



City of San Marcos

630 East Hopkins
San Marcos, TX 78666

Regular Meeting Agenda - Final Planning and Zoning Commission

Tuesday, June 14, 2016

6:00 PM

City Council Chambers

630 E. Hopkins

- I. Call To Order
- II. Roll Call
- III. Chairperson's Opening Remarks
- IV. 30 Minute Citizen Comment Period

CONSENT AGENDA

1. Consider approval of the minutes of the Regular Meeting on May 24, 2016.

PUBLIC HEARINGS

2. CUP-16-13 (Figaro's Pizza & Pub) Hold a public hearing and consider a request by Jeffery Harper for a Conditional Use Permit for the sale of mixed beverages at 243 Wonderland Drive. (W. Parrish)
3. CUP-16-14 (Blue Dahlia Bistro) Hold a public hearing and consider a request by Dandelion Café, L.L.C., on behalf of Blue Dahlia Bistro, for a new Restricted (Restaurant) Conditional Use Permit to allow the sale of beer and wine for on-premise consumption at 107 East Hopkins Street. (A. Brake)
4. PC-15-33_02 (Gilmore Industrial Park, Replat) Hold a public hearing and consider a request by Byrn and Associates, Inc. on behalf of DBI San Marcos Property, LP, for approval of a replat of 20.95 acres, more or less, being all of Lot 1 and Lot 4, Gilmore Industrial Park No. 3 and 12.07 acres in the J.M. Veramendi League No. 1, establishing Lot 5, Gilmore Industrial Park No. 3, Hays County, Texas. (A. Villalobos)
5. PDD-16-02 (Holt Tract) Hold a public hearing and consider a request by Alan Holt for a Planned Development District located at the intersection of IH-35 and East River Ridge Parkway. (W. Parrish)

NON-CONSENT AGENDA

- V. Question and Answer Session with Press and Public.

VI. Adjournment

Notice of Assistance at the Public Meetings

I certify that the attached notice and agenda of items to be considered by the Planning and Zoning Commission was removed by me from the City Hall bulletin board on the _____ day of _____

_____ Title:



City of San Marcos

630 East Hopkins
San Marcos, TX 78666

Legislation Text

File #: ID#16-300, **Version:** 1

AGENDA CAPTION:

Consider approval of the minutes of the Regular Meeting on May 24, 2016.

Meeting date: June 14, 2016

Department: Planning and Development Services

Funds Required: n/a

Account Number: n/a

Funds Available: n/a

Account Name: n/a

CITY COUNCIL GOAL:

BACKGROUND:



City of San Marcos

630 East Hopkins
San Marcos, TX 78666

DRAFT

Meeting Minutes Planning and Zoning Commission

Tuesday, May 24, 2016

6:00 PM

City Council Chambers

630 E. Hopkins

I. Call To Order

With a quorum present the regular meeting of the San Marcos Planning and Zoning Commission was called to order by Chair Garber at 6:00 p.m. on Tuesday, May 24, 2016 in the City Council Chambers of the City of San Marcos, City Hall, 630 E. Hopkins, San Marcos, Texas.

II. Roll Call

Present 8 - Commissioner Jim Garber, Commissioner Travis Kelsey, Commissioner Shawn Dupont, Commissioner Kate McCarty, Commissioner Douglas Beckett, Commissioner Betseygail Rand, Commissioner Lee Porterfield, and Commissioner Angie Ramirez

Excused 1 - Commissioner Saul Gonzales

III. Chairperson's Opening Remarks

Chair Garber asked for a moment of silence in memory of Commissioner Gonzales, mother, Aurora Gonzales.

IV. 30 Minute Citizen Comment Period

Lisa Marie Coppoletta presented a video of a tree being removed from the ground. She said it would be great if the City had some type of requirement that would require the same type of removal to protect the heritage oaks. Ms. Coppoletta said she is concerned about the trees and has attended the Code Rodeo for the past two years and other has attended other meetings as well. She also explained that she has written to the editor and has filed many open records request with staff. She asked if we could also have a Tree Ordinance like Austin. She explained that with a Tree Ordinance it would be difficult for trees to be removed. Ms. Coppoletta requested that the during the final rollout of the Code, if a total of expenses could be provided.

CONSENT AGENDA

1. Consider approval of the minutes of the Regular Meeting on May 10, 2016.
2. PC-16-14_03 (Cottonwood Creek Phase 1, Section 4) Consider a request by Ramsey Engineering, LLC, on behalf of Cottonwood Creek JDR, LTD, for approval of a Final Subdivision Plat of Cottonwood Creek Phase 1, Section 4 for approximately 5.71 acres, more

or less, out of the Farnam Frye, John F Geister, and Charles Henderson Surveys, consisting of 52 residential lots located northwest of the intersection of Monterrey Oak and Skylark Lane. (T. Carpenter)

A motion was made by Commissioner Kelsey, seconded by Commissioner Beckett, that the Consent Agenda be approved. The motion carried by the following vote:

For: 8 - Commissioner Garber, Commissioner Kelsey, Commissioner Dupont, Commissioner McCarty, Commissioner Beckett, Commissioner Rand, Commissioner Porterfield and Commissioner Ramirez

Against: 0

Excused: 1 - Commissioner Gonzales

PUBLIC HEARINGS

3. CUP-16-12 (Chuy's) Hold a public hearing and consider a request by Kyle V. Hill, on behalf of Chuy's, for a new Conditional Use Permit to allow the sale of mixed beverages for on-premise consumption at 1121 North IH-35. (A.Villalobos).

Chair Garber opened the public hearing.

Andrea Villalobos, Planning Tech gave an overview of the request.

There were no citizen comments and the public hearing was closed.

A motion was made by Commissioner Dupont, seconded by Commissioner Ramirez, that CUP-16-12 (Chuy's) be approved with conditions that the permit shall be valid for one (1) year, provided standards are met subject to the point system, the permit shall become effective upon the issuance of the Certificate of Occupancy, and the permit shall be posted in the same area and manner as the Certificate of Occupancy. The motion carried by the following vote:

For: 8 - Commissioner Garber, Commissioner Kelsey, Commissioner Dupont, Commissioner McCarty, Commissioner Beckett, Commissioner Rand, Commissioner Porterfield and Commissioner Ramirez

Against: 0

Excused: 1 - Commissioner Gonzales

4. LDC-16-03 Hold a public hearing and consider revisions to Subpart B of the City's Code of Ordinances (Land Development Code) updating Chapter 1 to require a zoning change application to accompany any request for a Preferred Scenario Map Amendment. (T. Carpenter)

Chair Garber opened the public hearing.

Tory Carpenter, Planner gave an overview of the request.

There were no citizen comments and the public hearing was closed.

A motion was made by Commissioner Kelsey, seconded by Commissioner McCarty, that LDC-16-03 be approved. The motion carried by the following vote:

For: 8 - Commissioner Garber, Commissioner Kelsey, Commissioner Dupont, Commissioner McCarty, Commissioner Beckett, Commissioner Rand, Commissioner Porterfield and Commissioner Ramirez

Against: 0

Excused: 1 - Commissioner Gonzales

NON-CONSENT AGENDA

5. Presentation and discussion concerning the release and review of the draft CodeSMTX.

Abby Gillfillan, Planning Manager gave a brief presentation concerning the release and the review of the draft CodeSMTX.

- 6.

Discussion and possible action concerning cancellation of the July 12, 2016 Planning Commission Regular Meeting.

A motion was made by Commissioner Kelsey, seconded by Commissioner McCarty, to approve that the July 12, 2016 Regular Meeting of the Planning and Zoning Commission be cancelled. The motion carried by the following vote:

For: 8 - Commissioner Garber, Commissioner Kelsey, Commissioner Dupont, Commissioner McCarty, Commissioner Beckett, Commissioner Rand, Commissioner Porterfield and Commissioner Ramirez

Against: 0

Excused: 1 - Commissioner Gonzales

- 7.

Discussion and possible action concerning cancellation of the November 22, 2016 and December 27, 2016 Planning Commission Regular Meetings.

A motion was made by Commissioner McCarty, seconded by Commissioner Kelsey, to approve that the November 22, 2016 and December 27, 2016 Regular Scheduled meetings of the Planning and Zoning Commission be cancelled. The motion carried by the following vote:

For: 8 - Commissioner Garber, Commissioner Kelsey, Commissioner Dupont, Commissioner McCarty, Commissioner Beckett, Commissioner Rand, Commissioner Porterfield and Commissioner Ramirez

Against: 0

Excused: 1 - Commissioner Gonzales

V. Question and Answer Session with Press and Public.

There were no questions from the press and public.

VI. Adjournment

A motion was made that the meeting be adjourned at 6:27 p.m. The motion carried by a unanimous vote.

Jim Garber, Commission Chair

ATTEST:

Francis Serna, Recording Secretary

Notice of Assistance at the Public Meetings

I certify that the attached notice and agenda of items to be considered by the Planning and Zoning Commission was removed by me from the City Hall bulletin board on the _____ day of _____

_____ Title:

Note

Lisa Marie Coppoletta, video of tree removal. asked the commission to consider incentives and she is concerned about the trees. has attended meeting and written letters to the editor. In support of Tree ordinance similar to austin. Expressed concerned with killing heritage trees and replace with small trees. Code Rodeo expenses. \$25,000/\$12,000. Public to see the costs of code rodeo.



Legislation Text

File #: CUP-16-13, **Version:** 1

AGENDA CAPTION:

CUP-16-13 (Figaro's Pizza & Pub) Hold a public hearing and consider a request by Jeffery Harper for a Conditional Use Permit for the sale of mixed beverages at 243 Wonderworld Drive. (W. Parrish)

Meeting date: June 14, 2016

Department: Planning and Development Services

Funds Required: NA

Account Number: NA

Funds Available: NA

Account Name: NA

CITY COUNCIL GOAL: NA

COMPREHENSIVE PLAN ELEMENT(s): NA

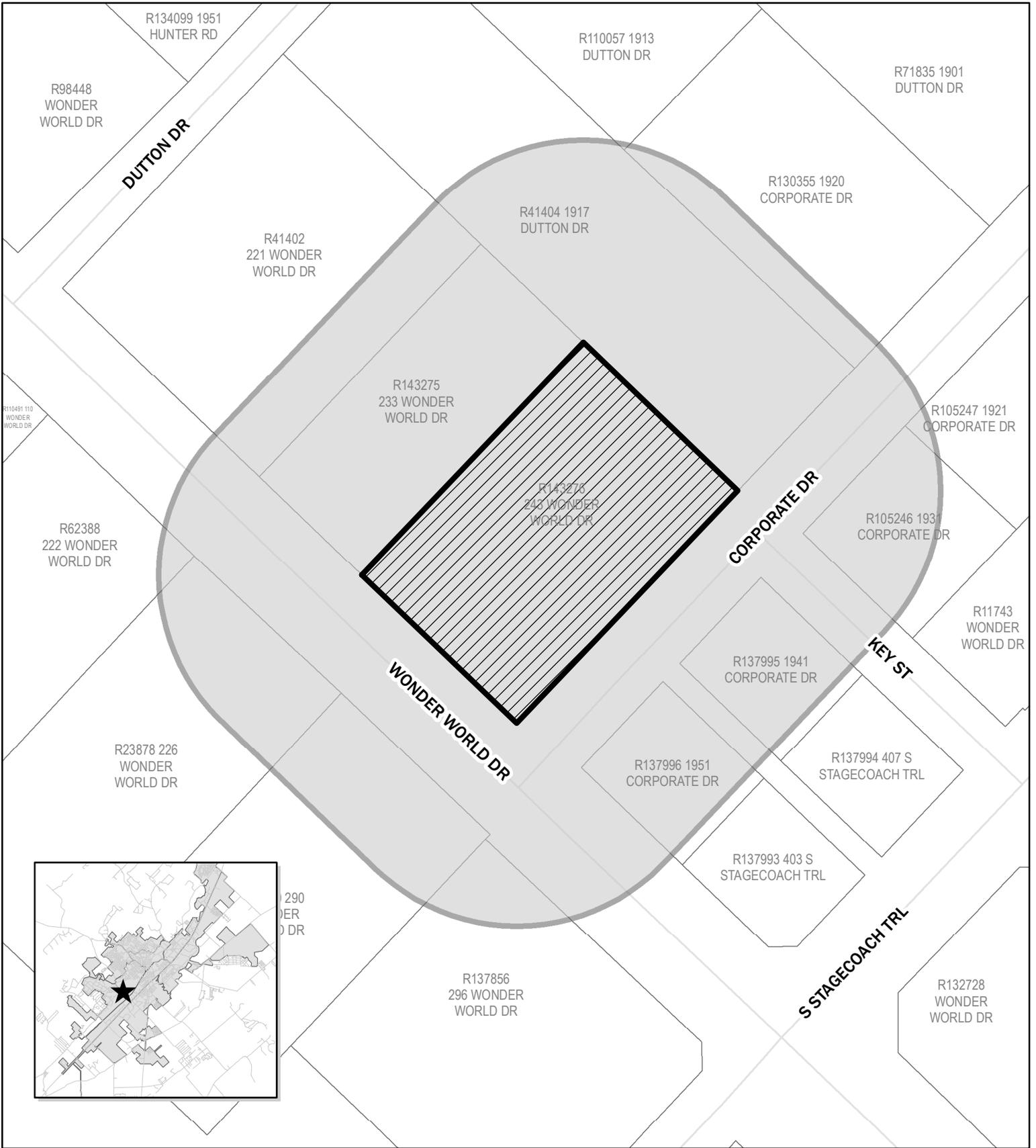
BACKGROUND:

Figaro's will be located at 243 Wonder World Drive at the intersection of Wonder World Drive and Corporate Drive in a new shopping center currently under construction. The surrounding lots are primarily zoned General Commercial and SmartCode T5, with a few Light Industrial lots across Wonder World Drive.

The restaurant is proposing to serve mixed drinks to complement their pizza sales. The proposed hours of operation are 11 a.m. to Midnight, 7 days a week. Figaro's gross floor area is 2,802 square feet and will have 58 indoor seats and 40 outdoor seats on the patio. There will be 87 off street parking spaces. The applicant would like to have the ability to provide live music on the patio.

Staff provides this request to the Commission for your consideration and recommends **approval** of the Conditional Use Permit with the following conditions:

- 1. The CUP shall be valid for one (1) year, provided standards are met, subject to the point system;**
- 2. The permit shall be effective upon the issuance of the Certificate of Occupancy; and**
- 3. The CUP shall be posted in the same area and manner as the Certificate of Occupancy.**

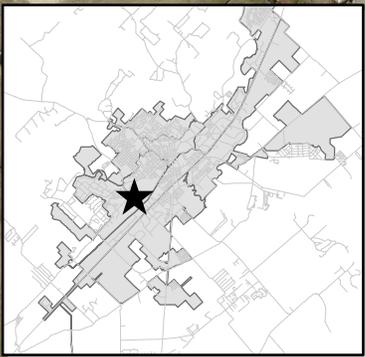
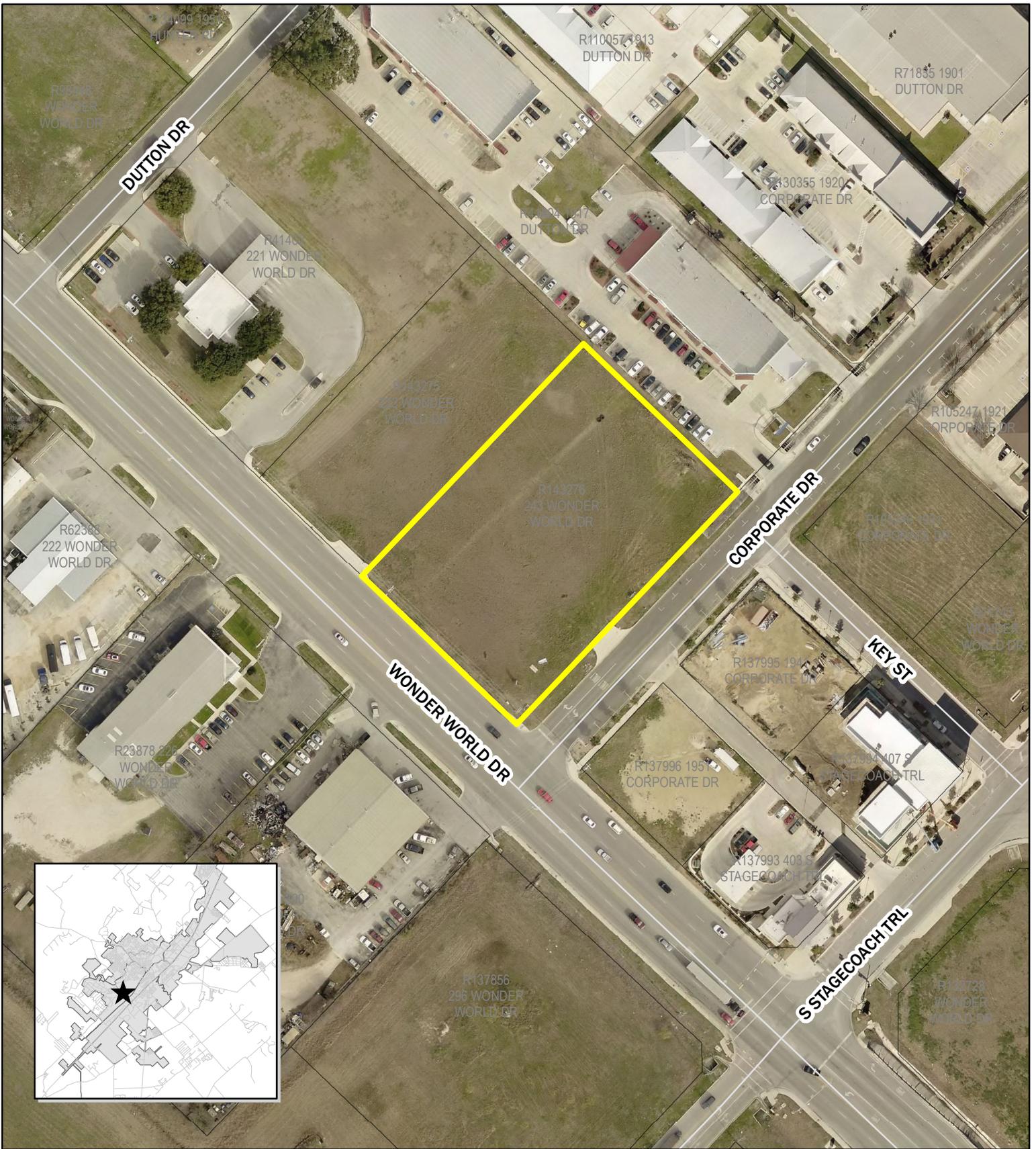


CUP-16-13
Figaro's Pizza & Pub
243 Wonder World Dr
Map Date: 5/26/2016

 Site Location
 Buffer



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.

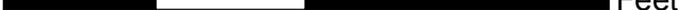


CUP-16-13
Figaro's Pizza & Pub
243 Wonder World Dr
Map Date: 5/26/2016

 Site Location



0 100 200 400 Feet



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.

CUP-16-13

Conditional Use Permit

Figaro's Pizza & Pub

243 Wonder World Drive



Applicant Information:

Applicant: Jeffery Harper

Mailing Address: PO Box 902
San Marcos, TX 78666

Property Owner: AMS Wonder World, L.P.
210 Barton Springs Road
Austin TX, 78704

Applicant Request: Request for a new Conditional Use Permit to allow the sale of mixed beverages for on-premise consumption at Figaro's Pizza and Pub located at 243 Wonder World Drive.

Public Hearing Notice: Public hearing notification was mailed on June 3, 2016.

Response: None as of completion of packet.

Subject Property:

Expiration Date: NA

Location: 243 Wonder World Drive

Legal Description: San Marcos Business Park Section 1 Replat

Frontage On: Wonder World Drive/ Corporate Drive

Intensity Zone: South End

Existing Zoning: GC – General Commercial

Preferred Scenario Designation: Medium Intensity

Utilities: Adequate

Existing Use of Property: Vacant

Zoning and Land Use Pattern:

	Current Zoning	Existing Land Use
N of property	GC	Commercial/Office
S of property	T5/GC	Vacant/Commercial
E of property	GC/T5	Vacant/Restaurant
W of property	LI	Industrial

Code Requirements:

A Conditional Use Permit (CUP) allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

A business applying for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located in a low density residential zoning district. This location **does** meet the distance requirements.

CUPs issued for on-premise consumption of alcohol make the business subject to the code standards and the penalty point system for violations (Section 4.3.4.2).

