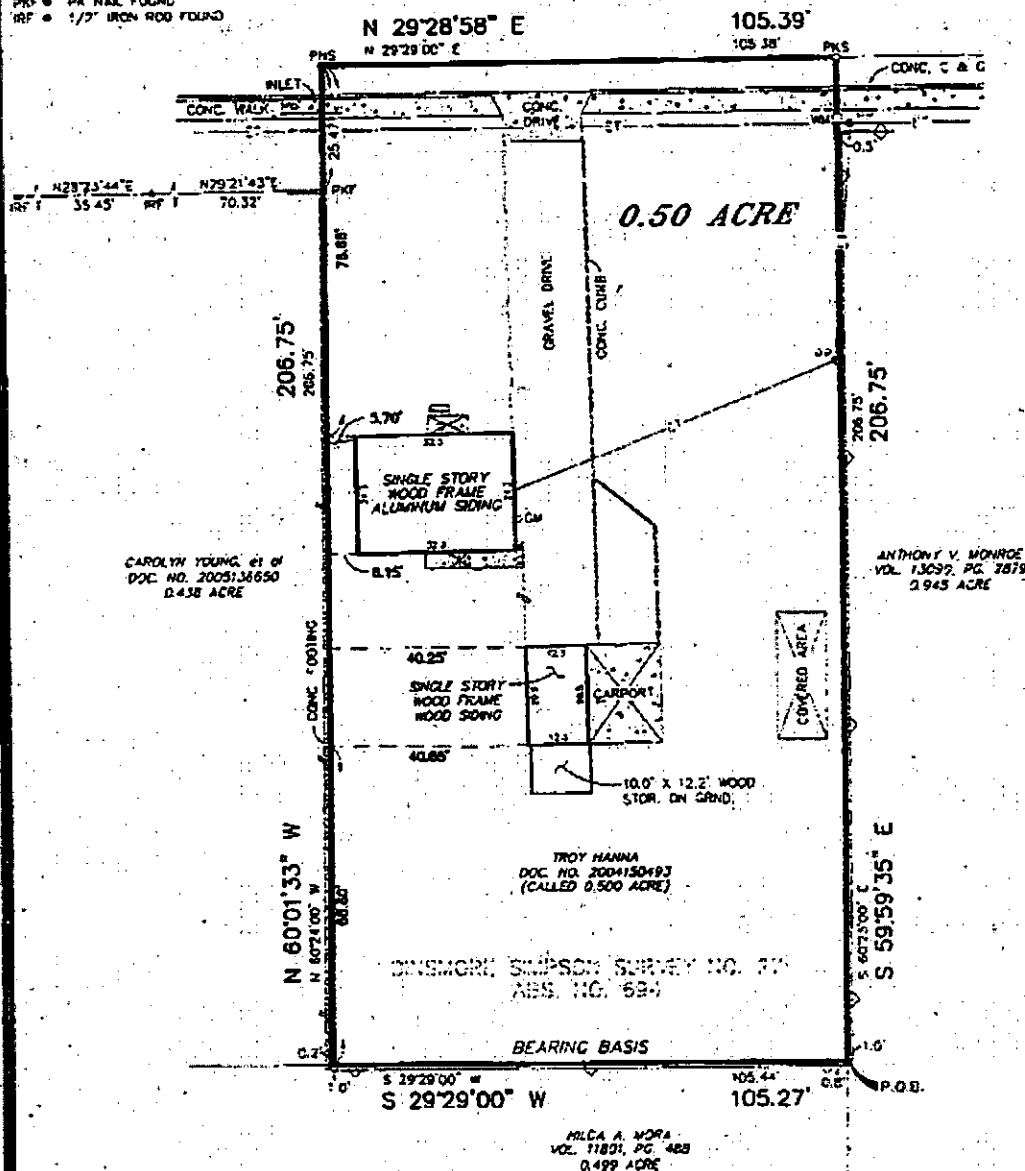
Exhibit A

**LEGEND**  
 PPS POWER POLE  
 -O- OVERHEAD ELEC./TELE. LINE  
 -G- CHAIN LINK FENCE  
 -W- WOOD FENCE  
 WMJ WATER METER  
 GMD GAS METER  
 PMS PUNCH HOLE SET  
 PMS PK NAIL SET  
 PKF PK NAIL FOUND  
 RRF 1/2" IRON ROD FOUND

# BERKMAN DRIVE

(ROW VARIES)

PAGE 2 OF 2



A title Commitment was NOT furnished to the Surveyor. The only Easements shown hereon are per Plat. The Surveyor does not assume any Liability for existence of any easements and/or restrictions encumbered to the Property.

\* DINSMORE SIMPSON SURVEY NO. 27, ABSTRACT NO. 694 (FIELD NOTES ATTACHED)

## PLAT OF SURVEY

Survey No. 051272

SCALE: 1" = 30'

See Loc. 5 in Zone X, as identified to, the  
 Federal Emergency Management Agency on  
 Community Panel No. 48453C 0160E  
 Dated: JUNE 16, 1993

LOT NO.        BLOCK NO.       

ADDITION OR SUBDIVISION 0.50 ACRE OF LAND, MORE OR LESS, OUT OF THE

STREET ADDRESS 6203 BERKMAN DRIVE

CITY AUSTIN

COUNTY TRAVIS

SURVEY FOR PRESIDIO GROUP REALTORS

REFERENCE TROY HANNA

TO  
 STATE OF TEXAS, COUNTY OF TRAVIS

I HEREBY CERTIFY THAT THE ABOVE SURVEY WAS MADE THIS DAY ON THE GROUND AND IS TRUE AND CORRECT, AND THAT  
 THERE ARE NO DISCREPANCIES, CONFLICTS, SHORTAGES IN AREA, ENCROACHMENTS, VISIBLE UTILITY LINES OR ROADS IN  
 PLACES EXCEPT AS SHOWN HEREON AND SAID PROPERTY HAS ACCESS TO A DEDICATED HIGHWAY, EXCEPT AS SHOWN HEREON

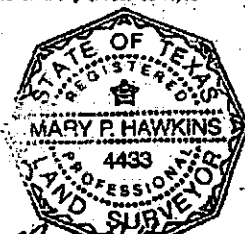
SNS ENGINEERING, INC.

12466 Los Indios Trail, Suite 101

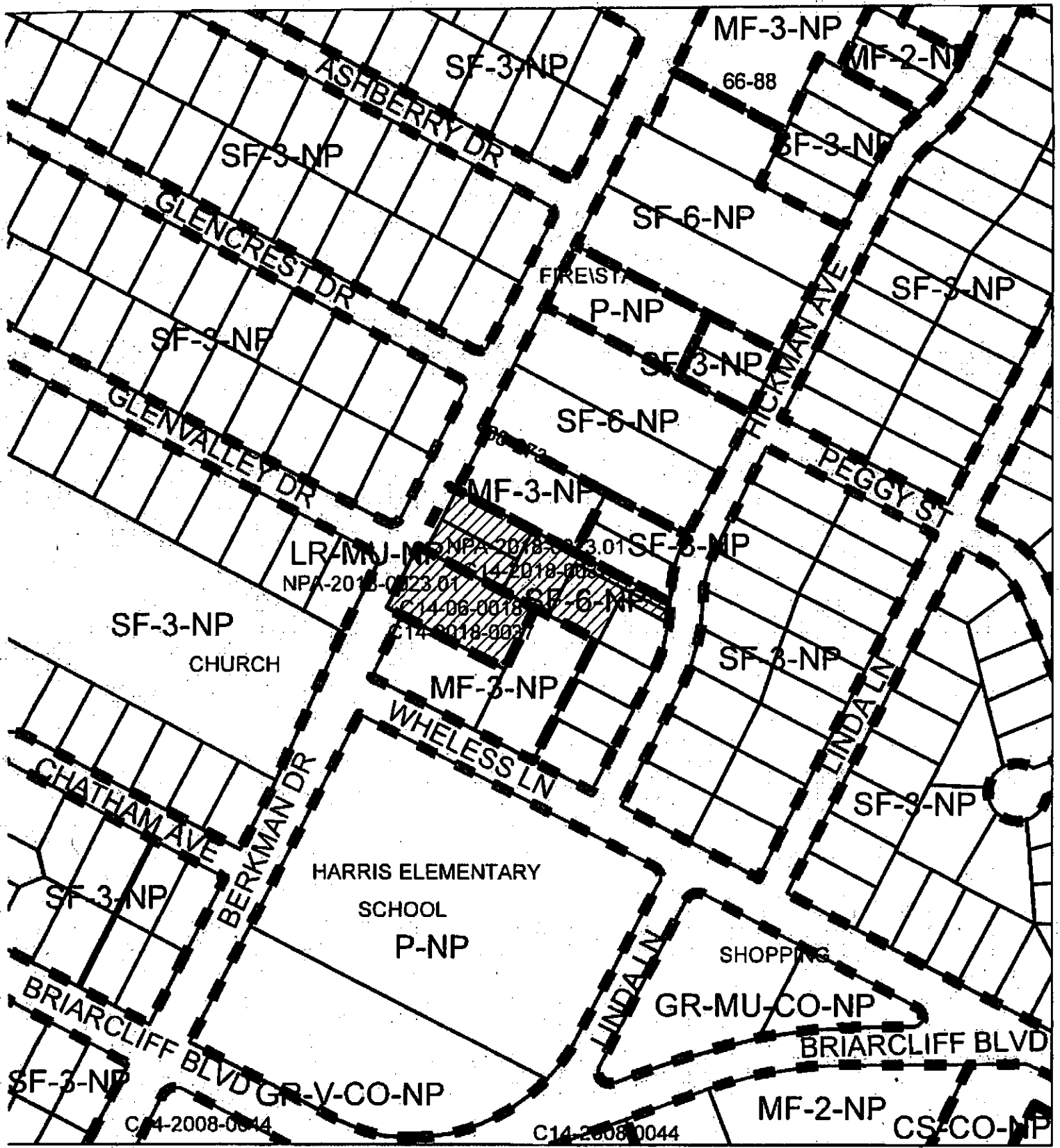
Austin, Texas 78729

(512) 335-3844 • (512) 250-8685 (Fax) WM

546/70



*Mary P. Hawkins*  
 Date: 01-04-2006






# Zoning

Exhibit B

Zoning Case: C14-2018-0037



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

1" = 200'

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## **2B PROPERTY PROFILE**



Questions? Click here for help and contact information.

### Disclaimer

The Information on this website has been produced by the City of Austin as a working staff map and is not warranted for any other use. No warranty is made by the City regarding its accuracy and completeness.

For official verification of the zoning of a property, please order a Zoning Verification Letter at **512-978-4000**.

<b>Location:</b>	6203 BERKMAN DR (3,130,230.25, 10,088,544)
<b>Grid:</b>	L26
<b>Future Land Use (FLUM):</b>	Mixed Use
<b>Regulating Plan:</b>	
<b>Zoning:</b>	GR-MU-CO-NP
<b>Zoning Case:</b>	C14-06-0018 C14-2018-0037 NPA-2018-0023.01
<b>Zoning Ordinance (Mostly after 2000):</b>	99-0225-70(b) 20070809-057 20061130-044 20181213-061 20181213-062
<b>Zoning Overlays:</b>	NEIGHBORHOOD PLANNING AREA ■ WINDSOR PARK ■ University Hills and Windsor Park Combined NPA  RESIDENTIAL DESIGN STANDARDS



### Zoning Guide

The Guide to Zoning provides a quick explanation of the above Zoning codes, however, the Development Assistance Center provides general zoning assistance and can advise you on the type of development allowed on a property. General information on the Neighborhood Planning Areas is available from Neighborhood Planning. Visit Zoning for the description of each Base Zoning District.



# GR

## Community Commercial

Community Commercial district is the designation for an office or other commercial use that serves neighborhood and community needs and that generally is accessible from major traffic ways.

### Site Development Standards

Lot		Massing	
Minimum Lot Size	5,750 sq ft	Maximum Height	60 ft
Minimum Lot Width	50 ft	Minimum Setbacks	
Maximum Building Coverage	75%	Front yard	10 ft
Maximum Impervious Cover	90%	Street side yard	10 ft
Maximum Floor Area Ratio	1:1	Interior side yard	n/a
		Rear yard	n/a

### Permitted and Conditional Uses

#### Residential

Bed and Breakfast Residential (Group I) \*

Bed and Breakfast Residential (Group 2) \*

#### Civic

Club or Lodge (c)  
 College and University Facilities \*  
 Communication Service Facilities \*  
 Community Events \*  
 Community Recreation—Private \*  
 Community Recreation—Public \*  
 Congregate Living  
 Counseling Services  
 Cultural Services  
 Day Care Services—Commercial  
 Day Care Services—General  
 Day Care Services—Limited  
 Family Home \*  
 Group Home Class I—General \*

Group Home Class I—Limited \*  
 Group Home Class II \*  
 Guidance Services  
 Hospital Services—General (c)  
 Hospital Services—Limited  
 Local Utility Services  
 Private Primary Educational Services \*  
 Private Secondary Educational Services \*  
 Public Primary Educational Services \*  
 Public Secondary Educational Services \*  
 Religious Assembly  
 Residential Treatment  
 Safety Services  
 Telecommunication Tower (PC) \*

#### Commercial

Art Gallery  
 Alternative Financial Services  
 Art Workshop \*  
 Administrative and Business Offices  
 Automotive Rentals

Automotive Repair Services  
 Automotive Sales  
 Automotive Washing of any type  
 Bail Bond Services (PC)

## VI. COMBINING DISTRICTS

### -MU

#### Mixed Use Combining District

Mixed Use combining district is intended for combination with selected base districts, in order to permit any combination of office, retail, commercial, and residential uses within a single development. Allows development of all types of residential uses, including single-family residential, multifamily residential, and townhomes.

Base Districts: The MU combining district may be combined with the commercial base districts listed below. The MU combining district may not be used with a residential base district.

**Table 3. Mixed Use Combining Districts**

Code	District Name
NO-MU	Neighborhood Office-Mixed Use
LO-MU	Limited Office-Mixed Use
GO-MU	General Office-Mixed Use
LR-MU	Neighborhood Commercial-Mixed Use
GR-MU	Community Commercial-Mixed Use
CS-MU	General Commercial Services-Mixed Use
CS-1-MU	Commercial Liquor Sales-Mixed Use

#### Permitted Uses

##### Residential

Townhouse Residential	Two-Family Residential
Multifamily Residential	Condominium Residential
Single-Family Residential	Duplex Residential
Single-Family Attached Residential	Group Residential
Small-Lot Single-Family Residential	

##### Civic

Group Home Class I—Limited	Group Home Class II
Group Home Class I—General	Civic uses as permitted in the base district.

##### Commercial

Vertical mixed use buildings, subject to compliance with Section 4.3 of Subchapter E of the Land Development Code.	Commercial uses as permitted in the base district.
--	--

## -MU (continued)

### MU Combining District Standards for Residential Uses

The following residential uses must be developed in accordance with the site development regulations for that use specified in the Land Development Code:

- Single-Family Residential—must comply with the site development regulations prescribed by the Land Development Code for a family residence (SF-3) district, except for the front yard setback. The use must comply with the front yard setback prescribed for the base district.
- Single-Family Attached Residential
- Small-Lot Single Family Residential
- Two-Family Residential
- Duplex Residential

For the following residential uses listed below, a specific minimum site area (listed in Table 4) is required, determined by the base zoning district and the type of unit.

- Multifamily Residential
- Townhouse Residential
- Condominium Residential
- Group Residential
- Group Home

Table 4. Site area required for each dwelling unit

Zoning District	Unit type		
	Efficiency	1-Bedroom	2- or more bedroom
NO	3,600 sq ft	4,000 sq ft	4,400 sq ft
LO, LR	1,600 sq ft	2,000 sq ft	2,400 sq ft
GO, GR, CS, CS-1	800 sq ft	1,000 sq ft	1,200 sq ft

## -V

### Vertical Mixed Use Building Combining District

The Vertical Mixed Use Building combining district may be applied in combination with any commercial base zoning district and allows for the combination of office, retail, commercial and residential uses with a vertical mixed use building.



# -CO

## Conditional Overlay Combining District

**Purpose:** The purpose of the conditional overlay (CO) combining district is to modify use and site development regulations to address the specific circumstances presented by a site. Use and site development regulations imposed by a CO combining district must be more restrictive than the restrictions otherwise applicable to the property.

**Application:** A conditional overlay may be applied any base district to do the following:

- Prohibit permitted, conditional and/or accessory uses otherwise allowed in a base district.
- Make a permitted use a conditional use
- Decrease the density that may be constructed
- Increase minimum lot size or minimum lot width requirements
- Decrease maximum floor to area ratio (FAR)
- Decrease maximum building heights
- Increase minimum yard and setback requirements
- Establish buffering requirement (hedge, fence, undisturbed buffer along property lines)
- Decrease maximum building or impervious coverage requirements
- Limit the maximum square footage of building space
- Restrict access to adjacent roads and require specific design features to minimize the effects of traffic
- For a mixed use (MU) combining district, prohibit or make conditional a use that is otherwise permitted by Chapter 25-2, Subchapter E (Mixed Use Zoning Districts) of the Land Use Development Code.

# -NP

## Neighborhood Plan Combining District

Purpose: To allow infill development by implementing a neighborhood plan that has been adopted by the council as an amendment to the comprehensive plan.

Below is a list of items that may be added to properties (individual, subdistrict or area-wide) within an NP combining district. These options are discussed during the neighborhood planning process and, if chosen, are adopted concurrently with the neighborhood plan. These options may also be added in the future through the rezoning and plan amendment process.

### A. APPLICATION OF INFILL SPECIAL USE OPTIONS

- Cottage Lot Urban
- Home Secondary
- Apartment
- Neighborhood Urban Center
- Corner Store
- Neighborhood Mixed Use Building
- Residential Infill
- Secondary Apartment
- Small Lot Amnesty

### B. APPLICATION OF DESIGN STANDARDS

- Front Porch Setback
- Impervious Cover and Parking Placement Requirements
- Garage Placement

### C. OTHER ITEMS

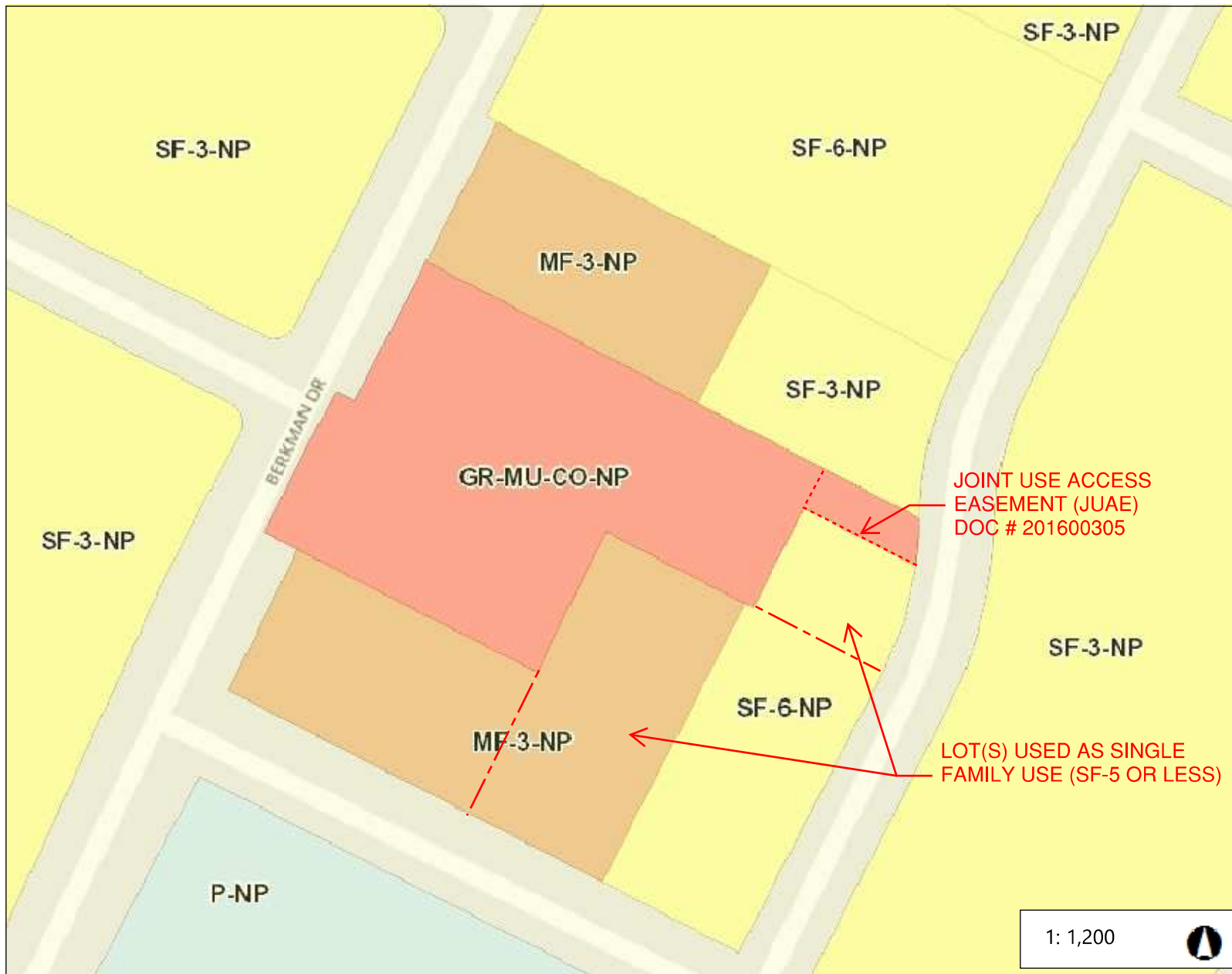
- Establishment of Front or Side Yard Parking
- Requirements for Mobile Food Establishments
- Modification of Residential Design and Compatibility Standards
- Modification of Affordability Requirements

Note: For additional information on Infill Special Use Options and Design Standards, refer to the Infill Options and Design Tool Handbook

**2C ZONING MAP**



# Zoning Map



## Legend

### Jurisdiction

- FULL PURPOSE
- LIMITED PURPOSE
- EXTRATERRITORIAL JURISDICTION
- 2 MILE ETJ AGRICULTURAL AGR
- OTHER CITY LIMITS
- OTHER CITIES ETJ

### Jurisdiction

- FULL PURPOSE
- LIMITED PURPOSE
- EXTRATERRITORIAL JURISDICTION
- 2 MILE ETJ AGRICULTURAL AGR
- OTHER CITY LIMITS
- OTHER CITIES ETJ

### Zoning

- Lake Austin, Rural Residence (LA;
- Single Family (SF-1; SF-2; SF-3; SI
- Mobile Home (MH)
- Multi-family (MF-1; MF-2; MF-3; MF
- Commercial (CH; CR; CS; CS-1; G
- Office (GO; LO; NO)
- Industrial (IP; LI; MI; R&D; W/LO)
- CBD; Downtown Mixed Use (DMU)
- ERC; NBG; TND; TOD
- Planned Unit Development (PUD)
- Agriculture, Development Reserve
- Aviation, Public, Unzoned (AV; P; L
- Unclassified

Zoning Text

## Notes

0.0 0 0.02 0.0 Miles

NAD\_1983\_StatePlane\_Texas\_Central\_FIPS\_4203\_Feet

Date Printed:

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1: 1,200

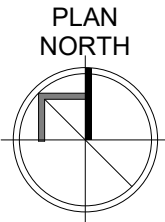


## **APPENDIX 3**

### **UTILITY SERVICE**



## **3A BERKMAN TERRACE CONCEPT PLAN**

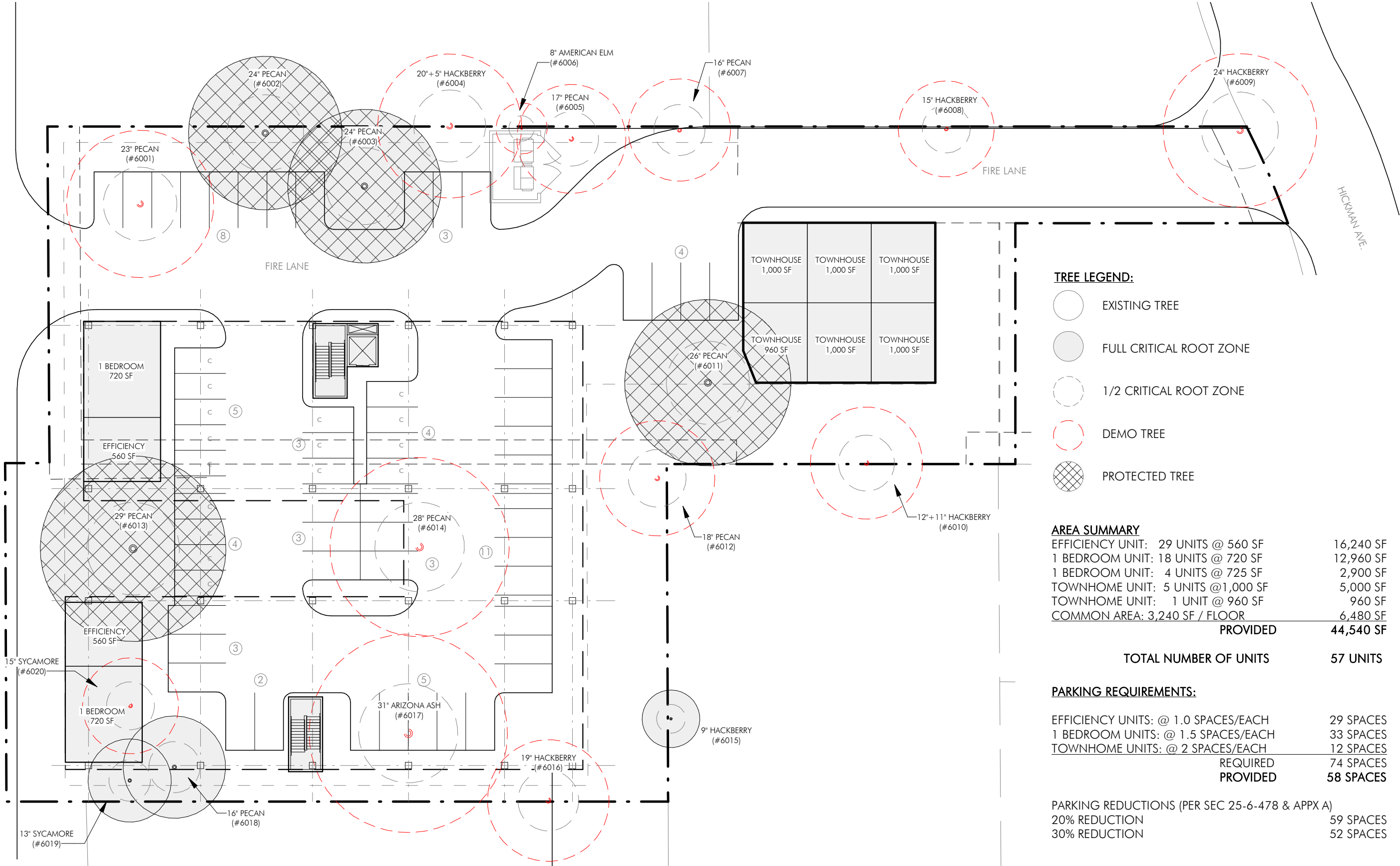


PRELIMINARY

This document was issued on 04/07/2021  
by Stephen V. Levy, Architect, State of Texas, #18122.  
Not for regulatory approval, permitting, or construction.

