REGULAR MEETING OF THE SAN MARCOS ZONING BOARD OF ADJUSTMENTS
Thursday, September 19, 2019 5:45 P.M.  City Council Chambers

Michael Nolen, Chair  Gloria Fortin, Vice Chair
Rick Henderson, Member  Wayman Jones, Member
Gary Pack, Member  Nicholas Costilla, Alternate
Tom Rowe, Alternate  Floyd Akers, Alternate

AGENDA

1. Call to order.

2. Roll call.

3. Chairperson’s Opening Remarks.

4. Citizen Comment Period.

5. Consider approval of the minutes of the ZBOA Regular Meeting of June 20, 2019

6. VR-19-04 Hold a public hearing and consider a request by John David Carson, on behalf of Carson Haysco Holdings LP, for a variance to Section 4.4.3.4 of the San Marcos Development Code requiring a maximum 12-foot primary street setback, in order to construct a live/work and a townhouse building with a 15-foot setback along Dutton Drive, located at 1909 Dutton Drive. (W. Parrish)

7. Question and Answer Session with Press and Public. This is an opportunity for the Press and Public to ask questions related to items on this agenda.

8. Adjourn.

NOTE: The Zoning Board of Adjustments may adjourn into Executive Session to consider any item listed on this agenda if a matter is raised that is appropriate for Executive Session discussion. An announcement will be made of the basis for the Executive Session discussion. The Zoning Board of Adjustments may also publicly discuss an item listed on the agenda for Executive Session.

The City of San Marcos does not discriminate on the basis of disability in the admission or access to its services, programs, or activities. Individuals who require auxiliary aids and services for this meeting should contact the City of San Marcos ADA Coordinator at 512-393-8000 (voice) or call Texas Relay Service (TRS) by dialing 7-1-1. Requests can also be faxed to 512-393-8074 or sent by e-mail to ADArequest@sanmarcostx.gov
Chair Nolen called the Board Meeting to order at 5:45 p.m.

Board Members in Attendance:
Michael Nolen, Chair
Gloria Fortin, Vice Chair
Nicholas Costilla
Wayman Jones
Gary Pack

Board Members Absent:
Tom Rowe
Floyd Akers

Staff in Attendance:
Sam Aguirre, Assistant City Attorney
Amanda Hernandez, Development Services Manager
Shavon Caldwell, Planner

1. Call to order
   With a quorum present, the Regular Meeting of the San Marcos Zoning Board of Adjustments was called to order by Chair Nolen at 5:45 p.m.

2. Roll Call

3. Chairperson’s Opening Remarks
   Chair Nolen welcomed the audience.

4. Citizen Comment Period
   Chair Nolen opened the citizen comment period. No one spoke.

5. Consider approval of the minutes of the ZBOA Regular Meeting of February 21, 2019
   MOTION: Member, Gary Pack made a motion to approve the minutes. Chair, Michael Nolen, seconded the motion. Following a voice vote, the motion passed 5-0.
6. **Discussion Item** *Receive a presentation from staff and discuss the Zoning Board of Adjustments authorizing Codes and Ordinances*

Amanda Hernandez, Development Services Manager provided the Board updated training materials. She noted that with the adoption of the new San Marcos Development Code article and section numbers have changed and relief procedures have been streamlined and clarified. There were no questions from Board members.

7. **VR-19-03 Hold a public hearing and consider a request by Robert Walch, on behalf of Madeline De Long, for a variance to Section 4.4.1.3 of the San Marcos Development Code requiring a 15-foot secondary street setback, in order to construct a principle building with an eight-foot setback along Knox Street, located at the southeast corner of Marshall Street and Knox Street.**

   Chair Nolen opened the public hearing.

   Shavon Caldwell, Planner, presented the staff report.

   Robert Walch, Applicant, presented the request.

   John Romero, 514 Knox Street, spoke in opposition to the request stating concerns with adequate room for a driveway and potential street parking.

   **MAIN MOTION:** Chair Nolen made a motion to *approve* the request. The motion was seconded by Vice Chair Fortin.

   **MOTION TO AMEND:** Vice Chair Fortin made a motion to amend the main motion to include a condition that the applicant work with staff to provide up to a 5’ easement to accommodate sidewalk and streetscape improvements. The motion was seconded by Board Member Pack. Following a roll call vote, the *amendment passed* 5-0.