Case Summary

Figaro's will be located at 243 Wonder World Drive at the intersection of Wonder World Drive and Corporate Drive in a new shopping center currently under construction. The surrounding lots are primarily zoned General Commercial and SmartCode T5, with a few Light Industrial lots across Wonder World Drive.

The restaurant is proposing to serve mixed drinks to complement their pizza sales. The proposed hours of operation are 11 a.m. to Midnight, 7 days a week. Figaro's gross floor area is 2,802 square feet and will have 58 indoor seats and 40 outdoor seats on the patio. There will be 87 off street parking spaces. The applicant would like to have the ability to provide live music on the patio.

Comments from Other Departments:

There have been no other comments from other departments.

Planning Department Analysis:

Staff has reviewed the request for compliance with the Land Development Code and has found that the request is consistent with the policies and the general intent of the zoning district and does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic.

In order to monitor new permits for on-premise consumption of alcohol, the Planning Department's standard recommendation is initial approval of the permit for a limited time period. Other new conditional use permits have been approved as follows:

- Initial approval for 1 year;
- Renewal for 3 years;
- Final approval for the life of the State TABC license, provided standards are met.

Staff provides this request to the Commission for your consideration and recommends **approval** of the Conditional Use Permit with the following conditions:

- 1. The CUP shall be valid for one (1) year, provided standards are met, subject to the point system;**
- 2. The permit shall be effective upon the issuance of the Certificate of Occupancy; and**
- 3. The CUP shall be posted in the same area and manner as the Certificate of Occupancy.**

Planning Department Recommendation:	
	Approve as submitted
X	Approve with conditions or revisions as noted
	Alternative
	Denial

Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

The Commission's decision is discretionary. In evaluating the impact of the proposed conditional use on surrounding properties, the Commission should consider the extent to which the use:

- is consistent with the policies of the Master Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and
- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Prepared by:

Will Parrish

Planning Technician

05/25/16

Name

Title

Date

City of San Marcos

CONDITIONAL USE PERMIT APPLICATION
To Allow On-Premise Consumption of Alcoholic Beverages
Outside the Central Business Area

LICENSE INFORMATION
 Trade Name of Business: FIGARO'S PIZZA & PUB

Application is filed by:
 Individual Partnership Corporation Other: _____

Name of Individual or Entity: GREFF INV. INC. Phone Number: 512-644-8001

Mailing Address: P.O. Box 902 SAN MARCOS, TX. 78667

Email Address: jbhapperr1967@yahoo.com

Type of Permit Requested: Mixed Beverage Beer & Wine Other: _____

PROPERTY
 Street Address: 243 WONDERWORLD DR, Current Zoning: COMMERCIAL

Legal Description: Lot _____ Block _____ Subdivision _____

Tax ID Number: R 143276 ↗ (512) 708-0200

Property Owner's Name: AMS WONDERWORLD LP Phone Number: 972-987-8981

Address: 210 BARTON SPRINGS RD., AUSTIN, TX 78704

BUSINESS DETAILS
 Primary Business Use: Restaurant Bar Other: _____

Hours of Operation: 11:00 AM - 12:00 AM

Type of Entertainment Facilities: POSSIBLE LIVE MUSIC

Indoor Fixed Seats Capacity: 58 Outdoor Fixed Seats: 40

Gross Floor Area Including Outdoor Above-ground Decks: 2802 Square Feet

Number of Off-Street Parking Spaces Provided: 87

Located more than 300 feet from church, public school, hospital, low density residential? Y N

APPLICATION FOR CITY OF SAN MARCOS CONDITIONAL USE PERMIT-TABC

CUP PERMIT HISTORY *Check all that apply*

- New request**, no existing TABC CUP Permit at this location
- Change** to existing TABC Permit. Nature of Change: _____
- Renewal**
- Change in name of license holder** of existing business at same location
- Change in name of existing business** at this location

SUBMITTAL REQUIREMENTS

- **Beer and Wine Permit:** \$609 Application fee + \$11.00 Technology Fee (non-refundable)
- **Mixed Beverage Permit:** \$609 Application fee + \$11.00 Technology Fee (non-refundable)
- **Change to Existing Permit/Renewal:** \$305.00 fee + \$11.00 Technology Fee (non-refundable)
- **Site Plan** drawn to scale, preferably on paper no larger than 11" x 17", showing dimensions of property, locations and square footage of building(s), interior layout showing dimensions of tables, bar area, etc., number of off-street paved parking spaces, and fences buffering residential uses.
- **Copy of State TABC License Application**

I certify that this information is complete and accurate. I understand that I or a representative should be present at all meetings regarding this application.

- I am the property owner of record; or*
- I have attached authorization to represent the owner, organization, or business in this application.*

GREFF INVESTMENTS, INC. BY: 

Applicant's Signature

Printed Name: JEFFREY B. HARPER Date: 4-27-16

To be completed by Staff:

Meeting Date: June 14, 2016 Application Deadline: 5/2/16
Accepted By: A. Brake Date: 4/28/16

09/15



Conditional Use Permit Application Checklist To Allow On-Premise Consumption of Alcoholic Beverages Outside the Central Business Area

Provided by applicant as of date of submittal		By staff as of date of completeness review	
Completed	Required Item	Staff Verification	Staff Comments
<input checked="" type="checkbox"/>	A pre-application conference with staff is recommended	<input type="checkbox"/>	
<input type="checkbox"/>	A completed application for Conditional Use Permit and required fees. * (see note below)	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	A site plan <i>drawn to scale</i> showing dimensions of property, locations and square footage of building(s), number of off-street paved parking spaces, and fences buffering residential uses. * (see note below)	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	Interior layout showing all proposed seating; kitchen and bar areas; and restroom facilities	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	All information and illustrations necessary to show the nature of the proposed use and its effect on surrounding properties	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	Authorization to represent the property owner, if applicant is not the owner	<input type="checkbox"/>	
Any of the following pieces of information as requested by the Director of Development Services : *(see note below)			
<input type="checkbox"/>	Landscaping and/or fencing of yards and setback areas and proposed changes	<input type="checkbox"/>	
<input type="checkbox"/>	Design of ingress and egress	<input type="checkbox"/>	
<input type="checkbox"/>	Off-street loading facilities	<input type="checkbox"/>	
<input type="checkbox"/>	Height of all structures	<input type="checkbox"/>	
<input type="checkbox"/>	Proposed uses	<input type="checkbox"/>	
<input type="checkbox"/>	The location and types of all signs	<input type="checkbox"/>	
<input type="checkbox"/>	Copy of State TABC License application	<input type="checkbox"/>	
<input type="checkbox"/>	Impervious cover or drainage issues or impacts	<input type="checkbox"/>	
<input type="checkbox"/>	Menu	<input type="checkbox"/>	

* For renewals, staff may accept a written statement that no changes have been made to these items if copies are available on file.

I hereby certify and attest that the application is complete and all information above is complete and hereby submitted for review. **GREFF INVESTMENTS, INC. BY:**

Signed: _____

Date: 4-27-16

Print Name: JEFFREY B. HARPER

Engineer Surveyor Architect/Planner Owner Agent _____



Legislation Text

File #: CUP-16-14, **Version:** 1

AGENDA CAPTION:

CUP-16-14 (Blue Dahlia Bistro) Hold a public hearing and consider a request by Dandelion Café, L.L.C., on behalf of Blue Dahlia Bistro, for a new Restricted (Restaurant) Conditional Use Permit to allow the sale of beer and wine for on-premise consumption at 107 East Hopkins Street. (A. Brake)

Meeting date: June 14, 2016

Department: Planning and Development Services

Funds Required: n/a

Account Number: n/a

Funds Available: n/a

Account Name: n/a

CITY COUNCIL GOAL: Community Wellness / Strengthen the Middle Class

COMPREHENSIVE PLAN ELEMENT(s): n/a

BACKGROUND:

Blue Dahlia Bistro is a new restaurant proposed to be located within the Downtown Historic District on the west side of the Courthouse Square. It is inside the Central Business Area (CBA) and zoned T5 under the SmartCode. As it is located within the Downtown Historic District, any exterior changes in material or design of the façade and signage are subject to the Historic Design Guidelines and the regulations of Section 4.2.5.1 (j). Previously, The Hungry Gamer was at this location. The applicant has requested a new **Restricted (Restaurant) Conditional Use Permit** which requires that the business must comply with standards outlined in Section 4.3.4.2 of the Land Development Code. There is a limit of 15 Restricted CUPs in the Central Business Area at any time; currently 14 exist.

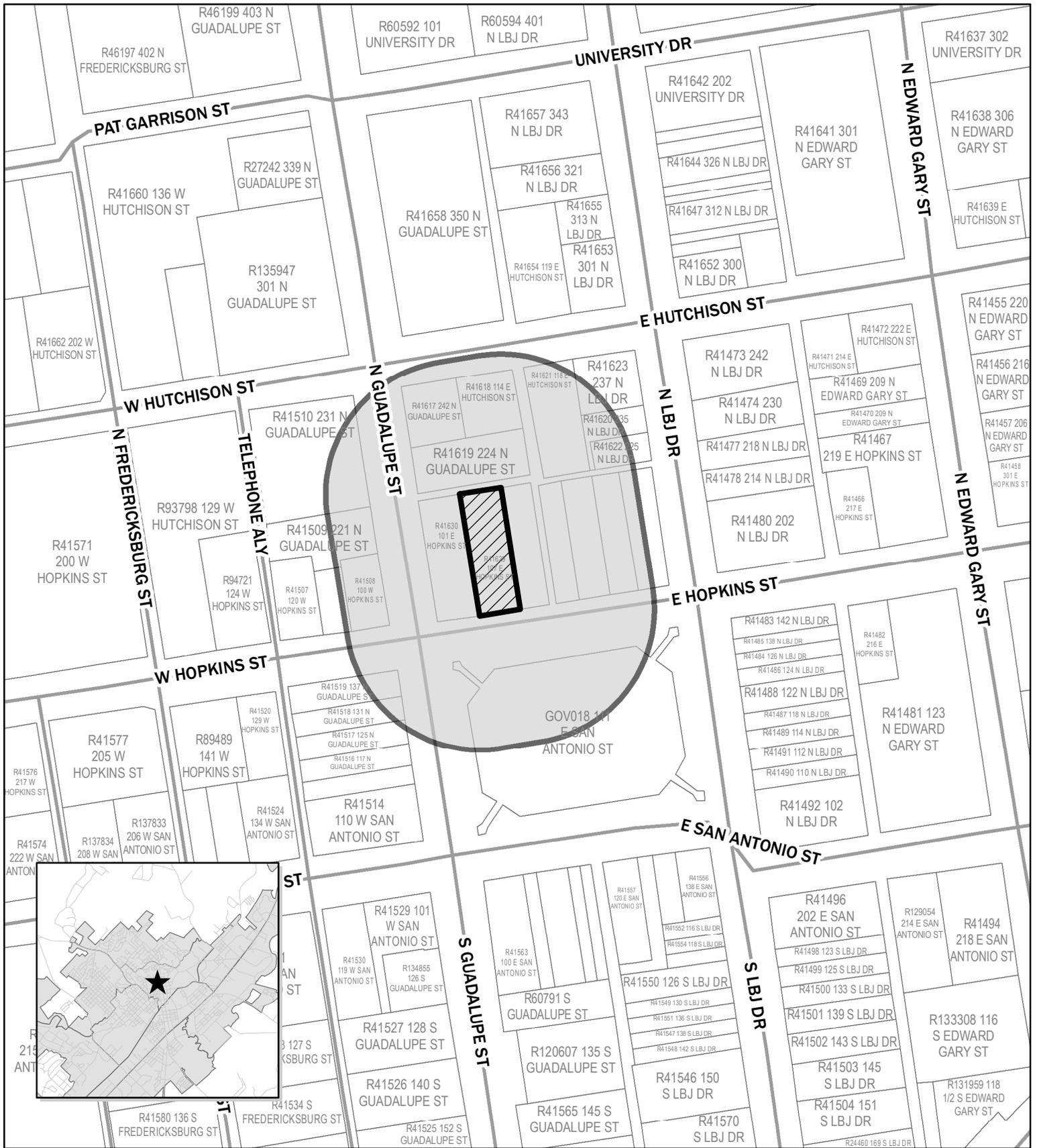
The total gross floor area of the space is 2,800 square feet with 58 indoor fixed seats and approximately 40 outdoor seats, primarily at the rear of the business along the alley behind the building. The application indicates hours of operation from 8 a.m. to 11 p.m. seven days a week. A menu has been included as an attachment. Businesses located within the Central Business Area (CBA) are not required to provide off-street parking and no entertainment facilities are proposed at this time.

On May 17, 2016, the San Marcos City Council approved an Economic Development Incentive Agreement to grant a waiver of the six month waiting period for on-premise sales of beer and wine (LDC Section 4.3.4.2c). This agreement was approved based on the City's desire to promote local economic development and to

stimulate business and commercial activity in the City by encouraging new in-fill development and job creation in the downtown area (Resolution 2016-67R). This allows the applicant to apply for this CUP without being subject to the waiting period.

Staff has reviewed the request for compliance with the Land Development Code and recommends **approval** of the Conditional Use Permit with the following conditions:

- 1. The permit shall be valid for one (1) year, provided standards are met, subject to the point system;**
- 2. The permit shall be effective upon the issuance of the Certificate of Occupancy; and**
- 3. The permit shall be posted in the same area and manner as the Certificate of Occupancy.**



CUP-16-14
Blue Dahlia Cafe
107 E Hopkins
Map Date: 5/26/2016

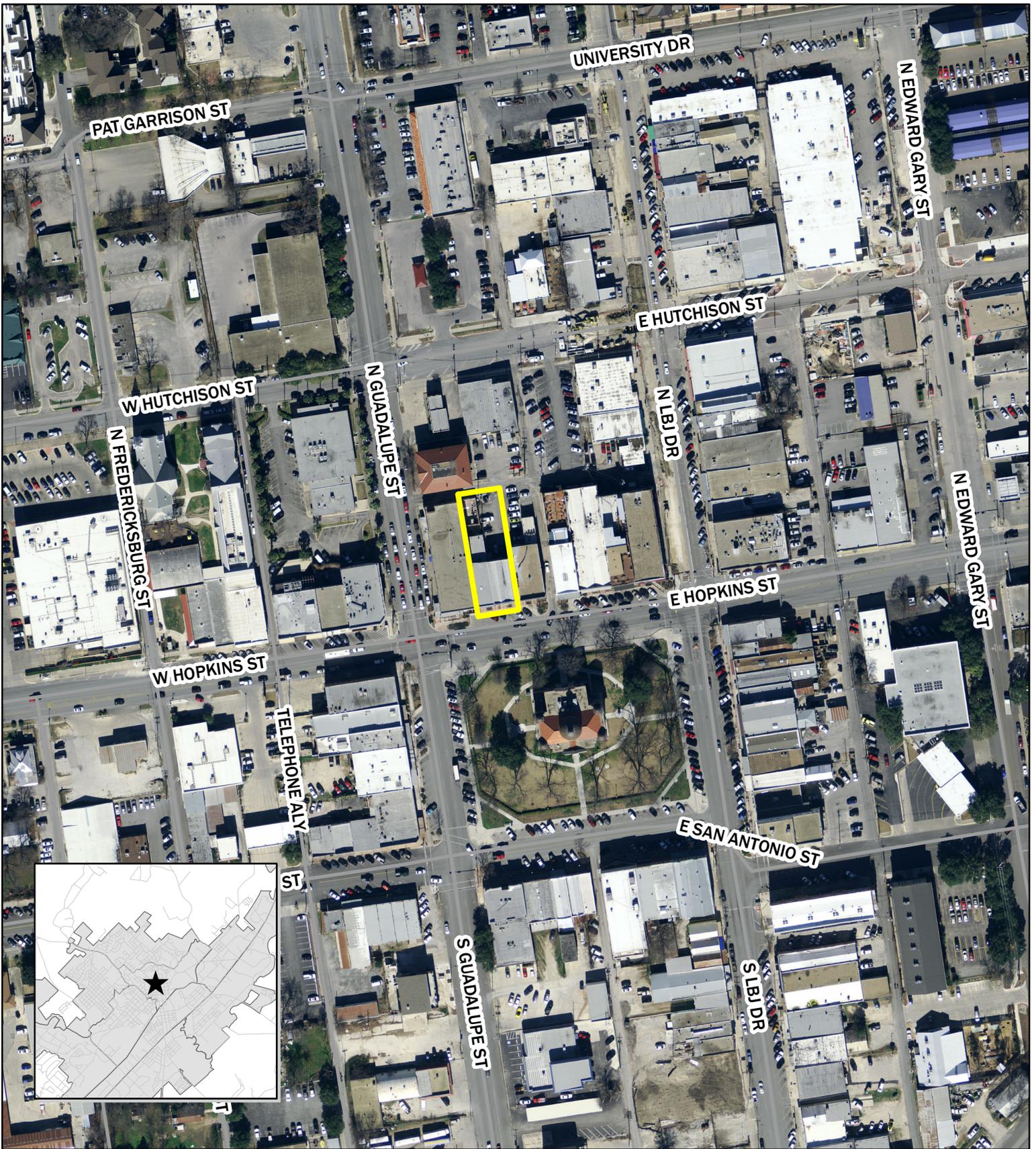
Legend
 CUP-16-14
 200 ft Buffer



0 150 300 600 Feet



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CUP-16-14
Blue Dahlia Cafe
107 E Hopkins
Map Date: 5/26/2016

Legend
 Site Location



0 150 300 600
 Feet

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CUP-16-14 Restricted (Restaurant) Conditional Use Permit Blue Dahlia Bistro 107 East Hopkins Street



Applicant Information:

Applicant: Dandelion Café, L.L.C.

Mailing Address: 3663 Bee Cave Road, #4A
Austin, TX 78746

Property Owner: East Hopkins, L.L.C.
120 West Hopkins Street, Suite 200
San Marcos, TX 78666

Applicant Request: Approval of a new Restricted (Restaurant) Conditional Use Permit (CUP) to allow on-premise consumption of beer and wine at a restaurant establishment.

Public Hearing Notice: Public hearing notification mailed on June 2, 2016

Response: None as of report date.

Subject Property:

Expiration Date: None – New

Location: 107 East Hopkins Street

Legal Description: Original Town of San Marcos, part of Lot 8, Block 20

Frontage On: East Hopkins Street

Neighborhood: Downtown

Existing Zoning: SmartCode T5 – Urban Center

Preferred Scenario Designation: High Intensity

Utilities: Adequate

Existing Use of Property: Commercial Redevelopment – Vacant Storefront

	Current Zoning	Existing Land Use
N of property	T5	Commercial, Retail
S of property	T5	Commercial, Bank

**Zoning and
Land Use Pattern:**

E of property	CS	Civic, Courthouse
W of property	T5	Civic, Texas State University Building

Code Requirements:

A Conditional Use Permit (CUP) allows the establishment of uses which may be suitable only in certain locations or only when subject to standards and conditions that assure compatibility with adjoining uses. Conditional uses are generally compatible with permitted uses, but require individual review and imposition of conditions in order to ensure the appropriateness of the use at a particular location.

Under Section 4.3.4.2 of the LDC a business applying for on-premise consumption of alcohol must not be within 300 feet of a church, school, hospital, or a residence located within a zoning district that limits density to six units per acre or less. This location **does meet** the distance requirements.

CUPs issued for on-premise consumption of alcohol make the business subject to the code standards and the penalty point system for violations (Section 4.3.4.2).

The applicant has requested a new **Restricted (Restaurant) Conditional Use Permit** which requires that the business must comply with the following standards at all times. There is a limit of 15 Restricted CUPs in the Central Business Area at any time. (Section 4.3.4.2). Currently, there are 14 existing Restricted CUPs.

- a. The business must have a kitchen and food storage facilities of sufficient size to enable food preparation. The kitchen must be equipped with, and must utilize, a commercial grill, griddle, fryer, oven, or similar heavy food preparation equipment.
- b. The business must apply for, obtain and maintain a food establishment permit in accordance with Chapter 18 of the City Code.
- c. The business must serve meals to customers during at least two meal periods each day the business is open. A meal must consist of at least one entree, such as a meat serving, a pasta dish, pizza, a sandwich or similar food in a serving that serves as a main course for a meal. At least three entrees must be available during each meal period. A meal period means a period of at least four hours.
- d. The business must be used, maintained, advertised and held out to the public as a place where meals are prepared and served.

The restaurant must be in operation for 6 months before a permit for beer and wine is issued, and 12 months before a permit for mixed beverages is issued without a previously approved Economic Development Waiver.