FEASIBILITY STUDY

This drawing is for feasibility only. It does not indicate  
drainage, grading, site utilities, final site layout or  
dimension control. A site survey will be required to  
confirm all site dimensions, etc.



TREE LEGEND:

- EXISTING TREE
- FULL CRITICAL ROOT ZONE
- 1/2 CRITICAL ROOT ZONE
- DEMO TREE
- PROTECTED TREE

AREA SUMMARY

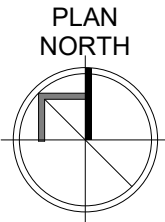
EFFICIENCY UNIT:	29 UNITS @ 560 SF	16,240 SF
1 BEDROOM UNIT:	18 UNITS @ 720 SF	12,960 SF
1 BEDROOM UNIT:	4 UNITS @ 725 SF	2,900 SF
TOWNHOME UNIT:	5 UNITS @ 1,000 SF	5,000 SF
TOWNHOME UNIT:	1 UNIT @ 960 SF	960 SF
COMMON AREA:	3,240 SF / FLOOR	6,480 SF
	PROVIDED	44,540 SF

TOTAL NUMBER OF UNITS 57 UNITS

PARKING REQUIREMENTS:

EFFICIENCY UNITS:	@ 1.0 SPACES/EACH	29 SPACES
1 BEDROOM UNITS:	@ 1.5 SPACES/EACH	33 SPACES
TOWNHOME UNITS:	@ 2 SPACES/EACH	12 SPACES
	REQUIRED	74 SPACES
	PROVIDED	58 SPACES

PARKING REDUCTIONS (PER SEC 25-6-478 & APPX A)	
20% REDUCTION	59 SPACES
30% REDUCTION	52 SPACES

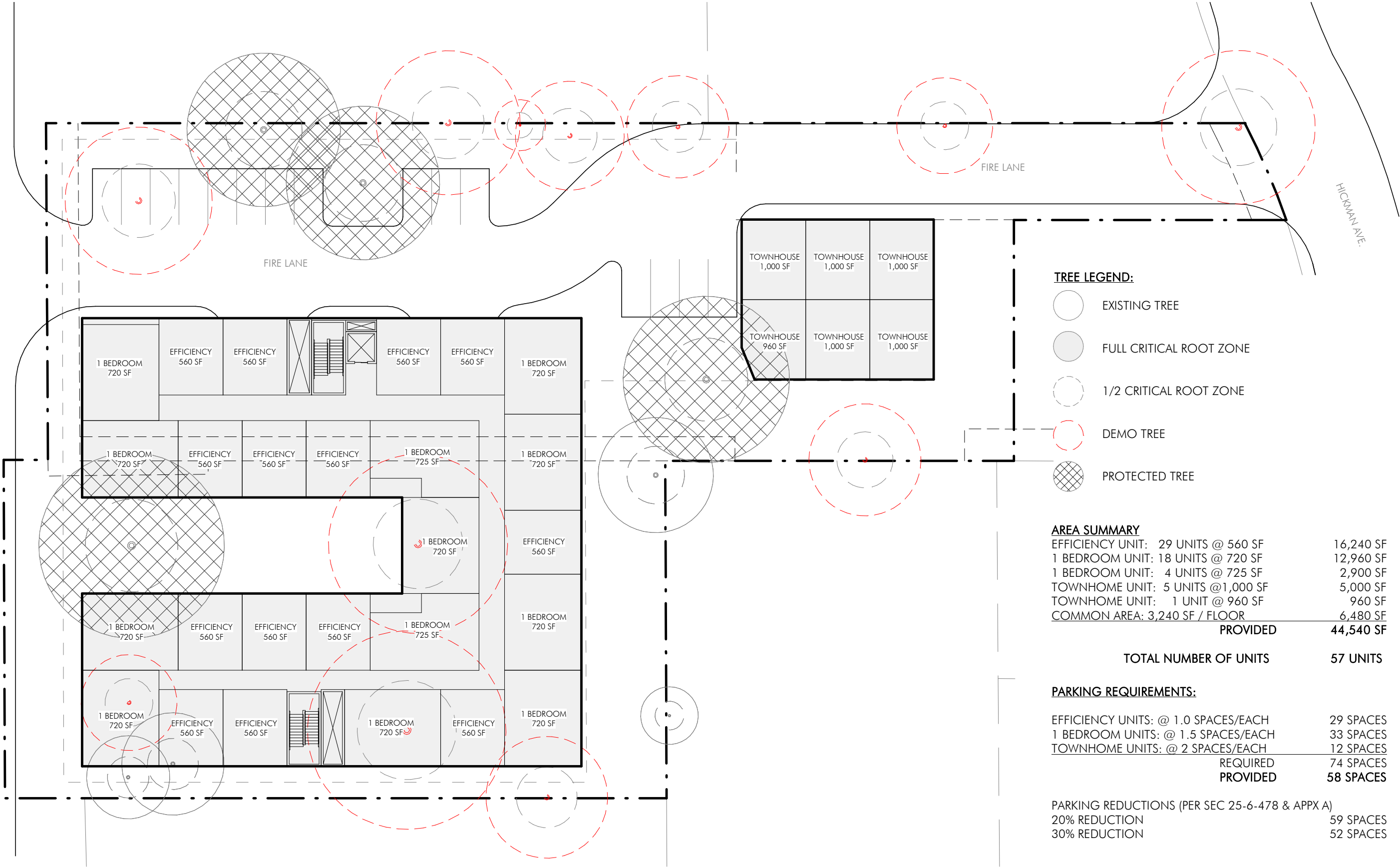


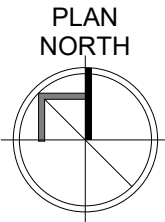
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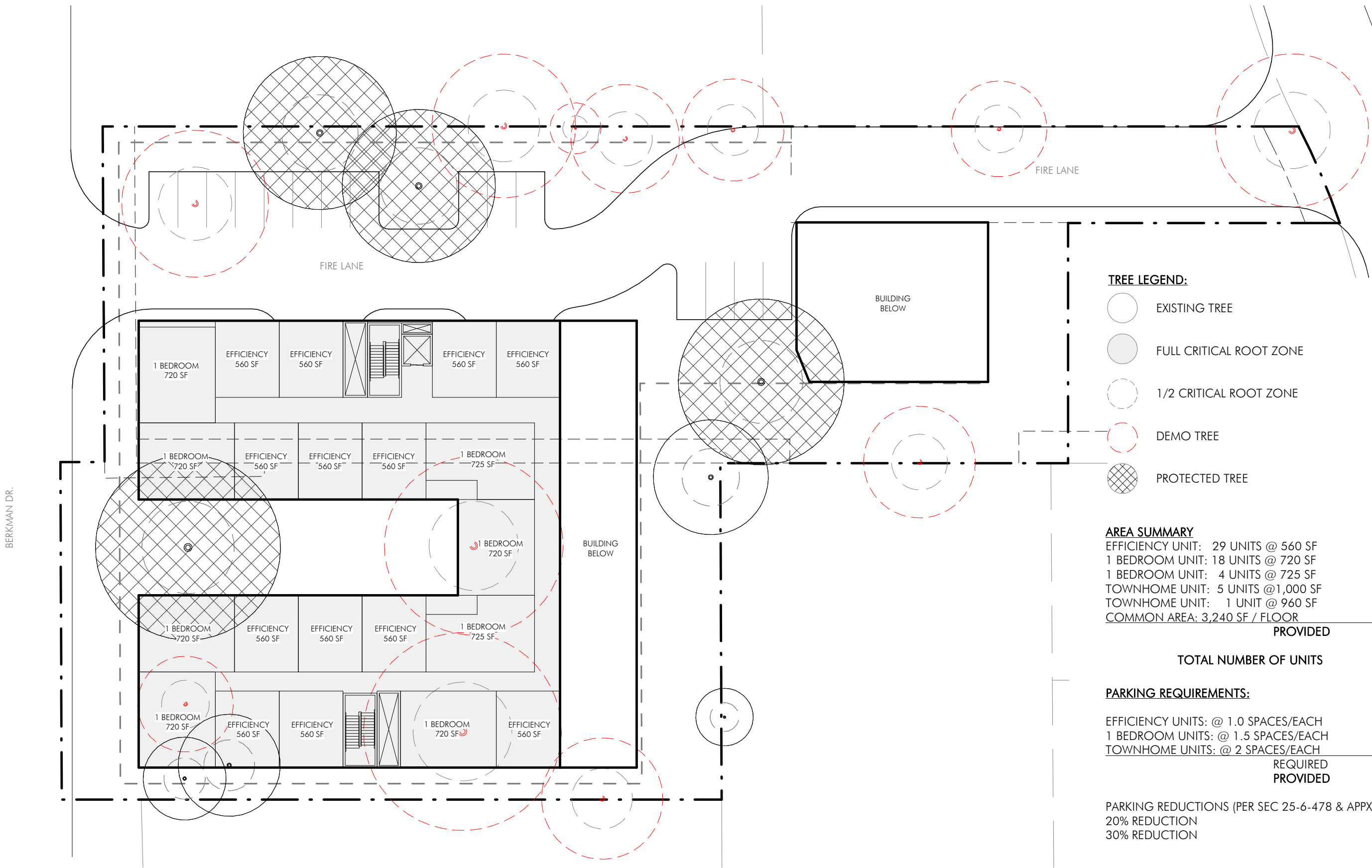


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TREE LEGEND:

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- FULL CRITICAL ROOT ZONE
- 1/2 CRITICAL ROOT ZONE
- DEMO TREE
- PROTECTED TREE

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EFFICIENCY UNIT:	29 UNITS @ 560 SF	16,240 SF
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PROVIDED		44,540 SF

TOTAL NUMBER OF UNITS 57 UNITS

PARKING REQUIREMENTS:

EFFICIENCY UNITS:	@ 1.0 SPACES/EACH	29 SPACES
1 BEDROOM UNITS:	@ 1.5 SPACES/EACH	33 SPACES
TOWNHOME UNITS:	@ 2 SPACES/EACH	12 SPACES
REQUIRED		74 SPACES
PROVIDED		58 SPACES

PARKING REDUCTIONS (PER SEC 25-6-478 & APPX A)	
20% REDUCTION	59 SPACES
30% REDUCTION	52 SPACES

**3B SER4936\_2021-01-19**

**WATER AND WASTEWATER  
SERVICE EXTENSION  
REQUEST FOR  
CONSIDERATION**

Name: Berkman Terrace

Service Requested: **Water**

**SER-4936**

Hansen Service Request Number 881568

Date Received: 11/10/2020

Location: 6203 BERKMAN DR AUSTIN TX 78723 Berkman Terrace

Acres: 1.29

Land Use: MIXED

LUE: 43

Alt. Utility Service or S.E.R. Number: City of Austin Wastewater SER-4937

Quad(s): L26

Reclaimed Pressure Zone: CENTRAL SERVICE AREA

DDZ: YES

Drainage Basin: FORT UPPER

Pressure Zone: NORTH

DWPZ: NO

Demand (Estimated Peak Hour): 96 GPM

FIRE FLOW: 1,500 GPM

Cost Participation: \$0.00

% Within City Limits: 100

% Within Limited Purpose: 0


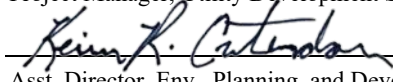
**Description of Improvements:**

Applicant shall make an appropriately sized water connection to the existing 8-inch water main located in Berkman Dr. at the approximate location shown on the attached map.

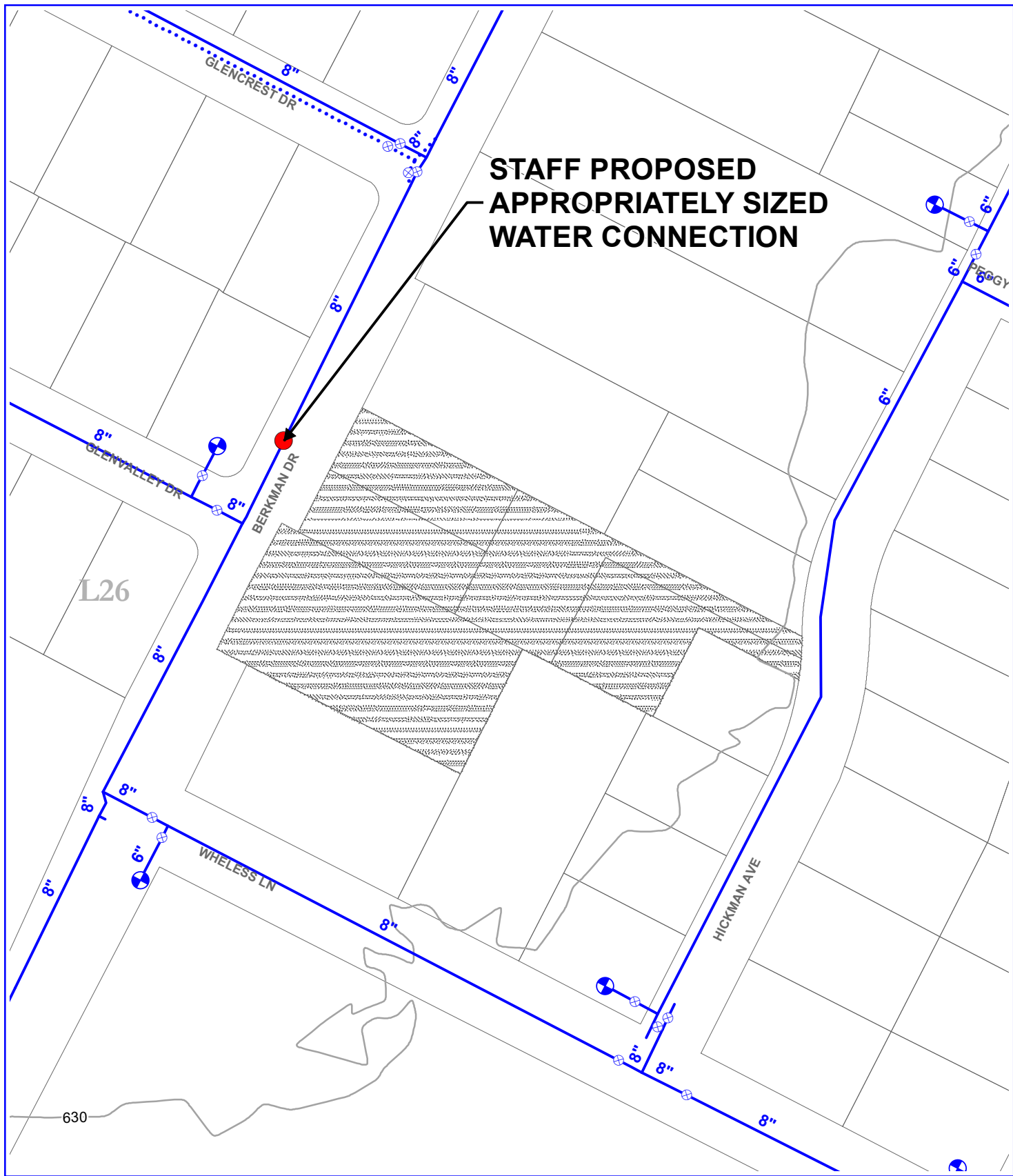
NOTES: 1) Water demand and fire flow requirement based on engineering calculations received from Michael A. Giannetta, P.E. of LandDev Consulting, LLC. on 11/12/2020. 2) Private water service lines shall not cross lot lines unless Utility Development Services determines proper cause for allowing a private water easement as means of providing water service to proposed lots. 3) Applicant has indicated that the multiple parcels that comprise the subject tract will be developed as a single tract. If the Applicant decides to develop each parcel individually, a revision to this SER may be required.

**Approval of this Service Extension Request is subject to completion and acceptance of the improvements described above and the conditions set forth below:**

- 1) Construction of all Service Extensions is subject to all environmental and planning ordinances.
- 2) Service Extensions are subject to the guidelines established in the Land Development Code, Chapter 25-9, Water and Wastewater Utility Service.
- 3) An approved Service Extension is not a reservation of capacity in the system, but is an acknowledgment of the intent to serve. Available capacity shall be confirmed at the time a development application is submitted.
- 4) The level of service approved by this document does not imply commitment for land use.
- 5) Public utility mains must meet City of Austin design and construction criteria and must be approved by Austin Water Engineering Review.
- 6) Approval of a site plan that meets the Fire Department requirements for fire control.
- 7) Proposed public water improvements will be dedicated to the City of Austin for ownership, operation, and maintenance.
- 8) Proposed public water improvements must be placed in the public right-of-way or approved utility easements. Utility easements must be approved by Austin Water Engineering Review and must be in place prior to construction plan approval.
- 9) The approved Service Extension will automatically expire 180 days after date of approval unless a development application has been accepted by the Development Services Department. The Service Extension expires on the date the development expires, or if approved, on the date the development application approval expires.

  
Project Manager, Utility Development Services      3/5/2021  
Date  
  
Asst. Director, Env., Planning, and Development Svcs.      03/05/2021  
Date

  
Supervisor, Utility Development Services      03/05/21  
Date  
  
Director, Austin Water      3/05/2021  
Date



0 50 100 200 300 Feet



Subject Tract

**W. S.E.R. Name: Berkman Terrace**

**W. S.E.R. Number: 4936**

Utility Development Services Plotted 1/19/2021

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**3C SER4937\_2021-01-12**



WATER AND WASTEWATER  
SERVICE EXTENSION  
REQUEST FOR  
CONSIDERATION

Name: Berkman Terrace		Service Requested: Wastewater
SER-4937	Hansen Service Request Number 881569	Date Received: 11/10/2020
Location: 6203 BERKMAN DR AUSTIN TX 78723 Berkman Terrace		
Acres: 1.29	Land Use: MIXED	LUE: 43
Alt. Utility Service or S.E.R. Number: City of Austin Water SER-4936		
Quad(s): L26	Reclaimed Pressure Zone: CENTRAL SERVICE AREA	DDZ: YES
Drainage Basin: FORT UPPER	Pressure Zone: NORTH	DWPZ: NO
Flow (Estimated Peak Wet Weather): 30 GPM		
Cost Participation: \$0.00	% Within City Limits: 100	% Within Limited Purpose: 0



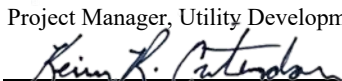
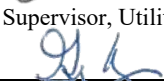
**Description of Improvements:**  
Wastewater Service Option 1:  
Applicant shall make an appropriately sized wastewater connection to the existing 8-inch gravity wastewater main located in Hickman Ave. at the approximate location shown on the attached map. Applicant shall also construct approximately 500 feet of 12-inch gravity wastewater main from the existing 12-inch gravity wastewater main (Project No. 98-0005; MH #133416) located in Wheless Ln, and extend north along Peggy St. to the existing 8-inch gravity wastewater main (Project No. 98-0005; MH #133409) as approximately shown on the attached map. The proposed 12-inch gravity wastewater main shall replace the existing 8-inch gravity wastewater main (Project No. 98-0005) along this path and all existing services shall be reconnected to the proposed 12-inch gravity wastewater main.

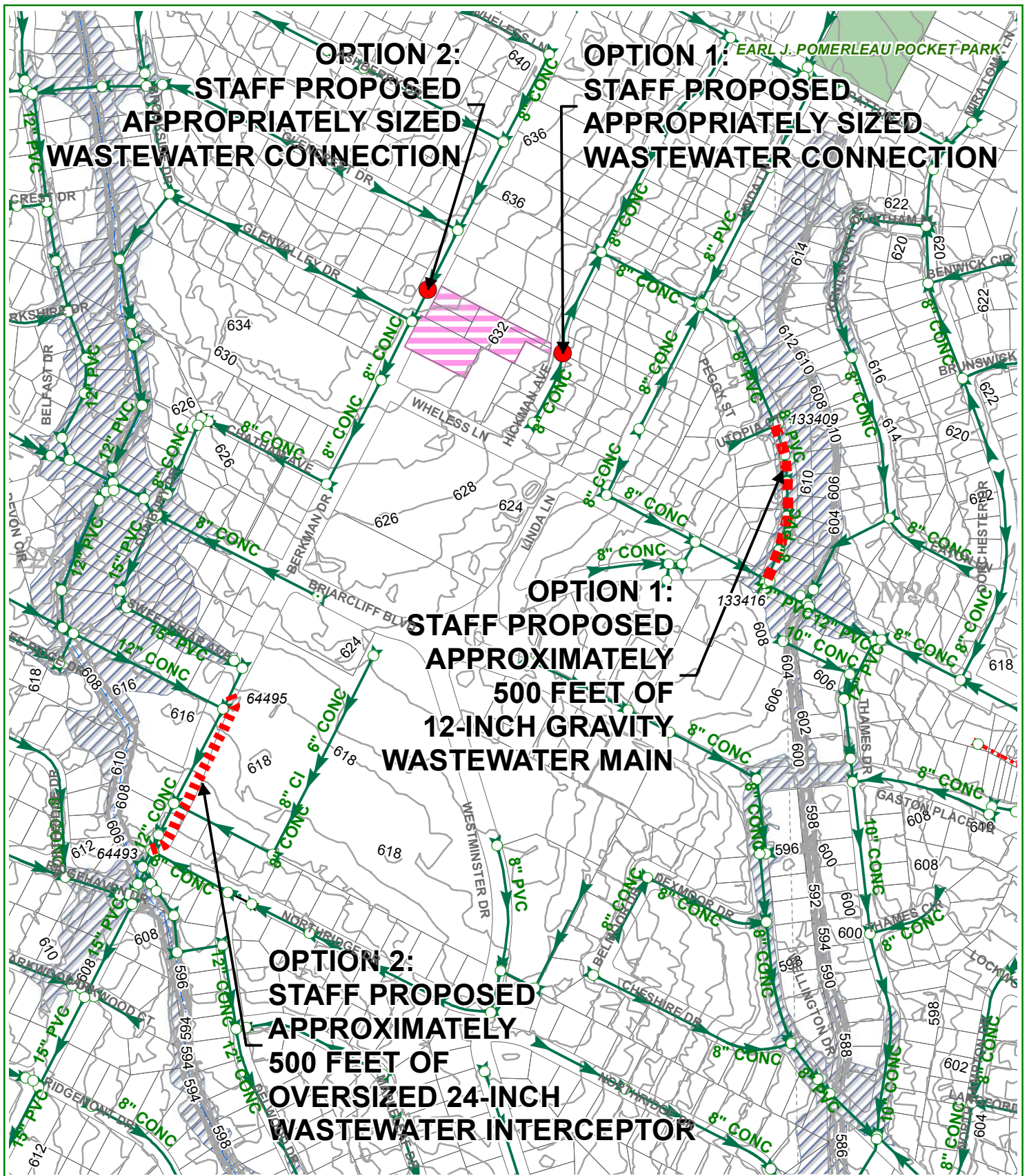
Wastewater Service Option 2:  
Applicant shall make an appropriately sized wastewater connection to the existing 8-inch gravity wastewater main located in Berkman Dr. at the approximate location shown on the attached map. Applicant shall also construct approximately 500 feet of oversized 24-inch wastewater interceptor from the existing 12-inch gravity wastewater main (MH #64493) located in Berkman Dr., and extend north along Berkman Dr. and connect to the existing 15-inch gravity wastewater main (Project No. 2003-0035) at or upstream of MH #64495 as approximately shown on the attached map. The proposed 24-inch wastewater interceptor shall be installed at a slope between 0.4%-0.5% and parallel to the existing 12-inch gravity wastewater main in Berkman Dr.

NOTES: 1) Wastewater flow based on engineering calculations received from Michael A. Giannetta, P.E. of LandDev Consulting, LLC. on 11/12/2020. 2) Applicant has indicated that the multiple parcels that comprise the subject tract will be developed as a single tract. If the Applicant decides to develop each parcel individually, a revision to this SER may be required. 3) The proposed 24-inch wastewater interceptor mentioned under Wastewater Service Option 2, is also proposed by Windsor Village (SER-4745). If this project needs these wastewater improvements prior to the completion of them by others, then the design and construction of those improvements are the responsibility of the Applicant.