   **MAIN MOTION:** Following a roll call vote, the motion *passed* 5-0.

8. **Election of Officers**

   a. **Election of Chairperson**
   
   Chair, Michael Nolen self-nominated. With no other nominations, Michael Nolen was elected with a unanimous voice vote, 5-0.

   b. **Election of Vice Chairperson**
   
   Member Gary Pack nominated Gloria Fortin. With no other nominations, Gloria Fortin was elected with a unanimous voice vote, 5-0.

9. **Question and Answer Session with Press and Public.**

   There were no questions from the Press or Public

10. **ADJOURN**

    Chair Nolen adjourned the meeting at 6:13 p.m. without objection.
This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

Map Date: 8/30/2019
VR-19-04
400' Notification Map
1909 Dutton Drive

Site Location
★ Subject Property
400' Buffer
Parcel
City Limit

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Map Date: 8/30/2019
VR-19-04
Variance
1909 Dutton Drive

Applicant Information:
Applicant: John David Carson
407 South Stagecoach Trail, Suite 203
San Marcos, TX 78666

Property Owner: Carson Haysco Holdings, LP
407 South Stagecoach Trail, Suite 203
San Marcos, TX 78666

Applicant's Request: A variance from the requirements of Section 4.4.3.4 of the San Marcos Development Code which states that the Primary Street Setback for a Principal Building shall be between 5 and 12 feet.

Notification: Public hearing notification mailed on September 6, 2019 to all property owners within 400 feet of subject property.

Citizen Response: None as of Staff Report date

Subject Property:
Location: 1909 Dutton

Legal Description: Lot 5 Block 1 of the San Marcos Business Park, Section 2

Frontage On: Dutton Drive

Neighborhood: Dunbar

Existing Zoning: General Commercial

Preferred Scenario Designation: Medium Intensity

Utilities: Adequate

Existing Use of Property: Vacant

Proposed Use of Property: For Sale Condominiums / Multifamily

Proposed Zoning: Character District 4 (CD-4)

Surrounding Area: | Proximity | Current Zoning | Existing Land Use |
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>N of Property</td>
<td>MF-18 / PDD</td>
<td>Apartments</td>
</tr>
<tr>
<td>E of Property</td>
<td>GC</td>
<td>Commercial</td>
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<tr>
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<td>GC / LI</td>
<td>Vacant / Commercial</td>
</tr>
<tr>
<td>W of Property</td>
<td>MF-18 / PDD</td>
<td>Apartments</td>
</tr>
</tbody>
</table>
Case Summary

This property is located at 1909 Dutton Drive and is zoned General Commercial (GC). The property owner is currently going through the zoning change process, and is requesting Character District 4 (CD-4). The CD-4 zoning district has a principal building setback of 5-12 feet from the Primary Frontage, however, the City has an existing 15 foot utility easement along the Dutton Drive Primary Frontage. The Utility Department has stated that they cannot reduce the easement due to existing waste water lines. The applicant is asking for a Variance of 3 feet, to allow a front setback maximum of 15 feet from the primary frontage along Dutton Drive.

The applicant submitted a site plan to show how he intends to develop the site. The 5 buildings facing Dutton Drive on the northwest side of the property are located 15 feet back from the property line, which is 3 feet further than base code allows.

Comments from Other Departments

No concerns from other departments have been noted.

Relevant Code Requirements

The San Marcos Development Code states that the Principal Building Setback for a Primary Frontage should be between 5-12 feet.

Section 4.4.3.4

- SETBACKS – PRINCIPAL BUILDING

Primary Street 5 ft. min. – 12 ft. max

Planning Department Analysis

<table>
<thead>
<tr>
<th>Status</th>
<th>San Marcos Development Code Standards</th>
<th>Applicant’s Request</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Principal Building shall be no further than <strong>12 feet</strong> from the property line along a Principal Frontage</td>
<td>Principal Building shall be no more than <strong>15 feet</strong> from the property line along a Principal Frontage</td>
</tr>
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</table>

The purpose of the setback standard is to increase walkability, provide a sense of enclosure, frame the public space (street), and allow space for rear loaded parking. These are characteristics of the walkable places that are envisioned in Comprehensive Plan Medium Intensity Zones, such as this one.