Case Summary

The subject property is located on the west side of the Courthouse Square. The site is located inside the Central Business Area (CBA) and is zoned T5 under the SmartCode. It is also located within the Downtown Historic District. Any exterior changes in material or design of the façade and signage are subject to the Historic Design Guidelines and the regulations of Section 4.2.5.1(j). The subject property previous housed The Hungry Gamer and is now being proposed as a restaurant. Surrounding uses include retail, restaurants, bars, and a ballet studio.

The total gross floor area of the space is 2,800 square feet with 58 indoor fixed seats and approximately 40 outdoor seats, primarily at the rear of the business along the alley behind the building. The application indicates hours of operation from 8 a.m. to 11 p.m. seven days a week. A menu has been included as an attachment. Per the SmartCode, businesses located within the Central Business Area (CBA) are not required to provide off-street parking. No entertainment facilities are proposed at this time.

Comments from Other Departments:

The Police Department has no issues with the proposed establishment and there have been no other comments from other departments.

Planning Department Analysis:

Staff has reviewed the request for compliance with the Land Development Code and it appears that the request is consistent with the policies and the general intent of the zoning district and does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic.

On May 17, 2016, the San Marcos City Council approved an Economic Development Incentive Agreement to grant a waiver of the six month waiting period for on-premise sales of beer and wine (LDC Section 4.3.4.2c). This agreement was approved based on the City's desire to promote local economic development and to stimulate business and commercial activity in the City by encouraging new in-fill development and job creation in the downtown area (Resolution 2016-67R). This allows the applicant to apply for this CUP without being subject to the waiting period.

In order to monitor new Restricted permits for on-premise consumption of alcohol, the Planning Department's recommendation is that they be approved initially for a limited time period. Other new Restricted conditional use permits have been approved as follows:

- Initial approval for 1 year;
- Renewal for 3 years

The Land Development Code however states that Restricted permits are valid for three years from date of issuance and cannot be valid for more than 3 years. Planning Commission has the discretion to add additional conditions.

Staff provides this request to the Commission for your consideration and recommends **approval** of the Conditional Use Permit with the following conditions:

- 1. The permit shall be valid for one (1) year, provided standards are met, subject to the point system;**
- 2. The permit shall be effective upon the issuance of the Certificate of Occupancy; and**
- 3. The permit shall be posted in the same area and manner as the Certificate of Occupancy.**

Planning Department Recommendation:	
	Approve as submitted
X	Approve with conditions or revisions as noted
	Alternative
	Denial

Commission's Responsibility:

The Commission is required to hold a public hearing and receive comments regarding the proposed Conditional Use Permit. After considering public input, the Commission is charged with making a decision on the Permit. Commission approval is discretionary. The applicant, or any other aggrieved

person, may submit a written appeal of the decision to the Planning Department within 10 working days of notification of the Commission's action, and the appeal shall be heard by the City Council.

The Commission's decision is discretionary. Provided the request meets the minimum requirements of section 4.3.4.2 of the LDC, the Commission shall also evaluate the impact of the proposed conditional use on surrounding properties under section 1.5.7.5 of the LDC, by considering the extent to which the use:

- is consistent with the policies of the Comprehensive Plan and the general intent of the zoning district;
- is compatible with the character and integrity of adjacent developments and neighborhoods;
- includes improvements to mitigate development-related adverse impacts; and
- does not generate pedestrian or vehicular traffic which is hazardous or conflicts with existing traffic in the neighborhood.

Conditions may be attached to the CUP that the Commission deems necessary to mitigate adverse effects of the proposed use and to carry out the intent of the Code.

Prepared by:

Alison Brake, CNU-A

Planner

June 2, 2016

Name

Title

Date

Blue Dahlia

BISTRO

DESSERT

Classic French Lemon Sugar Crêpes	6
Cheesecake plain, with chocolate sauce, or with fresh fruit	7
Crème Brulee	7
Flourless Chocolate Cake with raspberry drizzle	6.5
Poached Pears with Devonshire cream sauce, walnuts	6
Austin Scoops Lemon Lime Sorbet <i>(vegan)</i>	5
Austin Scoops Ice Cream seasonal flavors	5
Ice Cream a la mode	2.5
Granna's Bread Pudding a family recipe made with butter rum sauce	6
Assorted Cookies	.95
French Macaron Plate <i>choose four:</i> Cappuccino Chocolate Strawberry Orange Lemonade Passion Fruit Pistachio <i>single macaron</i>	5 1.25

DESSERT WINE

Tawny Port Ferreira PORTUGAL	6
Prosecco Tiamo ITALY (187ml) ∞	6

Blue Dahlia

BISTRO

We are proud to bring you premium teas from Austin's own Tea Embassy

BLACK, GREEN & WHITE TEAS 3.50

Grand English Breakfast
traditional breakfast tea from Keemun, China, which the English first drank as a breakfast blend in the 1800's

Cream Earl Grey Black Tea
blend of black tea from Sri Lanka, cornflower petals, and natural flavors of vanilla and bergamot

Love Story Tea
romantic blend of black tea with chocolate and rose flavors

Masala Chai
Assam Indian black tea with cardamom, cinnamon, ginger, vanilla

Almond Cookie Green Tea
fragrant organic green tea from China, blended with almonds, chopped coconut

White Cherry
wonderfully fragrant white tea with a strong sour cherry flavor

HERBAL TEAS 3.50

Lemon Lavender
calming and soothing, a natural blend of organically grown lavender, orange peel, lemongrass, lemon myrtle and peppermint

Austin Ambrosia
a beautiful, fruity blend of currants, rose hips, hibiscus, rooibos, blueberries, cherries, orange peel, passion fruit and mango flavors

Soothing Chamomile
Ayurvedic herbal blend of chamomile blossoms, peppermint leaves, yarrow, valerian root, marigold blossoms and lemon balm

Hot Cinnamon Spice
spicy, bold herbal blend of rooibos, cinnamon, orange peel and sweet cloves

all of our herbal teas are naturally caffeine-free

Blue Dahlia

BISTRO

HAPPY HOUR
3pm - 6:30pm Monday - Friday

WHITE WINE

Chardonnay Milou FRANCE	7 / 26
<i>peaches, pineapple, lemon zest</i>	
Sauvignon Blanc Stonehaven SOUTH AFRICA	9 / 34
<i>bright acidity, grapefruit, tropical fruit</i>	
Muscadet Le Charmel FRANCE ∞	8 / 30
<i>pear, melon, crisp finish</i>	
White Blend Moulin de Gassac FRANCE ∞	7 / 26
<i>light, with apricot notes, lively acidity</i>	
Pinot Grigio Lagaria ITALY	8 / 30
<i>apricot, apple, pear, floral</i>	
Bordeaux Blanc Medeville FRANCE	10 / 38
<i>minerals, almond, touches of honey</i>	
Viognier Peirano FRANCE	8 / 30
<i>juicy peaches, apple, orange marmalade</i>	
Riesling Revelry WASHINGTON	9 / 34
<i>pear, apple, minerality</i>	
Chardonnay Banshee SONOMA	11 / 42
<i>apricot, honey, orange blossoms</i>	

ROSE

Rose Mont Gravet FRANCE	7 / 28
<i>dry, raspberry, blackberry, 100% Cinsault</i>	
Rose My Essential FRANCE	9 / 34
<i>red fruit, flowers, crisp</i>	

BUBBLES

Sparkling Rose Hugo AUSTRIA	10 / 38
Cava Mercat SPAIN	8 / 30
Sparkling Tiamo ITALY (187ml) ∞	6
Kir Royale	6
Mimosa or Bellini	2

Sake 'Bloody Mary'	7
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RED WINE

Red Blend Esteva PORTUGAL	7 / 26
<i>raspberry, strawberry, black plum</i>	
Cote du Rhone Texier FRANCE ∞	11 / 42
<i>both fruity and spicy</i>	
Cabernet Broadside PASO ROBLES	9 / 34
<i>concentrated black raspberry & blackberry flavors</i>	
Pinot Noir Chilensis Reserva CHILE	9 / 34
<i>raspberry, mushrooms, leather</i>	
Malbec Bodini ARGENTINA	8 / 30
<i>full, fleshy and jammy</i>	
Bordeaux Exem FRANCE	8 / 30
<i>medium bodied, currants, cherry</i>	
Merlot Scarbolo ITALY ∞	10 / 38
<i>bright and juicy, hints of cocoa</i>	
Cabernet Franc Richou FRANCE	11 / 42
<i>tart cherries, spices, raspberry</i>	

∞ organic / biodynamic

SNACKS TO SHARE

Cheese Board	10
Meat & Cheese Board with olives	9
Hummus & Taboule Platter with greens, olives	6
Smoked Trout Platter garbanzo & olive salsa	9

TARTINES

Organic Egg Salad with olive oil, dill, capers	4
Blue Dahlia Brie with walnuts, homemade jam	5
Hummus with avocado, sprouts, chopped tomato	5
Smoked Salmon with herbed cream cheese, dill	6

BEER

Circle Brewing Envy Amber	3
Stella Artois	3
Independence Convict Hill Oatmeal Stout	3
Shiner Ruby	3
Lonestar bottle	2

\$1 OFF DRAFT BEER

\$5 WINE BY THE GLASS

Cava Brut Mercat SPAIN
Sauv Blanc Stonehaven AFRICA
Riesling Revelry WASHINGTON
Viognier Peirano FRANCE
Rose My Essential FRANCE
Cabernet Franc Richou FRANCE
Merlot Scarbolo ITALY ∞
Cote du Rhone Texier FRANCE

DRAFT BEER

Thirsty Goat Amber Ale	5.5
512 Black IPA	6
Live Oak Hefeweizen	5
Hops & Grain A Pale Mosaic	6

BOTTLES & CANS

Shiner Ruby Red	5
Austin Eastciders Original	6.5
Independence Convict Hill Oatmeal Stout	5.5
Revolver Blood and Honey	6
Circle Brewing Envy Amber	5.5
Stella Artois	5.5
Lonestar bottle	3

Blue Dahlia

BISTRO

SALADES

Goat Cheese Salad with walnuts, parmesan, tomato, extra virgin olive oil ✘	10.95
Mozzarella Salad with basil, tomato, basil pesto ✘	10.50
Salade Niçoise with seared rare Ahi tuna ✘ *	14.75
Maryland Crab Cake Salad with roasted red pepper aioli, pesto ✘	14.95
Garbanzo Bean Salad with cucumbers, tomato, basil pesto ✘	9.95
Black Bean Salad with avocado, tomato, cilantro, lime, mango, corn, bell pepper ✘	9.95
Mesclun Greens Salad with tomato, cucumber, basil pesto ✘	6.95
add egg salad 3.50 tuna salad 4.25 chicken salad 4.75 ✘	
add smoked salmon or seared tuna steak	7.00
add gluten free Maryland Crab Cake	8.00
<i>all served with organic mesclun greens and bread. house-made basil walnut pesto is vegan.</i>	

SANDWICHES POUR LES ENFANTS

Child's Sandwich turkey & cheese, ham & cheese, Nutelia & jam, or peanut butter & jam	6.95
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TARTINES

sandwiches with freshly-baked whole wheat bread, butter, & organic produce

Ham & Gruyère with Dijon mustard, cornichons	8.95
Tuna Salad EVOO base with basil, capers, white beans, onion, sun-dried tomatoes	8.95
French Goat Cheese with olive tapenade, roasted red peppers, shaved parmesan	9.50
Chicken Salad with dried cranberries, walnuts	8.95
Roasted Turkey with cranberry chutney	8.25
Blue Dahlia Brie with walnuts and jam	8.75
Hummus with avocado, sprouts, chopped tomato	8.50
Roast Beef with capers, Dijon crème fraîche	8.75
Organic Egg Salad with olive oil, dill, touch of cayenne, capers	7.95
Prosciutto & Mozzarella with pesto, sun-dried tomatoes	10.50
Smoked Salmon with herbed cream cheese, fresh dill	10.25
Ricotta with dried fig, honey and black pepper	7.25

gluten-free bread from local Wild Wood Bakehouse available for \$2 upcharge

PLATS DU SOIR

entrees available after 5pm. all served with freshly-baked bread

Seared Ahi Sashimi Tuna Steak served rare with lemon pepper. ✘ *	17.50
served with zucchini, yellow squash, cashews	
Mussels Dijon with white wine, cream, dijon-based broth ✘	14.25
Mussels Provençal with tomato, herbs, garlic-based broth ✘	14.25
Ratatouille served over Israeli couscous, topped with shaved parmesan ✘	14.25
Mushroom Crêpes with bleu cheese & parmesan cream sauce, mesclun greens	13.50
Porcini Ravioli with basil pesto, shaved parmesan, mesclun greens	13.50
Coq au Vin Blanc chicken, mushrooms, garlic, capers, prosciutto, all cooked in a white wine cream sauce	16.50
Bouillabaisse Provençal stew of cod, mussels, shrimp, onion, tomatoes, garlic, spices ✘	15.25
Coquilles St Jacques scallops in a white wine cream sauce with mushrooms, parmesan and topped with bread crumbs	15.95

Blue Dahlia

BISTRO

PETIT DÉJEUNER

breakfast available all day

Butter Croissant	2.50
Flavored Croissant strawberry cream cheese or chocolate hazelnut	3.25
Organic Egg Frittata <i>ask for today's feature</i> , with bread, mesclun greens, pesto ✕	9.75
Soft-Boiled Eggs with organic greens, bread <i>available until noon on weekdays</i> ✕✕	6.25
French Crêpes with Vermont maple syrup, Ghirardelli chocolate sauce, berries	6.50
Belgian Waffles topped with berries, with a side of Vermont maple syrup	6.95
Blueberry Blintzes with sweet ricotta	7.25
Parisian Sandwich ham, havarti, tomato, butter on fresh baguette, with choice of dijon or dill cream cheese <i>please no substitutions</i>	7.95
Fruit Salad melon, mango, berries	5.00
Greek Yogurt topped with fresh berries	4.95
Homemade Granola with fresh berries	6.95
Parfait yogurt, granola, fresh berries	6.00
Oatmeal topped with fresh berries	4.95
Handmade Bread one serving, freshly-baked with Nutella, assortment of jam	4.95
Bread Basket for two, freshly-baked with Nutella, assortment of jam	6.95

SPÉCIALITÉS DE LA MAISON *Platters and boards serve 2*

Cheese Board five assorted cheeses, olives, apple, jam	18.95
Meat Board selection of three meats, Port Salut cheese, cornichons, olives, apple, nuts	19.50
Hummus & Taboule Platter with mesclun greens, olives, sun dried tomato	11.50
Smoked Trout Platter with garbanzo and olive salsa	16.50
Truffled Mousse Pâté Platter with cornichons, pear	17.50
Soupe du Jour bowl of soup housemade with organic & local vegetables <i>(when available)</i>	6.25
Hearty Pork Stew with zucchini, tomato, corn, red pepper and spices	9.75

BOISSONS *all espresso drinks are 2 oz. shots*

Austin's Kohana Coffee	2.50	Pellegrino	2.50/3.75
Espresso or Americano	2.75	Iced Tea or Soft Drink	2.25
Macchiato	2.95	Hibiscus Mint Herbal Iced Tea	2.50
Cappuccino	3.50	Organic Maine Root Sodas	3.75
Latte	4.00	Orangina	2.95
Mochaccino	4.50	Homemade Lemonade	2.95
Flavored Shot	.50	regular, mint or pomegranate	
caramel, vanilla, lavender		Orange Juice or Apple Cider	1.95/3.95
Café au Lait	3.00	Milk regular, soy, or almond	3.75
Chai Tea Latte	4.25	Steamed Milk	4.50
Extra espresso shot	.70	with Ghirardelli Chocolate on the side	
		Tea Embassy organic loose leaf tea	3.50

we love and use local and organic ingredients when possible!

✕ can be made gluten free

✕✕ consuming raw or undercooked food may increase your risk of food-borne illness, especially if you have certain medical conditions

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

Pursuant to Section 1.4.4.1 of the City of San Marcos Land Development Code, this agreement (the “Agreement”) is entered into by and between Dandelion Café, LLC, d.b.a Blue Dahlia Bistro, (the “Owner”) and the City of San Marcos, Texas (the “City”). The Owner and the City are collectively referred to as the “Parties.”

PART 1. RECITALS

Section 1.01. The City seeks to promote local economic development and to stimulate business and commercial activity in the City by, among other things, encouraging new in-fill development and job creation in the downtown area.

Section 1.02. The Owner is the owner of the real property and improvements at 107 E. Hopkins Street, San Marcos, Texas 78666 (the “Property”). The Property is located within the Central Business Area (“CBA”) as defined in the City’s Land Development Code (“LDC”).

Section 1.03. The Owner has proposed and intends to redevelop the Property by remodeling the existing building and operating a restaurant with an outdoor seating area that will also serve wine and beer for on-premises consumption (the foregoing activities are collectively, the “Project”).

Section 1.04. The LDC establishes special conditions for the issuance of a Conditional Use Permit (“CUP”) for a restaurant serving alcoholic beverages for consumption on its premises. Pursuant to the requirements of Section 4.3.4.2(b)(8) the LDC the Owner is subject a six-month waiting period before beer and wine may be sold from the Property for on-premises consumption.

Section 1.05. Section 1.4.4.1 of the LDC authorizes the City Council to grant waivers of certain requirements under the LDC for economic development purposes. The waiting periods for the sale of alcoholic beverages for on-premises consumption under Section 4.3.4.2 (b)(8) of the LDC are major impediments to the Owner’s successful execution of the Project and redevelopment of the Property and the Owner, therefore, seeks a waiver of these waiting periods.

Section 1.06. The City Council finds that the Owner’s request for a waiver complies with the requirements for granting a waiver of certain requirements of the LDC for economic development purposes under Section 1.4.4.1 of the LDC. The City Council, therefore, is amenable to waiving the applicability of the waiting periods to the Project.

Section 1.07. In consideration of the mutual benefits stated in the Agreement and the promises of the Parties set forth below, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

PART 2. OBLIGATIONS OF OWNER

Section 2.01. Execution of the Project. On or before December 1, 2016 the Owner will commence execution of the Project to include building renovation and remodeling, landscaping, signage and related improvements in conformance with plans and specifications approved by the City's Department of Planning and Development Services. The Owner will pursue completion of the Project with commercially reasonable diligence, subject to *Force Majeure* events as defined in Section 5.05 below. The Owner, in executing the Project, shall comply with all requirements of all applicable City of San Marcos processes, procedures, ordinances, rules, regulations and standards.

Section 2.02. Employment. In conjunction with the Project, the Owner will employ at least 6 full-time and 75 part-time employees locally with estimated wage rates as follows:

- | | | |
|----|------------|-------------------|
| a. | Manager 6: | \$40,000 annually |
| c. | Staff 78: | \$20,700 annually |

PART 3. ECONOMIC DEVELOPMENT WAIVER PROVIDED BY THE CITY

Section 3.01. Waiver of Certain Land Development Code Requirements. As to the Project, the waiting periods for the sale of alcohol for on-premises consumption under Section 4.3.4.2 (b) (8) of the LDC are hereby waived.

Section 3.02. Waiver Limited.

a. Applies Only to Owner's Initial CUP. The waiver granted under Section 3.01 is subject to approval of a request for a CUP by the City's Planning and Zoning Commission. If said request for a CUP is approved, the waiver granted herein shall apply only to such initial CUP and any timely renewals thereof. Upon the expiration, revocation or lapse of said CUP, the waiver granted herein shall automatically terminate, and any future applicant for a CUP related to the sale of alcoholic beverages from the Property, whether the Owner or any other person or entity, shall be required to apply for a new CUP, subject to the then applicable requirements for the approval of such a CUP under the LDC or other ordinance.

b. Subject to Other Requirements. The waiver granted in Section 3.01 is subject to all other required approvals of the City under applicable ordinances, rules, regulations and standards. Except as specifically granted herein, the City grants no other waivers of any requirements under the LDC or its Code of Ordinances. The granting of the waiver through this Agreement is not a guarantee, representation or indication by the City regarding the likelihood of approval of any other applications, permits or requests related to the Project, including the initial request for the CUP to which this Agreement relates, or any certificates of occupancy.

PART 4. DEFAULT AND TERMINATION

Section 4.01. Default and Termination. The City may declare a default under this Agreement and may terminate this Agreement if the Owner:

- a.** fails to commence and complete the Project within the time specified or according to the specifications in Section 2.01;
- b.** made or makes any representation relied upon by the City in entering into this Agreement or in any request or submission to the City relating to this Agreement or the Project that is false or misleading in any material respect;
- c.** assigns this Agreement without the consent of the City;
- d.** allows ad valorem taxes on the Property or other property in the City owned by the Owner to become delinquent; or
- e.** fails to comply at all times with the terms of the initial CUP issued for on-premises consumption of alcoholic beverages on the Property, as renewed or amended, or the standards for “bona fide restaurants” under Section 4.3.4.2 of the LDC during the first 12 months following the date of issuance of said CUP.