**Approval of this Service Extension Request is subject to completion and acceptance of the improvements described above and the conditions set forth below:**

- 1) Construction of all Service Extensions is subject to all environmental and planning ordinances.
- 2) Service Extensions are subject to the guidelines established in the Land Development Code, Chapter 25-9, Water and Wastewater Utility Service.
- 3) An approved Service Extension is not a reservation of capacity in the system, but is an acknowledgment of the intent to serve. Available capacity shall be confirmed at the time a development application is submitted.
- 4) The level of service approved by this document does not imply commitment for land use.
- 5) Public utility mains must meet City of Austin Design and Construction Criteria and must be approved by Austin Water Engineering Review.
- 6) Proposed public wastewater improvements will be dedicated to the City of Austin for ownership, operation, and maintenance.
- 7) Proposed public wastewater improvements must be placed in the public right-of-way or approved utility easements. Utility easements must be approved by Austin Water Engineering Review and must be in place prior to construction plan approval.
- 8) The approved Service Extension will automatically expire 180 days after date of approval unless a development application has been accepted by the Development Services Department. The Service Extension expires on the date the development expires, or if approved, on the date the development application approval expires.
- 9) Approval by the City Council will be required should the applicant seek cost participation for oversized wastewater improvements.

 Project Manager, Utility Development Services	3/5/2021 Date	 Supervisor, Utility Development Services	03/05/21 Date
 Asst. Director, Env., Planning, and Development Svcs.	03/05/2021 Date	 Director, Austin Water	3/05/2021 Date



0 200 400 800 1,200 Feet



Subject Tract

100-yr FEMA Floodplain

**W.W. S.E.R. Name: Berkman Terrace**

**W.W. S.E.R. Number: 4937**

Utility Development Services Plotted 1/12/2021

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 the property boundaries. This product has been produced by the City of Austin for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

## **3D AE SERVICE**



**City of Austin**

*Austin's Community-Owned Electric Utility*

[www.austinenergy.com](http://www.austinenergy.com)

Town Lake Center • 721 Barton Springs Road • Austin, Texas • 78704

November 19, 2020

James Sayers  
4201 West Parmer Lane, Suite C-100  
Austin, TX 78727  
[James.sayers@landdevconsulting.com](mailto:James.sayers@landdevconsulting.com)

**SUBJECT: Electric Service Availability to:**

Owner: Pierre Fay Berkman Terraces, LLC  
Address: 6203 – 6207 Berkman Dr., Austin, TX 78723  
TCAD: 223387, 881852, 881853, 882867 & 882868  
Legal Description: N/A at this time

To whom it may concern,

The above described property is located within the Austin Energy's (AE) electric service territory. This letter will confirm that AE can provide electric service.

This confirmation of availability of electric service is conditional upon the obligation of the customer to comply with the technical and regulatory requirements pertaining to the provision of electric service to the above-described property. Please refer to the AE Design Criteria Manual ([www.austinenergy.com/go/designmanual](http://www.austinenergy.com/go/designmanual)). In some instances, it might be necessary for service to be extended to the property.

Austin Energy Distribution Design Group *Northeast* will prepare the design of service for the facility. When you are ready to proceed with the design, you will need to contact the Design Supervisor, **Brian Van Dyke** at 512-505-7247. He will assign a designer to your project that will be able to provide you information concerning any additional costs, which may be required.

Once the design is completed, there may be a need for additional easements, which must be provided prior to the project being released to construction. For assistance regarding easements, or any other questions concerning the process, please feel free to call **Christine Esparza** at 512-322-6112.

Sincerely,

***Melody Giambruno***

Public Involvement/Real Estate  
Austin Energy  
721 Barton Springs Road  
Austin, TX 78704

**From:** [noreply@formstack.com](mailto:noreply@formstack.com)  
**To:** [Service Letter](#)  
**Subject:** Application for Service Availability Letter  
**Date:** Thursday, November 19, 2020 12:21:19 PM

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\*\*\* External email - Exercise caution \*\*\*



## Formstack Submission For: **Application for Service Availability Letter**

Submitted at 11/19/20 1:20 PM

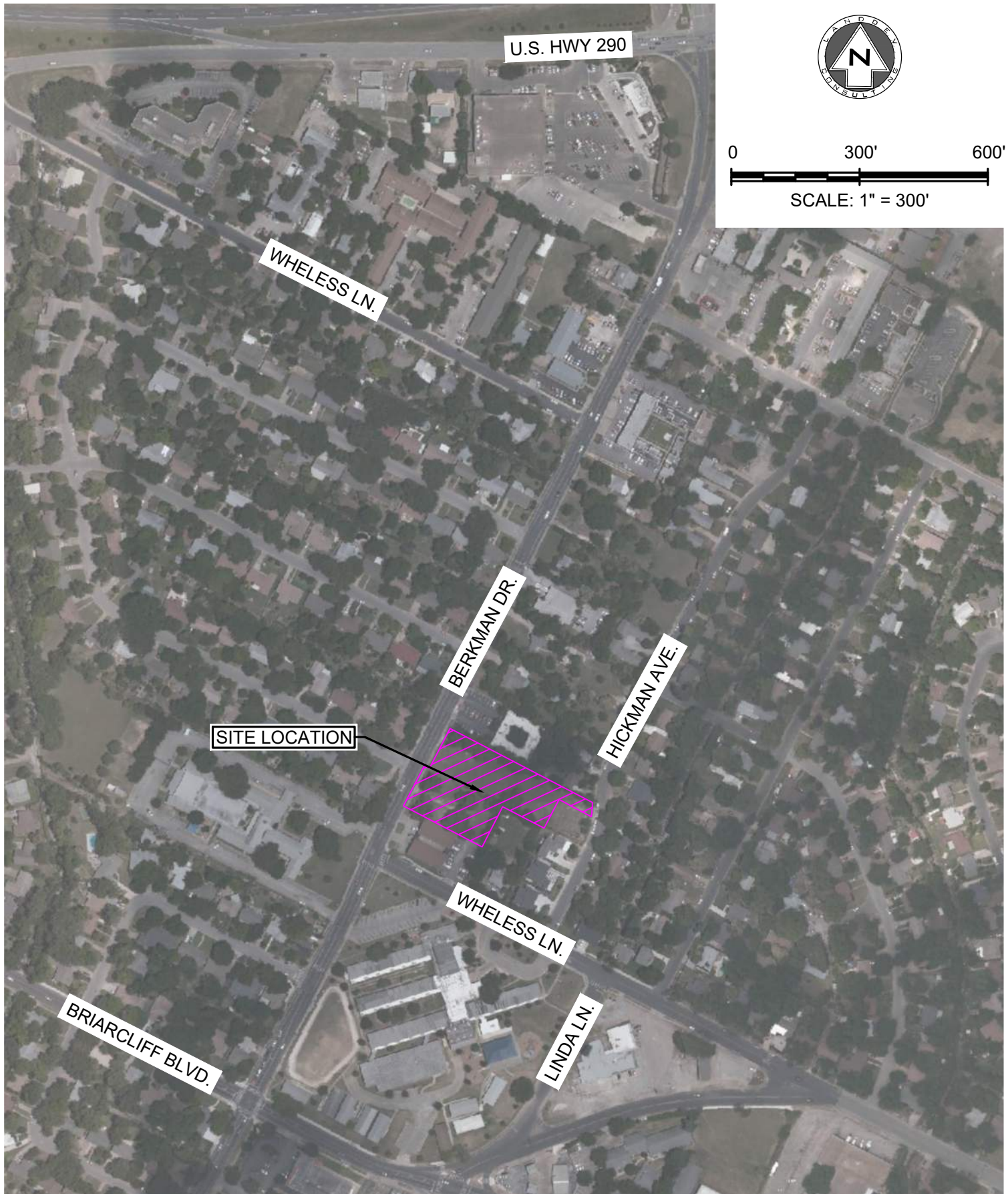
<b>Name of Property Owner:</b>	Pierre Fay of Berkman Terraces, LLC
<b>Property Address:</b>	6203 - 6207 Berkman Drive Austin, TX 78723
<b>Phone:</b>	(917) 453-1014
<b>Fax:</b>	
<b>Email Address:</b>	james.sayers@landdevconsulting.com
<b>Recording Information for Current Deed:</b>	
<b>TCAD/WCAD Parcel Number:</b>	223387, 881852, 881853, 882867 & 882868
<b>Mapsco Number:</b>	556K
<b>Site Plan Number:</b>	
<b>Subdivision Case Number:</b>	
<b>Legal Description:</b>	



<b>Attach Map or Sketch of Site:</b>	<a href="#">View File</a>
<b>Brief Description of Project (specify type of proposed improvements):</b>	Mixed use development, Multi-Family, Office and Retail
<b>Is Applicant Same as Property Owner?:</b>	No
<b>Applicant's Name:</b>	James Sayers
<b>Applicant's Address:</b>	4201 West Parmer Lane, uite C-100 Austin, TX 78727
<b>Phone:</b>	(512) 872-6696
<b>Fax:</b>	
<b>Email Address:</b>	james.sayers@landdevconsulting.com
<b>Please Check Preferred Response:</b>	by email in PDF format

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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038



**LAND DEV**

CONSULTING, LLC  
4201 WEST PARKER LN., SUITE C-100  
AUSTIN, TX 78727  
OFFICE: 512.872.6696  
FIRM NO. 16384

LOCATION MAP EXHIBIT  
6203-6207 BERKMAN DR.  
AUSTIN, TEXAS 78723

## Michael Giannetta

---

**From:** Van Dyke, Brian <brian.vandyke@austinenergy.com>  
**Sent:** Tuesday, October 20, 2020 11:09 AM  
**To:** Nick Brown  
**Cc:** Michael Giannetta; Taylor, Crystal  
**Subject:** RE: New Development question



**IRONSCALES couldn't recognize this email as this is the first time you received an email from this sender**  
**brian.vandyke@austinenergy.com**

Nick – it is possible to bury the lines or maybe even to possibly eliminate them all together as long as we can re-feed the existing customers at the south end.

Depending on what is submitted through the link provided below will determine what direction we would take.

I cannot provide a cost per linear foot due to COA policy but if it was to be buried we would need two (2) risers, one on each end and at least a 4-4" duct between. We would still need to establish a source to your proposed site and what was needed to provide service.

So, a lot depends on what is proposed, preferred and the site design.

Thank you,

**Brian Van Dyke**

Electric Distribution Designer Lead – NE Austin, North Distribution Design, Austin Energy

2412 Kramer Lane - Building C | Austin, TX 78758 | Office: 512-505-7247

To pursue our escalation path, contact Paul Martinez at [Paul.Martinez@austinenergy.com](mailto:Paul.Martinez@austinenergy.com) or (512) 505-7190

To better serve our customers, Austin Energy Electric Service Design [has](#) begun accepting electric service requests for all projects through an electronic submission form. This includes the Electric Service Planning Applications (ESPA). By providing your request through an electronic submission, Austin Energy will be able to manage requests based on submission date and project complexity and Austin Energy personnel will be able to respond to customer requests for information more rapidly. When you submit an Intake Form to the Austin Energy Electric Service Design department, you can expect a confirmation of submittal via email. [Our website has been updated to include the new form.](#)

<https://austinenergy.com/ae/contractors/electric-service-design-and-planning>

[https://austinenergy.com/wcm/connect/b65306b8-6eb3-4106-b92a-](https://austinenergy.com/wcm/connect/b65306b8-6eb3-4106-b92a-4239528ff77f/AvoidDelaysDuringDesignIntake.pdf?MOD=AJPERES&CVID=ndoZgnH)

[4239528ff77f/AvoidDelaysDuringDesignIntake.pdf?MOD=AJPERES&CVID=ndoZgnH](https://austinenergy.com/wcm/connect/b65306b8-6eb3-4106-b92a-4239528ff77f/AvoidDelaysDuringDesignIntake.pdf?MOD=AJPERES&CVID=ndoZgnH)

---

**From:** Nick Brown <nick.brown@landdevconsulting.com>  
**Sent:** Tuesday, October 20, 2020 9:31 AM  
**To:** Van Dyke, Brian <brian.vandyke@austinenergy.com>  
**Cc:** Michael Giannetta <Michael.Giannetta@landdevconsulting.com>  
**Subject:** RE: New Development question

\*\*\* External email - Exercise caution \*\*\*

Brian,

Wanted to follow up on this. Really just looking for high level info right now.



**Nick Brown, P.E.** | [LandDev Consulting](#) | [o] 512-872-6696 | [c] 512-923-8922

---

**From:** Nick Brown  
**Sent:** Tuesday, October 13, 2020 1:46 PM  
**To:** Brian Van Dyke ([brian.vandyke@austinenergy.com](mailto:brian.vandyke@austinenergy.com)) <[brian.vandyke@austinenergy.com](mailto:brian.vandyke@austinenergy.com)>  
**Cc:** Michael Giannetta <[michael.giannetta@landdevconsulting.com](mailto:michael.giannetta@landdevconsulting.com)>  
**Subject:** New Development question

Brian,  
Thomas Whiteaker let me know this was your part of town. I have a client looking at a piece of property north of Mueller along Berkman. Just a couple quick questions...

1. What is the general cost per linear foot to bury overhead? Would bury the Berkman side which is approximately 225-ft. We understand comms is another battle and the actual limits that would bury would depend of analyzing the system maps when we go to develop.
2. Is it possible to bury the overhead in this location?

Thanks,

**Nick Brown, P.E.**  
[LandDev Consulting, LLC](#)  
North Austin Office  
4201 Parmer Lane, Suite C-100  
Austin, Texas 78727  
[o] 512-872-6696 | [c] 512-923-8922  
[Nick.brown@landdevconsulting.com](mailto:Nick.brown@landdevconsulting.com)  
[www.landdevconsulting.com](http://www.landdevconsulting.com)  
TBPE Firm No. F-16384 | TBPLS Firm No. 10194101

**3E ONE GAS MAP**





Legend

- Designer Abandon Mains
  - to be Removed (Contains Gas)
  - to be Abandoned (Contains Gas)
  - Removed (No Longer Contains Gas)
  - Abandoned (No Longer Contains Gas)
- Designer Mains
  - Status Not Available
  - New Design - Status Pending
  - Proposed
  - Approved
  - Under Construction
  - Operating
- Pipe Assignment/Offset
- Controllable Fitting
  - 3-Way Tee
  - Short Stop
- Controllable Fitting
  - Short Stop
  - Three-Way Tee
- Non-Controllable Gas Fitting
  - Insulated Coupling
  - Other
- E Valves
- Reclassified E-Valve
- Gas Valve- Position
  - Closed
  - Open
- Regulator Station
- Town Border Station
- Rural Tap
- Meter Setting
- CP Bond
- CP Anode
  - Unknown
  - Pending
  - Operating
  - Decommissioned
- CP Anode - 15 years and older
- CP GroundBed
  - Unknown
  - Pending
  - Operating
  - Decommissioned
- CP Interference Bonds
  - Unknown
  - Pending
  - Critical, Operating
  - Non-Critical, Operating
  - Decommissioned
- CP Rectifier
  - Unknown
  - Pending
  - Operating
  - Decommissioned
- CP Test Point
  - Unknown Type, Unknown Status
  - Pending
  - Type A, Operating
  - Type A/P, Operating
  - Type B, Operating
  - Type BD, Operating
  - Type C, Operating
  - Type C-Bonded, Operating
  - Type C-N/E, Operating
  - Type C-S/W, Operating
  - Type D, Operating
  - Type E, Operating
  - Type E-Bonded, Operating
  - Type P, Operating
  - Terminal, Operating
  - Other, Operating
  - Unknown, Operating
  - Decommissioned
- CP Cable
  - Bond Wire
  - Rectifier Cable
- Rectifier Area Polygon
- Gas Pipe Casing

188.1 0 94.04 188.1 Feet

WGS\_1984\_Web\_Mercator\_Auxiliary\_Sphere  
© Latitude Geographics Group Ltd.

DISCLAIMER: This document and information herein is a visual representation and approximation of ONE Gas facilities and is subject to revision at any time without notice. It is an informational tool and is not guaranteed, warranted, or represented to be to scale, complete, accurate, or depicting depth. ONE Gas disclaims any and all liability for same. Call 811 by dialing 811 prior to and excavation.

Notes

Berkman Terrace 6203-6207 Berkman Drive



## **APPENDIX 4**

### **SITE TOPOGRAPHY**

## **4A BERKMAN TOPO**

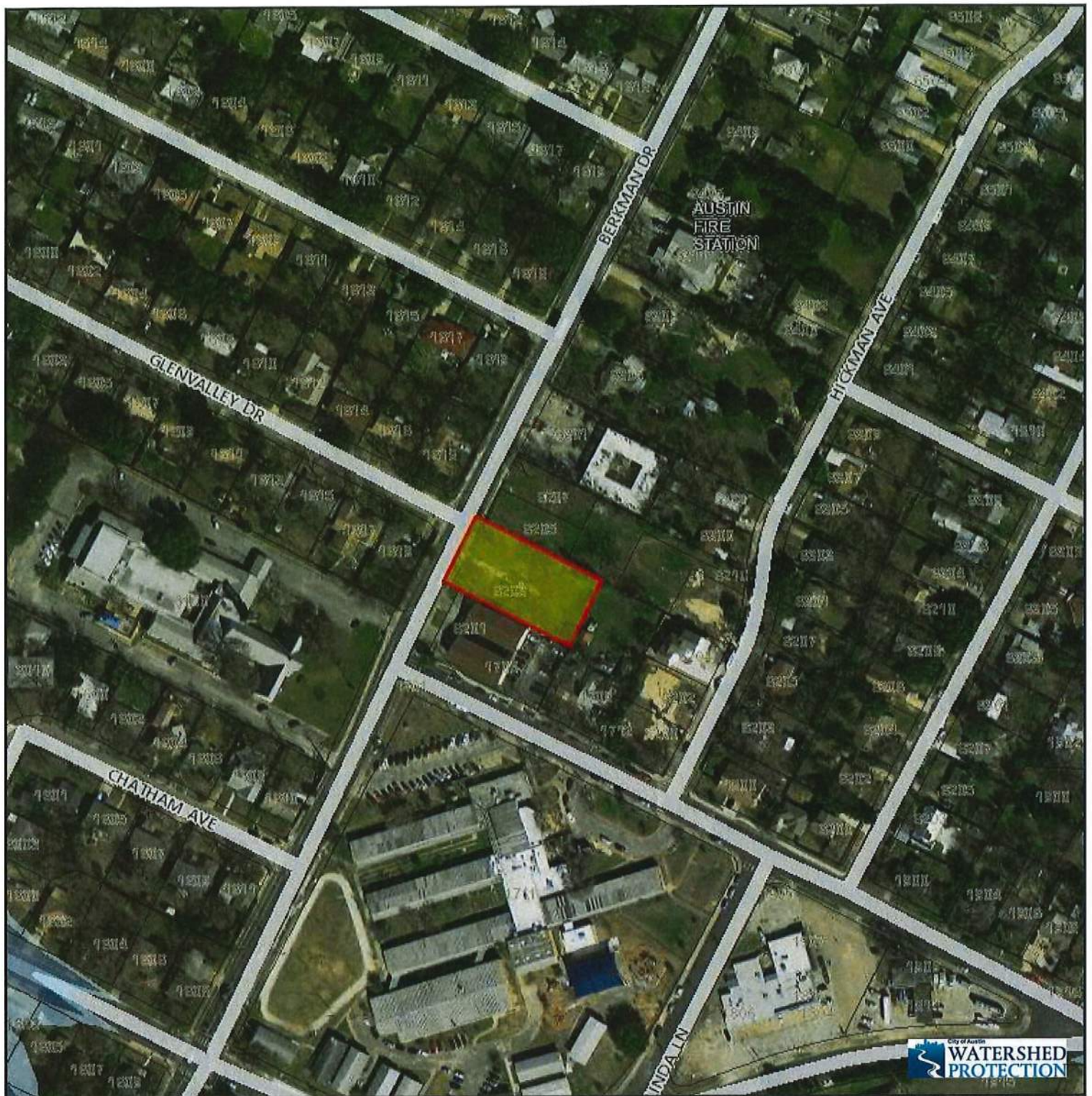


## **APPENDIX 5**

### **FLOODPLAIN**

**5A FEMA**





## FEMA Floodplains

The City of Austin Watershed Protection Department produced this product for informational purposes. It is not intended for or suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative locations of property boundaries. No warranty is made by the City of Austin regarding specific accuracy or completeness. Final determination of the floodplain status for a property must be based on a topographic survey by a Texas registered professional. For regulatory purposes, 100-Year floodplain elevations must be determined from an engineering model created in accordance with the Drainage Criteria Manual and approved by the City of Austin.

- Address
- Parcel
- FEMA Floodplain
  - 100 Year (Approx-A)
  - 100 Year (Detailed-AE)
  - 100 year (Shallow-AO)
  - X PROTECTED BY LEVEE
  - 500 Year

0 200 400 Feet



## **APPENDIX 6**

### **DRAINAGE**

## **6A POND AGREEMENT AND DET PLANS**



Hickman Oaks  
C8-2015-0235.0A

## **Subdivision Construction Agreement**

(Applicant and City)

### **Recitals:**

**A.** Subdivider owns the land included in the proposed final subdivision plat of the Hickman Oaks Subdivision, City Case No. C8-2015-0235.0A and more particularly described on the attached and incorporated **Exhibit A** (the "Property").

**B.** City ordinances require Subdivider to complete various Subdivision improvements to protect the health, safety, and general welfare of the community and to limit the harmful effects of substandard subdivisions.

**C.** Subdivider desires to subdivide the Property in accordance with all applicable state and local laws, rules, and regulations.

**D.** This Agreement is authorized by and consistent with state law and the City's ordinances, regulations, and other requirements governing development of a subdivision.

**E.** This document is executed to memorialize Subdivider's responsibility to provide certain improvements to the Subdivision required by the platting process ("Subdivision Improvements").

**F.** The City of Austin will not accept the Subdivision and release the Subdivider from its obligations under this Agreement, until all Subdivision Improvements have been approved and accepted by the City.

**G.** Subdivider may not have provided fiscal surety for all Subdivision Improvements.

**H.** This Agreement requires the Subdivider to post fiscal guarantees for certain improvements, which protects the City from, at its expense, completing subdivision improvements required to be provided by the Subdivider. Subdivider's fiscal surety may be used only to complete those improvements listed on the attached and incorporated **Exhibit B** (collectively called the "Exhibit B Improvements," any one of which is an "Exhibit B Improvement").

**I.** Under certain circumstances, outlined in the Agreement, Subdivider can assign all of its obligations hereunder to another subdivider.



IN CONSIDERATION of the mutual covenants set forth in this Agreement, the parties agree as follows:

### **Agreement:**

- 1. Incorporate Recitals.** The above Recitals, and all defined terms therein are incorporated in this Agreement for all purposes.
- 2. Parties.** The parties to this Subdivision Construction Agreement (the "Agreement") are Windsor Park Assets LLC (individually and collectively, the "Subdivider"), acting through its duly authorized agent ("Subdivider's Agent") **and** the City of Austin, a Texas home-rule municipal corporation (the "City") acting through its duly authorized City Manager, or designee, ("City Manager"), who for purposes of this Agreement is Development Services Director, or designee, ("DSD Director") or Public Works Director, or designee, ("PW Director"), whichever is applicable.
- 3. Effective Date.** This Agreement is effective on the date the Subdivider signs (the "Effective Date").

### **Subdivider's Obligations**

- 4. Improvements.** Subdivider covenants to construct and install, at Subdivider's expense, all external and internal subdivision improvements required to comply with City ordinances, regulations, and policies governing subdivision approval for the Hickman Oaks Subdivision, including Exhibit B Improvements.

Prior to starting construction of the Subdivision Improvements, the construction plans and specifications must be certified by Subdivider's engineer of record for the Subdivision as compliant with all applicable state and local development regulations (including environmental protections such as erosion controls and site restoration) and released for construction by the DSD Director (collectively called "Released Construction Plans"). All Subdivision Improvements must be constructed in conformance with the Released Construction Plans. Final acceptance of the Subdivision Improvements after completion is subject to inspection, certification and acceptance by the DSD Director or PW Director, as applicable, as being in conformance with the Released Construction Plans.

- 5. Fiscal Deposit.** Subdivider must provide and continually maintain financial guarantees in the estimated total cost to construct each Exhibit B Improvement in conformance with the Released Construction Plans, as shown on **Exhibit B** ("Stated Amount") to assure performance of its obligations. The guarantee can be a surety bond or irrevocable letter of credit in a form acceptable to the City Attorney or designee ("City Attorney") or a cash deposit held by the City ("Fiscal Deposit"). The Stated Amount of the Fiscal Deposit is Six thousand nine hundred eighty and 00/100 dollars (\$6,980.00).

**(a) Cash Deposit.** A cash deposit must be in the full Stated Amount, held by the City, and placed in an interest bearing escrow fund and invested as if it were funds of the City. All interest earned on the cash deposit will be credited to the Subdivider. The City will maintain a balance of 100% of the cost of construction of the Exhibit B Improvements as shown on Exhibit B, all interest in excess of that amount may be disbursed to the Subdivider upon City's receipt of Subdivider's written request therefor. Subdivider cannot request interest disbursements more frequently than once a year, with the request being dated within 30 days of the Effective Date of this Agreement. Subdivider cannot request an initial disbursement of interest until the Fiscal Deposit has been placed with the City for 365 days.

**(b) Letter of Credit.** A letter of credit must: (a) be in the full Stated Amount; (b) be a standard form acceptable to the City Attorney; (c) have an expiration date no earlier than one year from the date of its issuance; and (d) be issued by a financial institution having a rating equivalent to the minimum

acceptable rating established under the City's financial institution rating system in effect at the time the initial Fiscal Deposit is issued pursuant to this Agreement (the "Issuer"). During this Agreement and subject to the terms of **Section 23**, the City Attorney may revise the standard form letter of credit as s/he reasonably considers acceptable and necessary to secure the performance of Subdivider's obligations under this Agreement. If the standard letter of credit form is revised, the new form will not be required to be used until the next renewal period, if any.