The applicant attempted to have the existing easement modified in size, to allow the Principal Buildings to be located 12 feet from the property line, however the Utility Department determined that it needed the full width of the easement.

The Land Development Code has established criteria for approval that should be considered in the decision of a variance petition. Section 2.8.2.4 Criteria for Approval states that in deciding the variance petition, the decision-maker shall apply the following criteria:

1. There are special circumstances or conditions arising from the physical surroundings, shape, topography or other feature affecting the land subject to the variance petition, such that the strict application of the provisions of this Land Development Code to the development application would create an unnecessary hardship or inequity upon or for the petitioner, as distinguished from a mere

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inconvenience, in developing the land or deprive the petitioner of the reasonable and beneficial use of the land;
   a. The property is encumbered by an existing utility easement that was established prior to the designation as a Medium Intensity Zone, which is intended to promote walkability and density.

(2) The circumstances causing the hardship do not similarly affect all or most properties in the vicinity of the petitioner’s land;
   a. The easement runs along the length of the northwest face of the block on Dutton Drive, however the remaining properties are zoned GC and have already been developed. This is the only property in the area that is requesting to zone to CD-4. However, this is an area where the City expects to see more Character District zoning requests, as these are the districts intended to carry out the vision of The Comprehensive Plan.

(3) The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner;
   a. The variance is not a necessity for the enjoyment of the property as currently zoned, however if the zoning change request is successful, the property will be undevelopable without the variance.

(4) Granting the variance petition will not be detrimental of the public health, safety or welfare, or injurious to other property within the area;
   a. Staff finds that this request will not be detrimental of the public health, safety or welfare, or injurious to other property within the area.

(5) Granting the variance petition will not have the effect of preventing the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property;
   a. Granting a variance to the standards would not prevent the orderly use and enjoyment of other land within the area in accordance with the provisions of this Code, or adversely affect the rights of owners or residents of surrounding property.

(6) Granting the variance petition is consistent with any special criteria applicable to varying particular standards, as set forth in Chapter 4 through 7 of the San Marcos Development Code;
   a. Granting the variance petition is consistent with the criteria in Chapters 4-7.

(7) The hardship or inequity suffered by the petitioner is not caused wholly or in substantial part by the petitioner;
   a. The petitioner is requesting a zoning change to a zoning district that is consistent with the City’s adopted Comprehensive Plan.

(8) The request for a variance is not based exclusively on the petitioner’s desire for increased financial gain from the property, or to reduce an existing financial hardship;
   a. The request is based on the fact that due to the easement, the property would not be developable under the CD-4 zoning district without a variance.

(9) The degree of variance requested is the minimum amount necessary to meet the needs of the proponent and to meet the conditions of this Section;
   a. The applicant’s request is the minimum amount to make the property developable under the CD-4 zoning district.

Prepared by:
Will Parrish                Planner     September 10, 2019
Name                                                       Title                                                          Date                             .
SUBDIVISION / ZONING VARIANCE APPLICATION

Updated: October, 2018

CONTACT INFORMATION

<table>
<thead>
<tr>
<th>Applicant's Name</th>
<th>John David Carson</th>
<th>Property Owner</th>
<th>Carson Haysco Holdings, LP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant's Mailing Address</td>
<td>407 S Stagecoach Trl, Ste 203 San Marcos, TX 78666</td>
<td>Owner's Mailing Address</td>
<td>407 S Stagecoach Trl, Ste 203 San Marcos, TX 78666</td>
</tr>
<tr>
<td>Applicant's Phone #</td>
<td>(512) 392-3322</td>
<td>Owner's Phone #</td>
<td>(512) 392-3322</td>
</tr>
<tr>
<td>Applicant's Email</td>
<td><a href="mailto:johndavid@carsonproperties.net">johndavid@carsonproperties.net</a></td>
<td>Owner's Email</td>
<td><a href="mailto:johndavid@carsonproperties.net">johndavid@carsonproperties.net</a></td>
</tr>
</tbody>
</table>