Section 4.02. Notice of Default and Termination. If the City Manager reasonably determines that the Owner is in default under Sections 4.01(a) or (d) the City Manager will notify the Owner in writing of such default, and if the default is not cured within 30 days from the date of the notice, the City Manager may terminate this Agreement, unless reasonable efforts are being made to cure said default and said default cannot reasonably be cured within 30 days. For any default under Sections 4.01(b), (c) or (e) of this Agreement, the City Manager may terminate the Agreement upon sending written notice of termination to the Owner.

Section 4.03. Status of Waiver Upon Termination. The Owner agrees that upon termination of this Agreement, the waiver granted under this Agreement shall be deemed revoked and the Owner's conditional use permit for on-premises consumption of alcoholic beverages may, at the City's sole discretion, be suspended or revoked without a hearing, and without recourse against the City, its officers, agents, or employees.

Section 4.04. Automatic Termination. In addition to automatic termination under paragraph 3.02(a), this Agreement shall terminate automatically upon the denial of any application, permit or request of the Owner related to the Project and the Owner's exhaustion of remedies related thereto making the Project infeasible under applicable laws, ordinances, rules and regulations.

Section 4.05. Remedies not Exclusive. In the event of default, either party may exercise its remedies hereunder together with any other statutory or common law remedies, including applicable penal and civil enforcement provisions of the Land Development Code or successor provisions, or other ordinances. Any failure by one party to enforce this Agreement with respect

to one or more defaults by the other party will not waive that party's ability to enforce the Agreement after that time. In the event litigation is commenced under the terms of this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorney fees and costs.

PART 5. MISCELLANEOUS

Section 5.01. Notices. All notices required by this Agreement will be delivered to the following by certified mail or confirmed facsimile transmission if either party provides to the other a number for facsimile transmission:

City:

City Manager
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

Owner:

Amy Ramirez
Dandelion Café
3663 Bee Cave Rd 4A
Austin, Texas 78746

Each party will notify the other party in writing of any change in information required for notice under this paragraph.

Section 5.02. Assignment. The Owner may not assign this Agreement or any of its rights, or delegate or subcontract any of its duties under this Agreement, in whole or in part, without the prior written consent of the City.

Section 5.03. Applicable Law and Venue. This Agreement will be construed under the laws of the State of Texas. This Agreement is performable in Hays County, Texas. Mandatory venue for any action under this Agreement will be in the state court of appropriate jurisdiction for the action in Hays County, Texas. Mandatory venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

Section 5.04. No Liability. The Owner agrees that City assumes no liability or responsibility by approving plans, issuing permits or approvals or making inspections related to the Project.

Section 5.05. Force Majeure. A Force Majeure event means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

Section 5.06. No Waiver of Immunity or Liability. Nothing in this Agreement, and no action of the City under this Agreement, will constitute a waiver of any immunity of the City to suit or to liability or of any limitations on liability granted by law or the Texas Constitution.

Section 5.07. No Joint Venture. It is understood and agreed between the parties that the City and the Owner, in executing this Agreement, and in performing their respective obligations, are acting independently, and not in any form of partnership or joint venture. **THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO ANY THIRD PARTIES IN CONNECTION WITH THIS AGREEMENT, AND THE OWNER AGREES TO INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS FROM ANY SUCH LIABILITIES.**

EXECUTED to be effective May 17, 2016.

CITY OF SAN MARCOS:

By: _____
Jared Miller., City Manager

OWNER:
Dandelion Café, LLC

By: _____

Name: _____

Title: _____

CUP-16-14

City of San Marcos
RESTRICTED OR UNRESTRICTED
CONDITIONAL USE PERMIT APPLICATION
To Allow On-Premise Consumption of Alcoholic Beverages
for Businesses within the Central Business Area Zoning District

LICENSE INFORMATION

Trade Name of Business: BLUE DALLIA BISTRO

Application is filed by: Individual Partnership Corporation Other: _____

Name of Individual or Entity: DANDY KID CAFE, LLC Phone Number: 512.306.1660

Mailing Address: 3663 BEECAVE RD #4A AUSTIN, TX 78746

Email Address: AMY@BLUEDALLIABISTRO.COM

Type of Permit Requested: Mixed Beverage Beer & Wine Other: _____

PROPERTY

Street Address: 107 E HOPKINS ST SAN MARCOS 78666

Legal Description: Lot _____ Block _____ Subdivision _____

Tax ID Number: R 26-5332844

Property Owner's Name: SCOTT GREGSON Phone Number: 512 557 8000

Address: _____

BUSINESS DETAILS

Primary Business Use: Restaurant (Restricted) Bar (Unrestricted) Other: _____

Hours of Operation: 8AM - 11pm

Type of Entertainment Facilities: ∅

Indoor Fixed Seats: 58 Outdoor Fixed Seats: 40

Gross Floor Area Including Outdoor Above-ground Decks: 2800 Square Feet

Number of Off-Street Parking Spaces Provided: 2

Located more than 300 feet from churches, public schools, hospitals, low density residential? Yes No

No

APPLICATION FOR CITY OF SAN MARCOS CONDITIONAL USE PERMIT-TABC

CUP PERMIT HISTORY *Check all that apply*

- New request**, no existing TABC CUP Permit at this location
- Change** to existing TABC Permit. Nature of Change: _____
- Renewal**
- Change in name of license holder** of existing business at same location
- Change in name of existing business** at this location

SUBMITTAL REQUIREMENTS

- **Beer and Wine Permit:** \$609 Application fee + \$11.00 Technology Fee (non-refundable)
- **Mixed Beverage Permit:** \$609 Application fee + \$11.00 Technology Fee (non-refundable)
- **Change to Existing Permit/Renewal:** \$305.00 Application fee + \$11.00 Technology Fee (non-refundable)
- **Site Plan** drawn to scale, preferably on paper no larger than 11" x 17", showing dimensions of property, locations and square footage of building(s), interior layout showing dimensions of tables, bar area, etc., number of off-street paved parking spaces, and fences buffering residential uses.
- **Copy of State TABC License Application**

I certify that this information is complete and accurate. I understand that I or a representative should be present at all meetings regarding this application.

- I am the property owner of record; or*
- I have attached authorization to represent the owner, organization, or business in this application.*

SAM R. SMITH
Applicant's Signature

Printed Name: Smith

Date: 4/27/16

To be completed by Staff:

Meeting Date: _____

Application Deadline: _____

Accepted By: _____

Date: _____



Restricted or Unrestricted Conditional Use Permit Application Checklist For Businesses within the Central Business Area

Provided by applicant as of date of submittal		By staff as of date of completeness review	
Completed	Required Item	Staff Verification	Staff Comments
<input checked="" type="checkbox"/>	A pre-application conference with staff is recommended	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	A completed application for Conditional Use Permit and required fees. * (see note below)	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	A site plan <i>drawn to scale</i> illustrating the locations of all structures on the subject property and on adjoining properties. * (see note below)	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	Interior layout showing all proposed seating; kitchen and bar areas; and restroom facilities	<input type="checkbox"/>	
<input type="checkbox"/>	All information and illustrations necessary to show the nature and effect of the proposed variations to the standards of the zoning district.	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	Authorization to represent the property owner, if applicant is not the owner	<input type="checkbox"/>	
Any of the following pieces of information as requested by the Director of Development Services : *(see note below)			
<input type="checkbox"/>	Landscaping and/or fencing of yards and setback areas and proposed changes	<input type="checkbox"/>	
<input type="checkbox"/>	Design of ingress and egress	<input type="checkbox"/>	
<input type="checkbox"/>	Off-street parking and loading facilities	<input type="checkbox"/>	
<input type="checkbox"/>	Height of all structures	<input type="checkbox"/>	
<input type="checkbox"/>	Proposed uses	<input type="checkbox"/>	
<input type="checkbox"/>	The location and types of all signs	<input type="checkbox"/>	
<input type="checkbox"/>	Hours of operation	<input type="checkbox"/>	
<input type="checkbox"/>	Impervious cover or drainage issues or impacts	<input type="checkbox"/>	

* For renewals, staff may accept a written statement that no changes have been made to these items if copies are available on file.

I hereby certify and attest that the application is complete and all information above is complete and hereby submitted for review.

Signed: _____ Date: _____

Print Name: Sam Ramirez

Engineer Surveyor Architect/Planner Owner Agent _____



Legislation Text

File #: PC-15-33_02, **Version:** 1

AGENDA CAPTION:

PC-15-33_02 (Gilmore Industrial Park, Replat) Hold a public hearing and consider a request by Byrn and Associates, Inc. on behalf of DBI San Marcos Property, LP, for approval of a replat of 20.95 acres, more or less, being all of Lot 1 and Lot 4, Gilmore Industrial Park No. 3 and 12.07 acres in the J.M. Veramendi League No. 1, establishing Lot 5, Gilmore Industrial Park No. 3, Hays County, Texas. (A. Villalobos)

Meeting date: June 14, 2016

Department: Planning and Development Services

Funds Required: n/a

Account Number: n/a

Funds Available: n/a

Account Name: n/a

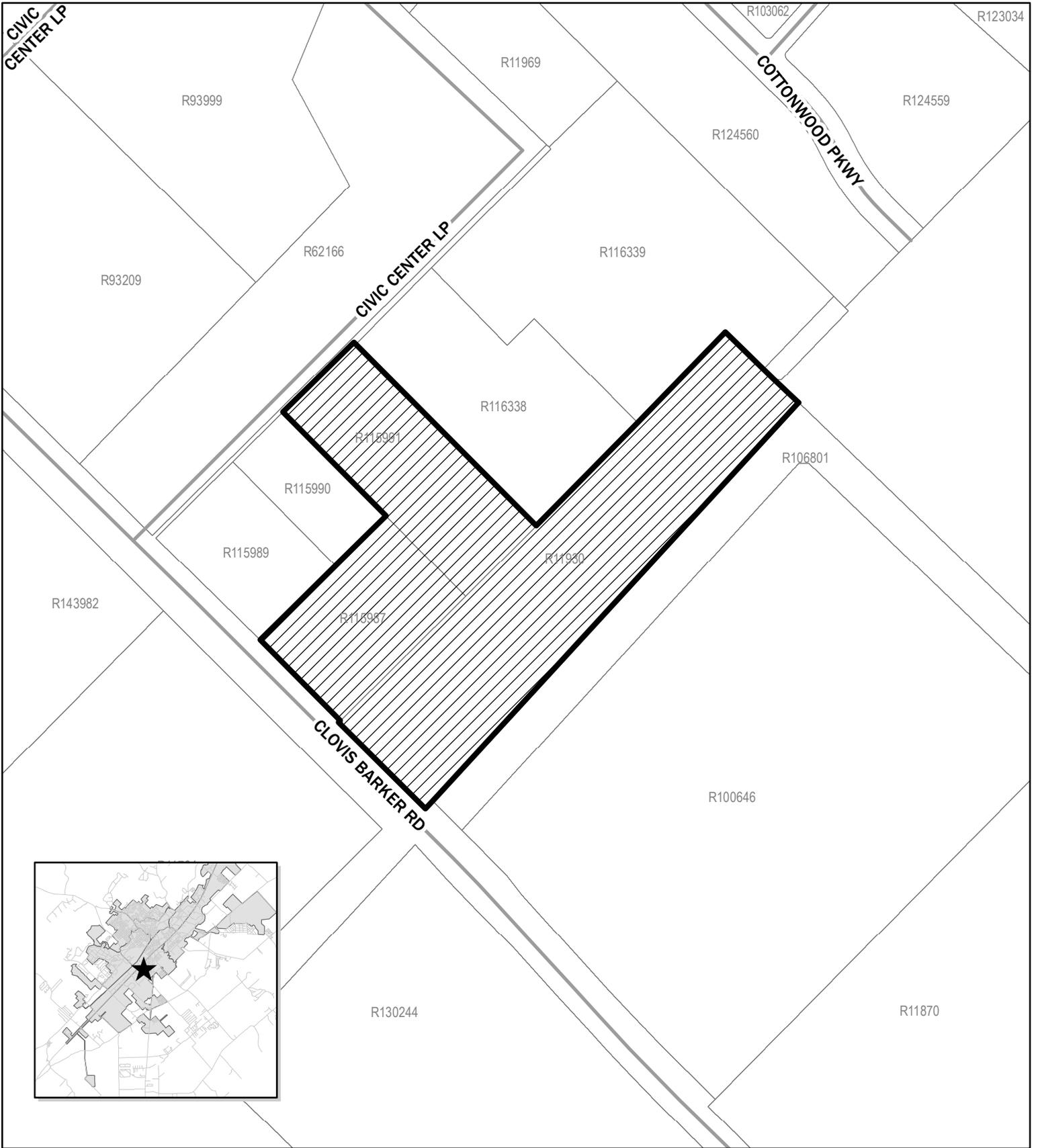
CITY COUNCIL GOAL: Community Wellness / Strengthen the Middle Class

COMPREHENSIVE PLAN ELEMENT(s): n/a

BACKGROUND:

The purpose of this plat is to replat two existing lots and a portion of unplatted property to establish one platted lot of 20.95 acres. In conjunction with the plat, Public Improvement Construction Plans have been approved for the construction of a wastewater extension down Civic Center Loop. The completion of the construction of the wastewater line is required prior to the recordation of the plat. Therefore, although the plat is to be approved, the plat will not be recorded until the City has accepted the public improvements.

Staff has reviewed the request and determined that the replat meets the requirements of Section 1.6.8.2 of the Land Development Code and recommends **approval** of the replat.

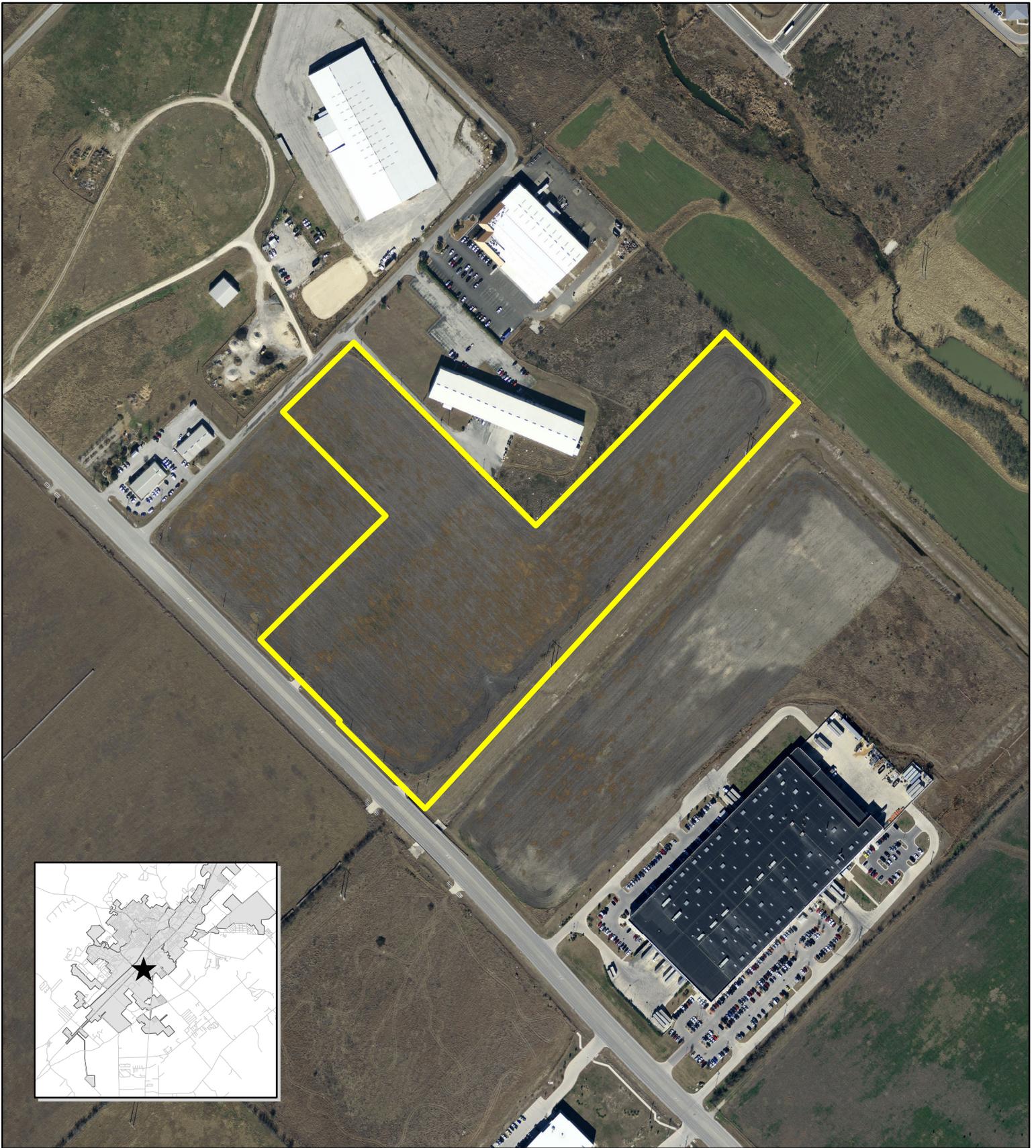


PC-15-33_02
Gilmore Industrial Park 3
Clovis Baker Road
Map Date: 6/1/2016

Legend
 PC-15-33_02



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.



PC-15-33_02
Gilmore Industrial Park 3
Clovis Baker Road
Map Date: 5/26/2016

Legend

 Site Location



0 300 600 1,200
Feet

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.

PC-15-33_02 Replat, Gilmore Industrial Park No. 3



Applicant Information:

Agent:

Byrn and Associates Inc.
1115 Hwy 80 E. PO Box 1433
San Marcos, Texas 78667-1433

Property Owner:

DBI San Marcos Property, LP
10510 West Sam Houston Pkwy, So.
Houston, TX 77099

Notification:

Published notification on May 29, 2016
San Marcos Daily Record

Type & Name of Subdivision:

Replat of Lots 1 and 4, Gilmore Industrial Park No. 3
and 12.07 acres in the J.M. Veramendi League No.1

Subject Property:

Summary:

The subject property is approximately 17.99 acres, more or less, located at the 1500 Block of Clovis Barker Road, San Marcos, Texas.

Zoning:

Heavy Industrial (HI) and Light Industrial (LI)

Traffic/ Transportation:

The property currently has access off of Clovis Barker Road and Civic Center Loop. A 160 foot future roadway reserve is being dedicated as part of the plat for the future extension of Hwy 21.

Utility Capacity:

As part of the development of this plat, the applicant is extending wastewater service down Civic Center Loop. Water service is adequate. Electric service is provided by SMEU.

Planning Department Analysis:

The purpose of this plat is to replat two existing lots and a portion of unplatted property to establish one platted lot of 20.95 acres. The replat consists of Lot 1 and Lot 4 within the Gilmore Industrial Park No. 3, originally recorded in 2004, and approximately 12.07 acres within the J.M. Veramendi League No. 1. The property is currently located within an Employment Center on the Comprehensive Plan and is zoned for Industrial uses.

In conjunction with the plat, Public Improvement Construction Plans have been approved for the construction of a wastewater extension down Civic Center Loop. The completion of the construction of the wastewater line is required prior to the recordation of the plat. Therefore, although the plat is to be approved, the plat will not be recorded until the City has accepted the public improvements.

Staff has reviewed the request and determined that the replat meets the requirements of Section 1.6.8.2 of the Land Development Code and recommends **approval** of the replat.

Planning Department Recommendation	
X	Approve as submitted
	Approve with conditions or revisions as noted
	Alternative
	Statutory Denial

Prepared By:

Andrea Villalobos	Planning Technician	June 1, 2016
Name	Title	Date

The Commission's Responsibility:

The Commission is charged with making the final decision regarding this proposed Replat. The City charter delegates all subdivision platting authority to the Planning and Zoning Commission. The Commission's decision on platting matters is final and may not be appealed to the City Council. Your options are to approve, disapprove if the plat does not meet the criteria set in the approval section of the Land Development Code, or statutorily deny (an action that keeps the applicant "in process") the plat.