(c) **Surety Bond.** A surety bond must: (a) be in the full Stated Amount; (b) be a standard form acceptable to the City Attorney; (c) be listed with the United States Treasury [http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety\\_home.htm](http://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/surety_home.htm) (d) be issued by an insurance company licensed to transact business in the state of Texas and (e) have a rating equivalent to the minimum acceptable rating established by the City's Financial Services Department in effect at the time the initial Fiscal Deposit is issued pursuant to this Agreement (the "Issuer"). During this Agreement and subject to the terms of **Section 23**, the City Attorney may revise the standard form surety bond as s/he reasonably considers acceptable and necessary to secure the performance of Subdivider's obligations under this Agreement. If the standard surety bond form is revised, the new form will not be required to be used until the next time the amount of the bond is adjusted, if any.

6. **Increase in Fiscal Deposit.** If, from time to time, the DSD Director determines the estimated total cost of constructing the Exhibit B Improvements exceeds the Stated Amount, the DSD Director shall notify Subdivider of the increase in the Stated Amount. Any increase of the estimated total cost of constructing the Exhibit B Improvements will be based on the Austin Public Works Construction Index (based upon unit prices taken from contracts issued by the City). Subdivider shall increase the Fiscal Deposit to equal the increased Stated Amount within 30 days after notification of the deficiency, by either amending the Fiscal Deposit or providing an additional Fiscal Deposit. All increased or new Fiscal Deposits must meet all requirements of **Section 5**. A revised **Exhibit B** showing the Stated Amount for each Exhibit B Improvement, as amended, will be filed of record as an amendment to the Subdivision Construction Agreement at Subdivider's expense. The revised **Exhibit B** replaces the Exhibit B originally filed of record effective on the date of its recordation. Subdivider, and all its lienholders, must sign or consent to the new **Exhibit B**, as applicable. Subdivider must provide an Updated Lien Search Certificate, which meets all the requirements of **Section 7**, and pay the recording fee to the City. City will file the amendment to the Agreement to substitute the revised **Exhibit B**.

7. **Lien Search Certificate.** Subdivider must provide a Lien Search Certificate prepared and signed by a title company acceptable to the DSD Director or PW Director, as applicable. The Lien Search Certificate must name all owners of the Property, must name all lienholders having current liens against the Property, must identify the property, and must be dated no more than 5 business days prior to the Effective Date of this Agreement or the date of posting Fiscal, whichever is later. The Lien Search Certificate must be accompanied by a Consent of Lienholder that is signed by duly qualified representatives of all lienholders identified on the Lien Search Certificate. The Fiscal Deposit will not be accepted without the Lien Search Certificate and the executed Consent of Lienholder, if applicable.

### City's Obligations

8. **Reduction in Fiscal Deposit.** After accepting any Exhibit B Improvement, the amount the City is authorized to draw on the Fiscal Deposit will be reduced by an amount equal to 90% of the estimated cost of the accepted Exhibit B Improvement, as shown on **Exhibit B**, as amended, if applicable, if Subdivider is not in default under this Agreement.

If Subdivider is not in default under this Agreement, when an Exhibit B Improvement is accepted, Subdivider may request the DSD Director to recalculate the Stated Amount within 60 days after receipt of the request. The recalculated Stated Amount will include 10% of the estimated cost of any accepted Exhibit B Improvement and 100% of the "Estimated Remaining Cost", which means the cost to complete all incomplete Exhibit B Improvements at the time the recalculation request is received. After recalculating the Stated Amount, the DSD Director shall convey a letter to Issuer, if applicable, verifying City's acceptance of each Exhibit B Improvement accepted, and containing a reduced Stated Amount, if the recalculated Stated Amount exceeds the Estimated Remaining Cost. Notwithstanding the preceding sentence, the DSD Director shall not authorize reductions in the Stated Amount more frequently than every 90 days; nor will the Stated Amount be reduced to zero until all Subdivision Improvements have been completed.

**9. Release of Fiscal Deposit.** Upon Subdivider completing all Subdivision Improvements, and complying with all requirements of the COA Standard Specifications Series 1800S – Private Development, Construction Requirements and Procedures, and upon DSD Director's receipt of notice from the Construction Inspection Division of acceptance of all Subdivision Improvements, the Fiscal Deposit will be released and this Agreement will be terminated. If any item is missing or incomplete, this Agreement remains in effect.

**10. Inspection and Certification.** The DSD Director or the Public Works Director, as applicable, agree (a) to inspect Subdivision Improvements (i) during and (ii) at the completion of construction, and, (b) if completed in accordance with the Released Construction Plans, to certify the Subdivision Improvements as complying with the Released Construction Plans. The inspections and certifications will be conducted in accordance with standard City policies and requirements. The Subdivider grants the City, its agents, employees, officers, and contractors an easement and license to enter the Property to perform such inspections as it deems appropriate.

**11. Notice of Defect.** The DSD Director or PW Director, as applicable, will provide timely notice to the Subdivider whenever inspection reveals that any Subdivision Improvement is not constructed or completed in accordance with the Released Construction Plans or is otherwise defective, followed by written notice and period to cure, if Subdivider fails to cure the defect upon being given oral notice. The Subdivider must cure or substantially cure the defect within the time period set out in the written notice. The DSD Director or PW Director, as applicable, may declare a default under this Agreement if the defect is not cured to his satisfaction within the stated cure period.

**12. Use of Proceeds.** The City will invest all funds obtained by one or more draws under the Fiscal Deposit ("Escrowed Funds") in the same manner as if they were funds of the City. The City will invest such Escrowed Funds, and accrued interest thereon, until they are disbursed by the City. All Escrowed Funds and interest accrued thereon belong to the City and the Subdivider forfeits all rights to the Escrowed Funds and accrued interest.

The City will disburse Escrowed Funds, and interest thereon, only to complete the Exhibit B Improvements, in conformance with the Released Construction Plans, or to correct defects in or failures of the Exhibit B Improvements. The City may, in its sole discretion, complete some or all of the Exhibit B Improvements unfinished at the time of default, regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced, and without incurring any obligation to complete any of the unfinished Exhibit B Improvements.

The DSD Director may disburse all or part of the Escrowed Funds as Exhibit B Improvements are completed and accepted by the City, or in accordance with the terms of a written construction contract between the City and a third party to construct Exhibit B Improvements.

**13. Conditions of Draw on Fiscal Deposit.** The DSD Director may draw upon any financial guarantee posted in accordance with **Section 5** upon the occurrence of one or more of the following events:

- a. Subdivider did not properly construct one or more Improvements and failed to remedy the construction deficiency within the cure period;
- b. Subdivider did not renew or replace the Fiscal Deposit at least 45 days prior to its expiration date;
- c. Subdivider did not replace the Fiscal Deposit within 45 days after notice that the Issuer failed to maintain the minimum rating acceptable to the City, in accordance with **Section 5**;
- d. The Issuer's acquisition of the Property or a portion of the Property, through foreclosure or an assignment or conveyance in lieu of foreclosure; or
- e. If City elects to construct an external **Exhibit B** Improvement, the DSD Director may draw on the Fiscal at any time.

The DSD Director or PW Director, as applicable, shall provide written notice of the occurrence of one or more of the above events to the Subdivider.

If the City draws on the Fiscal Deposit under **Section 13(a)**, the notice must state the specific construction deficiency, the time period to cure, and include a statement that the City intends to perform some or all of Subdivider's obligations under **Section 4** for specified Exhibit B Improvements if the failure is not cured. If Subdivider has not cured the default within the stated cure period, the DSD Director will send a draw letter to Issuer, with a copy to Subdivider, within 15 days after the cure period expires.

If a renewal or replacement Letter of Credit is not provided at least 45 days prior to expiry, as required under **Section 13 (b), (c) and (d)**, then within 15 days prior to expiry of such Letter of Credit the DSD Director will send a draw letter to Issuer, with a copy to Subdivider.

If the Issuer has acquired all or part of the Property through foreclosure or an assignment or conveyance in lieu of foreclosure, in lieu of honoring a draft based on a **Section 13 (d)** default, the Issuer may deliver a substitute or confirming Fiscal Deposit to the City.

If the City draws on the Fiscal Deposit under **Sections 13 (b), (c), or (d)**, the funds received will be converted to a Cash Deposit for the benefit of Subdivider, as if originally deposited as Cash under **Section 5 (a)**.

The notice for a drawing under **Section 13 (e)** must be given to Issuer, with a copy to Subdivider, no less than 15 days before drawing on the Fiscal Deposit.

**14. Procedures for Drawing on the Fiscal Deposit.** The DSD Director may draw upon the Fiscal Deposit in accordance with **Section 13** by submitting a draft to the Issuer that complies with the terms governing such draft. Non-cash Fiscal Deposits must be surrendered upon presenting any draft that exhausts the Stated Amount of such Fiscal Deposit. The DSD Director may not draft under a Fiscal Deposit unless s/he has substantially complied with all obligations to the Issuer under this Agreement and has properly completed and executed the draft in strict accordance with its terms. To draw on a cash Fiscal Deposit requires a letter of explanation to the person who posted the cash Fiscal Deposit, which meets the requirements to draw upon the City's most currently approved Letter of Credit form.

If a draw is based on a default under **Section 13(a)**, the DSD Director may draw the amount he considers necessary to perform Subdivider's obligations under **Section 4**. For each Exhibit B Improvement constructed by the City, the DSD Director may draw 100% of the amount allocated in **Exhibit B** for any Exhibit B Improvement the City intends to construct, complete, repair, or replace in accordance with the Released Construction Plans.



**15. Cost Participation by City.** If the City agrees to participate in the expense of installing any of the Subdivision Improvements, the respective benefits and obligations of the parties will be governed by the terms of a Community Facilities Construction Agreement ("CFC") that will be executed subsequently and attached and incorporated as an **Exhibit** to this Agreement. The terms of that CFC agreement control to the extent of any inconsistency with this Agreement.

**16. Right of Entry.** The Subdivider hereby grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property to construct, maintain, and repair such Subdivision Improvements.

**17. Remedies.** The remedies available to the City and the Subdivider under this Agreement and the laws of Texas are cumulative in nature.

**18. Third Party Rights.** No person or entity who or which is not a party to this Agreement has any right of action under this Agreement. Nor does any such person or entity, other than the City, (including without limitation a trustee in bankruptcy) have any interest in or claim to Escrowed Funds drawn on the Fiscal Deposit in accordance with this Agreement.

**19. Indemnification.** Subdivider covenants to fully indemnify, save, and hold harmless the City of Austin, its officers, employees, and agents (collectively called "Indemnitees") from, and against, all claims, demands, actions, damages, losses, costs, liabilities, expenses, and judgments recovered from or asserted against Indemnitees on account of injury or damage to person [including without limitation, Workers' Compensation and Death Claims], or property loss or damage of any kind whatsoever, to the extent any damage or injury may be incident to, arise out of, be caused by, or be in any way connected with, either proximately or remotely, wholly or in part, the construction, existence, use, operation, maintenance, alteration, repair, or removal of any Improvement installed by or on behalf of Subdivider in the Property; the performance of this Subdivision Construction Agreement; an act or omission, negligence, or misconduct on the part of Subdivider, or any of its agents, servants, employees, contractors, patrons, guests, licensees, invitees, or other persons entering upon the Property under this Agreement, whether authorized with the expressed or implied invitation or permission of Subdivider (collectively called "Subdivider's Invitees"); including any injury or damage resulting, proximately or remotely, from the violation by Subdivider or Subdivider's Invitees of any law, ordinance, or governmental order of any kind, including any injury or damage in any other way arising from or out of the use of the Improvements on the Property or the Property itself by any person, whether authorized to use the Improvements.

Subdivider covenants and agrees that if the City or any other Indemnitee is made a party to any litigation against Subdivider or any litigation commenced by any party, other than Subdivider, relating to this Agreement, Subdivider shall, upon receipt of reasonable notice regarding commencement of litigation, at its own expense, investigate all claims and demands, attend to their settlement or other disposition, defend the City in all actions with counsel acceptable to City, and pay all charges of attorneys and all other costs and expenses of any kind arising from any liability, damage, loss, claims, demands, and actions.

**20. No Waiver.** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement executed by duly authorized representatives of each party. No waiver of any default under this Agreement will be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or any covenant by the City, the Subdivider, or the Issuer, their respective heirs, successors or assigns, whether any violations thereof are known, does not constitute a waiver or estoppel of the right to do so.

**21. Attorney's Fees.** If either party sues to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, is entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs in their entirety.

**22. Assignability.** The benefits and burdens of this Agreement are personal obligations of the Subdivider and also are binding on the heirs, successors, and assigns of the Subdivider and on any person acquiring an ownership interest in the Property through the Subdivider. The Subdivider's obligations under this Agreement may not be assigned without the express written approval of the DSD Director. The DSD Director's written approval may not be withheld if the Subdivider's assignee explicitly assumes all obligations of the Subdivider under this Agreement and has posted the required Fiscal Deposit.

An assignment alone does not release the Subdivider from Subdivider's obligations under this Agreement. Subdivider's obligations hereunder continue, notwithstanding any assignment approved pursuant to this **Section 22**, unless and until the City executes and delivers to the Subdivider a written release of Subdivider from the obligations imposed by this Agreement. The DSD Director agrees to release or reduce, as appropriate, the Fiscal Deposit provided by the Subdivider if he accepts substitute Fiscal Deposit for all or part of the Exhibit B Improvements. The City, in its sole discretion, may assign some or all of its rights under this Agreement, and any such assignment is effective upon notice to the Subdivider and the Issuer.

**23. Notice.** Any notice required or permitted by this Agreement is deemed delivered when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Subdivider: Windsor Park Assets LLC  
PO Box 203535  
Austin, TX 78720

if to City: Development Services Department  
P. O. Box 1088  
Austin, Texas 78767-8828  
Attn: Wendy Stucker, Fiscal Surety Office

if to the Issuer: at Issuer's address shown on the Fiscal Deposit

The parties may, from time to time, change their respective addresses listed above to any other location in the United States. A party's change of address is effective when notice of the change is provided to the other party in accordance with this **Section 23**.

**24. Severability.** If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or unenforceability does not affect the

validity of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.

**25. Personal Jurisdiction and Venue.** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to the Agreement or the Fiscal Deposit, is only deemed proper if commenced in District Court for Travis County, Texas, or the United States District Court for the Western District of Texas, Austin Division. The Subdivider expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal. The Issuer, by providing a Fiscal Deposit pursuant to the terms of this Agreement, expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal.

**26. Release.**

**A. Upon Completion.** Upon accepting all Subdivision Improvements, the City agrees: (i) to provide a recordable release to the Subdivider and the Issuer releasing the Subdivider and Subdivider's heirs, successors and assigns, and the Property from all provisions of this Agreement and (ii) to return the Fiscal Deposit to the Issuer.

**B. Upon Vacation of Plat.** Upon receipt of notice of Vacation of Plat under the City's usual process for same, the City agrees: (i) to provide a recordable release to the Subdivider and the Issuer releasing the Subdivider and Subdivider's heirs, successors and assigns, and the Property from all provisions of this Agreement and (ii) to return the Fiscal Deposit to the Issuer.

**27. Captions Immaterial.** The numbering, order, and captions or headings of the paragraphs of this Agreement are for convenience only and must not be considered in construing this Agreement.

**28. Entire Agreement.** This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date.

**29. Amendment.** Any oral representations or modifications concerning this Agreement have no force or effect unless there is a subsequent written modification executed by duly authorized representatives of both parties.


**30. Authorization to Complete Blanks.** By signing and delivering this Agreement to the appropriate official of the City, the Subdivider authorizes completion of this Agreement by filling in the Effective Date below.

**31. Binding Agreement.** The execution and delivery of this Agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate and governmental action of the City. Further, the execution and delivery of this Agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate action of both the Subdivider and Issuer. This Agreement has been duly executed and delivered by each party, and constitutes a legal, valid, and binding obligation of each party enforceable in accordance with the terms as of the Effective Date. These representations and agreements are for the benefit of the Issuer, and have been relied on by the Issuer in issuing the Fiscal Deposit.

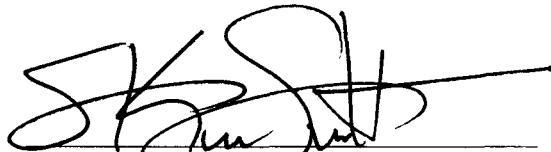
Executed by the parties to be Effective on Oct 17, 2016.

City of Austin:

Subdivider:  
Windsor Park Assets LLC



Beth Robinson, Acting Managing Engineer  
Development Services Department  
Delegated by: J. Rodney Gonzales, Director  
Development Services Department

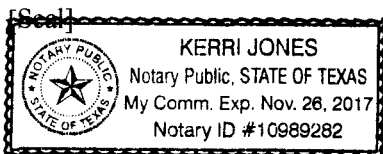


Kevin Smith, Managing Member

### Acknowledgments

State of Texas §  
County of Travis §

Before me Kevin Smith, a Notary Public on this day personally appeared Kevin Smith as Managing Member of Windsor Park Assets LLC, known to me personally or through valid photo identification 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 17 day of October, 2016.

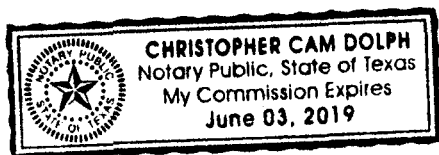
Kerri Jones  
Notary Public, State of Texas

State of Texas §  
County of Travis §

This instrument was acknowledged before me on November 8th, 2016 by Beth Robinson, Acting Managing Engineer, Development Services Department as delegated by J. Rodney Gonzales, Director for the Development Services Department of the City of Austin, a Texas municipal corporation, on behalf of the corporation.

[Seal]

Given under my hand and seal of office this 8th day of November, 2016.



Christopher Dolph  
Notary Public, State of Texas

**CONSENT OF LIENHOLDER TO  
Execution of Subdivision Construction Contract**

**STATE OF TEXAS           §**  
**COUNTY OF TRAVIS       §**

**Whereas, WINDSOR PARK ASSTES LLC** is the Owner ("Owner") of the following described property:

That tract of land situated in Travis County, Texas described in the attached and incorporated **EXHIBIT "A"** ("Property"), and

**Whereas, FRONTAGE FUNDING LLC** is the lienholder ("Lienholder") of the Property under the terms and conditions of the following described documents:

Deed of Trust dated July 1, 2015, from WINDSOR PARK ASSETS LLC, to J. MARK ROPER, Trustee, securing the payment of one promissory note of even date in the original principal amount of \$850,000.00, payable to FRONTAGE FUNDING, LLC. Deed of Trust of record in Document Number 2015106451, of the Official Public Records of Travis County, Texas.

**Whereas, Owner** has executed a Subdivision Construction Agreement with the City of Austin ("City") governing installation of Improvements in the HICKMAN OAKS ("Development"), and;

**NOW THEREFORE**, in consideration of \$10 the Lienholder agrees as follows:

FRONTAGE FUNDING, LLC consents to the execution of the Subdivision Construction Agreement and the rights and obligations of Subdivider set out therein, and subordinates all of its liens on this Property to the rights and interests of the City in the Subdivision Construction Agreement, its successors and assigns, and any foreclosure of its liens will not extinguish City's rights and interests in the Subdivision Construction Agreement. FRONTAGE FUNDING, LLC affirms that the undersigned has the authority to bind the Lienholder, and that all corporate acts necessary to bind the Lienholder have been taken.

Executed on \_\_\_\_\_, 20\_\_.

Frontage Funding, LLC,

By: \_\_\_\_\_

Name: J. Mark Roper

Title: Member

STATE OF TEXAS  
COUNTY OF TRAVIS

§  
§

Before me COREY M. PETTY [name of notary], Notary Public of the State of TX, on this day personally appeared J. MARK ROPEK [name of party], known to me personally or through valid photo identification to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that s/he executed the same for the purposes and consideration expressed.

Given under my hand and seal of office this 26<sup>th</sup> day of October A.D., 2016.

[SEAL]



Corey M. Petty  
Notary Public, State of TEXAS  
Commission ID #: 13015822-9

**EXHIBIT LIST:**

Exhibit A - Property Description

Exhibit B - Subdivision Improvements

**EXHIBIT A:**  
**METES AND BOUNDS DESCRIPTION OF PROPERTY**



## EXHIBIT "A"

### HOLT CARSON, INCORPORATED

1904 FORTVIEW ROAD  
AUSTIN, TX 78704  
TELEPHONE: (512) 442-0990  
e-mail: hci@austin.rr.com

October 12, 2016

**DESCRIPTION OF 0.048 ACRE OF LAND OUT OF THE DINSMORE SIMPSON SURVEY, ABSTRACT NO. 694 IN TRAVIS COUNTY, TEXAS, BEING A DRAINAGE EASEMENT, OVER AND ACROSS A PORTION OF THAT CERTAIN (0.981 ACRE) TRACT OF LAND AS CONVEYED TO WINDSOR PARK ASSETS, LLC BY GENERAL WARRANTY DEED RECORDED IN DOCUMENT NO. 2015105148 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS.**

**BEGINNING FOR REFERENCE** at a PK nail found in concrete at the base of a fence corner post in the curving West right-of-way line of Hickman Avenue, at the Southeast corner of that certain (0.981 acre) tract of land as conveyed to Windsor Park Assets, LLC by General Warranty Deed recorded in Document No. 2015105148 of the Official Public Records of Travis County, Texas, same being the Northeast corner of Lot 1, Block A, Hickman Terrace, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Document No. 201600089 of the Official Public Records of Travis County, Texas, also being the Southeast corner of a 10' wide sanitary sewer easement, granted to the City of Austin, as set forth in instrument recorded in Volume 2499, Page 101 of the Deed Records of Travis County, Texas;

**THENCE** with the curving West right-of-way line of Hickman Avenue and the East lines of said Windsor Park Assets, LLC tract and said sanitary sewer easement, N 27 deg. 13'24" E 10.00 ft. (chord bearing and distance) to a calculated point for the Southeast corner and **PLACE OF BEGINNING** of the herein described easement;

**THENCE** leaving the West right-of-way line of Hickman Avenue and entering the interior of said Windsor Park Assets, LLC tract, with the North line of said 10' wide sanitary sewer easement, N 61 deg. 15'20" W 38.00 ft. to a calculated point for the Southwest corner of the herein described easement;

**THENCE** leaving the North line of said 10' wide sanitary sewer easement and continuing through the interior of said Windsor Park Assets, LLC tract, the following two (2) courses:

- 1.) N 29 deg. 10'51" E 63.00 ft. to a calculated point for the Northwest corner of the herein described easement;
- 2.) S 61 deg. 15'20" E 25.74 ft. to a calculated point in the curving West right-of-way line of Hickman Avenue, same being a point in the East line of said Windsor Park Assets, LLC tract and the Northeast corner of the herein described easement, from which a 60D nail found in the root of a 16" Hackberry tree at the Northeast corner of said Windsor Park Assets, LLC tract, same being the Southeast corner of Lot 3, The Johnson and Hoffman Subdivision of a Portion of Dinsmore Simpson Survey, a subdivision in Travis County, Texas, according to the map or plat thereof recorded in Volume 13, Page 9 of the Plat Records of Travis County, Texas bears, N 06 deg. 01'22" E 35.00 ft. and N 01 deg. 46'00" E 0.14 ft. (chord bearing and distance);

**THENCE** with the West right-of-way line of Hickman Avenue and the East line of said Windsor Park Assets, LLC, tract, along a curve to the right with a radius of 234.60 ft. for an arc length of 64.29 ft. and which chord bears, S 18 deg. 09'05" W 64.09 ft. to the **PLACE OF BEGINNING** and containing 0.048 acre of land.

PREPARED: October 12, 2016

  
Holt Carson

Registered Professional Land Surveyor No. 5166

Reference map: C939016

#### REFERENCES

Tax Parcel No. 04-2419-02-18

City Grid L-26

## **EXHIBIT B:**

### **SUBDIVISION IMPROVEMENTS**

**External Subdivision Improvements.** Subdivider and City agree the following improvements located outside the boundaries of the Subdivision are required in connection with the approval and development of the Subdivision (collectively, the "External Subdivision Improvements"). Subdivider agrees to deliver a financial guarantee acceptable in form and substance to the City Attorney in an amount equal to Subdivider's pro-rata share of the estimated cost to construct and install the External Subdivision Improvements, in the amount listed below, as follows:

Description of Improvement(s)		Total Estimated Cost
a)	none	

**Internal Subdivision Improvements.** Subdivider and City agree the following improvements located inside the boundaries of the Subdivision are required in connection with the approval and development of the Subdivision (collectively, the "Internal Subdivision Improvements"). Subdivider agrees to deliver a financial guarantee acceptable in form and substance to the City Attorney in an amount equal to the Estimated Cost of Completion listed below, as follows:

Description of Improvement(s)		Estimated Cost of Completion
a)	Detention Pond(s)	\$6,980.00

<b>TOTAL</b>	<b>\$6,980.00</b>
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AFTER RECORDING, RETURN TO:

City of Austin  
Development Services Department  
Fiscal Surety Office  
P.O. Box 1088  
Austin, Texas 78767  
Attn: Wendy Stucker

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

Dec 05, 2016 03:46 PM 2016201418

WILLIAMSJ: \$86.00

Dana DeBeauvoir, County Clerk  
Travis County TEXAS

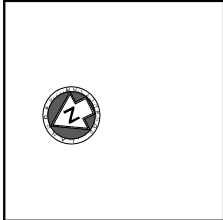
**Recorders Memorandum**-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.