PROPERTY INFORMATION

Subject Property Address: 1909 Dutton Drive, San Marcos, TX 78666

Acres: Relating to 0.72 acres of a 1.70 acre lot 4.4.3.4

Tax ID #: R 41406

Legal Description: Lot 5  Block 1 Subdivision San Marcos Business Park, Section 2

Existing Use(s): Vacant Land

DESCRIPTION OF REQUEST

Variance to Section: 4.4.3.4 of the Land Development Code, which requires:

- a maximum setback of 12 feet for the Primary Street

Description of proposed variance (additional pages may be used): The request is to allow a maximum setback of 15 feet for the Primary Street to accommodate an existing public wastewater line located within an existing 15’ easement granted to the City of San Marcos. Applicant cannot physically comply with the 12’ setback as it would create a violation of the easement.

AUTHORIZATION

I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.

Filing Fee $721 Technology Fee $12 TOTAL COST $733

Submittal of this digital Application shall constitute as acknowledgement and authorization to process this request.

APPLY ONLINE – WWW.MYGOVERNMENTONLINE.ORG/
**VARIANCE CONSIDERATIONS**
*(Please include additional pages as necessary)*

1) What special circumstances or conditions affect the subject property such that strict application of the provisions of the Land Development Code would create an unnecessary hardship or inequity upon the applicant or would deprive the applicant of the reasonable and beneficial use of the property?

   *A public wastewater line is installed within an existing 15 foot easement on the Subject Property granted to the City of San Marcos. Said easement is along the frontage that City staff interprets to be the Primary frontage of the Subject Property.*

2) Do the circumstances or conditions causing the hardship similarly affect all or most of the properties in the vicinity of the subject property? No. The easement is specific to the Subject Property.

3) What substantial property right would not be preserved or enjoyed if the provisions of the Land Development Code were literally enforced? The property could not physically be developed under the City's preferred and compatible zoning categories per the Comprehensive Plan Preferred Scenario Table 4.1

4) What effect, if any, would the variance have on the rights of owners or occupants of surrounding property, or on the public health, safety or general welfare? None

5) What effect, if any, would the variance have on the orderly subdivision of other land in the area in accordance with the provisions of the Land Development Code? None

6) Is the hardship or inequity suffered by the applicant caused wholly or in substantial part by the property owner or applicant? No

7) To what extent is the request for variance based upon a desire of the owner, occupant or applicant for increase financial gain from the property, or to reduce an existing financial hardship? None

8) Is the degree of variance requested the minimum amount necessary to meet the needs of the applicant or property owner? Yes. The request is to modify to a 15' maximum setback, which is the dimension of the easement.

*Note for the Board / Commission:
The following responses were provided by the applicant and may not be consistent with the Department staff report.*
The City of San Marcos Development Code requires public notification in the form of notification signs on the subject property, published notice, and / or personal notice based on the type of application presented to the Planning Commission and / or City Council.

- Notification Signs: if required by code, staff shall place notification signs on each street adjacent to the subject property and must be placed in a visible, unobstructed location near the property line. It is unlawful for a person to alter any notification sign, or to remove it while the request is pending. However, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements. **It shall be the responsibility of the applicant to periodically check sign locations to verify that the signs remain in place had have not been vandalized or removed. The applicant shall immediately notify the responsible official of any missing or defective signs. It is unlawful for a person to alter any notification sign, or to remove it while the case is pending; however, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements.**

- Published Notice: if required by code, staff shall publish a notice in a newspaper of general circulation in accordance with City Codes and the Texas Local Government Code. **If, for any reason, more than one notice is required to be published it may be at the expense of the applicant. The renotification fee shall be $88 plus an $12 technology fee.**

- Personal Notice: if required by code, staff shall mail personal notice in accordance with City Codes and the Texas Local Government Code. **If, for any reason, more than one notice is required to be mailed it may be at the expense of the applicant. The renotification fee shall be $88 plus a $12 technology fee.**

I have read the above statements and agree to the required public notification, as required, based on the attached application. The City’s Planning and Development Services Department staff has my permission to place signs, as required, on the property and I will notify City staff if the sign(s) is/are damaged, moved or removed. I understand the process of notification and public hearing and hereby submit the attached application for review by the City.