GENERAL NOTES

1. THE BEARING BASIS FOR THIS SURVEY PLAT WAS DETERMINED FROM GPS OBSERVATIONS AND REFERS TO GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE.
2. ACCORDING TO SCALING FROM F.E.M.A. FLOOD INSURANCE RATE MAP NOS. 48209C0477F & 48209C0479, DATED SEPTEMBER 2, 2005, A PORTION OF THIS LOT LIES WITHIN ZONE X.
3. SIDEWALKS ARE REQUIRED ALONG CLOVIS BARKER ROAD.
4. A RESERVE FOR THE "160' WIDE FUTURE ROADWAY AS SHOWN ON THE SAN MARCOS THOROUGHFARE PLAN" WILL BE DEDICATED "AT NO COST" TO THE CITY OF SAN MARCOS BY SEPARATE INSTRUMENT BY THE OWNER OF LOT 5 AT THE TIME IN THE FUTURE THAT THE CITY OF SAN MARCOS IS PREPARED TO BEGIN CONSTRUCTION OF SAID ROADWAY. CONSTRUCTION OF BUILDINGS WITHIN THE "RESERVE" IS PROHIBITED.

ORIGINAL SCALE
1" = 200'

STATE OF TEXAS*
COUNTY OF HAYS*

I, WILLIAM W. HALL -- VICE PRESIDENT OF DBI SAN MARCOS PROPERTY, LP, THE OWNER OF LOTS 1 & 4, GILMORE INDUSTRIAL PARK NO. 3, RECORDED IN VOLUME 12, PAGE 300 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS AND THAT 12.07 ACRE TRACT IN THE J.M. VERAMENDI LEAGUE NO. 1, ALL THREE TRACTS BEING CONVEYED TO US IN VOLUME 5066, PAGE 427 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE 20.95 ACRES TO BE KNOWN AS REPLAT OF LOT 1 AND LOT 4, GILMORE INDUSTRIAL PARK NO. 3 AND DO HEREBY DEDICATE ALL STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINS, AND OTHER EASEMENTS SHOWN ON THIS PLAT, TO THE USE OF THE PUBLIC FOREVER.

DBI SAN MARCOS PROPERTY, LP
BY: DBEARDEN INVESTMENTS-GP, LLC ITS GENERAL PARTNER
BY: WILLIAM W. HALL, VICE PRESIDENT
10460 W. SAM HOUSTON PARKWAY SO., SUITE 200
HOUSTON, TX 77099

STATE OF TEXAS*
COUNTY OF HAYS*

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED

_____, OWNER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATIONS THEREIN EXPRESSED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS ____ DAY OF _____, 20____.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

MY COMMISSION EXPIRES ON: _____

APPROVED BY THE CITY OF SAN MARCOS PLANNING & ZONING COMMISSION
ON _____ OF _____ 2016.

JIM GARBER -- CHAIRMAN
PLANNING AND ZONING COMMISSION

DATE

SHANNON MATTINGLY, AICP
DIRECTOR OF PLANNING
AND DEVELOPMENT SERVICES

DATE

FRANCIS SERNA
RECORDING SECRETARY

DATE

ENGINEERING / CIP

DATE

STATE OF TEXAS *
COUNTY OF HAYS *

I, LIZ GONZALEZ, COUNTY CLERK OF HAYS COUNTY, TEXAS, CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN MY OFFICE ON THE ____

DAY OF _____, 20____ AT ____ O'CLOCK ____M., AND RECORDED ON THE ____ DAY OF

_____, 20____ AT ____ O'CLOCK ____M., IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS IN BOOK _____, AT PAGE _____.

LIZ GONZALEZ
COUNTY CLERK
HAYS COUNTY, TEXAS

KNOW ALL MEN BY THESE PRESENTS:

THAT I, DAVID C. WILLIAMSON, DO HEREBY CERTIFY THAT I PREPARED THIS PLAT FROM AN ACTUAL AND ACCURATE SURVEY OF THE LAND AND THAT THE CORNER MONUMENTS SHOWN THEREON AS "SET" WERE PROPERLY PLACED UNDER MY PERSONAL SUPERVISION IN ACCORDANCE WITH THE SUBDIVISION REGULATIONS OF THE CITY OF SAN MARCOS.

PRELIMINARY, THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE.
REGISTERED PROFESSIONAL LAND SURVEYOR
DAVID C. WILLIAMSON, R.P.L.S. NO. 4190

PLAT ESTABLISHING
**LOT 5,
GILMORE INDUSTRIAL
PARK NO. 3**

BEING 20.95 ACRES, MORE OR LESS, BEING A REPLAT OF LOTS 1 & 4, GILMORE INDUSTRIAL PARK NO. 3 AND 12.07 ACRES IN THE J.M. VERAMENDI LEAGUE NO. 1, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS



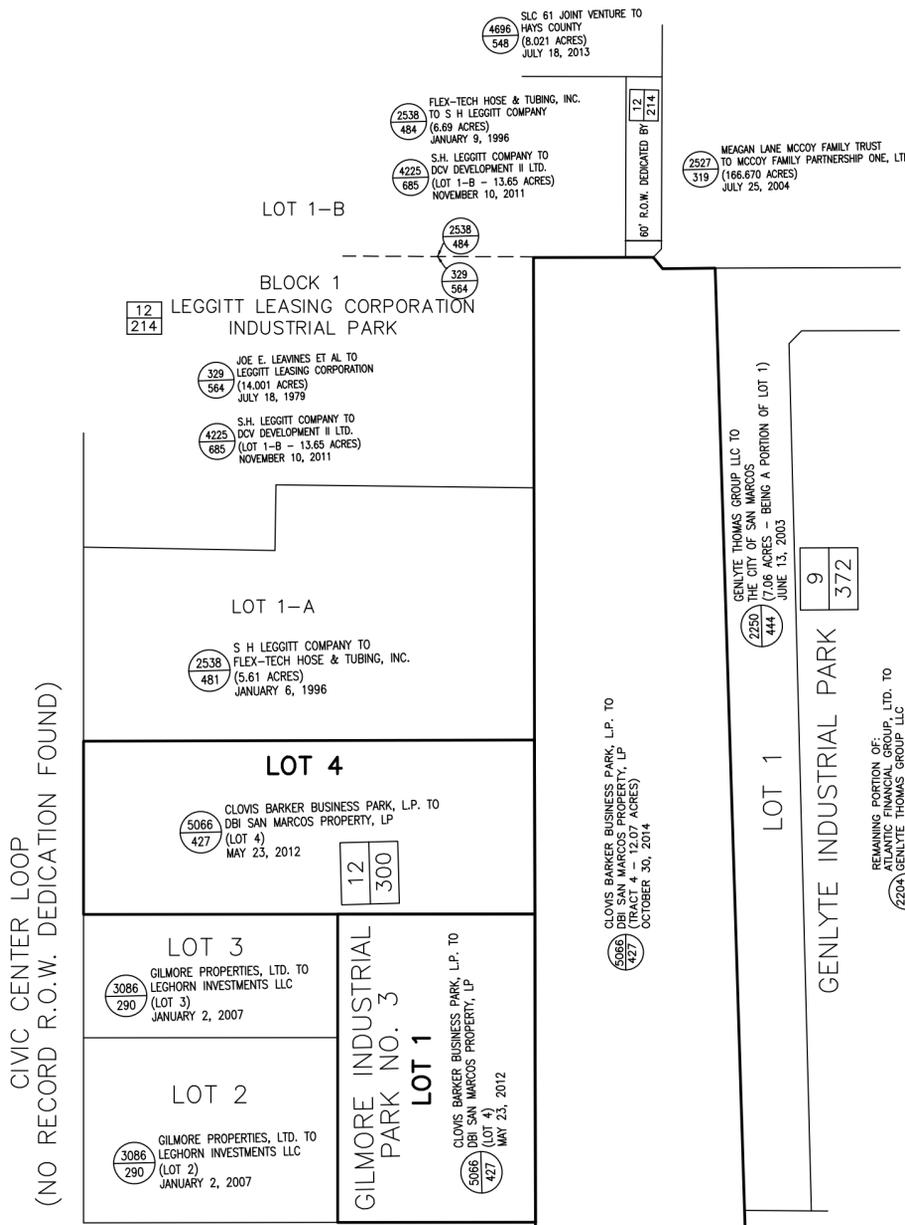
ENGINEERS SURVEYORS

P.O. BOX 1433 SAN MARCOS, TEXAS 78667
PHONE 512-396-2270 FAX 512-392-2945

SHEET 1 OF 2

CLIENT: BEARDEN MANAGEMENT
DATE: AUGUST 12, 2015
OFFICE: R. SCHULTE
CREW: C. SMITH, Z. HADEN, E. LOZANO
FB/PG: 744/01
PLAT NO. 26691-15-3-c

OWNER:
DBI SAN MARCOS PROPERTY, LP
10510 W. SAM HOUSTON PARKWAY SOUTH
HOUSTON, TEXAS 77099



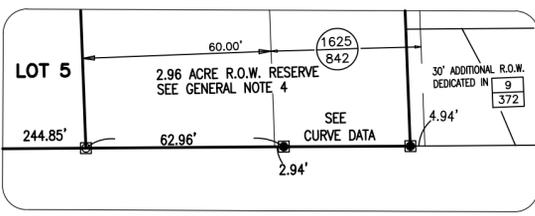
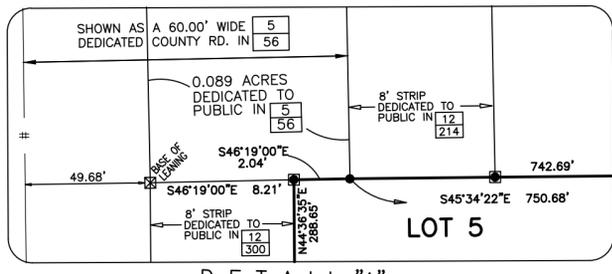
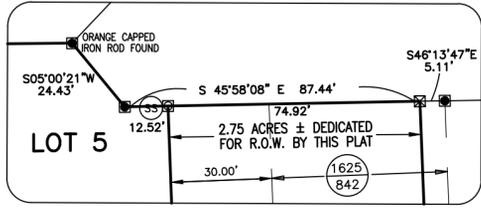
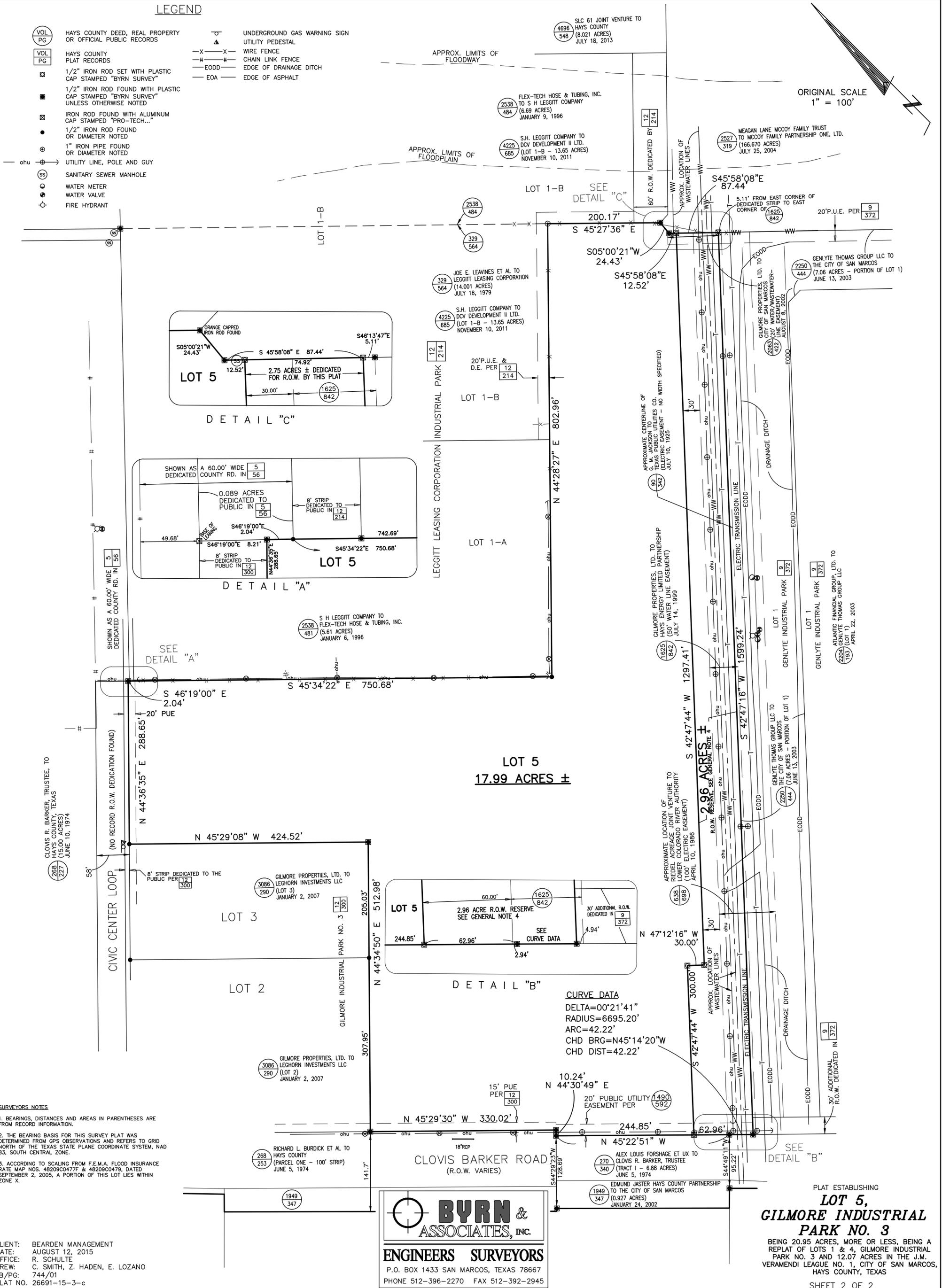
CLOVIS BARKER ROAD
(R.O.W. VARIES)

EXISTING TRACT CONFIGURATION

LEGEND

- VOL PG HAYS COUNTY DEED, REAL PROPERTY OR OFFICIAL PUBLIC RECORDS
- VOL PG HAYS COUNTY PLAT RECORDS
- 1/2" IRON ROD SET WITH PLASTIC CAP STAMPED "BYRN SURVEY"
- 1/2" IRON ROD FOUND WITH PLASTIC CAP STAMPED "BYRN SURVEY" UNLESS OTHERWISE NOTED
- IRON ROD FOUND WITH ALUMINUM CAP STAMPED "PRO-TECH..."
- 1/2" IRON ROD FOUND OR DIAMETER NOTED
- 1" IRON PIPE FOUND OR DIAMETER NOTED
- ohu UTILITY LINE, POLE AND GUY
- SS SANITARY SEWER MANHOLE
- W WATER METER
- V WATER VALVE
- FH FIRE HYDRANT
- UGWS UNDERGROUND GAS WARNING SIGN
- UP UTILITY PEDESTAL
- X-X- WIRE FENCE
- #-#- CHAIN LINK FENCE
- EODD- EDGE OF DRAINAGE DITCH
- EOA- EDGE OF ASPHALT

ORIGINAL SCALE
1" = 100'



SURVEYORS NOTES

- BEARINGS, DISTANCES AND AREAS IN PARENTHESES ARE FROM RECORD INFORMATION.
- THE BEARING BASIS FOR THIS SURVEY PLAT WAS DETERMINED FROM GPS OBSERVATIONS AND REFERS TO GRID NORTH OF THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE.
- ACCORDING TO SCALING FROM F.E.M.A. FLOOD INSURANCE RATE MAP NOS. 48209C0477F & 48209C0479, DATED SEPTEMBER 2, 2005, A PORTION OF THIS LOT LIES WITHIN ZONE X.

BYRN & ASSOCIATES, INC.

ENGINEERS SURVEYORS

P.O. BOX 1433 SAN MARCOS, TEXAS 78667
PHONE 512-396-2270 FAX 512-392-2945

PLAT ESTABLISHING
**LOT 5,
GILMORE INDUSTRIAL
PARK NO. 3**

BEING 20.95 ACRES, MORE OR LESS, BEING A REPLAT OF LOTS 1 & 4, GILMORE INDUSTRIAL PARK NO. 3 AND 12.07 ACRES IN THE J.M. VERAMENDI LEAGUE NO. 1, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS

SHEET 2 OF 2

City of San Marcos
SUBDIVISION PLAT APPLICATION

	<u>APPLICANT</u>	<u>PROPERTY OWNER</u>
Name	<u>DBI San Marcos Property, LP</u>	<u>DBI San Marcos Property, LP</u>
Mailing Address	<u>10510 W. San Houston Pkwy. So</u> <u>Houston, TX. 77099</u>	<u>10510 W. San Houston Pkwy, So.</u> <u>Houston, TX. 77099</u>
Daytime Phone	<u>281-568-4185</u>	<u>SAME</u>
Email Address	<u>KathyW@beardeninvestments.com</u>	

AGENT ACKNOWLEDGEMENT STATEMENT:

I DBI San Marcos Property, LP acknowledge that I am the rightful owner of the property proposed for subdivision and hereby authorize Byrn & Associates, Inc. to serve as my agent to file this application and to work with the Responsible Official on my behalf during the subdivision platting process.

DBI SAN MARCOS PROPERTY, LP
 BY: DBEARDEN INVESTMENTS-GP, LLC
 Signature of Property Owner: BY: William W. Hall

Printed Name: WILLIAM W. HALL, VP Date: 8/14/15

Signature of Agent: [Signature]

Printed Name: David C. Williams Date: 8-21-15

Subdivision Plats

- Subdivision Concept Plat
- Preliminary Subdivision Plat
- Final Subdivision Plat

- Variance
- Plat Vacation

Section _____
 Accompanying _____

Development Plats

- Preliminary Development Plat
- Final Development Plat

Minor Subdivision Plats (for Administrative Approval)

- Minor Subdivision Plat

Revisions to Recorded Plats (for Administrative Approval)

- Amending Plat
- Replat without Vacation

SUBJECT PROPERTY

Subdivision Name: Lot 5 Gilmore Industrial Park No. 3

Address or General Location: Clovis Barker Road

Proposed Number of Lots: 1 Acres: 20.95 acres

Appraisal District Tax ID: R.115991, R115987, R11930

Located In City Limits ETJ* - Please circle county: *Caldwell Comal Guadalupe Hays*
 S.M. River Corridor Planned Development District

Proposed Use of Land _____

**Subdivision plat applications for land in the ETJ may be subject to additional requirements and review as defined by the Interlocal Agreement for the respective county.*

SUBDIVISION IMPROVEMENT AGREEMENT

Whenever public improvements to serve the development are deferred until after Final Subdivision Plat or Final Development Plat approval, the property owner shall enter into a Subdivision Improvement Agreement by which the owner covenants to complete all required public improvements no later than two years following the date upon which the Final Subdivision Plat or Final Development Plat is approved.

- I will complete all required public improvements prior to the Final Subdivision Plat or Final Development Plat.
- I wish to defer installation of public improvements and will complete a Subdivision Improvement Agreement with the City.

Signature: 

Printed Name: _____ Date: _____

- Complete application
- Required fees \$ _____ (see next page for Fee Schedule)
- All legislative requirements complete
- Proof of record ownership (recorded deed corresponds to ownership indicated on tax certificate)
- Current tax certificate (must show prior year taxes paid by January 31st of current year)
- Names and addresses of property lien-holders
- One digital copy of submittal materials
- Five 18"x24" hard copies of plat document*

I hereby affirm that if I am not the property owner of record, or if the applicant is an organization or business entity, I have been authorized to represent the owner, organization, or business in this application. I certify the preceding information is complete and accurate, and it is understood that I or another representative should be present at all meetings concerning this application.

DBI SAN MARCOS PROPERTY, LP

By: DBAROEN INVESTMENTS - GP, LLC

Signature of Applicant: By: William W. Hall

Printed Name: WILLIAM W. HALL, VP

Date: 8/14/15

*Plats in the ETJ may require additional hard copies.