## **APPENDIX 7**

### **SITE CONSTRAINTS**

## **7A HEIGHT RESTRICTION EXHIBIT**



BERKMAN TERRACES, LLC  
HEIGHT COMPATIBILITY EXHIBIT  
6203-6207 BERKMAN DR AND 6210 HICKMAN AVE.  
AUSTIN, TRAVIS COUNTY, TEXAS  
4/6/2021

**LAND DEV**  
**CONSULTING, LLC**  
4201 W. PARKER LANE, SUITE C-100  
AUSTIN, TX 78727  
OFFICE: 512.872.6696  
FIRM NO. 16382

**7B BOARD OF ADJUSTMENT VARIANCE  
APPLICATION AND RULES**





## CITY OF AUSTIN

### Development Services Department

One Texas Center | Phone: 512.978.4000

505 Barton Springs Road, Austin, Texas 78704

## Board of Adjustment General/Parking Variance Application

The following information provides a summary of the Board of Adjustment variance process. This is not intended to be a complete or exhaustive guide in assisting you through this process.

### Variance Requirements

- A. A variance may be granted if, because of special circumstances of a property, the strict application of the City of Austin Land Development Code regulations deprives the property owner of privileges that are enjoyed by another person who owns property in the area that has the same zoning designation as the property for which the variance is requested.
- B. A variance to a regulation may not grant special privileges that are inconsistent with the limitations on other properties in the area or in the district in which the property is located.

### Submittal Requirements

**All variances expire one year after approval date per City Code Section 25-1-217 unless Board decision states otherwise.**

Failure to complete the application or to submit all the required materials below will result in non-acceptance of the application, and it will not be added to the next Board agenda.

1. A completed application indicating all variances being requested. The application must include proposed findings that will support requested variances. The required findings must address each variance being sought.
  - Application must be typed
  - Application must be signed and dated by owner and agent
2. A site plan or survey drawn to scale indicating present and proposed construction and location and use of structures on adjacent lots.
3. If property is located in Williamson County, then contact Williamson County Appraisal District for an electronic spreadsheet list of the property owners' names and addresses within a 500-foot radius.
4. Check made payable to the City of Austin for the Board of Adjustment application fee.
  - See Board of Adjustment fees at: <http://www.austintexas.gov/department/fees>
5. Other Information — Although the following is not a requirement of submittal you may wish to include additional information that may assist the Board in making an informed decision regarding your request such as: photos of the site or visual aids to support the request, letters from the neighborhood association(s), signatures of support from neighbors, tree and topography information, cover letter explaining extenuating circumstances, elevations of the proposed

structure, floorplans of the proposed structure, etc. Any additional information you wish to submit must be in our office two weeks prior to the meeting. The Board will receive an 8-1/2" x 11" black and white copied packet with all information that has been submitted on the Thursday prior to the meeting. If you would like the Board to see any of your evidence in either full color or large format, provide 15 sets of the information to our office two weeks prior to the meeting.

— Please consider contacting your Neighborhood Association about your request

6. Austin Energy approval as noted below:

— The Austin Electric Utility Department (Austin Energy) enforces electric easements and the setback requirements set forth in the Austin Utility Code, Electric Criteria Manual, and National Electric Safety Code. The Board of Adjustment considers variance to the City of Austin Land Development Code, and a variance granted by the Board does not waive the requirements enforced by Austin Energy. Prior to your variance hearing, you must receive approval from Austin Energy by contacting Eben Kellogg at (512) 322-6050 or email [eben.kellogg@austinenergy.com](mailto:eben.kellogg@austinenergy.com).

Variances approved by the Board are limited to and conditioned upon the plans and specifications presented by the applicants, except as modified by the Board.

Please be advised that the Board only reviews 16 new cases a month, therefore, applications will be accepted on a first come, first served basis. In addition, a request for reconsideration must be filed within 10 days from the Board meeting.

Board of Adjustment staff

City of Austin – Development Assistance Center  
505 Barton Springs Road  
Austin, Texas 78704  
Phone: (512) 978-4000; Fax: (512) 974-6305

Mailing Address

P. O. Box 1088  
Austin, Texas 78767-1088

## **Required Findings**

All variance findings must be met in order for the Board to grant a variance. An application must include proposed findings that will support the requested variance. Incomplete applications will not be accepted.

### **Reasonable Use**

Application must demonstrate to the Board how the zoning regulations applicable to the property do not allow for a reasonable use of the property. (Note: The Board cannot approve a variance for a use that is not allowed in the zoning district in which the property is located. This requires a change in zoning.)

### **Hardship**

- a) Application must demonstrate to the Board how the hardship for which the variance is requested is unique to the property. Hardship should be specific to the property for which the variance is being requested (for example, topography, lot configuration, or any physical constraint that would limit the placement of the structure or prevent compliance with required site development regulations, etc.). A strictly financial or personal reason is not a valid hardship.

- b) Application must demonstrate to the Board why the hardship is not general to the area in which the property is located. Describe how the hardship relating to the site is different from other properties in the area.

### **Area Character**

Application must demonstrate to the Board how the variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the zoning regulations of the zoning district in which the property is located.

### **Parking**

Parking variances **require additional findings** to be made. The additional findings are listed on the application and must also be completed for submittal of the application.



## CITY OF AUSTIN

### Development Services Department

One Texas Center | Phone: 512.978.4000

505 Barton Springs Road, Austin, Texas 78704

## Board of Adjustment General/Parking Variance Application

**WARNING:** Filing of this appeal stops all affected construction activity.

**This application is a fillable PDF that can be completed electronically. To ensure your information is saved, [click here to Save](#) the form to your computer, then open your copy and continue.**

The Tab key may be used to navigate to each field; Shift + Tab moves to the previous field. The Enter key activates links, emails, and buttons. Use the Up & Down Arrow keys to scroll through drop-down lists and check boxes, and hit Enter to make a selection.

The application must be complete and accurate prior to submittal. ***If more space is required, please complete Section 6 as needed.*** All information is required (if applicable).

### For Office Use Only

Case # \_\_\_\_\_ ROW # \_\_\_\_\_ Tax # \_\_\_\_\_

### Section 1: Applicant Statement

Street Address: \_\_\_\_\_

Subdivision Legal Description:

\_\_\_\_\_  
\_\_\_\_\_

Lot(s): \_\_\_\_\_ Block(s): \_\_\_\_\_

Outlot: \_\_\_\_\_ Division: \_\_\_\_\_

Zoning District: \_\_\_\_\_

I/We \_\_\_\_\_ on behalf of myself/ourselves as  
authorized agent for \_\_\_\_\_ affirm that on

Month \_\_\_\_\_, Day \_\_\_\_\_, Year \_\_\_\_\_, hereby apply for a hearing before the

Board of Adjustment for consideration to (select appropriate option below):

☐ Erect ☐ Attach ☐ Complete ☐ Remodel ☐ Maintain ☐ Other: \_\_\_\_\_

Type of Structure: \_\_\_\_\_

Portion of the City of Austin Land Development Code applicant is seeking a variance from:

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## Section 2: Variance Findings

The Board must determine the existence of, sufficiency of, and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional supporting documents.

**NOTE: The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.**

I contend that my entitlement to the requested variance is based on the following findings:

### Reasonable Use

The zoning regulations applicable to the property do not allow for a reasonable use because:

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### Hardship

a) The hardship for which the variance is requested is unique to the property in that:

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b) The hardship is not general to the area in which the property is located because:

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### Area Character

The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

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### Parking (additional criteria for parking variances only)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed in the City of Austin Land Development Code Chapter 25-6, Appendix A with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specific regulation because:

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2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

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3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

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4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

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### Section 3: Applicant Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Applicant Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Applicant Name (typed or printed): \_\_\_\_\_

Applicant Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone (will be public information): \_\_\_\_\_

Email (optional – will be public information): \_\_\_\_\_

### Section 4: Owner Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Owner Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Owner Name (typed or printed): \_\_\_\_\_

Owner Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone (will be public information): \_\_\_\_\_

Email (optional – will be public information): \_\_\_\_\_

### Section 5: Agent Information

Agent Name: \_\_\_\_\_

Agent Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone (will be public information): \_\_\_\_\_

Email (optional – will be public information): \_\_\_\_\_

### Section 6: Additional Space (if applicable)

Please use the space below to provide additional information as needed. To ensure the information is referenced to the proper item, include the Section and Field names as well (continued on next page).

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## Regulatory Policy and Administration

### Board of Adjustments\*

	DSD Fees	Basic Notification	Sub Total	4% Surcharge	Total
Zoning Variance	\$3,455.00	\$291.00	\$3,746.00	\$149.84	\$3,895.84
Residential Variance (Homeowners only**)	\$500.00	\$291.00	\$791.00	\$31.64	\$822.64
Special Exceptions	\$2,552.00	\$291.00	\$2,843.00	\$113.72	\$2,956.72
Residential Exception (Homeowners only**)	\$500.00	\$291.00	\$791.00	\$31.64	\$822.64
Sign Variance	\$3,455.00	\$291.00	\$3,746.00	\$149.84	\$3,895.84
Zoning Interpretation Appeal*** (Code Interpretation/Use Determination)	\$2,552.00		\$2,552.00	\$102.08	\$2,654.08

### Determination of Regulations/Vested Rights

Verification	\$583.00		\$583.00	\$23.32	\$606.32
Full Determination	\$2,327.00	\$101.00	\$2,428.00	\$97.12	\$2,525.12
Managed Growth Agreement	\$11,656.00	\$4,200.00	\$15,856.00	\$634.24	\$16,490.24
Project Consent Agreement	\$11,656.00	\$9,699.00	\$21,355.00	\$854.20	\$22,209.20
Fair Notice Fee	\$874.00		\$874.00	\$34.96	\$908.96

\*Additional AE fee of \$262 will apply to all variances and special exceptions other than parking variances.

\*\*With homestead tax exemption

\*\*\*Additional Basic Notification Fee may apply.

## Board of Adjustment

### Applicant Information

The Board of Adjustment (BOA) is a quasi-judicial board. In the City of Austin process, it is a sovereign board and the decision of the BOA is final. Its decisions can only be appealed in District Court. The board is composed of eleven regular members that serve at the pleasure of city council (appointed alternates also serve in the absence of regular members on an as-needed basis). A quorum consists of nine members.

The BOA operates under a set of **Bylaws** and a set of **Rules and Procedures**.

Both should be reviewed prior to your case:

They are on the city website: <https://www.austintexas.gov/boa>

The Austin Land Development Code is also online: <https://library.municode.com/TX/Austin>

Since the BOA is a quasi-judicial body, **individual board members cannot be contacted directly or lobbied regarding a case**. All information must be submitted directly to the staff liaison, and they will pass it on to all board members.

A variance request is dealt with in a hearing style format. Each side is allowed a **TOTAL of 5 MINUTES** for their presentation. **Each side must SHARE their 5 minutes between ALL SPEAKERS**. Prior to the hearing, it is a good idea to practice your presentation by allocating this time between your lead speaker and any additional speaker(s). Often, a lead speaker will make the entire presentation and can then ask all those in support to stand and be recognized. Five minutes can go by very fast – organization of key points is essential. After each side makes their 5-minute presentation, only the applicant receives an additional two-minute rebuttal period.

The board may then ask questions of either side for clarification or to gain additional information or insight into the case. Next, the board will make a motion to grant, deny, or postpone.

For a motion to APPROVE an appeal (variance), 9 out of 11 - YES votes are required in order for it to be granted. In other words, three or more NO votes will cause the variance to be denied. The corollary to this is the motion to DENY: If a motion to DENY is made, only 3 YES votes are needed to deny the variance.

A motion to DENY requires no findings but any motion to GRANT does require “findings”.

What are “findings”? This is the section of the application where the applicant explains the hardship unique to that property and explains how it will not affect the area character of its surroundings.

The key ingredient of findings is **HARDSHIP**. This is often the hardest to understand. The BOA statute and the City Code do not define “unnecessary hardship.” It is somewhat of a fluid concept. Hardships have been dealt with in state case law through the years. Whether there is a hardship is a determination for the BOA members to make on a case-by-case basis.

Hardships are something related to the particular property that prohibit the owner from having a reasonable “conforming use,” if he/she is required to comply with the city's development regulations. The application of the city's regulations to the particular property, when taking into account its configuration, topography, the surrounding property, etc., create the typical hardship. Examples are pie-shaped lots, lot size, lots with slope problems, lots where every other house on the street is already benefiting from the condition being sought in this variance request, all of which MAY justify area, setback or height variances. Trying to save trees has also been accepted as a hardship by at least one Texas appellate court. The preceding list not intended to list every example of a situation that could create a hardship. Please note, a hardship should not be self-imposed. i.e., if you subdivide your own

property into weirdly shaped lots and thereby make it difficult to build a normal size house on one of those lots, you may have a self-imposed hardship and may not be granted the variance.

A hardship cannot be merely an economic hardship: the sole basis for a variance request should not be "if you grant me this variance, I can make more money (or save money) or I can build a bigger structure". Hardships are conditions that are unique to the applicant's property – not conditions that are unique to the applicants themselves. Health issues, age, mobility, the desire to improve the property by building it a certain way, built without a permit, etc. .... these do not qualify as BOA hardships. The desire to have an extra room, a deck, a carport, etc. are all very reasonable but it is also reasonable to build within existing city codes without the need of a variance.

If a person can solve his development problem with a zoning change, then generally speaking, he should seek that zoning change instead of a variance. The BOA does not grant variances which amount to a zoning change.

The BOA generally looks at hardships as condition that relate to issues like topography, safety, trees, drainage easements, flooding, pre-existing conditions that might be "grandfathered": construction prior to current code or annexation, etc. It is impossible for this document to give anything other than general guidance, as each property is unique and is in its own unique surroundings.

Effective presentations should include legible site plans, drawings, surveys, photographs, and topo maps. **Evidence should be provided to support your claim of hardship.** Just saying you have a slope on your lot, an easement issue or your structure was built prior to current code is insufficient. Provide supporting proof of your claim to the board, ideally in the initial application.

Applicants are responsible for maintaining the city-provided notice yard sign(s) posted on their property. Notification is also sent to nearby property owners and neighborhood organizations that are registered with the city's Community Registry. **It is wise to DISCUSS your variance request with your NEIGHBORS early in the process.** You should also **CONTACT the Neighborhood Association** for your area. You may search the city's Community Registry by zip code or association name to obtain association contact information here: [www.austintexas.gov/page/community-registry](http://www.austintexas.gov/page/community-registry) or <http://www.austintexas.gov/GIS/PropertyProfile/>

**Variances are granted for a one-year period.** Following receipt of a variance, the applicant typically must proceed with a Building Permit. Receiving a variance is the beginning of a process, not the end. Project completion should take place before the variance expires. In some cases, a variance may be granted for an additional year for a showing of good cause. If a variance is **DENIED**, the BOA may not hear a request for substantially the same variance for a one-year period.

Either side may request **RECONSIDERATION** of the BOA's decision to either grant or deny a variance. To do so, one must apply for reconsideration in writing (email will suffice) to the BOA Staff Liaison within 10 days of the board's decision. A request to reconsider shall state clearly **how the Board erred in its determination, why the action should be reconsidered, and be supported by new or clarified evidence that was not available at the initial hearing.** All of this information should be submitted within the 10-day period, as Board members will review the request prior to any public hearing or live presentation. A vote must first be taken to reconsider. If the vote is in favor of reconsideration, the case will then be reopened and another vote will be taken on the actual variance or interpretation request.

The only recourse for an aggrieved party (Applicant or Interested Party) that is unsatisfied with the BOA reconsideration decision is only an appeal to District Court. BOA appeals do not go to City Council.

# **A COMMUNITY GUIDE TO THE CITY OF AUSTIN'S BOARD OF ADJUSTMENT: Practical Tips for Zoning Variances, Special Exceptions and Administrative Appeals**

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Approved by the Board of Adjustment, on April 13, 2015, and prepared in collaboration with the City Law Department and Development Services Department.

**Boardmembers:**

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Melissa Hawthorne, Vice Chair  
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## **INTRODUCTION**

This guidebook explains the purpose and function of the Board of Adjustment in the context of the City of Austin's regulations for the use and development of land. It seeks to provide practical information on how to request a variance, special exception, or an appeal, while also conveying a broader understanding of the purpose behind the City's regulations.

Zoning ordinances are laws, so this guidebook necessarily covers some basic legal information. However, it is not intended as legal advice and should not be relied on as such. In the event of a conflict with the City's Land Development Code or other applicable law, the code or other law supersedes this guidebook.

## **ZONING IN AUSTIN: A BRIEF HISTORY**

The Board of Adjustment derives its legal authority from both the City of Austin's Land Development Code and Chapter 211 of the Texas Local Government Code. Its purpose is to help administer and interpret zoning ordinances adopted by the City Council. To understand the Board's role, it's important to understand what zoning is and the purpose it serves in regulating land use and development in Austin.

In broad terms, zoning implements a community's vision for the use and development of land. As such, zoning seeks to balance competing goals and values, such as providing parks and open space, ensuring adequate infrastructure, and controlling traffic, along with the protection of private property rights and achieving the goals of the City's comprehensive plan.

Historically, communities across the country have used zoning to serve two main functions. First, traditional zoning establishes geographic "districts" that group compatible land uses together and prohibit incompatible uses, such as residential and industrial, from occurring adjacent to each other. Second, zoning regulates the physical characteristics of development by restricting things like building height, setbacks from a property line, density, impervious cover, floor-to-area

ratio, and other aspects of development. These restrictions are generally referred to as “site development standards.”

The first zoning ordinance in the United States was adopted by New York City in 1916, primarily to limit the construction of large skyscrapers adjacent to residential neighborhoods. Cities across the nation followed New York’s lead, adopting their own zoning ordinances tailored to address local circumstances. The City of Austin adopted its first zoning ordinance in 1931, with several rewrites occurring in the following decades.

Today, while the City’s regulations retain many aspects of traditional zoning, they have evolved in response to new challenges posed by sky-rocketing growth and the broader range of planning goals defined in the *Imagine Austin Comprehensive Plan*. The comprehensive plan, adopted by the City Council in 2013, serves as the policy guide for city regulations and emphasizes the importance of efficient transportation, environmental protection, household affordability, and the preservation of neighborhood character. *Imagine Austin* also incorporates more detailed subarea plans, including approximately 53 separately adopted neighborhood plans, station area plans, and corridor regulating plans, which set forth more detailed goals and policies for particular areas.

A detailed understanding of the City’s zoning regulations is not necessary for everyone using this guide. In many cases, an explanation from staff as to what’s required will be sufficient for anyone wishing to understand the rules that apply to a particular property. For those who need or desire more information, however, Appendix E summarizes some of the most common types of zoning regulations.

## **THE BOARD OF ADJUSTMENT: PURPOSE & FUNCTIONS**

The Board of Adjustment, established by the City in the 1940s, is one of two bodies authorized under state law to provide community residents with a meaningful role in the regulatory process. Composed of 11 members appointed by the Mayor and City Council, the Board is



charged with considering requests to relax the strict application of development regulations to particular properties. Additionally, the Board is authorized to hear appeals of administrative decisions by city staff in enforcing and interpreting zoning regulations.

The Board of Adjustment is a “sovereign board,” which means that it makes final decisions on behalf of the City for those matters within its legal authority. A party aggrieved by the Board’s decision, whether a citizen or a city department, can appeal the Board’s decision to District Court in accordance with requirements of state law. The city council may not overturn a decision by the Board.

The Land Use Commission, which is divided into the Planning Commission and the Zoning & Platting Commission, is the other citizen board established to assist in the zoning process. Unlike the Board of Adjustment, the Commission functions in an advisory capacity on zoning matters by providing recommendations to the City Council on proposed rezones and regulatory amendments. The Commission consists of 13 members, one for each council office, and four ex officio members as established by city charter.

## **RULES & GUIDELINES FOR VARIANCES, SPECIAL EXCEPTIONS, AND APPEALS**

To make a request to the Board of Adjustment, the landowner or the landowner’s agent must file an application with city staff and then present his or her case to the Board at one of its regularly held public meetings or, in exceptional cases, at a special-called meeting. This section summarizes the specific applications that can be filed and the rules governing how the Board reviews an application. Copies of each application can be found in Appendices B-D.

### **A. Zoning Variances**

The most common type of application is a request for a zoning variance to reduce a numeric regulation, such as a yard setback or limit on impervious cover. The “Guidelines for Zoning Variances,” which appear on the following page, provide a useful summary of the criteria the Board uses in considering a variance and practical tips for presenting a variance case to the Board.

## *Guidelines for Zoning Variances*

To get a variance, your property must have special characteristics that make it extremely hard to comply with a regulation without giving up a privilege enjoyed by similar properties in your area.



### **Here's what you have to prove:**

- (a) A hardship that's unique to the property and not common to the area. Self-created or financial hardships are not enough, nor are personal circumstances, design preferences, or desire for additional space. **Focus on the property, not the people.**
- (b) The regulation deprives your property of a "reasonable use" that's fundamental to its use & enjoyment and is allowed by zoning ordinance. Simply wanting to make your property more valuable is not sufficient for a variance.
- (c) Granting the variance would not change the character of your neighborhood, impair the use of adjacent property, or impair the purpose of the regulations. To satisfy these findings, proposed construction must be consistent with surrounding development in appearance and intensity.

### **Here's what you need to do:**

- ✓ Be prepared to explain what you're planning to build and why it requires a variance. Ask for the smallest variance needed to achieve your objective.
- ✓ A picture is often worth more than a 1000 words, so using scaled drawings and photographs is strongly encouraged.
- ✓ Reach out to your neighbors. Let them know what you're trying to do and work with them, as best you can, to address any reasonable concerns.
- ✓ Offer conditions that will lessen the impact of your variance.

## **1. *When Is A Variance Required? The Importance of Considering Alternate Designs***

The most common function of the Board of Adjustment is to consider requests for a variance from a site development regulation, such as a restriction on building height, setbacks, impervious cover, floor-to-area ratio, or any zoning regulation imposed under City Code Chapter 25-2 (*Zoning*). A variance relaxes the regulation by a specified amount; for example, increasing a height limit from 100 to 125 feet or a setback restriction from 20 to 15 feet from a property line. However, the Board cannot grant a variance to allow a use that is not permitted.

When a building permit or site plan application is submitted to city staff, they review it for compliance with the regulations in the Land Development Code and, in some cases, separate requirements of a neighborhood plan, small area plan, or regulating plan. During the review process, staff will notify a permit applicant if changes to the building plans are required in order to comply with applicable regulations. Staff cannot approve a permit or site plan that fails to comply with applicable regulations.

If an applicant believes that full compliance is impossible or unreasonable due to unique features of the property, he or she may seek a variance from the Board of Adjustment. The Board may approve a variance as requested by the applicant, deny the variance, or approve the variance with conditions it considers necessary to mitigate the impacts of development allowed by the variance. The Board's decision is final, unless appealed to district court in accordance with Chapter 211 of the Local Government Code.

A copy of the City's variance application is included in Appendix B. Please refer to "Guidelines for Zoning Variances" on the preceding page for general tips and the discussion below for more detailed information on how the process works.

## **2. *Basic Requirements for Obtaining a Variance.***

Before seeking a variance, an applicant should evaluate the feasibility of potential design changes that would bring a project into

compliance with city regulations and thus avoid the need for a variance. Those changes may require reducing square footage, moving new construction further away from a property line, or reducing the amount of impervious cover. If an applicant decides to seek a variance, he or she should be prepared to provide evidence to show what design changes were considered and why they were determined to be infeasible.

The Board of Adjustment may only approve a variance by a “super-majority” vote of at least nine out of 11 members. To grant a variance, the Board must find that the request meets the three specific criteria described below. An applicant should carefully consider these criteria, which are called “findings,” when deciding whether or not to request a variance. If an applicant chooses to request a variance, he or she should make sure to address these findings in the variance application and supporting materials, as well as when presenting the case to the Board.

**(a) Hardship: Focus on Property, Not People**

To grant a variance, the Board must find that strict application of a zoning regulation would create a “hardship” that is “unique to the property and not generally characteristic of the area in which the property is located.” There is no clear-cut, universal definition of what constitutes a “hardship”; each case will vary according to the type of property involved and the nature of the variance requested.

That said, the following guidelines are based on decisions of the Texas courts and the Board’s experience over the years. ***In general, these are the factors the Board considers in determining whether a “hardship” exists:***

- ✓ A hardship cannot be personal, but must be based on unique physical features of the property for which the variance is sought.
  - Courts have held that: “[A] hardship must not be self-imposed, nor financial only, and must relate to the very property for which a variance is sought, i.e. a condition unique, oppressive, and not common to other property.”

- Common examples of hardship include lots with steep slopes, topographical restraints, unusually small lot area, or irregular lot shapes. Trees may constitute a hardship, if they are required to be preserved or if an applicant wants to preserve them.
  - Personal circumstances, such as financial difficulties or troubles with neighbors, cannot be the sole basis for finding a hardship. An applicant may mention such factors, but should focus primarily on characteristics of the property itself.
- ✓ A hardship cannot be self-created.
- An applicant for a permit or site plan cannot claim a hardship based on conditions that he or she is responsible for creating.
  - For example, if a structure is designed in a manner that fails to comply with regulations, the structure's non-compliance isn't a hardship. Or, if a landowner subdivides a lot into irregular pieces, he or she can't rely on their irregular shape to prove a hardship.
- ✓ A hardship must be unique to the property, not general to the area where it's located.
- If steep slopes or small lots are common to a particular area, then neither condition is sufficiently unique to constitute a hardship by itself.
  - If a lot is entitled under city code to "small lot amnesty," which automatically relaxes certain development regulations for small lots, then lot size alone should not be relied on as evidence of a hardship. Small lot amnesty was approved with the understanding that, with the exception of minimum lot area, development would meet other site development regulations.
  - The City's regulations alone cannot be the hardship. For example, an applicant cannot request a height variance and



claim that the restrictions on building height constitute a hardship. The applicant must focus on unique features of his or her property.