8/9/19

Signature: __________________________ Date: __________________________

John David Carson

Print Name: __________________________
STATE OF TEXAS
COUNTY OF HAYS

LOT 5 – BLK 1 – ZONING PARCEL CD-4
SAN MARCOS BUSINESS PARK SEC. 2

BEING A 0.72 ACRE PORTION OF LOT 5 OF BLOCK 1, SAN MARCOS BUSINESS PARK SECTION 2, AN ADDITION TO THE CITY OF SAN MARCOS ACCORDING TO THE MAP THEREOF RECORDED IN VOLUME 4, PAGE 201 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron rod found with cap marked “Bym” at the north corner of said Lot 5, Block 1, for the north corner of the herein described tract of land, same being at the intersection of the southeast line of Dutton Drive, a 60 foot public right-of-way, with a southwest line of said Dutton Drive, 60' public right-of-way, as shown by plat of said San Marcos Business Park Section 2, and from which a 1/2" iron rod found with cap at the west corner of said Lot 5, and the common north corner of Lot 4A of the Replat of Lot 4, San Marcos Business Park Section 1, an addition to the City of San Marcos according to the map thereof recorded in Volume 11, Page 139 of the Plat Records of Hays County, Texas, bears South 43°30'03" West (S 43°32'00" W Record), a distance of 329.20 feet (329.50' Record);

THENCE with the southwest line of said Dutton Drive, and the common northeast line of said Lot 5, Block 1, South 46°18'54" East (S 46°17'00" E Record), a distance of 225.00 feet (Record) to a point chiseled in concrete at the east corner of said Lot 5, Block 1, for the east corner of the herein described tract of land, same being at the common north corner of Lot 6A of the Replat of Lots 6 and 7 of Block 1, San Marcos Business Park Section 2, an addition to the City of San Marcos according to the map thereof recorded in Volume 7, Page 227, Hays County Plat Records, and from which a 1/2" iron rod set with cap “ASH15687” at the south corner of said Lot 5 and the common west corner of said Lot 6A, bears South 43°30'06" West (S 43°32'00" W Record), a distance of 329.39 feet (329.50' Record);

THENCE with the common line of said Lot 5 and said Lot 6A, South 43°30'06" West (S 43°32'00" W Record), a distance of 140.19 feet to the south corner of the herein described tract of land;

THENCE through and severing said Lot 5, Block 1, North 46°15'59" West, a distance of 225.00 feet to the northwest line of said Lot 5, and the common southeast line of aforesaid Dutton Drive, for the west corner of the herein described tract of land;

THENCE with the common line of said Lot 5 and said Dutton Drive, North 43°30'03" East (N 43°32'00" E Record), a distance of 140.00 feet to the POINT OF BEGINNING and CONTAINING 0.72 ACRES OF LAND.

Bearing Basis – GPS coordinates (NAD83) adjusted by HARN (High Accuracy Reference Network) and projected to Texas State Plane Coordinates (Texas South Central Zone).

*This description severing Lot 5 for Zoning Purposes is not intended to subjugate the Development Rules of any State, County or City Ordinance, and all required permits should be obtained before occupying the premises.

I, Richard H. Taylor, do certify that this description and associated exhibit were prepared from a survey performed under my direction during June 2019, and is true and correct to the best of my knowledge and belief.

Richard H. Taylor
Registered Professional Land Surveyor
No. 3986 State of Texas

Job: 19-7220

08/09/19
Date
Instrument Number: 2013-13028791
As
OPR RECORDINGS

Recorded On: August 22, 2013

Parties: CARSON HAYSCO HOLDING LP
       To       SAN MARCOS CITY OF

Billable Pages: 5
Number of Pages: 6

Comment:
(Parties listed above are for Clerk's reference only)

** Examined and Charged as Follows: **

OPR RECORDINGS
Total Recording: 32.00

********** DO NOT REMOVE. THIS PAGE IS PART OF THE INSTRUMENT **********

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.