ADDITIONAL REQUIREMENTS:

Subdivision Concept Plats:

- Watershed Protection Plan (Phase 1)
- Residential compatibility site plan (where applicable)
- Cluster development plan (where applicable)

Preliminary Subdivision Plats or Preliminary Development Plats

- Approved Watershed Protection Plan Phase I (can be submitted concurrently)
- Traffic Impact Analysis Worksheet (if commercial development or 100+ unit residential)

Final Subdivision or Final Development Plats:

- Preliminary Plat (where applicable)
- Approved Watershed Protection Plan Phase II and approved Public Improvement Construction Plan by the Director of Engineering (can be submitted concurrently).
- Subdivision Improvement Agreement and surety if public facility construction was deferred.
- Traffic Impact Analysis Worksheet (if commercial development or 100+ unit residential)

Minor Subdivision Plats:

Minor subdivisions plats must meet the following qualifications:

- Proposed subdivision results in 4 or fewer lots
- All lots front onto an existing public street and construction or extension of a street or alley is not required or is considered a minor extension by Director of Engineering.
- Extension of municipal facilities is not required or the installation of utilities is considered a minor extension by the Director of Engineering.
- Approved WPP Phase II is required if land is located within the Edwards Aquifer Recharge Zone, within a designated stream or river corridor, or if the land contains floodplain, floodway or a waterway as defined by the LDC.

Amending Plats and Replats:

- Detailed description of the purposes and circumstances that warrant change of the recorded plat identifying all lots, easements or improvements affected by the proposed change.

FEE SCHEDULE

For Plats Located Inside/Outside of the City Limits

Subdivision Minor Plat / Amending Plat	\$400 plus \$100 per acre (max \$1000)
Concept Plan	\$750 plus \$50 acre (max \$2000)
Preliminary Plat	\$750 plus \$50 acre (max \$2000)
Final Plat	\$1000 plus \$100 acre (max \$2500)
Replat, not administrative	\$750 plus \$50 acre (max \$2000)
Vacation of Previously Recorded Plat	\$150
Subdivision Variance Request	\$600
Cluster Development Plan	\$25 per acre (\$100 min / \$1500 max)

STAFF USE ONLY:

Submittal Date: 8/21 5 Business Days from Submittal: 8/28

Completeness Review By: WP Date: 8/21

Contact Date for Supplemental Info: _____

Supplemental Info Received (required within 5 days of contact): _____

Application Returned to Applicant: _____

Application Accepted for Review: 8/21 Fee: \$1,807.50

Comments Due to Applicant: ~~9/8~~ 9/16

Date for Plat Resubmittals: 9/16 9/25

Date of Planning and Zoning Commission Meeting: 10/13/2015

Bilmore Industrial lots

WATER AND WASTEWATER UTILITY SERVICE ACKNOWLEDGEMENT:

Utility service codes are to be indicated, as applicable in the space provided in each acknowledgment listed below according to the following designations:

- A. Adequate service is currently available to the subject property
- B. Adequate service is not currently available, but arrangements have been made to provide it
- C. Adequate service is not currently available, and arrangements have not been made to provide it
- D. Need easement(s) within subject property

Name of Water Service Provider City of San Marcos

Applicable Utility Service Code(s) A

Comments/Conditions water located on Clovis Barker Rd.

Signature of Water Utility Official: Tony Selman

Title: Water Dist. Manager Date: Aug 19, 2015

Name of Wastewater Service Provider _____

Applicable Utility Service Code(s) _____

OR, the use of either 1) _____ a private wastewater treatment system, or 2) _____ septic tanks, is approved for all lots in the proposed subdivision which are not required to connect to the City of San Marcos wastewater system.

Comments/Conditions _____

Signature of City or County Wastewater Official: _____

Title: _____ Date _____

TELEPHONE UTILITY SERVICE ACKNOWLEDGEMENT:

Utility service codes are to be indicated, as applicable in the space provided in each acknowledgment listed below according to the following designations:

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- B. Adequate service is not currently available, but arrangements have been made to provide it
- C. Adequate service is not currently available, and arrangements have not been made to provide it
- D. Need easement(s) within subject property

Name of Telephone Service Provider _____

Applicable Utility Service Code(s) _____

Comments/Conditions _____

Signature of Telephone Company Official _____

Title: _____ Date _____

SUBMITTAL REQUIREMENTS FOR ALL PLATS:

WATER AND WASTEWATER UTILITY SERVICE ACKNOWLEDGEMENT:

Utility service codes are to be indicated, as applicable in the space provided in each acknowledgment listed below according to the following designations:

- A. Adequate service is currently available to the subject property
- B. Adequate service is not currently available, but arrangements have been made to provide it
- C. Adequate service is not currently available, and arrangements have not been made to provide it
- D. Need easement(s) within subject property

Name of Water Service Provider _____

Applicable Utility Service Code(s) _____

Comments/Conditions _____

Signature of Water Utility Official: _____

Title: _____ Date: _____

Name of Wastewater Service Provider City of San Marcos

Applicable Utility Service Code(s) A

OR, the use of either 1) _____ a private wastewater treatment system, or 2) _____ septic tanks, is approved for all lots in the proposed subdivision which are not required to connect to the City of San Marcos wastewater system.

Comments/Conditions Wastewater service(s) to be installed by developer

Signature of City or County Wastewater Official: Lloyd Juarez

Title: Wastewater Coll. mgr. Date 8-18-15

TELEPHONE UTILITY SERVICE ACKNOWLEDGEMENT:

Utility service codes are to be indicated, as applicable in the space provided in each acknowledgment listed below according to the following designations:

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- C. Adequate service is not currently available, and arrangements have not been made to provide it
- D. Need easement(s) within subject property

Name of Telephone Service Provider _____

Applicable Utility Service Code(s) _____

Comments/Conditions _____

Signature of Telephone Company Official _____

Title: _____ Date _____

SUBMITTAL REQUIREMENTS FOR ALL PLATS:

WATER AND WASTEWATER UTILITY SERVICE ACKNOWLEDGEMENT:

Utility service codes are to be indicated, as applicable in the space provided in each acknowledgment listed below according to the following designations:

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- B. Adequate service is not currently available, but arrangements have been made to provide it
- C. Adequate service is not currently available, and arrangements have not been made to provide it
- D. Need easement(s) within subject property

Name of Water Service Provider _____

Applicable Utility Service Code(s) _____

Comments/Conditions _____

Signature of Water Utility Official: _____

Title: _____ Date: _____

Name of Wastewater Service Provider _____

Applicable Utility Service Code(s) _____

OR, the use of either 1) _____ a private wastewater treatment system, or 2) _____ septic tanks, is approved for all lots in the proposed subdivision which are not required to connect to the City of San Marcos wastewater system.

Comments/Conditions _____

Signature of City or County Wastewater Official: _____

Title: _____ Date _____

TELEPHONE UTILITY SERVICE ACKNOWLEDGEMENT:

Utility service codes are to be indicated, as applicable in the space provided in each acknowledgment listed below according to the following designations:

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- B. Adequate service is not currently available, but arrangements have been made to provide it
- C. Adequate service is not currently available, and arrangements have not been made to provide it
- D. Need easement(s) within subject property

Name of Telephone Service Provider CenturyLink _____

Applicable Utility Service Code(s) A _____

Comments/Conditions _____

Signature of Telephone Company Official Adam Monsen _____

Title: Engineer _____ Date 08-20-2015 _____

SUBMITTAL REQUIREMENTS FOR ALL PLATS:

ELECTRIC UTILITY SERVICE ACKNOWLEDGEMENT:

Utility service codes are to be indicated, as applicable in the space provided in each acknowledgment listed below according to the following designations:

- A. Adequate service is currently available to the subject property
- B. Adequate service is not currently available, but arrangements have been made to provide it
- C. Adequate service is not currently available, and arrangements have not been made to provide it
- D. Need easement(s) within subject property

Name of Electric Service Provider SAN MARCOS ELECTRIC UTILITY

Applicable Utility Service Code(s) C

Comments/Conditions _____

Signature of Electric Company Official Alexis Anderson

Title ELEC. ENGINEERING TECH

Date 8/12/15

GAS UTILITY SERVICE ACKNOWLEDGEMENT:

Utility service codes are to be indicated, as applicable in the space provided in each acknowledgment listed below according to the following designations:

- A. Adequate service is currently available to the subject property
- B. Adequate service is not currently available, but arrangements have been made to provide it
- C. Adequate service is not currently available, and arrangements have not been made to provide it
- D. Need easement(s) within subject property

Name of Gas Service Provider _____

Applicable Utility Service Code(s) _____

Comments/Conditions _____

Signature of Gas Company Official _____

Title _____

Date _____

ELECTRIC UTILITY SERVICE ACKNOWLEDGEMENT:

Utility service codes are to be indicated, as applicable in the space provided in each acknowledgment listed below according to the following designations:

- A. Adequate service is currently available to the subject property
- B. Adequate service is not currently available, but arrangements have been made to provide it
- C. Adequate service is not currently available, and arrangements have not been made to provide it
- D. Need easement(s) within subject property

Name of *Electric Service Provider* _____

Applicable Utility Service Code(s) _____

Comments/Conditions _____

Signature of Electric Company Official _____

Title _____ Date _____

GAS UTILITY SERVICE ACKNOWLEDGEMENT:

Utility service codes are to be indicated, as applicable in the space provided in each acknowledgment listed below according to the following designations:

- A. Adequate service is currently available to the subject property
- B. Adequate service is not currently available, but arrangements have been made to provide it
- C. Adequate service is not currently available, and arrangements have not been made to provide it
- D. Need easement(s) within subject property

Name of *Gas Service Provider* _____ CenterPoint Energy _____

Applicable Utility Service Code(s) _____ A _____

Comments/Conditions _____

Signature of Gas Company Official _____ *Nancy Jenschke* _____

Title _____ Operations Supervisor _____ Date _____ 8/13/2015 _____



Legislation Text

File #: PDD-16-02, **Version:** 1

AGENDA CAPTION:

PDD-16-02 (Holt Tract) Hold a public hearing and consider a request by Alan Holt for a Planned Development District located at the intersection of IH-35 and East River Ridge Parkway. (W. Parrish)

Meeting date: June 14, 2016

Department: Planning and Development Services

Funds Required: NA

Account Number: NA

Funds Available: NA

Account Name: NA

CITY COUNCIL GOAL: Community Wellness / Strengthen the Middle Class

COMPREHENSIVE PLAN ELEMENT(s): Economic Development: Goal 3, Goal 4. Land Use: Goal 1, Goal 3

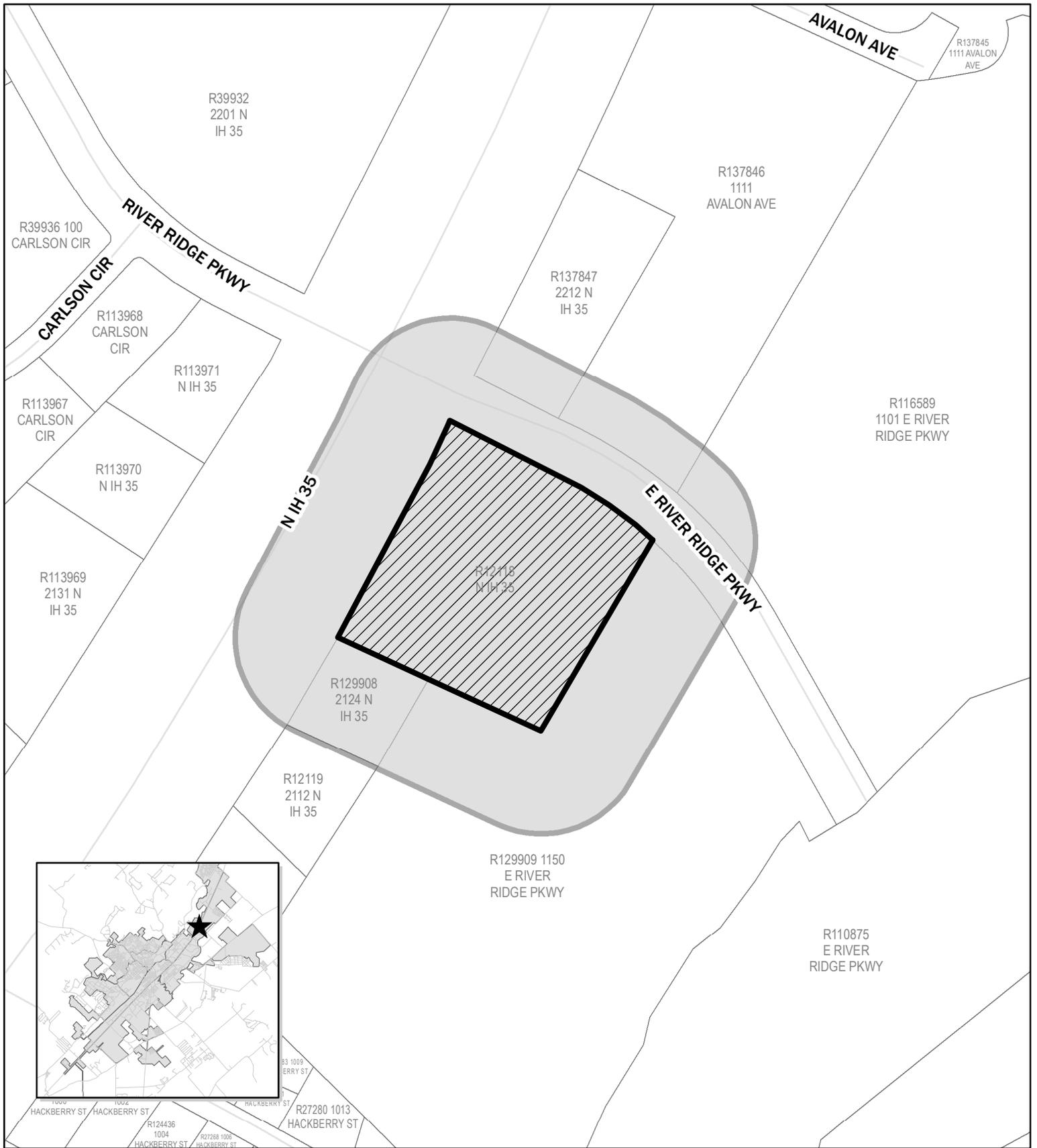
BACKGROUND:

The subject site consists of approximately 4.78 acres, more or less, out of the J.M. Veramendi Survey. The property is located on the Southeast corner of IH-35 and East River Ridge Pkwy, across IH-35 from Carlson Circle.

At the May 3, 2016 meeting, City Council approved a Preferred Scenario Amendment (PSA) which resulted in this tract being identified as an Employment Center on the Preferred Scenario Map. City Council stated that as part of the approval they wanted the applicant to bring back a Planned Development District (PDD) zoning application rather than a basic General Commercial (GC) zoning application due to concerns over the potential of development on this property having a negative effect on neighboring properties in the event of a flood. Specifically, Council wanted to see a reduction in the allowable impervious cover from 80% to 50%.

Additionally, staff has added language specific to development in the 100-year floodplain that reflects proposed changes to the Land Development Code.

Staff provides this request to the Commission with a recommendation of **approval** as submitted.



PDD-16-02
Holt Employment Center
2100 Block N IH 35
Map Date: 5/26/2016

 Site Location
 Buffer



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.

Uses Allowed Within the General Commercial Zoning District

Use	Permitted	Conditional
Farmers Market		X
Accessory Building/Structure	X	
Accessory Dwelling		X
Bed and Breakfast Inn	X	
Caretaker/Guards Residence	X	
Loft Apartments		X
Armed Services Recruitment Center	X	
Bank/Savings and Loan	X	
Check Cashing Service	X	
Office (Medical Office)	X	
Office (Health Services)	X	
Office (Professional)	X	
Call Service Center	X	
Appliance Repair	X	
Artist Studio	X	
Ambulance Service (Private)	X	
Automobile Driving School	X	
ATM Machine	X	
Barber/Beauty College	X	
Barber/Beauty Shop	X	
Bed and Breakfast (No Permanent Residence)	X	
Communication Equipment	X	
Dance/Drama/Music schools	X	
Extended Stay Hotels	X	
Exterminator Service	X	
Funeral Home	X	
Hotel/Motel	X	
Kiosk (providing a retail service)	X	
Laundry/Dry Cleaning	X	
Martial Arts School	X	
Medical Supplies and Equipment	X	
Mini-Storage/Warehouse		X
Off Premise Free Standing Sign	X	
Photocopying/Copy Shop	X	
Studio for Radio or Television (without tower)	X	
Tool Rental (indoor storage only)	X	
Tool Rental (with outdoor storage)		X
Washeteria/Laundry (Self-Serve)	X	

Uses Allowed Within the General Commercial Zoning District

All Terrain Vehicle (go carts) Dealer/Sales	X	
Antique Shop	X	
Auto Dealer (Primarily New)	X	
Auto Dealer, Used	X	
Auto Supply Store	X	
Bike Sales and Repair	X	
Building Material Sales	X	
Cabinet Shop (Manufacturing)	X	
Convenience Store (no gas)	X	
Convenience Store (gas)	X	
Department Store	X	
Food or Grocery Store with Gas	X	
Food or Grocery Store without Gas	X	
Gravestone Sales		X
Gun Smith		X
Home Improvement Center (10,000 s.f. or more)	X	
Lawnmower Sales and/or Repair	X	
Liquor Sales (retail)	X	
Market (Public, Flea)		X
Pharmacy	X	
Plant Nursery	X	
Recycling Kiosk	X	
Restaurant/Prepared Food Sales	X	
Restaurant/Prepared Food Sales with beer/wine off-premise consumption		X
Restaurant/Prepared Food Sales with Drive-Thru	X	
Retail Store with Drive Thru	X	
Retail Store without Drive Thru (under 100,000 s.f.)	X	
Retail Store (100,000 s.f. or more)	X	
Retail Store (100,000 s.f. or more) with outside sales	X	
Retail Store (under 10,000 s.f.) Outside Sales	X	
Retail Store (under 10,000 s.f.) no Outside Sales	X	
Security System Instillation Company	X	
Shopping Center (Over 5 acres)	X	
Studio Tattoo or Body Piercing	X	

Uses Allowed Within the General Commercial Zoning District

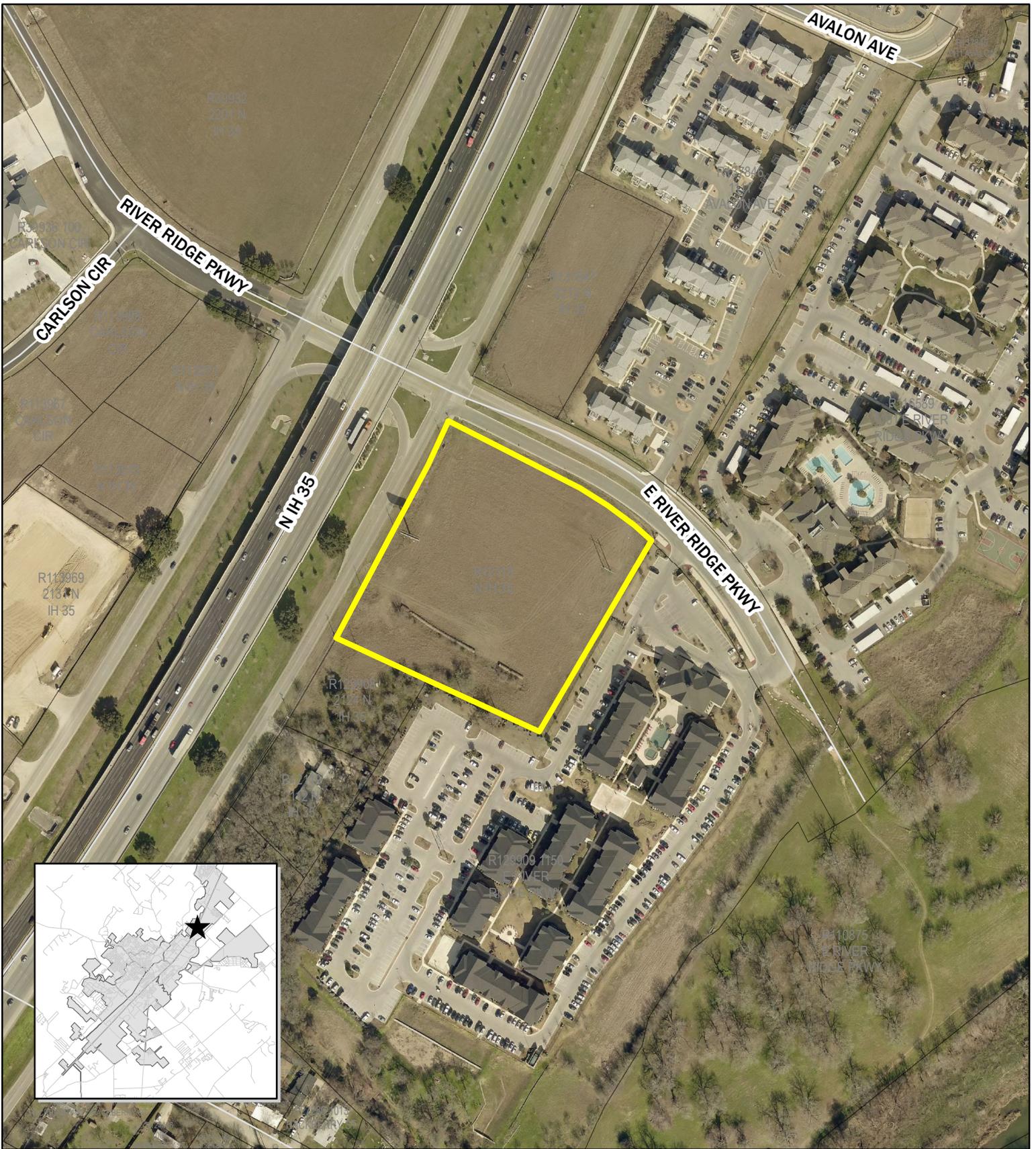
Temporary Outdoor Retail Sales (4 day limit)	X	
Upholstery Shop (non-auto)	X	
Veterinarian (Indoor Kennel)	X	
Woodworking Shop (Ornamental)	X	
General Vehicular Sales and Service	X	
Auto Body Repair		X
Auto Muffler	X	
Auto Paint Shop		X
Auto Repair (General)	X	
Auto Repair as an Accessory Use to Retail Sales	X	
Auto Tire Repair/Sales (Indoor)	X	
Car Wash (Self-Service; Automated)	X	
Full Service Car Wash	X	
Limousine/Taxi Service	X	
Public Garage/Parking Structure		X
Tire Sales (Outdoor/Storage)	X	
Transit Terminal		X
Truck Terminal		X
Amusement Services or Venue (Indoors)	X	
Amusement Services or Venue (Outdoors)	X	
Bar		X
Billiard/Pool Facility/Nightclub (three or more tables) No alcohol consumption	X	
Smoking Lounge	X	
Charitable Gaming Facility		X
Civic/Conference Center	X	
Country Club (Private)		X
Dance Hall/Dancing Facility	X	
Day Camp	X	
Driving Range	X	
Health Club (Physical Fitness; Indoors Only)	X	
Motion Picture Studio, Commercial Film	X	
Motion Picture Theater (Indoors)	X	
On-Premises Consumption of Alcohol		X