**(b) Reasonable Use: Not “Highest & Best” Use**

To grant a variance, the Board of Adjustment must also find that the regulation “does not allow for a reasonable use of property.” As with hardship, there is no clear-cut answer to what constitutes reasonable use. However, the following guidelines are helpful:

- ✓ A property is not left with no reasonable use just because a regulation limits the size or design of a structure or increases development costs.
- ✓ A property does not need to be left completely undevelopable in order for the Board to find that a regulation does not allow for a reasonable use.
  - Depriving a residential lot of amenities commonly associated with a residence may constitute a lack of reasonable use. However, as with all variances, there must be a hardship related to physical features of the property such that there is no feasible alternative to accommodate the amenity without a variance. And if an amenity requires increasing utilization of the site, reducing the size and scale of the development should also be considered as a tradeoff for the amenity.
  - In general, the fact that a regulation reduces the potential profitability of an otherwise developable commercial or residential property does not constitute a lack of reasonable use.

**(c) Area Character & Purpose of Regulations**

In addition to the “hardship” and “no reasonable use” findings discussed above, the Board of Adjustment cannot grant a variance unless it finds that development under the variance would not:

- alter the character of the area adjacent to the property;
- impair the use of adjacent property that conforms with City regulations; or
- impair the purposes of the applicable zoning regulations.

These criteria require the Board of Adjustment to consider the potential impacts of granting a variance on the surrounding area. An applicant should be able to show the Board that the variance will not significantly affect neighborhood character or harm adjacent properties. This can be done most effectively by photographs of the surrounding area, as well as letters or testimony from neighbors and, if possible, from the neighborhood association or neighborhood plan contact team.

While there are no hard and fast rules, many factors may result in altering area character. For example, increasing traffic to adjacent streets, reducing tree canopy, or diminishing privacy to adjacent properties could have the effect of altering area character. Development that exceeds the size and scale typical of properties in the vicinity may also alter area character.

An applicant should also be able to explain, in general terms, how the variance will not significantly impair the purpose of the regulation. For example, a residential setback restriction is intended to protect privacy, provide for open space, and avoid the aesthetic and safety concerns associated with over-crowding. An applicant requesting a setback variance, therefore, should be able to explain how decreasing the setback will not undermine those objectives. Appendix E summarizes the goals behind several important city regulations.

### **3. *Special Types of Variances.***

The requirements discussed above apply to all variances considered by the Board of Adjustment, and in many cases those are the only requirements that must be met to obtain a variance. Each of the variances discussed below, however, has additional requirements or considerations.

**(a) Parking Variances**

In order to grant a variance from a minimum parking or loading facility requirement, the Board must find that it meets all of the general findings discussed above—i.e., *hardship, reasonable use, area character*—in addition to the following special findings:

- current or anticipated traffic volume generated by the use of the property or a nearby property does not reasonably require strict compliance with and enforcement of the requirement;
- development under the variance will not result in parking or loading on public streets that interferes with the free flow of traffic on the streets; and
- development under the variance will not create a safety hazard or any other condition that is inconsistent with the objectives of the Code.

In applying these criteria, the Board may consider street width and the availability of on-street parking in determining impacts on traffic.

**(b) Sign Variances**

The Board may grant a variance from the structural requirements for signs adopted in City Code Chapter 25-10, which restrict the number of signs allowed on a property, as well as the height, size, location, and lighting of signs. Because these requirements are not traditional zoning regulations, approval of a variance from sign regulations only requires a “simple majority” vote of six members as opposed to 11 members as required for a variance from zoning regulations.

The Board may grant a sign variance only if it finds that:

- the variance is necessary because the requirement prevents any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site including its dimensions, landscaping, or topography;



- granting the variance will not have a substantially adverse effect on neighboring properties; or
- granting the variance will not substantially conflict with the purposes of the sign regulations.

**(c) Existing Construction: Asking Forgiveness, Rather Than Permission**

The best time to ask for a variance is during the development review process, before starting construction. An applicant who builds first, without obtaining a building permit or variance, runs the risk of having to tear down or modify a structure in the event that a variance is later denied. Building permits are sometimes issued in error; responsibility for building in compliance with city regulations rests ultimately with the landowner and his or her consultants and contractors. Staff error in issuing a permit should not be relied on as the sole basis for requesting a variance.

The Board of Adjustment considers a variance request under the same criteria, regardless of whether the structure has already been built or not. For this reason, an applicant seeking a variance for existing construction must meet the legal requirements discussed at pages 7-12, just like any other zoning variance.


In many cases, however, applicants in this situation may want to emphasize the reasons that construction occurred without a variance. (Errors by contractors during construction, or by city staff during the review process, are common examples). Members of the Board understand the significance of these considerations for applicants and are not unsympathetic to landowners who genuinely tried to follow the rules. However, personal circumstances can never be the basis for obtaining a variance, so an applicant should focus primarily on the characteristics of the property and the legal requirements for obtaining a variance.

## **B. SPECIAL EXCEPTIONS**

Texas law allows cities to authorize a board of adjustment to grant “special exceptions” from a zoning ordinance. Unlike a standard zoning

variance, the criteria for a special exception can be tailored to address different kinds of situation and don't necessarily require a showing of "hardship."

In 2011, the City of Austin adopted a special exception process designed to address minor setback violations that have existed for long periods of time without incident, but which might not meet the criteria required for a traditional zoning variance. The guidelines below summarize the requirements for obtaining a special exception and are followed by a more thorough explanation on the next page.

<p><i>Guidelines for Special Exceptions</i></p> <p>To get a special exception from a setback requirement, the violation must have existed for at least 25 years.</p>	
<p>To get a special exception:</p> <ul style="list-style-type: none"><li>✓ The city Building Official must find that the violation is not a threat to public safety.</li><li>✓ The Board of Adjustment must find that:<ul style="list-style-type: none"><li>○ the use is allowed in an SF-3 or more restrictive zoning district;</li><li>○ the structure either has a permit, or is legally nonconforming, and doesn't share a lot with more than one other primary residence; and</li><li>○ granting the exception would not alter the character of the area, impair the use of adjacent property, or grant a special privilege inconsistent with other properties in the area.</li></ul></li></ul>	

## ***1. Different than a Variance: No Hardship Required***

The Land Development Code, specifically City Code § 25-2-476, authorizes the Board of Adjustment to grant “special exceptions” for minor setback violations that have existed for ten years or more without objection if the violation does not threaten public safety or create a hazard particular to the property or adjacent properties.

To obtain a special exception, an applicant needs to show that the requirements listed in the Guidelines (above) have been met. The key difference between a special exception and a zoning variance is that, unlike a variance, a special exception does not require proof of hardship or lack of reasonable use.

## ***2. Health & Safety Inspection***

The purpose of a health and safety inspection is to determine whether granting the special exception would adversely impact public safety by, for example, obstructing access to a property by the fire department or creating unsafe conditions on adjacent properties. When applying for a special exception, an applicant should work with staff to schedule a safety inspection of the property in advance of the hearing and pay the required fee. The Board of Adjustment cannot grant a special exception unless the structure and the premises pass the inspection.

## **C. APPEALS**

The Board of Adjustment has the authority to consider appeals of decisions by city departments regarding the interpretation of zoning ordinances. While a variance or special exception grants relief from the strict application of a zoning ordinance, an appeal provides a means to challenge how city staff interprets and applies particular zoning regulations. Granting an appeal has the effect of over-turning city staff and, like a variance, it must receive a “super-majority” vote of at least nine BOA members in order to pass.

It’s important to remember that neither city staff nor the Board of Adjustment can re-write the Land Development Code, even if they see

flaws in how it's written. If the code supports the department's determination, the Board of Adjustment will not over-turn the decision even if members of the Board don't like the result. Only the City Council, through the code amendment process, can change the code itself.

An appeal has a greater potential to impact city operations than a variance, because some of the issues that come to the Board on appeal are ones that affect how the code is applied to projects across the City. Unless an applicant or an interested party understands the nuances of how city regulations are written, he or she would be well advised to seek legal counsel before appealing an administrative decision. Appealing a decision by staff is only appropriate where the code seems to be ambiguous or appears to have been miss-applied.

Only an applicant for a permit or an "interested party" has the right to appeal an administrative decision. Depending on the circumstances, interested parties may include residents affected by nearby development or representatives of neighborhood associations or neighborhood plan contact teams. The Land Development Code, specifically City Code § 25-1-131, lists the requirements which must be met to be considered an interested party.

Following is an explanation of the different types of appeals that can be filed with the Board of Adjustment. The Land Development Code contains additional information on appeals as well. An appeal cannot be placed on the Board's agenda if it lacks the required information or is not filed within 20-days of the staff decision, as required by City Code § 25-1-182.

## ***1. Code Interpretations***

When city staff reviews a permit application, they often have to exercise professional judgment regarding the meaning and intent of particular regulations. If an applicant or an interested party believes that a regulation has been misinterpreted, he or she can appeal the determination to the Board of Adjustment within 20-days of a staff decision.

The Land Development Code acknowledges the Board's authority to hear interpretation appeals in Section 25-2-475, but does not address several questions regarding the process for appealing a determination. Here are a few general rules of thumb:

***Non-Project Appeals:***

- If an applicant or interested party has questions about how staff is applying a regulation overall, they can request a general code interpretation regarding the meaning of the regulation and how it applies to particular situations. Staff will then provide a written determination of the code, which can be appealed within 20-days to the Board of Adjustment.
- If a general code interpretation is appealed to the Board, and the Board votes to overturn the interpretation, the decision will impact how staff applies that regulation to future permit applications. However, it will not affect permits that have already been issued.

***Project Appeals:***

- An interpretation appeal associated with a building permit or site plan must be filed within 20-days from the date that the permit or site plan is issued. Since public notice is not provided for building permits, residents as well as neighborhood associations and contact teams should monitor the City website for information on issuance of building permits.
- An applicant may also challenge interpretations made during "plan review" by filing an appeal within 20 days after staff receiving staff comments on the project.

***Enforcement Appeals:***

- If a landowner or tenant has received a decision from staff finding that his or her property is out of compliance with a zoning regulation, he or she may appeal within 20 days of receiving the first notification of the violation.

- Examples of enforcement decisions include a “notice of violation” or an administrative order suspending or revoking a permit.
- The 20-day clock does not start over when subsequent notices for the same violation are received. So, a landowner who disagrees with staff’s decision that a violation exists must appeal within 20-days of receiving the first written decision from staff that a violation exists.

***General Requirements & Pointers:***

- An interpretation appeal may only be filed for site development regulations that are codified in the City’s zoning code, which is at Chapter 25-2 of the Land Development Code, or in a separately adopted zoning ordinance such as a Neighborhood Conservation Combining District or small area regulating plan. The Board may not consider appeals involving environmental regulations or building codes.
- In presenting an appeal to the Board, an applicant or interested party should:
  - Explain why he or she believes staff misinterpreted the code as it is currently written. This requires carefully reading the code provisions in question and understanding how they work with the context of the Land Development Code.
  - Suggest an alternate interpretation and explain why he or she believes it is more consistent with the code

## ***2. Use Determinations***

The Land Development Code defines various categories of residential, commercial, and civic uses. Some of these definitions are self-explanatory: a traditional house, for example, is “Single-Family Residential” and an auto-dealership is “Automobile Sales.” In some cases, though, a land use may not fit neatly into one particular category or it may have similarities to two or more different use categories.

If a proposed land use is not clearly defined, staff has to decide which category is the best fit based on the similarities of the proposed use to the more clearly defined uses. How such uses get classified is an important decision, since it will impact whether the use is allowed, prohibited, or “conditional” within a particular zoning district. (A “conditional use” is one that requires discretionary review by the Planning Commission, or the Zoning & Platting Commission, in order to be approved).

The permit applicant or interested party should consult staff, and read City Code § 25-1-197 (*Use Determinations*), for the requirements on challenging a use determination. Following are a few pointers to keep in mind:

- Whether you’re an applicant or a neighbor, the first step is to formally request a use determination. This triggers a more thorough review by staff and will result in a formal written determination that can then be appealed to the Board of Adjustment.
- A “project-level determination” is where either an applicant or an interested party (usually a neighbor) is challenging a determination that’s related to a particular development. Once a determination is made by staff, an appeal must be filed within 20 days or it will be rejected.
- If you’re concerned about a broad category of projects, and are not trying to challenge a particular permit, then you can request a “non-project determination.” A non-project determination may be requested at any time and provides a better vehicle for looking at overall issues of how the code is being applied.

Once you receive a use determination from the department, consider it carefully before deciding whether to appeal. If you do appeal, be prepared to explain to the Board as specifically as possible why you believe the department is wrong—i.e., why doesn’t the proposed land use fit within the particular category identified by staff?



Before the Board can overturn the department, they will need to conclude that the proposed use has greater similarities to another defined land use than the one identified by staff. Overturning a staff interpretation requires a “super-majority” vote of the Board (i.e., at least nine out of 11 members).

### ***3. Non-Conforming Uses & Non-Complying Structures***

Existing land uses that were begun legally, under the code in effect at that time, are generally allowed to continue operating, even if they could no longer be permitted today. Such uses fit into one or both of the following categories:

- A non-conforming use is one that was permitted under the rules in place when it began, but could no longer be allowed under current use regulations in place for the applicable zoning district. An auto body repair shop in a residential neighborhood, for example, that began before the area was subsequently zoned “Single Family.”
- A non-complying structure is one that doesn’t meet current site development regulations, such as setbacks or impervious cover limitations, but did comply with the code in effect at the time it was built.

The rules for what a landowner can do with a non-conforming use or a non-complying structure are set forth in Sections 25-2-941 and 25-2-963, respectively. These and other sections of the Land Development Code describe in detail the requirements for continuing to operate a non-conforming use or non-complying structure, including limited allowances for alterations and maintenance. A landowner who fails to comply with these requirements may be required to bring his or her property into full compliance with current regulations.

If a landowner or other interested party disagrees with staff’s determination regarding the non-conforming or non-complying status of a property, he or she may appeal the decision to the Board of Adjustment. As with an interpretation appeal, the 20-day clock for filing



an appeal starts to run with the first written communication from staff regarding the determination.

Staff determines a property's non-conforming or non-complying status are dependent on the facts of each case—for example, when did the use begin, what did the rules allow at that time, and how significantly has the use or structure been altered? In appealing staff's determination, an applicant or interested party should be able to provide evidence backing up his or her position on all of the relevant factors considered by staff in making their determination.

## **PREPARING & PRESENTING YOUR CASE**

The main thing to remember is to be prepared and to be respectful to other parties and to members of the Board. Following are a few examples of things you can do ahead of time to maximize the chances of a smooth, orderly hearing on your case and a timely decision by the Board.

### **A. OBTAINING NECESSARY INSPECTIONS & SIGN-OFFS**

The Board will generally not consider a case involving construction which impacts an Austin Energy or other public utility easement unless the utility has agreed in writing that it does not object to the variance. Work with the Board's staff liaison who can direct you to the appropriate department to obtain the necessary approvals before your case is heard.

Likewise, if you are requesting a special exception or a variance for an existing structure, the Board needs to have a determination by staff that structure is safe and does not pose a threat to "life, health, or public safety." Work with staff to obtain any required inspections before your case is heard.

### **B. CONSULTING YOUR NEIGHBORS**

If you're requesting a variance or a special exception, reach-out to your neighbors, neighborhood association, and neighborhood contact

team to discuss what you plan to do—ideally before filing an application, but definitely before your hearing. Residents within 500-feet of your property, as well as registered neighborhood associations and contact teams, will obtain notice from the City of your application regardless of whether you tell them or not, and it's usually better if they hear it directly from the applicant first.

If your neighbors do not object to what you'd like to do, ask if they'd be willing to sign or submit a short letter to that effect. A written letter is stronger evidence of neighborhood support than simply stating that you've obtained their support. While it doesn't guarantee approval, written support for a variance from those most likely to be affected goes a long way towards addressing compatibility with "area character," which is one of the findings the Board has to make in order to approve a variance.

In some cases, the Board will want to know whether you proactively sought to engage your neighbors, neighborhood association or neighborhood plan contact team. If possible, it's always best to present your proposal to the neighborhood association or contact team in writing and to make yourself available to answer questions. Meeting times for neighborhood associations and contact teams vary, so plan ahead and make sure to submit your request in plenty of time for the neighborhood association or contact to consider it before the Board considers your case.

### **C. PROPOSED FINDINGS**

As explained at pages 7-14, above, the Board of Adjustment has to make certain "findings" in order to legally approve a variance. When you submit an application, provide staff with an explanation as to how your request meets each of those findings. Likewise, in presenting to the Board, be sure to emphasize:

- (1) How physical features of your property constitute a hardship that makes strict compliance with the regulations impossible or extremely difficult;

- (2) Why your variance is necessary to obtain reasonable use of your property; and
- (3) The compatibility of what you'd like to do with surrounding development in your neighborhood.

In addition to standard restrictions on height, setbacks, and impervious cover, the City's zoning regulations also seek to ensure neighborhood compatibility, pedestrian-friendly streetscapes, and building scale that's appropriate to surrounding patterns of development. Similarly, while the City continues to limit uses to specific zoning districts, such as "Single-Family Residential" or "Commercial Services," current regulations make greater allowance for mixed-use development that allows people to shop and work near their homes.

## **D. USE OF GRAPHICS & PICTURES**

The old adage "a picture is worth a thousand words" holds true for cases before the Board. Applicants are strongly encouraged to provide staff with scaled drawings and photographs to include in their supporting materials and to use them in their presentation to the Board.

Not every case requires an elaborate plan set or detailed architectural drawings. But in order to convince the Board that your case meets the findings required for a variance, you should be prepared to accurately depict the physical dimensions of your property, what you're proposing to build, and the general character of the surrounding area. If a case is more complex, or requests a larger variance, you should be prepared to provide more detailed information. Likewise, if you're relying on a tree or other natural feature as a "hardship," be prepared to provide pictures or a site survey substantiating it.

## **BOARD MEETINGS: RULES & PROTOCOLS**

The Board of Adjustment meets on the 2<sup>nd</sup> Monday of every month and occasionally holds special meetings to consider more complex cases. Applicants should work with staff to schedule their cases and should try to consult with surrounding neighbors, as well as the

neighborhood association or contact team, to make sure the hearing date works for anyone who is interested in the case.

The Board's meetings are governed by Rules of Procedure and Bylaws, which are available online at:

[Rules of Procedure](#) (rules for hearings and action on cases)

[Bylaws](#) (overall structure and operation)

It's important to be familiar with the general order of presentations and time limits, which are summarized in Appendix F. Additionally, all comments should be directed to the Board, and not to other parties. Be concise in your presentation, and once your time is up, do not speak unless members of the Board have questions for you. Be respectful and courteous, even if you disagree with statements made about your case.

## **RULES FOR CONTACTING THE BOARD**

Because the Board is a quasi-judicial body, applicants and interested parties cannot communicate with the Board or with individual members outside of a public meeting. All information intended for the Board should be provided to the Board's staff liaison to be included in the "backup" (i.e., supporting materials) that is posted on the Board's agenda.

The staff liaison, whose contact information is listed below, can also help you to schedule your case and work with plan reviewers to make sure that you're requesting the correct variances for your project:

**Elaine Ramirez**

*Planner Senior*

Development Services Department

One Texas Center

505 Barton Springs Road

Austin, Texas 78704

(512) 974-2202

[elaine.ramirez@austintexas.gov](mailto:elaine.ramirez@austintexas.gov)

**BOARD OF ADJUSTMENT**  
**RULES OF PROCEDURE**

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*Approved by the Board of Adjustment on February 11, 2019*

**ARTICLE I. GENERAL PROVISIONS**

**(A) Legal Authority & Jurisdiction.**

- (1) The Board of Adjustment (“BOA” or “Board”) is a sovereign board established by the City Council pursuant to Subchapter A of Chapter 211 of the Texas Local Government Code (“Chapter 211”). The BOA derives its authority from state law, as well as City Code § 2-1-111 (*Board of Adjustment*) and Chapter 25-2 (*Zoning*).
- (2) As stated in Chapter 211 and the City Code, the BOA’s primary functions are to hear and decide:
  - (a) Requests for variances from site development regulations adopted under Chapter 25-2, Subchapter C (*Use and Development Regulations*) and from certain sign regulations under Chapter 25-10 (*Sign Regulations*);
  - (b) Requests for special exceptions from site development regulations, where expressly authorized by Code; and
  - (c) Appeals of administrative decisions made in the enforcement and administration of City zoning regulations and decisions made in the enforcement of Chapter 211.

**(B) Rules of Procedure.**

- (1) These Rules of Procedure (“Rules”) establish standards, guidelines, and requirements for:
  - (a) the conduct of public hearings and the resolution of cases before the BOA;
  - (b) applications for variances or administrative appeals; and
  - (c) processing of applications for variances and administrative appeals filed with the Development Services Department; and
  - (d) notification to the BOA of the filing of an application for a variance and administrative appeals.

- (2) In the event of a conflict with City Code, Chapter 211 or other applicable law, the Code, Chapter 211 or other law supersedes these Rules.
- (3) Applicants should familiarize themselves with these Rules before filing an application or presenting a case to the BOA for decision. For more detailed information regarding Board and the rules for variances, special exceptions, and appeals, see the *Board of Adjustment Community Guidebook*, at:

[https://www.austintexas.gov/sites/default/files/files/Planning/Applications\\_Forms/Board\\_of\\_Adjustment\\_Guidebook\\_July\\_2015\\_.pdf](https://www.austintexas.gov/sites/default/files/files/Planning/Applications_Forms/Board_of_Adjustment_Guidebook_July_2015_.pdf)

## **ARTICLE II. REQUIREMENTS FOR REQUESTING BOARD ACTION**

### **(A) Complete Application Required.**

All requests to the BOA shall be filed on an application form provided by the staff liaison. The staff liaison shall determine if an application is complete before accepting it for filing.

### **(B) Timing of Submittal & Other Application Requirements.**

#### **(1) *Variances & Special Exceptions.***

- (a) Except as provided in Paragraph (B)(1)(b), below, an application for a variance or special exception may be filed at any time provided that the Development Services Department has determined that the development proposed by an applicant requires a variance or special exception.
- (b) A variance or special exception may not be requested for one year if the Board has denied a variance or special exception for the same or substantially similar project.
- (c) Depending on the nature of the project, staff may require an applicant to submit a full permit application before accepting an application for a variance or special exception. At a minimum, staff will require a general plot plan and other detail regarding what the applicant proposes to build.

#### **(2) *Administrative Appeals.***

The BOA is authorized by state law to hear and decide appeals alleging error in an order, requirement, decision, or determination made by staff in the enforcement of Chapter 211 and City zoning regulations, including action on

development applications, code interpretations, land use determinations, and suspension or revocation orders. The rules in Paragraphs (2)(a)-(d), below, supplement the requirements for administrative appeals established under the Land Development Code.

- (a) **Deadline for Filing Appeal.** Under the Land Development Code, an Interested Party must file an administrative appeal within 20 days from the date of the staff decision being appealed, unless a different deadline is specifically established. The BOA may accept an appeal after the deadline on the basis of waiver, estoppel, misrepresentation, misinformation, the interest of justice, or other appropriate legal and equitable grounds. In calculating the deadline for appealing particular types of administrative decisions, the following rules apply:
- (i) If the Land Development Code requires notification of an administrative decision, the deadline begins to run on the date that notification of the decision is provided in accordance with City Code § 25-1-134. (Examples of decisions requiring notification include approval of site plans for which an interested party has registered under City Code § 25-5-114 and use determinations obtained prior to submitting a development application under City Code § 25-1-197).
  - (ii) If the Land Development Code does not require notification of a decision, the appeal deadline begins to run on:
    - For a building permit, the date the permit is issued;
    - For an administrative site plan, the date the site plan is released;
    - For a non-project code interpretation or use determination not associated with a development application, the date the determination is published; and
    - For other types of decisions related to City zoning regulations, the date that the decision is published.
- (b) **Appeal Forms and Other Procedures.** An appeal must contain the information required under City Code § 25-1-183 and be on a form provided by the Development Services Department. and shall:

- (i) Provide the Board an opportunity to review and approve appeal forms; and
    - (ii) Make the required forms available on the City's website, along with useful guidance on how to appeal the decisions listed in Paragraph (2)(a)(i)-(ii), above, and how to obtain formal interpretations of City zoning regulations.
  - (c) **Notice of Appeal.** On receiving the notice of appeal, the official from whom the appeal is taken shall immediately, no later than 3 business days, transmit to the Board the relevant papers constituting the record of the action that is appealed in order that the Board may make a determination.
- (3) ***Payment of Fees Required for All BOA Applications.***
- (a) An applicant must pay the fee established in the City's annual fee schedule at the time an application for a variance, special exception, or administrative appeal is filed.
  - (b) For a variance or special exception, staff may defer payment of the fee until any time prior to the date initially scheduled for the public hearing.
  - (c) For an administrative appeal, staff may not defer payment of the required fee beyond the deadline required for filing the appeal.

(C) **Standing & Jurisdiction.**

(1) ***Variances & Special Exceptions.***

- (a) An application for a variance or special exception may be filed by the property owner or by an authorized agent of the property owner.
- (b) City staff or the Board may require additional information, other than a completed application form, in order to substantiate that an applicant has authority to file an application.
- (c) The BOA may only consider requests for variances and special exceptions from site development regulations adopted under City Code Chapter 25-2 (*Zoning*). Staff cannot accept applications for variances or special exceptions that are beyond the Board's legal authority.

(2) ***Administrative Appeals.***



- (a) Notwithstanding the requirements of City Code § 25-1-131 (*Interested Parties*), any “aggrieved party” has standing to appeal a decision to the Board in accordance with applicable requirements of the Land Development Code and these rules. The Board shall determine standing, timeliness, ripeness, and any objections thereto, prior to conducting a public hearing on the appeal.
- (b) The BOA may only consider appeals relating to the interpretation of site development regulations or the classification of a land use under Chapter 25-2, Subchapter C (*Use and Development Regulations*), or a separately adopted zoning ordinance. The Board may not consider an administrative appeal that is beyond its legal jurisdiction.