File Information:
Document Number: 2013-13028791
Receipt Number: 346426
Recorded Date/Time: August 22, 2013 03:31:39P
Book-Vol/Pg: BK-OPR VL-4730 PG-252
User / Station: O Martinez - Cashering #1

Record and Return To:
LC3 CAPITAL PARTNERS LLC
ORIGINAL TO CUSTOMER
SAN MARCOS TX 78666

State of Texas
County of Hays

I hereby certify that this instrument was filed for record in my office on the date and
time stamped herein and was recorded on the volume and page of the named records
of Hays County, Texas

Liz Q. Gonzalez, County Clerk
NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER’S LICENSE NUMBER.

CITY OF SAN MARCOS PUBLIC WATER AND WASTEWATER EASEMENT

Date: August 21, 2013

Grantor: Carson Haysco Holdings, LP, a Texas limited partnership

Grantors’ Address: 1911 Corporate Dr., Suite 102, San Marcos, Hays County, TX 78666

Grantee: City of San Marcos, Texas, a home rule municipal corporation

Grantees’ Address: 630 East Hopkins, San Marcos, Hays County, Texas 78666

Consideration: Ten dollars ($10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged.

Easement Area:

Being all of that certain tract of land out of the J.M. Veramendi League Number 1, Situated in Hays County, Texas, being more particularly described as being out of and part of Lot 5, Block 1, San Marcos Business Park, Section Two, a Subdivision recorded in Volume 4, Page 201, of the Plat Records of Hays County, Texas (P.R.H.C.TX.), said 0.111 Acre (4,814 sq. ft.) tract of land being more fully described by metes and bounds in the attached Exhibit “A”, made a part hereof for all purposes.

Grant of Easement:

Grantor, for the consideration, grants, sells and conveys to the Grantee a perpetual easement within, across, through and over the Easement Area for the purposes of constructing, laying, installing, reconstructing, replacing, operating and maintaining one or more water lines, and one or more wastewater lines, and valves, manholes, connections, fireplugs, controls, monitoring devices, and other associated equipment and appurtenances (the “Public Water and Wastewater Facilities”), together with a right of ingress and egress at all times to, across, over and within the Easement Area for these purposes, to have and to hold this easement to Grantee and Grantee’s successors or assigns forever. Grantor binds Grantor and Grantor’s heirs, executors, administrators, successors and assigns to warrant and forever defend this easement and the rights and premises granted herein to Grantee and Grantee’s successors and assigns against every person whomever lawfully claiming or to claim the same or any part thereof.
The Grantor covenants for itself and its successors and assigns, not to place or maintain any building, structure, or any other obstruction on or within the Easement Area, or to use the surface of the Easement Area for any purpose that would interfere with or prevent the use by Grantee of the Easement Area for the purposes set forth herein without the consent of Grantee. Grantee shall have the right to remove any building, structure or other improvements in the Easement Area to which it has not consented.

Grantee shall have the right to cut, trim, and control the growth of trees and other vegetation and to remove or alleviate other such obstructions on and in the Easement Area without payment to the Grantor, which interferes with or threatens the operation and maintenance of the Public Water and Wastewater Facilities.

Grantor acknowledges that any and all Public Water and Wastewater Facilities in the Easement Area shall remain the property of Grantee.

Grantor acknowledges that this easement may be freely assigned by Grantee.

Grantor expressly subordinates all rights of surface use incident to the mineral estate to the above described uses of said surface by Grantee, and agrees to any subordinations as may be requested by third parties on behalf of Grantee necessary for the financing of public improvements by Grantee. Grantor will provide Grantee with the names and addresses of all lien holders having an interest in the Easement Area.

If any clause, sentence, paragraph or article of this easement is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such determination shall not be deemed to impair, invalidate, or nullify the remainder of this Agreement if the easement can be given effect without the invalid portion. To this extent, the provisions of this easement are declared to be severable.

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

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE(S) ON FOLLOWING PAGE.
EXECUTED to be effective the 21<sup>st</sup> day of August, 2013.