Uses Allowed Within the General Commercial Zoning District

Park and/or Playground	X	
Travel Trailers/RVs (Short Term Stays)	X	
RV/Travel Trailer Sales	X	
Tennis Court (lighted)		X
Theater (Non-Motion Picture)	X	
Adult Day Care (No Overnight Stay)	X	
Antenna (Non-Commercial)	X	
Antenna Commercial	X	
Assisted Living Facility/Hospice	X	
Museum (Indoors Only)	X	
Cellular Communications Tower	X	
Child Day Care (Business)	X	
Meeting Place/Nonreligious	X	
Place of Religious Assembly/Church	X	
Clinic (Medical)	X	
Electric Substation		X
Emergency Care Clinic	X	
Fraternal Organization/ Civic Club	X	
Governmental Building or Use	X	
Heliport		X
Hospital (Acute Care/Chronic Care)	X	
Nursing/Convalescent Home	X	
Philanthropic Organization	X	
Post Office (Private)	X	
Post Office (Governmental)	X	
Rectory/Parsonage with Place of Worship	X	
Retirement Home/Home for the Aged	X	
School, K through 12 (Private)	X	
School, K through 12 (Public)	X	
School, Vocational (Business/Trade)	X	
Auction Sales (non-vehicle)	X	
Caterer		X
Extermination Services	X	
Feed and Grain Store	X	
Maintenance/Janitorial Service	X	
Metal Fabrication Shop		X
Moving Storage Company		X
Portable Building Sales	X	

Uses Allowed Within the General Commercial Zoning District

Taxidermist	X	
Warehouse/Office and Storage		X
Electronic Assembly/High Tech Manufacturing	X	
Micro Brewery (onsite mfg. and sales)		X
Outside Storage (as a primary use)		X
Research Lab (non-hazardous)		X



PDD-16-02
Holt Employment Center
2100 Block N IH 35
Map Date: 5/26/2016

 Site Location



0 200 400 800
 Feet

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Zoning Change PDD-16-02 IH-35 and East River Ridge Parkway



Summary: Armbruster Holt LTD., is requesting a zoning change from “FD” Future Development to “PDD” Planned Development District with a base zoning classification of “GC”, General Commercial, on 4.78 +/- acres of the Juan Veramendi Survey No. 2. Abstract No. 17.

**Applicant/
Property Owner:** Armbruster Holt LTD.
P.O. Box 2183
Manchaca TX, 78652

Notification: Personal notification mailed on June 3, 2016

Response: None at the time of this staff report.

Property/Area Profile:

Legal Description: A tract of land containing 4.78 acres out of the J.M. Veramendi Survey No. 2, Abstract No. 17, situated in the City of San Marcos, Hays County, Texas.

Location: The Southeast corner of the intersection of IH-35 and East River Ridge Parkway.

Existing Use of Property: Vacant.

Proposed Use of Property: Commercial.

Intensity: The property is located within an Employment District.

Existing Zoning: “FD”, Future Development

Historic District: None

Proposed Zoning: “PDD” – Planned Development District; “GC” General Commercial base Zoning.

Utility Capacity: Adequate.

Area Zoning & Land Use:

	Zoning	Existing Land Use
N of Property	GC & MF-18	Vacant & Multifamily
S of Property	FD & MF-18	Vacant & Multifamily
E of Property	MF-18 & PDD	Multifamily
W of Property	GC	IH-35 and Carlson Circle

Case Summary

The subject site consists of approximately 4.78 acres, more or less, out of the J.M. Veramendi Survey. The property is located on the Southeast corner of IH-35 and East River Ridge Pkwy, across IH-35 from Carlson Circle.

This site was previously identified as an Area of Stability on the Preferred Scenario Map. However, a Preferred Scenario Amendment (PSA) was approved at the May 3, 2016 City Council meeting which resulted in this tract being identified as an Employment Center. City Council stated that as part of their approval they wanted the applicant to bring back a Planned Development District (PDD) zoning application rather than a basic GC zoning application due to their concerns over the potential of development on this property having a negative effect on neighboring properties in the event of a flood.

Currently the site consists of vacant land and is zoned Future Development (FD). Surrounding land uses include vacant land, and multifamily apartments.

Prior to the 2005 City wide rezoning that was done in conjunction with the adoption of the current Land Development Code, this property was part of a larger tract of land which was zoned Commercial (C), the standard commercial zoning under the previous code. However, during the City wide rezone, the property was rezoned to Future Development. The majority of the other portions of this property that had been rezoned under the City wide rezoning from C to FD have since been rezoned from FD to General Commercial (GC) or Multifamily 18 (MF-18). It is unclear to current City staff what the rationale was behind the 2005 rezoning from C to FD.

Additionally, it should be noted that this property is subject to two deed restrictions. The first restricts the property owner from developing Multifamily until 2058, and the second prohibits the owner from developing a hotel until 2024. Copies of these deed restrictions are attached.

Planning Department Analysis

The proposed PDD was reviewed according to Section 4.2.6 "Planned Development Districts" within the City of San Marcos Land Development Code (LDC). More specifically, Section 4.2.6.1 states:

"The purpose of an overlay planned development zoning district ("PD District") is to provide for the development of land as an integral unit for single or mixed use in accordance with a PD Concept Plan that may include uses, regulations and other requirements that vary from the provisions of other zoning districts. PD districts are intended to implement generally the goals and objectives of the City's Comprehensive Plan. PD districts are also intended to encourage flexible and creative planning, to ensure the compatibility of land uses, to allow for the adjustment of changing demands to meet the current needs of the community, and to result in a higher quality development for the community than would result from the use of conventional zoning districts."

LAND USE:

Consistent with the above stated purpose, the proposed PDD plans for commercial uses along IH-35, while taking into consideration environmental factors related to its location within the 100-year floodplain.

MODIFICATIONS AND ENHANCEMENTS

Also consistent with the purpose of the PDD, there are modifications to several development standards, as well as enhancements and amenities that are intended to yield higher quality development. These modifications and enhancements are summarized as follows:

- **FLOODPLAIN/ENVIRONMENTAL:**

This PDD includes language that the Department of CIP and Engineering will be recommending to add to the existing Land Development Code in August of 2016. These requirements will increase the ability to ensure that appropriate steps are taken in the site development process to mitigate the effects of developing in the 100-year floodplain.

- **IMPERVIOUS COVER:**

This PDD restricts the allowable impervious cover to 50% of the site, as opposed to 80% which is traditionally allowed within GC zoning districts. This reduction in impervious cover will help reduce the negative impacts of heavy rain and flood events.

- **SIDEWALKS:**

This PDD requires that when this site is developed, the existing 10 foot sidewalk or “shared use path” that extends from Blanco Shoals Park to the edge of this property along East River Ridge Parkway will be extended along East River Ridge to the intersection with IH-35. Additionally, the standard street trees normally required will be placed between the sidewalk and the curb in order to provide shade and protection to pedestrians and cyclists.

- **EXTERIOR BUILDING MATERIALS:**

While this PDD does not require an increase in standards regarding exterior building materials at this time, it does state that at the time the City of San Marcos adopts increased building material standards the newly adopted standards shall apply. This prevents this property from having a “grandfathered” status in regard to exterior building materials.

CONFORMANCE WITH COMPREHENSIVE PLAN ELEMENTS

Planning staff also reviewed the proposed PDD with the City’s Comprehensive Plan, *Vision San Marcos*. Staff finds that the draft submittal for the proposed PDD conforms to the Comprehensive Plan Elements and the following Comprehensive Plan Element “Goals.”

Economic Development:

- *Goal 3: Emerging markets and industry relationships that generate quality entrepreneurial and employment opportunities.*
- *Goal 4: An enhanced and diverse local economic environment that is prosperous, efficient and provides improved opportunities to residents.*

Land Use:

- *Goal 1: Direct growth compatible with surrounding uses.*
- *Goal 3: Set appropriate density and impervious cover limitations in the environmentally sensitive areas to avoid adverse impacts on the water supply.*

CONFORMANCE WITH PREFERRED SCENARIO MAP

Planning staff also reviewed the proposed PDD with the City’s Future Land Use Plan, better known as the “Preferred Scenario.” The proposed PDD project site is located within an *Employment Center* which maintains a focus on commercial and industrial uses.

The base zoning classification of “GC” General Commercial District requested in this PDD, is a permitted zoning district within an Employment Center. However, due to the properties location within the 100-year floodplain the applicant applied for a PDD to allow for more in depth review of proposed site plans and mitigation techniques at the time of development. It is staff’s opinion that this requested Planned Development District meets the intent of the Comprehensive Plan and the Preferred Scenario.

Evaluation		Neutral	Criteria (LDC 1.5.1.5)
Consistent	Inconsistent		
X			Change implements the policies of the adopted Master Plan, including the land use classification on the Future Land Use Map and any incorporated sector plan maps. <i>Yes, as previously discussed.</i>
		X	Consistency with any development agreement in effect <i>No development agreements are in effect for this property.</i>
X			Whether the uses permitted by the proposed change and the standards applicable to such uses will be appropriate in the immediate area of the land to be reclassified <i>The proposed PDD and underlying zoning would be meet the intent of the Comprehensive Plan and Preferred Scenario.</i>
		X	Whether the proposed change is in accord with any existing or proposed plans for providing public schools, streets, water supply, sanitary sewers, and other public services and utilities to the area <i>The proposed PDD will not have an effect on public services.</i>
		X	Other factors which substantially affect the public health, safety, morals, or general welfare <i>None noted.</i>

Additionally, the Commission should consider:

(1) Is the property suitable for use as presently zoned?

Staff evaluation: The property is currently zoned "FD" Future Development. Future Development is a place holder zoning classification that allows very little other than a single family house or agricultural uses. Due to this property's location at a hard corner of IH-35 and East River Ridge, this property more suitable for commercial uses than a single family dwelling or agricultural use.

(2) Has there been a substantial change of conditions in the neighborhood surrounding the subject property?

Staff evaluation: During the 2015 Memorial Day Flood this property and the surrounding properties were impacted by the flood. It is due to concerns of the impact that development on this property may have that Staff added enhanced development requirements to the PDD.

(3) Will the proposed rezoning address a substantial unmet public need?

Staff evaluation: There are several apartment complexes adjacent to this property that would benefit from many of the retail uses allowed within the GC district. However the applicant is not proposing to develop the property himself, or limit the allowable uses with GC, so staff cannot state at this time what specific GC use or uses will be developed at this location.

(4) Will the proposed rezoning confer a special benefit on the landowner/developer and cause a substantial detriment to the surrounding lands?

Staff evaluation: Rezoning will not confer a special benefit to the landowner/developer, and Staff feels that the enhanced development standards regarding development in the 100-year floodplain will mitigate potential detriment to surrounding properties.

(5) Will the proposed rezoning serve a substantial public purpose?

Staff evaluation: A goal of the Comprehensive Plan is to support "An enhanced and diverse local economic environment that is prosperous, efficient and provides improved opportunities to residents." This property is adjacent to three apartment complexes that are relatively isolated from commercial properties. Approval of this PDD would provide additional opportunities for commercial properties located adjacent to these residents. Additionally, another goal of the Comprehensive Plan is to "Direct growth compatible with surrounding uses." This property is located on a hard corner at IH-35, a location which is compatible with many of the uses allowed within the General Commercial district.

Staff provides this request to the Commission with a recommendation of approval as submitted.

Planning Department Recommendation:	
<input checked="" type="checkbox"/>	Approve as submitted
<input type="checkbox"/>	Approve with conditions or revisions as noted
<input type="checkbox"/>	Alternative
<input type="checkbox"/>	Denial

The Commission's Responsibility:

To hold a discussion regarding the proposed zoning change. When the item is placed on the agenda for consideration, the Commission is required by law to hold a public hearing and receive public comment regarding the proposed zoning. After considering the public input, the Commission is charged with making a recommendation to the City Council regarding the request. The City Council will ultimately decide whether to approve or deny the zoning change request. The Commission's recommendation to the Council is a discretionary decision.

Prepared by:

William Parrish, CNU

Planning Technician

May 29, 2016

Name

Title

Date

PDD-16-02 Zone Change Review (By Comp Plan Element)

LAND USE – Preferred Scenario Map / Land Use Intensity Matrix

	YES	NO (map amendment required)
Does the request meet the intent of the Preferred Scenario Map and the Land Use Intensity Matrix?	X	

Economic Development (ED)

The ED chapter of *Vision San Marcos* looks specifically at the strategies of the Core 4 Collaboration moving forward. The three collaborative actions identified by the Core 4 are 1) Preparing the 21st Century Workforce, 2) Competitive Infrastructure and Entrepreneurial Regulation and 3) Creating the Community of Choice. Staff analyzed this request based on the three action items to determine if the request supports, contradicts or is neutral toward the actions and provides the following table of the analysis:

ECONOMIC DEVELOPMENT – Furthering the goal of the Core 4 through the three strategies

STRATEGY	SUMMARY	Supports	Contradicts	Neutral
Preparing the 21 st Century Workforce	Provides / Encourages educational opportunities			Applicant has not indicated that educational facilities will be included
Competitive Infrastructure & Entrepreneurial Regulation	Provides / Encourages land, utilities and infrastructure for business	Applicant indicates that proposed project will provide opportunities for jobs and services.		
The Community of Choice	Provides / Encourages safe & stable neighborhoods, quality schools, fair wage jobs, community amenities, distinctive identity	Applicant indicates that proposed project will provide opportunities for jobs and services.		

Environment & Resource Protection (ERP)

The ERP chapter of *Vision San Marcos* provides useful analysis tools. The Land Use Suitability Map considers the constraints as listed in the table below in its creation to determine what areas are most suitable for development. The water quality model provides a watershed-level analysis of the impacts of adding impervious cover for developments.

The overall land use suitability for this site is a three (3), which is considered moderately constrained. This is largely due to the fact that the lot is wholly within the 100 year flood plain, which is considered a four (4) on the constraint scale, the second most constrained. Additionally, it is located within the Blanco River Watershed, which is designated as a three (3) in terms of constraint (moderate). For all other environmental indicators this site ranks a one (1), which indicates the lowest level of constraint. The table below indicates the scores for this site for each of the variables used in creating the Land Use Suitability Map and the results of the water quality model. Please refer to the attached Land Use Suitability and Environmental Features maps for further clarification.

ENVIRONMENT & RESOURCE PROTECTION – Land Use Suitability & Development Constraints

	1 (least)	2	3 (moderate)	4	5 (most)
Level of Overall Constraint			X		
Constraint by Class					
Cultural	X				
Edwards Aquifer	X				
Endangered Species	X				
Floodplains				X	
Geological	X				
Slope	X				
Soils	X				
Vegetation	X				
Watersheds			X		
Water Quality Zone	X				

ENVIRONMENT & RESOURCE PROTECTION – Water Quality Model Results

Located in Subwatershed:	Blanco River Watershed				
	0-25%	25-50%	50-75%	75-100%	100%+
Modeled Impervious Cover Increase Anticipated for watershed			X		
Notes: The subwatershed will experience a higher amount of impervious cover with the Preferred Scenario. Due to the intermittent nature of the river, the increases in TSS and bacteria would generally occur during storm events. Implementing various best management practices specific to this site to filter run off could reduce potential increases in TSS and bacteria loading.					

Land Use (LU)

The LU chapter of *Vision San Marcos* focuses on the Preferred Scenario Map. This site is located in an Area of Stability. A map is attached which shows a detailed view of the preferred scenario zones within and surrounding this property.

Neighborhoods & Housing (NH)

The NH chapter of *Vision San Marcos* focuses on the Neighborhood Character Studies which are currently being conducted alongside the Code SMTX project, the update to the Land Development Code. The site is not located within a neighborhood but is located in the Northern Neighborhood Character Study Area. The Neighborhood Character Study process would allow citizens the opportunity to tell staff what they would like to see developed in this area. The Neighborhood Character Plans do not currently exist and will be drafted after the adoption of Code SMTX.

Parks, Public Spaces & Facilities (PPSF)

The PPSF chapter of *Vision San Marcos* discusses the City’s recreational facilities as well as the water, wastewater and other public infrastructure. The table below is an analysis of the facilities in the area. Wastewater and water service is available in the area and both are indicated as low maintenance areas. In addition, Blanco Shoals Park is located within ¼ mile of the property.

PARKS, PUBLIC SPACES AND FACILITIES –Availability of parks and infrastructure

		YES	NO
Will Parks and / or Open Space be Provided?			X
Will Trails and / or Green Space Connections be Provided?			X
Parkland dedication is only required when developing residential properties.			
Maintenance / Repair Density	Low (maintenance)	Medium	High (maintenance)
Wastewater Infrastructure	X		
Water Infrastructure	X		
Public Facility Availability			
		YES	NO
Parks / Open Space within ¼ mile (walking distance)? Blanco Shoals Park		X	
Wastewater service available?		X	
Water service available?		X	

Transportation

A Travel Demand Model (TDM) was created to analyze the traffic impacts of growth in San Marcos. The table below is a summary of the TDM results and other transportation modes surrounding the site. The TDM analyzes the overall transportation network of the existing network and the Preferred Scenario. It is not a measure of the impact of this particular change. The results of the TDM indicate that improvements may be required. However, the TDM was created before the completion of the recent Texas Department of Transportation (TXDOT) improvements to Hunter Road. A Traffic Impact Analysis (TIA) would describe any improvements needed in more detail.

TRANSPORTATION – Level of Service (LOS), Access to sidewalks, bicycle lanes and public transportation

	A	B	C	D	F
Existing Daily LOS North bound IH-35 Frontage East River Ridge Parkway	X X				
Existing Peak LOS North bound IH-35 Frontage East River Ridge Parkway	X X				
Preferred Scenario Daily LOS North bound IH-35 Frontage East River Ridge Parkway	X				X
Preferred Scenario Peak LOS North bound IH-35 Frontage East River Ridge Parkway		X			X
The current Travel Demand Model shows that the North bound IH 35 Frontage Road deteriorates from a LOS A (Existing Daily and Existing Peak) to a LOS F (Future Daily and Future Peak). Additionally, the Preferred Scenario shows that East River Ridge Parkway deteriorates from a LOS A (Existing Peak) to a LOS B (Future Peak) with the Existing Daily and Future Daily remaining a LOS A.					
		N/A	Good	Fair	Poor
Sidewalk Availability (Required to build.)	X				
Sidewalks will be required to be built along both IH 35 and East River Ridge Parkway					
	YES			NO	
Adjacent to existing bicycle lane?				X	
Adjacent to existing public transportation route?				X	
Notes: The site is not close to a CARTS route, however there is a Texas State University bus route that travels past this site. Existing sidewalks on East River Ridge are 10 feet wide and can be used as a shared use path for Bicycles and pedestrians, however it is not currently designated as such.					