**(D) Public Notice.**

- (1) Before the Board conducts a public hearing on a case, public notice is required in accordance with requirements of state law and the Land Development Code. An applicant bears the cost of providing public notice.
- (2) For variances, special exceptions, and appeals relating to a particular site, signs describing the requested action must be posted on the subject property in a manner visible to the public no less than ten (10) days prior to the hearing date. If the subject property is adjacent to more than one public street, separate signs facing each public street must be posted. Mailed notice may also be required, as provided in the Land Development Code.
- (3) If an applicant fails to maintain a sign in accordance with applicable requirements, the Board may postpone a public hearing until adequate notice is provided in accordance with the Land Development Code.
- (4) In accordance with City Code, the postponement or continuation of a public hearing does not require additional notice if the postponement or continuance is to a specific date and time no later than 60 days from the date of the hearing for which notice was given.

**ARTICLE III.**  
**SUBSTANTIVE REQUIREMENTS FOR VARIANCES AND SPECIAL**  
**EXCEPTIONS**

**(A) General Requirements.**

- (1) This article summarizes the findings that the BOA is required to make in order to approve a variance or special exception and the number of votes required for approval. More detailed information can be found in the *Board of Adjustment Community Guidebook*, which is accessible via hyperlink in Rule (I)(B), above.
- (2) The applicant bears the burden of demonstrating that his or her case satisfies the required findings. As such, an applicant should provide pictures, drawings, and other visual aids to show the impact that the proposed development would have on adjacent properties and provide context for development patterns in the surrounding area.
- (3) The BOA may request additional information if the material provided by an applicant is insufficient to determine whether a request satisfies the required findings.

**(B) Zoning Variances.**

- (1) ***Number of Votes Required.*** The concurring vote of at least 75% of the Board is required in order to grant a variance. In calculating the required 75% super-majority:
  - (a) If all eleven (11) authorized seats on the Board have been appointed (i.e., no vacancies) and no member is legally required to recuse him or herself from a variance request, then approval of the variance requires a concurring vote of at least nine of the 11 boardmembers.
  - (b) In calculating the required 75%, all vacant positions and members legally required to recuse themselves are excluded. Thus, if one seat is vacant and one member has a financial conflict of interest that requires recusal, then approval of the variance requires the concurring vote of at least 7 of the nine members.
  - (c) Fractions are rounded to the highest whole number when calculating the required 75% super-majority. That is why, for example, an 11-member

board would require nine rather than 8 votes in order to approve a zoning variance (i.e.,  $0.75 \times 11 = 8.25$ , rounded to 9).

(2) ***Required Findings.*** In order to grant a zoning variance, the Board must find that:

- (a) The zoning regulations applicable to the property do not allow for a reasonable use;
- (b) The hardship for which the variance is requested is unique to the property and not general to the area in which the property is located; and
- (c) The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of regulations to the zoning district in which the property is located.

(3) ***Optional Findings/Narrative.*** In addition to the findings required under Rule III(B)(2), above, the Board's motion to approve a variance may also include additional, case-specific explanation highlighting particular facts in support of the Board's findings. The BOA is not required to include a case-specific explanation, however, and making the findings in Rule III(B)(2), above, is legally sufficient to approve a variance.

(4) ***Conditions.*** The Board may impose reasonable conditions on a zoning variance that directly mitigate the impacts of approving the variance on surrounding properties or are otherwise necessary in order for the Board to make one or more of the findings required under Rule III(B)(2), above.

(5) ***Limited Effect of Variance.*** A zoning variance:

- (a) Applies only to the use for which the variance was granted and does not run with the land on which the use is located; and
- (b) Expires one-year after the date of approval—which means that any site plan or building permit applications for which the variance is required must be submitted within one-year from the date the BOA approves the variance.

(C) **Parking Variances.**

- (1) ***Requirements for Zoning Variances Apply.*** A variance from the minimum parking requirements in Chapter 25-6, Appendix A (*Table of Off-Street Parking & Loading Requirements*) of the Land Development Code is a zoning variance and subject to all of the requirements in Rule III(B), above.
- (2) ***Additional Required Findings.*** In addition to the findings required under Rule III(B)(2), above, the Board must make the following additional findings if a requested variance involves a regulation addressing loading facility or off-street parking requirements:
  - (a) Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specified regulation;
  - (b) Granting the variance will not result in the parking or loading of vehicles on public streets in a manner that interferes with the free flow of traffic on the streets; and
  - (c) Granting the variance will not create a safety hazard or any other condition inconsistent with the objective of the regulations.

(D) **Sign Variances.**

- (1) ***Requirements for Zoning Variances Not Applicable.*** The Board is authorized by ordinance to consider requests for variances from the development standards in Chapter 25-10 (*Sign Regulations*). Since these requirements are not zoning regulations,<sup>1</sup> the concurring vote of a simple majority of authorized positions (i.e., 6 of 11) is sufficient to approve a variance from a sign regulation.
- (2) ***Required Findings.*** The BOA may grant a variance from the development standards of Chapter 25-10 if it finds that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated; and makes one or more of these additional findings:
  - (a) the variance is necessary because strict enforcement of the provisions of the sign regulations prohibit any reasonable opportunity to provide

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<sup>1</sup> Pursuant to established case law, decisions on the legal non-conformity of an off-premise sign are treated as zoning determinations for purposes of the super-majority voting requirement in Rule III(B).

adequate signs on the site, considering the unique features of a site, such as its dimensions, landscaping or topography;

- (b) granting the variance will not have a substantially adverse impact upon neighboring properties; or
- (c) granting the variance will not substantially conflict with the stated purposes of the sign regulations.

**(E) Findings for Airport Zoning Variances.**

- (1) ***Number of Votes Required.*** Approval of a variance from regulations under Chapter 25-13 (*Airport Hazard and Compatible Land Use Regulations*) requires the concurring vote of at least 75% of the Board, as calculated in accordance with Rule III(B)(1), above.
- (2) ***Required Findings.*** Pursuant to state law, the findings required for the BOA to approve an airport zoning variance are different than the findings required for a general zoning variance under Rule III(B), above. In order to approve a variance from a development regulation under Chapter 25-13, the Board must find that:
  - (a) a literal application or enforcement of the regulation would result in practical difficulty or unnecessary hardship; and
  - (b) the granting of the relief would:
    - i. result in substantial justice being done;
    - ii. not be contrary to the public interest; and
    - iii. be in accordance with the spirit of the regulation and Chapter 241, Local Government Code.

**(F) Special Exceptions.**

- (1) ***Distinct From Standard Zoning Variance.*** The BOA may approve a special exception for an existing structure with minor setback violations, as specified under the Land Development Code. Approval of a special exception requires the concurring vote of at least 75% of the Board, per Rule III(B)(1), above.
- (2) ***Required Findings.*** The Board may approve a special exception if:
  - (a) the residential use for which the special exception is sought is allowed in an SF-3 or more restrictive zoning district;

- (b) the building official performs an inspection and determines that the violation does not pose a hazard to life, health, or public safety; and
- (c) the Board finds that:
  - i. the violation has existed for at least 25 years;
  - ii. the use is a permitted use or a nonconforming use;
  - iii. the structure does not share a lot with more than one other primary residence; and
  - iv. granting a special exception would not:
    - alter the character of the area;
    - impair the use of adjacent property that is developed in compliance with city code; or
    - grant a special privilege that is inconsistent with other properties in the area or in the district in which the property is located.

#### **ARTICLE IV.**

### **SUBSTANTIVE REQUIREMENTS FOR ADMINISTRATIVE APPEALS**

- (A) **Appeals Limited to Interpretations of Site Development Regulations & Land Use Determinations.** The BOA may consider an administrative appeal alleging error in an order, requirement, decision, or determination made by City staff in enforcing a substantive requirement of Chapter 25-2 or other City zoning regulation, including appeals challenging the approval or disapproval of a site plan or building permit and formal code interpretations not related to a particular development.
- (B) **Number of Votes Required.** In order to grant an appeal reversing or modifying a decision by City staff regarding a code interpretation or use determination, the concurring vote of at least 75% of the Board is required, as calculated in accordance with Rule III(B)(1), above.
- (C) **Basis for Decision.** In deciding an appeal, the Board may affirm or reverse, in whole or in part, or modify the administrative decision under review, but may not exceed the authority of the City official who made the decision. Before deciding an administrative appeal, the Board shall consider:
  - (1) the facts and statements in the application;
  - (2) the testimony and other evidence presented at the public hearing;
  - (3) the responsible city official's statement on the appeal; and

- (4) the Board's consideration and evaluation of the language of the regulations and of related ordinances bearing thereon.
- (D) **Decision and Findings.** In order to grant an appeal reversing or modifying an administrative decision, the Board must:
  - (1) find that City staff's determination is erroneous and provide a statement of grounds in support of the finding;
  - (2) state what the Board determines to be the correct interpretation of the site development or use regulation(s) at issue in the appeal.

## **ARTICLE V. HEARINGS AND DECISIONS**

- (A) **Applicant or Registered Agent/Representative.** The applicant, or a party in opposition, may appear in person or be represented by counsel or an agent.
- (B) **Order of Business.**

After the chair calls the meeting to order, the staff liaison shall call each matter in the order filed and shall announce the case number, the name of the applicant, and the location of the property. The staff liaison shall describe the nature of the case and advise the Board of any communications received. The chair shall administer an oath to all persons providing testimony or other evidence.
- (C) **Procedure for Hearings on a Variance or Special Exception.** A public hearing on a request for a variance or special exception should generally adhere to the following format:
  - (1) The chair shall call the applicant, who shall first address standing to appear before the Board by establishing status as:
    - (a) the agent or owner for the subject property; or
    - (b) an interested party under the notice provisions of the Land Development Code or an individual otherwise affected by the applicant's request.
  - (2) The applicant shall present arguments. The chair shall then inquire if there are others affected who support the variance or special exception, who may then speak, within the remaining time allotted.
  - (3) The chair shall call next those opposed to the applicant's request to present arguments. The chair shall then call the applicant to rebut arguments presented by opposition. Following rebuttal, the chair shall order the hearing closed.

- (4) Each side shall proceed without interruption by the other and all arguments and pleadings shall be addressed to the Board. No argument between applicant and opponents is permitted. The chair may allow limited cross-examination between applicant and opponents.
  - (5) The Board may continue a hearing on any matter for which the applicant fails to appear, unless the applicant has requested that the Board act without the applicant's being present.
  - (6) The Board may deny any matter in which the applicant has failed to appear without cause for two meetings for which the variance or special exception was posted for consideration, provided the Board shall hear those persons appearing in response to the notice of hearing.
- (D) **Administrative Appeals.** A public hearing on an administrative appeal should generally adhere to the following format, but the Board may modify the format for particular cases as deemed appropriate:
- (1) ***Standing to Appeal & Requests for Postponement.***
    - (a) The chair should begin by stating: *"Before we open the public hearing, are there any requests for postponement or issues of standing that anyone would like to raise?"*
    - (b) If objections to standing (which include issues of timeliness, jurisdiction, or ripeness) or requests for postponement are raised, the chair should resolve them before proceeding to the public hearing. The chair should limit testimony to only those issues, not the merits of the case. If no objections are raised, the chair should open the public hearing and follow the format below.
  - (2) ***Format for Appeal Hearing.***
    - (a) Presentation by the appealing party or their lead representative (suggest limiting to 10 minutes with no donation of time allowed);
    - (b) Report from City staff and all opposing parties regarding the basis for the decision (suggest limiting to 10 minutes);
      - i. if the appeal challenges approval of a permit or other project-specific administrative decision, a presentation by the permit-holder or project applicant, or their representative (suggest limiting to 10 minutes with no donation of time allowed);



- (c) Comments by citizens in support of or in opposition to the appeal (3 minutes each, with donation of time allowed), subject to reasonable limits imposed by chair to save time and avoid redundant or irrelevant testimony; and
- (d) Rebuttal by the appealing party (3 minutes).

(E) **Time Limits for Presentations.**

- (1) ***Variances.*** Presentations on behalf of an application for a variance shall be limited to a total of five minutes. Presentations on behalf of opponents shall be limited to a total of five minutes. The applicant shall have a total of two minutes to rebut the arguments of the opponents.
- (2) ***Administrative Appeals.*** Presentations to the Board on administrative appeals should generally adhere to the time limits specified in Rule IV(D), above.
- (3) ***Increase of Time Limits.*** By majority vote of the Board, or upon ruling by the chair, time limits may be equitably extended. After the public hearing is closed, no further public comment shall be accepted unless requested by the chair.

(F) **Deliberation, Voting and Post-Hearing Procedures.**

- (1) ***Board Deliberation.*** After closing the public hearing, the Chair may call for questions from the Board to the applicant, staff, witnesses and interested parties in order to bring out all relevant facts, circumstances and conditions affecting the matter and then call for questions from other Board members or the responsible city official. During its deliberation, the Board may call on any party to the proceeding or witness for further questioning.
- (2) ***Disposition.*** The Board may defer action on an appeal if it concludes that additional evidence is needed, alternate solutions need further examination, or evidence presented at the hearing requires further review. The Board may dismiss or postpone a matter if the Board finds that it was improperly filed.
- (3) ***Vote Required.*** In addition to the substantive rules specified in Article III, above, the calculation of votes is subject to the following additional rules:
  - (a) If a motion in favor of an applicant fails to receive the minimum number of affirmative votes required for approval, it shall be regarded as a vote to deny.

- (b) If a member is absent and the vote of that member added to the number voting for the applicant would equal the minimum number of affirmative votes required to approve a request, the motion shall be regarded as a vote to postpone action and continue consideration of the matter to the next meeting.
  - (c) If a motion to deny a zoning variance or administrative appeal receives at least three affirmative votes, it shall be regarded as a vote to deny. If a motion to deny a variance from Chapter 25-10 (*Sign Regulations*) receives at least five votes, it shall be regarded as a vote to deny.
- (4) ***Reconsideration.*** The following rules apply to a request that the Board reconsider a prior determination:
- (a) A matter on which the Board has acted may be reconsidered once by the Board.
  - (b) A request to reconsider may be filed by any person having original standing in the matter—i.e., for a variance or special exception, an individual who qualifies as an interested party or their agent or the landowner or their agent; for an administrative appeal, an aggrieved party or their agent.
  - (c) Requests for reconsideration shall be filed in writing with the staff liaison within 10 days after the Board's decision and must: (i) state how the Board erred in its determination; (ii) state why the action should be reconsidered; and (iii) be supported by new or clarified evidence.
  - (d) When a request to reconsider has been properly filed, the staff liaison shall place the matter on the agenda of the next regular meeting. The Board shall review the request and shall, on the basis of the written material submitted by the applicant in support of the request, determine whether to reconsider the matter because of an error in its original determination or on the basis of new or clarified evidence not presented to the Board at the original hearing that might affect its determination.
  - (e) A member may move to reconsider regardless of the member's vote on the original appeal. The affirmative vote of six (6) members of the Board shall be necessary to reconsider a matter, which shall then be heard immediately following the Board's decision to reconsider.

Failure of a motion to reconsider shall constitute final action on the matter.

- (f) Action on a matter for which reconsideration has been granted is subject to the same voting requirements as the original determination.

**(5) *Decision Sheet.***

- (a) Upon final disposition of a case, the staff liaison shall file in the Board's offices a decision sheet stating:
  - (i) the ultimate disposition of a case;
  - (ii) if applicable, any conditions imposed on a variance or special exception; and
  - (iii) the Board's findings.
- (b) For an administrative appeal:
  - (i) The decision sheet may include an addendum stating the Board's interpretation of the regulation or land use category at issue in the appeal. A decision by the Board is a final determination unless the decision is reversed by District Court or the relevant Code provisions are amended by the City Council.
  - (ii) The City shall post precedential BOA decisions on the City's website.
- (c) The record before the Board at a public hearing on a variance, special exception, or administrative appeal is automatically incorporated into the decision sheet.

**(6) *Appeal to District Court.*** Final decisions of the Board may be appealed to District Court within 10-days, as provided under Sec. 211.011 of the Texas Local Government Code and other applicable law. For purposes of these Rules, a decision is deemed to be "filed in the board's office" on the later of:

- (a) The first business day after the expiration of the reconsideration period established under Rule V(F)(4), above; or
- (b) If a timely request for reconsideration is filed, the first business day after: (i) the meeting at which the Board denies the reconsideration

request; or (ii) if a request to reconsider a case is granted, the meeting at which the Board takes action on the case.

#### **ARTICLE VI. PROHIBITION ON *EX PARTE* COMMUNICATIONS.**

- (A) ***Quasi-Judicial Body.*** The BOA is a quasi-judicial body with authority to decide the rights of individual parties, subject to the requirements of state law and the Land Development Code. In deference to its decision-making role, no one other than City staff may contact a boardmember outside of a public hearing regarding a matter that is pending, or may in the future be pending, before the Board. All communications to the Board outside of a public hearing should be directed to the staff liaison.
- (B) ***Limitations on Outside Investigations.*** Members shall not individually investigate cases before the Board, other than routine site visits or reviewing publicly available information.
- (C) ***Disqualification.*** A BOA member that receives material information regarding a case that is not made available to other boardmembers is disqualified from participating in the case unless the member publicly discloses the information and its source at the earliest reasonable opportunity. A BOA member may disqualify him or herself if an applicant, interested party, or agent has sought to influence the member's vote other than in a public hearing or through documents made available at the public hearing.
- (D) ***Attendance of Required Witnesses.*** The chair may compel the attendance of witnesses at public hearings before the Board.

# **BYLAWS OF THE BOARD OF ADJUSTMENT**

## **ARTICLE 1. NAME.**

The name of the board is the Board of Adjustment.

## **ARTICLE 2. PURPOSE AND DUTIES.**

(A) The purpose of the Board of Adjustment is to:

1. Hear and decide a request for a variance from the requirements of Chapter 25-2 (Zoning), except as otherwise provided by the Code;
2. Hear and decide an appeal of an administration action under Chapter 25-2 (Zoning);
3. Hear and decide on a request for a variance from the requirements of airport zoning regulations under Section 241.034, Local Government Code; and
4. Perform other duties prescribed by ordinance or state law.

## **ARTICLE 3. MEMBERSHIP.**

- (A) The Board of Adjustment is composed of eleven members appointed by the city council. The council may appoint any number of alternate members to serve in the absence of a regular member.
- (B) A member that was appointed to the Board of Adjustment may be removed by the council for cause on a written charge after a public hearing.
- (C) Board members serve for a term of two years beginning March 1<sup>st</sup> on the year of appointment. A vacancy on the Board of Adjustment shall be filled for the unexpired term.
- (D) An individual board member may not act in an official capacity except through the action of the board.
- (E) A regular board member who is absent for three consecutive regular meetings or one-third of all regular meetings in a “rolling” twelve month timeframe automatically vacates the member’s position subject to the holdover provisions in Section 2-1-27 of the City Code. This does not apply to an absence due to illness or injury of the board member, an illness or injury of a board member’s immediate family member, active military service, or the birth or adoption of the board member’s child for 90 days after the event. The board member must notify the staff liaison of the reason for the absence not later than the date of the next regular meeting of the board. Failure to notify the liaison before the next regular meeting of the board will result in an unexcused absence.
- (F) At each meeting, each board member shall sign an attendance sheet which indicates that the member does not have a conflict of interest with any item on that agenda, or identifies each

agenda item on which the member has a conflict of interest. Failure to sign the sheet results in the member being counted as absent and his/her votes are not counted.

- (G) A member who seeks to resign from the board shall submit a written resignation to the chair of the board, the staff liaison, or the city clerk's office. If possible, the resignation should allow for a thirty day notice so the city council can appoint a replacement.

#### **ARTICLE 4. OFFICERS.**

- (A) The officers of the board shall consist of a chair and a vice-chair.
- (B) Officers shall be elected annually by a majority vote of the board at the first regular meeting after April 1<sup>st</sup>. In the event a current officer becomes ineligible to serve as an officer, the board may hold an emergency election as needed.
- (C) The term of office shall be one year, beginning May 1st and ending April 30<sup>th</sup>. An officer may continue to serve until a successor is elected. A person may not serve as an officer in a designated position of a board for more than four consecutive one-year terms. A person who has served as an officer in a designated position of a board for four consecutive terms is not eligible for re-election to that designated office until the expiration of two years after the last date of the person's service in that office. The board may override the term limit provision for an officer by an affirmative vote of two-thirds of the authorized board members.
- (D) A member may not hold more than one office at a time.

#### **ARTICLE 5. DUTIES OF OFFICERS.**

- (A) The chair shall preside at board meetings, appoint all committees, represent the board at ceremonial functions and approve each final meeting agenda.
- (B) In the absence of the chair, the vice-chair shall perform all duties of the chair.

#### **ARTICLE 6. AGENDAS.**

- (A) Two or more board members may place an item on the agenda by oral or written request to the staff liaison at least five days before the meeting. After first consulting with and receiving input from the staff liaison, the chair shall approve each final meeting agenda.
- (B) The board liaison shall submit the meeting agenda through the online agenda posting system for each meeting not less than 72 hours before the meeting.
- (C) ~~Posting of the agenda must comply with Texas Government Code Chapter 551 (Texas Open Meetings Act).~~

#### **ARTICLE 7. MEETINGS.**

- (A) The board meetings shall comply with Texas Government Code Chapter 551 (Texas Open Meetings Act).
- (B) Board meetings shall be governed by Robert's Rules of Order.
- (C) The board may not conduct a closed meeting without the approval of the city attorney.

- (D) The board shall meet monthly. In November of each year, the board shall adopt a schedule of the meetings for the upcoming year, including makeup meeting dates for the holidays and cancelled meetings.
- (E) The chair may call a special meeting, and the chair shall call a special meeting if requested by three or more members. The call shall state the purpose of the meeting. A board may not call a meeting in addition to its regular scheduled meetings as identified in its adopted meeting schedule, more often than once a quarter, unless the meeting is required to comply with a statutory deadline or a deadline established by Council.
- (F) Six members constitute a quorum, however, in order to approve a zoning variance or special exception, or to reverse an administrative decision on appeal, the following rules apply:
- (i) The affirmative vote of three-fourths of all qualified voting members is required. If all positions have been appointed and no board member is disqualified from voting, the minimum number of votes required is 9 out of 11.
  - (ii) For purposes of calculating a required super-majority, the total number of positions excludes any vacancies (i.e., seats for which no appointment has been made) and members who are legally disqualified from voting on a particular case. For example, if one position is vacant and another position is held by a member who is legally required to recuse herself on a particular matter, then the required super-majority for that case would be 7 votes (i.e., three-fourths of 9, rounded to the nearest whole number).
- (G) If a quorum for a meeting does not convene within one-half hour of the posted time for the meeting, then the meeting may not be held.
- (H) To be effective, a board action must be adopted by: (i) an affirmative vote of the number of members necessary to provide a quorum; or (ii) for zoning variances, special exceptions, and administrative appeals, a three-fourths supermajority as determined under Subsection (F) of this article.
- (I) The chair has the same voting privilege as any other member.
- (J) The board shall allow citizens to address the board on agenda items, except individual cases under Article 2(A)(1) through (3) and (B)(1) and (2). If a citizen requests in writing that a matter within the scope of the board's responsibilities other than a case under Article 2(A)(1) through (3) and (B)(1) and (2), the staff liaison shall place the matter on the agenda within a reasonable time and during a period of time set aside for citizen communications. The chair may limit a speaker to three minutes.
- (K) The staff liaison shall prepare the board minutes. The minutes of each board meeting must include the vote of each member on each item before the board and indicate whether a member is absent or failed to vote on an item.
- (L) The city clerk shall retain agendas, approved minutes, internal review reports and bylaws. The Development Services Department shall retain all official board documents. The documents are public records under Texas Local Government Code Chapter 552 (Texas Public Information Act).
- (M) The chair shall adjourn a meeting not later than 10 p.m., unless the board votes to continue the meeting.
- (N) Each person and board member attending a board meeting should observe decorum pursuant to Section 2-1-48 of the City Code.
- (O) A member of the public may not address a board at a meeting on an item posted as a briefing.

## **ARTICLE 8. COMMITTEES/WORKING GROUPS.**

### **COMMITTEES**

- (A) The Board of Adjustment will have no committees.
- (A) Each committee must be established by an affirmative vote of the board. A committee cannot meet until its creation is approved by the Council Audit and Finance Committee. Each committee shall consist of at least three board members appointed by the chair. A staff member shall be assigned to each committee by the director of the Development Services Department.
- (C) The board chair shall appoint a board member as the committee chair, with the member's consent.
- (D) A majority of the total number of appointed committee members constitutes a quorum.
- (E) Each committee shall meet on a regularly scheduled basis at least quarterly.
- (F) Each committee shall make an annual report to the board at the January board meeting.
- (G) Committee meetings must be posted in accordance with Texas Government Code Chapter 551 (Texas Open Meetings Act).
- (H) At each committee meeting, a committee member shall sign in on a sheet provided and shall indicate that the member has no conflict of interest with any item on the committee meeting agenda, or identify each agenda item on which the member has a conflict of interest.

### **WORKING GROUPS**

- (A) The board can determine the size of a working group but the number of board members serving on the working group must be less than a quorum of the board.
- (B) A working group may designate a chair, with the member's consent, but is not required to do so.
- (C) Quorum requirements do not apply to working groups.
- (D) Staff support will not be provided for working groups.
- (E) Working groups are not required to post their meetings in accordance with the Texas Government Code Chapter 551 (Texas Open Meetings Act).

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## **ARTICLE 9. PARLIAMENTARY AUTHORITY.**

- (A) Except as otherwise provided in this article, The rules contained in the current edition of Robert's Rules of Order shall govern the board in all cases to which they are applicable, except when inconsistent with these bylaws or with special rules of order procedure which the board or city council may adopt.
- (B) The Rules of Procedure for the Board of Adjustment and Sign Review Board shall not be subject to a motion to suspend the rules under 25 of Robert's Rules of Order.



## ARTICLE 10. AMENDMENT OF BYLAWS.

A bylaw amendment is not effective unless approved by the Council Audit and Finance Committee.