GRANTOR:

[Signature]

Carson Haysco Holdings, LP
BY: Carson Diversified GP, LLC, Its General Partner
BY: W.C. Carson, Member/Manager of the General Partner

ACKNOWLEDGEMENT

STATE OF TEXAS  

COUNTY OF HAYS  

This instrument was acknowledged before me on August 21, 2013 by

[Signature]

REBECCA L. PARMAN  
Notary Public  
STATE OF TEXAS  

[Notary Seal]

Notary Public, State of Texas
FIELD NOTES

BEING ALL OF THAT CERTAIN TRACT OF LAND OUT OF THE J.M. VERAMENDI LEAGUE NUMBER 1, SITUATED IN HAYS COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED AS BEING OUT OF AND PART OF LOT 5, BLOCK 1, SAN MARCOS BUSINESS PARK, SECTION TWO, A SUBDIVISION RECORDED IN VOLUME 4, PAGE 201, OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS (P.R.H.C.TX.), SAID 0.111 ACRE (4,814 SQ. FT.) TRACT OF LAND BEING MORE FULLY DESCRIBED BY METES AND BOUNDS AS Follows:

BEGINNING, at an iron rod found at the westernmost corner of said Lot 5, common to the northermmost corner of Lot 4-A, Replat of Lot 4, Establishing Lots 4-A and 4-B, San Marcos Business Park, Section One, also being in the southeastern right-of-way of Dutton Drive (60' R.O.W.) for the POINT OF BEGINNING of the herein described tract,

THENCE, with the common boundary line of said Lot 5 and said Dutton Drive, N43°32'00"E, a distance of 309.36 feet to a calculated point, at a point of curvature to the right,

THENCE, leaving the common boundary line of said Lot 5 and said Dutton Drive and crossing said Lot 5 the following five (5) courses and distances, numbered 1 through 5,

1. With said curve to the right having a radius of 15.00 feet, an arc length of 19.48 feet, and whose chord bears S83°29'07"E, a distance of 18.14 feet to a calculated point,
2. S 46°12'17"E, a distance of 0.52 feet to a calculated point,
3. S43°32'00"W, a distance of 310.35 feet to a calculated point,
4. S46°28'00"E, a distance of 5.00 feet to a calculated point, and
5. S43°32'00"W, a distance of 10.00 feet to a calculated point in the common boundary line of said Lot 5 and said Lot 4-A,

THENCE, with the common boundary line of said Lot 5 and said Lot 4-A, N46°17'00"W, a distance of 20.00 feet to the POINT OF BEGINNING and containing 0.111 acre (4,814 Sq. Ft.) of land.

Surveyed by:

ROBERT J. GERTSON, R.P.L.S. NO. 6367
Carlson, Brigham and Doering, Inc.
5501 West William Cannon
Austin, TX 78749
Ph: 512-280-5160 Fax: 512-280-5165
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BEARING BASIS: SAN MARCOS BUSINESS PARK, SECTION TWO, VOLUME 4, PAGE 201, P.R.H.C.TX.
J. M. VERAMENDI LEAGUE NO. 1

DUTTON DRIVE (60’ ROW)

N 43°32’00” E 309.36’

S 43°32’00” W 310.35’

WATER AND WASTEWATER EASEMENT #1
0.111 ACRE
4,814 SQ. FT.

LOT 5
SAN MARCOS BUSINESS PARK
SECTION TWO
VOLUME 4, PAGE 201, P.R.H.C.TX.

LINE TABLE

<table>
<thead>
<tr>
<th>LINE</th>
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<tbody>
<tr>
<td>L1</td>
<td>5.00</td>
<td>S46°28’00”E</td>
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<tr>
<td>L2</td>
<td>10.00</td>
<td>S43°32’00”W</td>
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<td>L3</td>
<td>20.00</td>
<td>N46°17’00”W</td>
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<td>0.52</td>
<td>S46°12’17”E</td>
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CURVE TABLE

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<th>CHORD BEARING</th>
<th>TANGENT</th>
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<tr>
<td>C1</td>
<td>15.00’</td>
<td>19.48’</td>
<td>18.14’</td>
<td>S83°29’07”E</td>
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LEGEND

△ CALCULATED POINT
◉ IRON ROD FOUND

BEARING BASIS: SAN MARCOS BUSINESS PARK "SECTION TWO", VOL. 4, PG. 201, P.R.H.C.TX.

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PATH: J:\4558\DWG\FN-WATER AND WW ESMT #1.DWG