The bylaws were approved by the Austin City Council at their meeting held on May 19, 2016.

Gene Helouf  
(Signature of Executive or Staff Liaison)

Staff liaison  
(Insert – Title -- Executive or Staff Liaison)

# Board of Adjustment; Guidelines for Postponements

In an effort to minimize multiple, on-going postponements, the Board of Adjustment (BOA) shall set forth the following guidelines in considering the merits of requests for postponement.

## 1. FIRST POSTPONEMENT REQUEST (applicant or opposition):

- a. An applicant (or their agent) for a variance or special exception may request one (1) postponement without cause for any new case on the BOA agenda.
- b. The opposition (only one entity per case) to a variance or special exception may request one (1) postponement without cause for any new case on the BOA agenda.

## 2. SUBSEQUENT POSTPONEMENT REQUESTS:

- a. After the first requested postponement (by either the applicant or the opposition), consideration of any subsequent postponements shall be handled as follows:
  - i. Applicant shall submit (in writing to the BOA Staff Liaison) a concise, clear statement outlining why an additional postponement is warranted. The applicant (or their agent) should attend the BOA hearing to answer any questions from the BOA, and be ready to proceed with the case should the request for postponement be denied.
  - ii. Absence from the BOA hearing may result in denial of the variance or special exception request (at the Board's sole discretion).
  - iii. BOA may accept or reject the request for postponement based on the merits of the request. Any postponed cases shall be added to the next scheduled BOA meeting agenda.
- b. The BOA will consider the following in determining if a case should be postponed:
  - i. Merits (e.g. new evidence) of the postponement request as submitted by the applicant.
  - ii. Need for applicant to provide additional information requested by the BOA.
  - iii. Need for applicant to consult with opposition, neighbors and neighborhood groups/planning teams, adjacent

property owners, City Staff, design professionals, or other such entities.

iv. Need for applicant to investigate and report to the BOA regarding alternative solutions, etc.

v. Personal emergency.

c. The BOA Staff Liaison will add to BOA's agenda (or to the case's back-up documents) a tally of the past postponements including (but not limited to) date and requestor of previous postponements for consideration by the Board in determining if additional postponements are warranted.

### 3. POSTPONEMENT REQUESTS -- Miscellaneous (based on BOA Member attendance or Staff request):

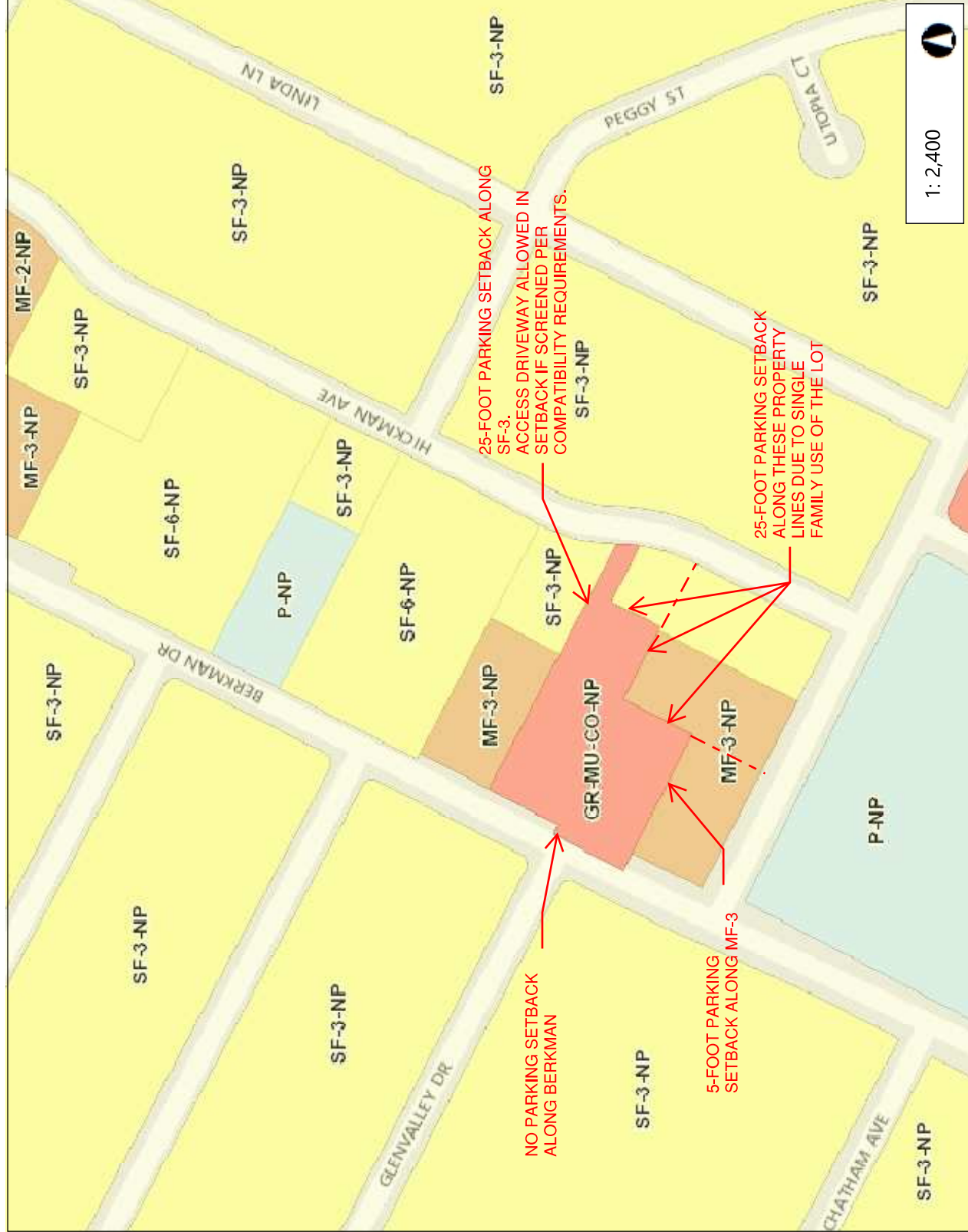
a. Should the number of BOA members (including alternates) present at a hearing (by number, abstentions or recusal) be less than (eleven) 11 members for cases requiring nine (9) votes to "pass", an applicant may request a postponement without cause.

b. Should City Staff request a postponement (due to posting error or other such matters), a postponement may be granted by the BOA without prejudice to the applicant or opposition.

## **7C PARKING SETBACK**



## Parking Setback Exhibit



1: 2,400



0.1 0 0.04 0.1 Miles

NAD\_1983\_StatePlane\_Texas\_Central\_FIPS\_4203\_Feet

Date Printed:

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

## Legend

### Jurisdiction

- FULL PURPOSE
- LIMITED PURPOSE
- EXTRATERRITORIAL JURISDICTION
- 2 MILE ETJ AGRICULTURAL AGR
- OTHER CITY LIMITS
- OTHER CITIES ETJ

### Jurisdiction

- FULL PURPOSE
- LIMITED PURPOSE
- EXTRATERRITORIAL JURISDICTION
- 2 MILE ETJ AGRICULTURAL AGR
- OTHER CITY LIMITS
- OTHER CITIES ETJ

### Zoning

- Lake Austin, Rural Residence (LA)
- Single Family (SF-1; SF-2; SF-3; SI)
- Mobile Home (MH)
- Multi-family (MF-1; MF-2; MF-3; MF)
- Commercial (CH; CR; CS; CS-1; G)
- Office (GO; LO; NO)
- Industrial (IP; LI; MI; R&D; WLO)
- CBD; Downtown Mixed Use (DMU)
- ERC; NBG; TND; TOD
- Planned Unit Development (PUD)
- Agriculture, Development Reserve
- Aviation, Public, Unzoned (AV; P; L)
- Unclassified

### Zoning Text



## Notes

## **7D ARBORIST REPORT**



## City of Austin – City Arborist Program

Notes from routine Tree Ordinance Review Site Visit or On-site Pre-Development Consultation (circle one)

**Address:** 6203 Berkman Terrace Dr

**Date:** 12/15/2020

**City Arborist staff:** Dillon Olsen, [Dillon.Olsen@austintexas.gov](mailto:Dillon.Olsen@austintexas.gov)

**Applicant(s) present:**

**TP Permit Number:** 2020-171583 TP

### General Notes:

- Formal submittal will require the following for tree review. Include the TP permit number for this consult as reference on the application.
  - Add date of survey to plans. – Survey must not be older than 5 years.
  - Tree protection fencing, mulch and/or tree planking. Tree fencing must be 5 feet high (min), chain link and protect as much of full CRZ as possible. An 8 inch layer of hardwood, shredded mulch is required to be placed over any portion of full CRZ that is not protected by the fence. If the fence encroaches into the ½ CRZ, strap 2x4x6 planks securely around the trunk of the tree.
  - Utility meters and routes. Utilities need to avoid the ½ CRZ of protected/Heritage trees onsite. If this is completely unavoidable, then the utilities need to be air-excavated for the top 30” of soil to avoid severing roots 1.5 inch diameter and greater.
- Existing house foundation is pier & beam.
- Trees to remain must meet Tree Preservation Criteria per ECM Section 3.5.2:
  - a minimum of 50% of the full critical root zone area must be preserved at natural grade, with natural ground cover;
  - cut or fill is limited to 4 inches from the ½ critical root zone to the ¼ critical root zone; and
  - no cut or fill is permitted within the ¼ critical root zone

### #6001 – 23” Pecan (P)

- Poor condition
- Two large cavities present
- Can be removed. Mitigation should follow standard rate per ECM 3.5.4

### #6002 – 24” Pecan (H)

- Good condition
- Preserve in place according to preservation criteria per ECM 3.5.2

### #6003 – 24” Pecan (H)

- Good condition
- Preserve in place according to preservation criteria per ECM 3.5.2

### #6004 – 22.5” Hackberry (P)

City of Austin Tree Ordinance Pre-Development Consultation for Pending Development

Development Plans Provided: \_\_\_ Yes \_\_\_ No. Trees Measured Match Tree Survey? \_\_\_ Yes \_\_\_ No \_\_\_ N/A

- DDI, 0% mitigation required for removal.
- Stem has split
- Mistletoe present

**#60?? – Hackberry (in between #6006 and #6007)**

- Omitted from survey. Must be included in the tree survey at time of site plan submittal.

**#6009 – 24” Hackberry (P)**

- Poor condition. Multi-stem.
- Can be removed at reduced mitigation 50%
- A large crack is present
- Has grown into the privacy fence

**#6011 – 26” Pecan (H)**

- Good condition
- Explore transplant feasibility with a qualified tree mover and/or qualified 3rd-party arborist.
- The end location for this transplant may be on-site, or on an adjacent property, to be approved during site plan or site plan exemption review.
- Preserve in place according to tree preservation criteria if it cannot be transplanted.

**#6013– 29” Pecan (H)**

- Good condition.
- Preserve in place according to preservation criteria per ECM 3.5.2
- Draw critical root zone (CRZ) at accurate size, to-scale, for site plan submittal

**#6014– 28” Pecan (H)**

- Fair/poor condition
- A TRAQ assessment from a qualified 3rd-party arborist required for removal
- Observed large cavity
- 5-6 failures over 6" in diameter

**#6016– 19” Hackberry (P)**

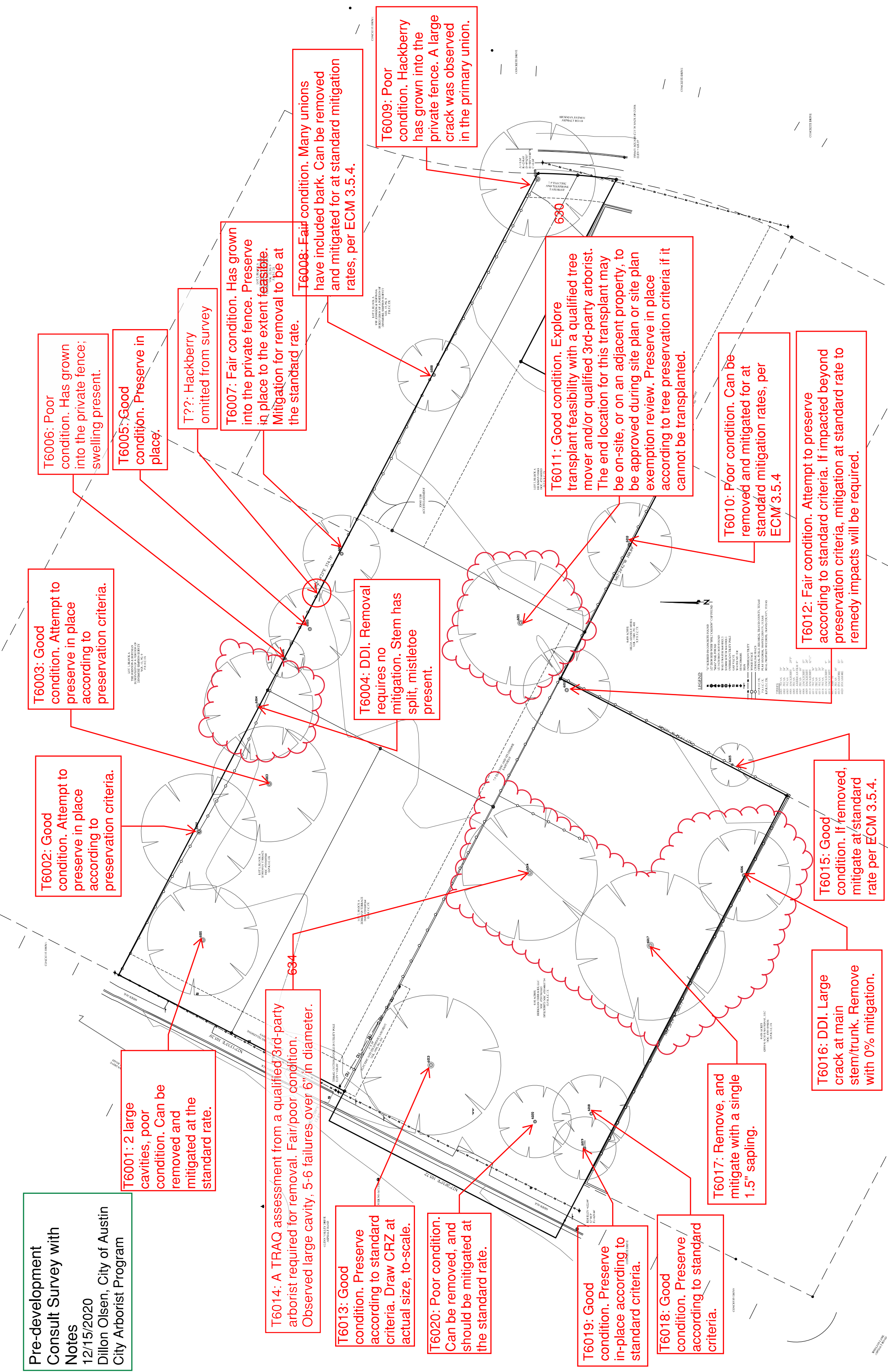
- DDI, can be removed with 0% mitigation
- Large crack at main stem/trunk

**#6017 – 31” Arizona Ash (P)**

- Remove, and mitigate with a single 1.5" sapling according to Appendix F



Pre-development  
Consult Survey with  
Notes  
12/15/2020  
Dillon Olsen, City of Austin  
City Arborist Program



**7E AFFORDABLE HOUSING RESTRICTIVE  
COVENANT**

**RESTRICTIVE COVENANT****(Affordable Housing Requirements)**

**THE STATE OF TEXAS** §  
§  
**COUNTY OF TRAVIS** §

**Definitions:**

**Owner:** Berkman Terraces, LLC,  
a Texas limited liability company

**Owner's Address:** 2407 South Congress Avenue, Suite E107  
Austin, Travis County, Texas 78704

**Consideration:** Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the Windsor Park Neighborhood Association, Inc., a Texas nonprofit corporation ("WPNA"), to the Owner, the receipt and sufficiency of which is acknowledged.

**Property:** Lots 2 and 3, Block A, Hickman Oaks subdivision, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Document No. 201600305 of the Official Public Records of Travis County, Texas;

Lots 1 and 2, Block A, Berkman Terrace subdivision, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Document No. 201600264 of the Official Public Records of Travis County, Texas; and

0.50 acre tract of land out of the Dinsmore Simpson Survey No. 27, Abstract No. 694 in Travis County, Texas, and being more particularly described by metes and bounds in **Exhibit A** incorporated herein.

**Recitals:**

- A. The Owner wishes to provide affordable housing on the Property; and
- B. The Owner and WPNA agree that the Property should be impressed with certain private covenants and restrictions in connection with the City of Austin Zoning Case No. C14-2018-0037 ("Zoning Case").

**NOW, THEREFORE,** it is declared by the Owner of the Property, for the Consideration paid to the Owner, the receipt and sufficiency of which are hereby acknowledged, that the Property shall be held, developed, used, sold, and conveyed subject to the following covenants and

restrictions impressed upon the Property by this Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be binding on the Owners of the Property, their heirs, successors, and assigns.

1. **Development Restrictive Covenants.** Development of the Property shall provide the following:
  - a. At least ten percent (10%) of the total number of owner occupied residential dwelling units on the Property must be available for purchase and occupancy by a homeowner household whose adjusted gross income for the year immediately preceding the date of occupancy of the residential dwelling unit is at or below a household income that is equal to eighty percent (80%) of the current median family income in the Austin statistical metropolitan area, as determined by the Bureau of Labor Statistics of the United States Department of Labor ("MFI").
  - b. Owner shall reserve the units developed as affordable under Section 1.a. of this Restrictive Covenant ("Affordable Units") for not less than ninety-nine (99) years from the date a certificate of occupancy is issued. Affordable means spending no more than (i) thirty percent (30%) of gross income or (ii) thirty-five percent (35%) of gross income if homeowner receives homebuyer counseling, on the estimated utilities and mortgage payments.
2. **Designated Units.** It is the express intent of Owner that only certain owner-occupied residential dwelling units constructed on the Property be encumbered by the affordable housing requirements provided in Section 1 above ("Affordable Housing Requirements"). At such time as the Owner (i) has created a condominium regime with residential condominium units, and (ii) designates the Affordable Units, such Affordable Units shall be encumbered by a separate restrictive covenant in a form reasonably acceptable to Owner, recorded in the real property records of Travis County, Texas ("Replacement Restrictive Covenant"), to remain so encumbered for the period of time set forth in Section 1.b. of this Restrictive Covenant. At such time as the Affordable Housing Requirements for the Property have been met by the recordation of a Replacement Restrictive Covenant, this Restrictive Covenant shall automatically terminate and be of no further force or effect. In such event, WPNA shall execute a release and termination of this Restrictive Covenant for Property to be replaced by the Replacement Restrictive Covenant encumbering each of the four Affordable Units; provided, however, that WPNA's failure to do so shall in no way prevent automatic termination.
3. **Zoning Case.** Owner and WPNA hereby acknowledge and agree that the terms, covenants, conditions, and provisions of this Restrictive Covenant shall only be binding on the Owner and shall encumber the Property only if the City of Austin Council approves, on all three (3) required readings, the Zoning Case to rezoning the Property to "GR-MU-CO" as approved by the Austin City Council on first reading on November 11, 2018, with only those modifications that are accepted by the Owner and contained in the final zoning ordinance.

4. **Modification and Amendment.** This Restrictive Covenant may only be modified, amended, or terminated upon the filing of a modification, amendment, or termination in the Official Public Records of Travis County, Texas, executed, acknowledged, and approved by (i) the Owner, and (ii) the officer or employee signing on behalf of WPNA. The joint action shall only become effective after it is reduced to writing and signed by the parties listed above.
5. **Duration.** This Restrictive Covenant shall be effective for no more than ninety-nine (99) years of documented compliance with the affordability terms listed in Section 1 unless modified, amended, or terminated in accordance with Section 4 (*Modification and Amendment*).
6. **Violation.** If any person or entity shall violate or attempt to violate this Restrictive Covenant, it shall be lawful for WPNA 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 taking actions in violation of this Restrictive Covenant.
7. **No Waiver.** The failure to enforce any provision of this Restrictive Covenant at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Restrictive Covenant. A violation of any provision of this Restrictive Covenant shall never be grounds for, nor give rise to the modification, amendment, or termination of, any provision of this Restrictive Covenant.
8. **Assignment and Conveyance.** WPNA may not assign its rights under this Restrictive Covenant, in whole or in part. When the Owner conveys all or any portion of the Property, the former Owner will thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that they had in connection with the Property conveyed by them from and after the date of recording of such conveyance, but no such conveyance releases such Owner from any liabilities, if any, existing as of the time of such conveyance.
9. **Governing Law; Place of Performance.** This Restrictive Covenant and all rights and obligations hereunder shall be governed by the laws of the State of Texas. This Restrictive Covenant is performable on the Property.
10. **Severability.** The provisions of this Restrictive Covenant are deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion does not affect the validity or enforceability of any other provision.
11. **Entire Agreement.** This Restrictive Covenant contains all the representations and the entire agreement between the parties with respect to the subject matter. Any prior correspondence, memoranda, or agreements are superseded in total.

12. **Counterparts.** This Restrictive Covenant may be executed in any number of counterparts which will, together, be deemed to constitute one document.
13. **Interpretation.** Regardless of which party prepared the initial draft of this Restrictive Covenant, this Restrictive Covenant shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for nor against any party.

*--- signatures on following page ---*

EXECUTED to be effective the 24 day of December, 2018.

**OWNER:**

BERKMAN TERRACES, LLC,  
a Texas limited liability company

By: \_\_\_\_\_

Pierre Fay, Manager

THE STATE OF Florida §  
COUNTY OF Miami-Dade §

This instrument was acknowledged before on the 24<sup>th</sup> day of December, 2018, by Pierre Fay as Manager of Berkman Terraces, LLC, a Texas limited liability company, on behalf of said limited liability company.



Lizette Garcia  
Notary Public, State of Florida

WPNA:

WINDSOR PARK NEIGHBORHOOD  
ASSOCIATION, INC.,  
a Texas nonprofit corporation

By: Rodney E. Ahart

Name: Rodney E. Ahart

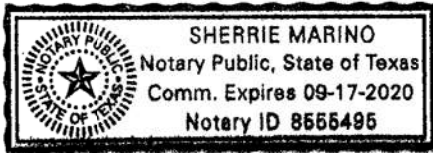
Title: Windsor Park Neighborhood Plan Contact Team,  
Chair

STATE OF TEXAS

§  
§  
§

COUNTY OF TRAVIS

This instrument was acknowledged before me on the 20<sup>th</sup> day of December  
2018, by Rodney E. Ahart, as Chair of Windsor Park Neighborhood Plan  
Control Team,  
Neighborhood Association, Inc., a Texas non-profit corporation, on behalf of said non-profit  
corporation.



Sherrie Marino  
NOTARY PUBLIC, State of Texas



**EXHIBIT A**  
**to the Restrictive Covenant**

**Property Description**

FIELD NOTES FOR  
0.50 ACRE OUT OF THE  
DINSMORE SIMPSON SURVEY No. 27,  
ABSTRACT No. 694  
TRAVIS COUNTY, TEXAS

### METES AND BOUNDS DESCRIPTION

DESCRIPTION OF A 0.50 ACRE TRACT OF LAND OUT OF THE DINSMORE SIMPSON SURVEY No. 27, ABSTRACT No. 694 IN TRAVIS COUNTY, TEXAS AND BEING THAT CERTAIN TRACT OF LAND CONVEYED TO TROY HANNA BY DEED RECORDED IN DOCUMENT No. 2004150483 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS. SAID TRACT HAVING BEEN SURVEYED ON THE GROUND BY SNS ENGINEERING AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½" Iron rod found on the southerly line of a 0.945 acre tract of land conveyed to Anthony V. Monroe by deed recorded in Volume 13090, Page 2879 of the Real Property Records of Travis County, Texas, at the northwest corner of a 0.499 acre tract of land conveyed to Hilda A. Mora by deed recorded in Volume 11801, Page 488 of the Real Property Records of Travis County, Texas, for the northeast corner of the tract herein described;

THENCE, departing the southerly line of said 0.945 acre tract and along the common line of said 0.499 acre tract and this tract, S 29°29'00"W, a distance of 105.27 FEET to a ½" Iron rod found at the northeast corner of a 0.438 acre tract of land conveyed to Carolyn Young, et al by deed recorded in Document No. 2005136650 of the Official Public Records of Travis County, Texas, for the southeast corner of the tract herein described;

THENCE, departing the westerly line of said 0.499 acre tract and along the common line of said 0.438 acre tract and this tract, N 60°01'33"W, at 181.28 feet pass a P.K. nail found at the northwest corner of said 0.438 acre tract, being in the easterly right-of-way of Berkman Drive, continuing with the easterly right-of-way of Berkman drive and the southerly line of this tract for a total distance of 208.75 FEET to a punchhole set for the southwest corner of the tract herein described;

THENCE, along the easterly right-of-way of Berkman Drive, N 29°28'58"E, a distance of 105.39 FEET to a P.K. nail set at the southwest corner of the aforementioned 0.945 acre tract, for the northwest corner of the tract herein described;

THENCE, departing the easterly right-of-way of Berkman Drive and along the common line of said 0.945 acre tract and this tract, S 59°59'35"E, a distance of 206.75 FEET to the POINT OF BEGINNING and containing 0.50 acre of land, more or less.

See SNS Engineering "Plat of Survey" No. 051272, page 2 of 2 attached hereto and made a part hereof.



Mary P. Hawkins  
Registered Professional Land Surveyor No. 4433  
State of Texas



Exhibit A





**FILED AND RECORDED**  
**OFFICIAL PUBLIC RECORDS**

*Dana DeBeauvoir*

DANA DEBEAUVOIR, COUNTY CLERK  
TRAVIS COUNTY, TEXAS

December 27 2018 11:17 AM

FEE: \$ 62.00 2018198366