PLANNED DEVELOPMENT DISTRICT STANDARDS FOR THE HOLT TRACT PLANNED DEVELOPMENT DISTRICT

1. Planned Development District (“PDD”) Standards.

The following uses, regulations and requirements that vary from the requirements of other zoning districts and overlay the base zoning district shall apply to the property and the project in order to result in a higher quality development for the community. Except and unless expressly varied by these PDD Standards, the property and the project shall be subject to all applicable requirements of the City of San Marcos ordinances, zoning regulations, and Land Development Code as the “City codes and development standards” as defined in the definitions herein.

2. Introduction:

This property is located at the intersection of IH-35 and East River Ridge Parkway, between IH-35 and the Blanco River. Adjacent to this property are several student oriented apartment projects and a hotel. At the time of this PDD, there is only one commercial property on East River Ridge Parkway, which is being developed as a hotel.

The site is comprised of 4.78 acres out of the Juan Veramendi Survey and is located entirely within the 100-year floodplain of the Blanco River.

3. Zoning and Uses:

The base zoning district will be General Commercial “GC.” All uses permitted within the General Commercial zoning district will be allowed on this property.

4. Site Development Guidelines:

a. Sidewalks

Sidewalks shall be constructed at the time of development in accordance with all applicable City codes and development standards.

1. The sidewalk located along East River Ridge will be 10 feet in width to match the width of the existing sidewalk in front of the apartment complex adjacent to this property on East River Ridge. There shall be a minimum 6 foot wide landscape strip between the sidewalk and the back of curb along East River Ridge. All required street trees along East River Ridge shall be located in this landscape strip.
2. In order to allow for a smooth transition, in any case that the distance between the sidewalk and the curb must be adjusted, the sidewalk will extend 15 feet in length for every 1 foot change in distance from the sidewalk to the curb.

b. Access

TxDOT is proposing to build an IH-35 exit ramp adjacent to this property. Any access off of IH-35 must meet the TxDOT standards for distance from an exit ramp. Any access from East River Ridge Parkway shall comply with all applicable City codes and development standards as determined by the responsible official.

c. Floodplain/Environmental:

1. At the time an application is made for either Watershed Protection Plan or Comprehensive Site Plan the applicant will provide a drainage analysis of any proposed development contained within the 1% chance floodplain (current or advisory.) The analysis will include either a 1D or 2D analysis, as determined by the Director of Engineering, using the most current version of the Blanco River Flood Model.
2. The proposed development will show no increase in the water surface elevation unless it is contained within a drainage easement or right-of-way or within property owned by the applicant.
3. The increase in discharge due to loss of storage within the floodplain shall be accounted for in all reclamation.
4. The lowest floor of any building or enclosed space will be at or above one and one half feet from the one percent annual chance flood as projected in the most current version of the Blanco River Flood Model.

f. Impervious Cover

This site is limited to a total of 50% impervious cover, a reduction from the 80% allowed under GC in the current code of ordinances. In any case that a public sidewalk adjacent to either East River Ridge Drive or the IH-35 Frontage Road encroaches onto private property, it shall not be calculated towards the maximum 50% impervious cover allowed on the site.

g. Storm Water Quality Control:

This site shall meet all applicable development standards related to storm water quality as determined by the responsible official.

h. Landscaping:

This site shall meet all applicable development standards related to landscaping as determined by the responsible official. Plants listed as locally invasive (see attached) are prohibited.

5. Exterior Building Materials:

Exterior building materials shall comply with all applicable City codes and development standards as determined by the responsible official. However, at the time the City revises city code to adopt a higher building standard requirement, such standards shall supersede the Building Material and Masonry requirements within this PDD.

Definitions:

“City” shall mean the City of San Marcos, Texas.

“City codes and development standards” shall mean the regulations that have been adopted by the City of San Marcos, TX at the time this PDD is approved.

“Responsible Official” shall mean the director of the City department who has been designated to accept and review the relevant Development Application.

**FIELD NOTE DESCRIPTION
OF A
4.768 ACRE TRACT OF LAND
OUT OF THE
J.M. VERAMENDI SURVEY NO. 2, ABSTRACT NO. 17,
SITUATED IN
THE CITY OF SAN MARCOS, HAYS COUNTY, TEXAS**

BEING A 4.768 ACRE (207,681 SQUARE FOOT) TRACT OF LAND SITUATED IN THE J.M. VERAMENDI SURVEY NO. 2, ABSTRACT NO. 17, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS; BEING A PORTION OF THAT TRACT DESCRIBED AS "UNSOLD PORTIONS OF 189.6 ACRES" IN A SPECIAL WARRANTY DEED TO ARMBRUSTER HOLT LTD., FILED DECEMBER 28, 2005 AND RECORDED IN VOLUME (VOL.) 2834, PAGE (PG.) 86 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS (H.C.O.P.R.); SAID 4.768 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BYRN SURVEY" (HEREAFTER REFERRED TO AS "BYRN CAP") FOUND FOR THE NORTHERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAME MARKING THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY (R.O.W.) LINE OF INTERSTATE HIGHWAY NO. 35 (HAVING A VARIABLE WIDTH) WITH THE SOUTHWESTERLY R.O.W. LINE OF EAST RIVER RIDGE PARKWAY (HAVING A WIDTH OF 100 FEET) AS DEDICATED BY THE FINAL PLAT OF LOT 2, AND EAST RIVER RIDGE PARKWAY, BLANCO SHOALS SUBDIVISION, FILED JUNE 7, 2004 AND RECORDED IN VOL. 11, PG. 365, HAYS COUNTY PLAT RECORDS (H.C.P.R.);

THENCE, DEPARTING THE EASTERLY R.O.W. LINE OF SAID INTERSTATE HIGHWAY NO. 35 (IH-35), AND WITH THE SOUTHWESTERLY R.O.W. LINE OF SAID EAST RIVER RIDGE PARKWAY, THE FOLLOWING TWO (2) CALLS:

- 1) SOUTH 63 DEGREES 33 MINUTES 40 SECONDS EAST, A DISTANCE OF 251.61 FEET TO A 1/2-INCH IRON ROD WITH "BYRN CAP" FOUND FOR CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT ALSO BEING THE BEGINNING OF A CURVE TO THE RIGHT FROM WHICH THE RADIUS POINT BEARS SOUTH 26 DEGREES 26 MINUTES 28 SECONDS WEST, AT A DISTANCE OF 768.51 FEET;
- 2) IN A SOUTHEASTERLY DIRECTION, WITH SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 15 DEGREES 10 MINUTES 24 SECONDS, AN ARC LENGTH OF 203.52 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 55 DEGREES 58 MINUTES 20 SECONDS EAST - 202.93 FEET TO A 1/2-INCH IRON ROD WITH "BYRN CAP" FOUND FOR THE EASTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT ALSO BEING ON THE EASTERLY LINE OF THAT CERTAIN CALLED 100 FOOT WIDE EASEMENT AND R.O.W. DESCRIBED IN A DEED TO LOWER COLORADO RIVER AUTHORITY (L.C.R.A.), FILED MARCH 28, 1951 AND RECORDED IN VOL. 149, PG. 334, HAYS COUNTY DEED RECORDS (H.C.D.R.);

THENCE, DEPARTING THE SOUTHWESTERLY R.O.W. LINE OF SAID EAST RIVER RIDGE PARKWAY, AND TRAVELING THROUGH THE INTERIOR OF SAID PORTION OF 189.6 ACRE TRACT, THE FOLLOWING TWO (2) CALLS:

- 1) SOUTH 29 DEGREES 41 MINUTES 56 SECONDS WEST, WITH THE EASTERLY LINE OF SAID 100 FOOT WIDE EASEMENT AND R.O.W., A DISTANCE OF 430.64 FEET TO A 1/2-INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "WALLACE GROUP" (HEREAFTER REFERRED TO AS "WALLACE CAP") SET FOR THE SOUTHERNMOST CORNER OF THE HEREIN DESCRIBED TRACT;

DESCRIPTION OF 4.768 ACRE TRACT (CONTINUED)

- 2) NORTH 65 DEGREES 49 MINUTES 45 SECONDS WEST, DEPARTING THE EASTERLY LINE OF SAID 100 FOOT WIDE EASEMENT AND R.O.W., A DISTANCE OF 450.03 FEET TO A 1/2-INCH IRON ROD WITH "WALLACE CAP" SET FOR THE WESTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT BEING ON THE EASTERLY R.O.W. LINE OF SAID IH-35, SAID POINT ALSO BEING ON A CURVE TO THE LEFT FROM WHICH THE RADIUS POINT BEARS NORTH 59 DEGREES 48 MINUTES 37 SECONDS WEST, AT A DISTANCE OF 11,649.19 FEET;

THENCE, IN A NORTHERLY DIRECTION, WITH THE EASTERLY R.O.W. LINE OF SAID IH-35, AND WITH SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 02 DEGREES 20 MINUTES 12 SECONDS, AN ARC LENGTH OF 475.08 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 29 DEGREES 01 MINUTES 17 SECONDS EAST - 475.03 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT, DELINEATING AND ENCOMPASSING WITHIN THE METES RECITED 4.768 ACRES (207,681 SQUARE FEET) OF LAND, MORE OR LESS, BASED ON AN ON-THE-GROUND SURVEY PERFORMED BY THE WALLACE GROUP, INC., ROUND ROCK, TEXAS IN FEBRUARY AND MARCH OF 2008, AND WITH BEARINGS SHOWN HEREON BEING REFERENCED TO THE CITY OF SAN MARCOS GPS CONTROL MONUMENTS NO. 02 AND 10 USING NAD-83 IN THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE NO. 4204.

I, DANIEL M. FLAHERTY, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5004, STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS FIELD NOTE DESCRIPTION WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY PERFORMED ON THE GROUND AND THAT THE SAME IS TRUE AND CORRECT.



Daniel M. Flaherty
DANIEL M. FLAHERTY, R.P.L.S. #5004

THE WALLACE GROUP, INC.
ONE CHISHOLM TRAIL, SUITE 130
ROUND ROCK, TEXAS 78681
PH. (512) 248-0065
WORK ORDER NO. 20950
20950-FN 4.768 ACRE TRACT

03-05-08
DATE

RiverRidge PDD
Locally Invasive Plants

Name	Common Name	Origin	Form
<i>Festuca arundinacea</i>	Tall Fescue	Europe	Grass
<i>Sorghum halepense</i>	Johnson Grass	Europe	Grass
<i>Andropogon ischaemum</i>	King Ranch Bluestem	Asia	Grass
<i>Centaurea cyanus</i>	Bachelor's Button, Cornflower	Europe	Herb
<i>Euphorbia esula</i>	Leafy Spurge	Europe	Herb
<i>Fallopia japonica</i>	Japanese Knotweed	Asia	Herb
<i>Lotus corniculatus</i>	Bird's Foot Trefoil (Deer Vetch)	Asia	Herb
<i>Lythrum salicaria</i>	Purple Loosestrife	Europe	Herb
<i>Rapistrum rugosum</i>	Wild Turnip	Europe	Herb
<i>Ruellia britanica</i>	Mexican Petunia	Mexico	Herb
<i>Berberis thunbergii</i>	Japanese Barberry	Asia	Shrub
<i>Elaeagnus angustifolia</i>	Russian Olive	Europe	Shrub
<i>Elaeagnus umbellata</i>	Autumn Olive	Asia	Shrub
<i>Ligustrum</i> sp.	Chinese, European, and Japanese Privet	Eurasia	Shrub
<i>Lonicera</i> sp.	Amur, Japanese, Morrow, Tahitian Honeysuckle	Eurasia	Shrub
<i>Nandina domestica</i>	Heavenly Bamboo	Asia	Shrub
<i>Rosa multiflora</i>	Multiflora Rose	Asia	Shrub
<i>Ailanthus altissima</i>	Tree-of-Heaven	Asia	Tree
<i>Albizia julibrissin</i>	Silk Tree (Asian Mimosa)	Asia	Tree
<i>Melia azedarach</i>	Chinaberry	Asia	Tree
<i>Paulownia tomentosa</i>	Princess Tree	Asia	Tree
<i>Rhamnus Cathartica</i>	Common Buckthorn	Eurasia	Tree
<i>Rhamnus frangula</i>	Smooth or Glossy Buckthorn	Eurasia	Tree
<i>Robinia pseudoacacia</i>	Black Locust	US	Tree
<i>Sapium sebiferum</i>	Chinese Tallow	Asia	Tree
<i>Hedera helix</i>	English Ivy	Eurasia	Vine
<i>Wisteria</i> sp.	Chinese, Japanese Wisteria	Asia	Vine

Hays County
Linda C. Fritsche
County Clerk
San Marcos, Texas 78666



70 2008 80035939

Instrument Number: 2008-80035939

As

Recorded On: November 19, 2008

OPR RECORDINGS

Parties: ARMBRUSTER HOLT LTD

To

Billable Pages: 25

Number of Pages: 26

Comment:

(Parties listed above are for Clerks reference only)

**** Examined and Charged as Follows: ****

OPR RECORDINGS	112.00
Total Recording:	112.00

***** 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: 2008-80035939
Receipt Number: 207246
Recorded Date/Time: November 19, 2008 03:05:16P
Book-Vol/Pg: BK-OPR VL-3533 PG-804
User / Station: O Martinez - Cashing #2

Record and Return To:

INDEPENDENCE TITLE
HOLD
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 hereon and was recorded on the volume and page of the named records of Hays County, Texas

Linda C. Fritsche

Linda C. Fritsche, County Clerk

After Recording Return To:
Independence Title Company
0715509

80035939 Bk Vol Pg
0PR 3533 805

This instrument prepared by:
James L. Webb
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203

Return to:
Janet Karr
Chicago Title
909 Fannin #200
Houston, Texas 77010
460417

STATE OF TEXAS)

HAYS COUNTY)

RESTRICTIVE COVENANT AND EASEMENT AGREEMENT

This Restrictive Covenant and Easement Agreement (this "Agreement") is made as of this 10 day of November, 2008, by and among **ARMBRUSTER HOLT LTD.**, a Texas limited partnership, **WILLIAM CLIFTON HOLT**, an individual resident of the State of Texas, **MARYEM A. HOLT**, an individual resident of the State of Texas, **DAVID WAYNE HOLT**, an individual resident of the State of Texas, and **TIMOTHY JAMES HOLT**, an individual resident of the State of Texas (collectively, "Holt"), and **CAMPUS CREST AT SAN MARCOS, LP**, a Delaware limited partnership ("Campus Crest").

RECITALS

A. Campus Crest is the owner of 19.390 acres of land located in San Marcos, Hays County, Texas, more particularly described in Exhibit A attached hereto and made a part hereof (the "Campus Crest Property").

B. Holt is the owner of 4.768 acres of land located in San Marcos, Hays County, Texas, more particularly described in Exhibit B attached hereto and made a part hereof (the "Holt Property"). The Holt Property is adjacent to the Campus Crest Property.

C. The parties now desire to create certain covenants, easements, restrictions and obligations which shall attach to and run with the Campus Crest Property and the Holt Property, all as further set forth herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Adoption of Recitals. The foregoing Recitals are hereby acknowledged as being true and correct, and the same are hereby adopted as part of this Agreement.

2. Restrictive Covenant. No portion of the Holt Property shall be used for multifamily or student housing purposes for a period of fifty (50) years from the date hereof.

3. Access and Maintenance Easement from Holt. Holt does hereby grant and convey unto Campus Crest, its successors and assigns, for the benefit of Campus Crest, its employees, invitees, tenants and agents, a perpetual, non-exclusive easement, license and privilege on, over, across and upon that certain property more particularly described and depicted in Exhibit C attached hereto and made a part hereof (the "Holt Easement Property") (i) for vehicular and pedestrian ingress and egress to and from the Interstate 35 frontage road and the Campus Crest Property and (ii) to enter upon and to install, construct, use, operate, maintain, repair and replace the Improvements on the Holt Easement Property as more particularly provided in Section 6.

4. Access and Maintenance Easement from Campus Crest. Campus Crest does hereby grant and convey unto Holt, its successors and assigns, for the benefit of Holt, its employees, invitees, tenants and agents, a perpetual, non-exclusive easement, license and privilege on, over, across and upon that certain property more particularly described and depicted in Exhibit D attached hereto and made a part hereof (the "Campus Crest Easement Property", and together with the Holt Easement Property, the "Overall Easement Property") (i) for vehicular and pedestrian ingress and egress to and from the Interstate 35 frontage road and the Holt Property and (ii) to enter upon and to install, construct, use, operate, maintain, repair and replace the Improvements on the Campus Crest Easement Property as more particularly provided in Section 6.

5. Use of Easements. Notwithstanding that the aforesaid easements granted in Sections 3 and 4 shall be effective as of the date hereof, neither party shall be permitted to utilize said easements until such time as the Curb Cut (as defined herein) is approved by the applicable governmental authorities and construction on the Improvements has commenced.

6. Construction and Maintenance of Improvements.

(a) At such time as Campus Crest or Holt, or their respective successors and/or assigns, is granted approval for a curb cut ("Curb Cut") from the applicable governmental authorities, which provides access from the Interstate 35 frontage road to any portion of the Campus Crest Property or Holt Property, as applicable, the parties will reasonably cooperate with one another to construct the Curb Cut and a driveway (together, the "Improvements") on the Overall Easement Property. The parties agree that, upon seeking approval for the Curb Cut, they will use reasonable efforts to attempt to have the Curb Cut approved for a location within the Overall Easement Property. In the event the Curb Cut is approved for a location along the frontage of the Campus Crest Property or Holt Property other than within the Overall Easement Property, the parties agree to execute and record an amendment to this Agreement which replaces the description of the Overall Easement Property with a description consistent with the final location of the Curb Cut.

(b) Once said Curb Cut approval has been obtained, the party receiving such approval (the "Constructing Party") will deliver to the other party hereto a proposed budget, construction schedule and plans and specifications for the construction of the Improvements, which Improvements shall be in a first class manner consistent with other similar improvements on retail

property in Hays County, Texas. The non-Constructing Party shall have thirty (30) days to review and provide comments thereon. Said budget, construction schedule and plans and specifications shall be deemed approved in the event that no comments are provided by the non-Constructing Party within said time period. The Constructing Party will work in good faith to reach a mutually acceptable and reasonable agreement on said budget, construction schedule and plans and specifications. The Constructing Party shall construct the Improvements in accordance with said budget, construction schedule and plans and specifications within a reasonable time thereafter and without unreasonably interfering with the operations then being conducted on the other parcel. At such time as construction of the Improvements is ready to commence, the parties agree to execute and record, if necessary, a reasonable amendment document that amends the terms of this Agreement to address the then current status of the parcels and the facts of the situation as they exist at such time, provided that such amendment shall not materially increase the obligations or reduce the rights of the parties hereto.

(c) Upon completion of the construction of the Improvements, the Constructing Party shall deliver a written reimbursement request with supporting documentation to the non-Constructing Party for one-half of the cost of constructing the Improvements. The non-Constructing Party shall reimburse the Constructing Party for said costs within twenty (20) days of receipt of such written request with supporting documentation; provided, however, that the reimbursing party shall not be obligated to reimburse the Constructing Party for more than one half of the estimated costs set forth on the budget presented by the Constructing Party prior to the commencement of construction.

(d) Upon completion of the construction of the Improvements, Campus Crest and Holt, or their respective successors and/or assigns with respect to the Campus Crest Easement Property and the Holt Easement Property, respectively, shall share equally in the cost of using, operating, maintaining, repairing and replacing the Improvements on the Overall Easement Property. Campus Crest and Holt, or their respective successors and/or assigns, shall be responsible for maintaining the Improvements located within the portion of the Overall Easement Property owned by it in good condition and repair; provided, however, that if the Improvements on such owner's property are damaged or destroyed through the acts of the other party hereto, its successors and/or assigns, or its employees, invitees, tenants or agents, whether such act is willful, negligent or accidental, then the damaging owner shall forthwith proceed to rebuild, repair and replace the same to as good a condition as to which such Improvements existed immediately prior to such damage or destruction at no cost to the non-damaging owner. All such repair work performed by the damaging owner shall be performed as expeditiously as possible and in such a manner as not to unreasonably interfere with, obstruct or delay access to or from the portion of the Campus Crest Property or Holt Property owned by the non-damaging owner.

(e) Campus Crest and Holt agree to cause all work performed hereunder to be conducted in a good and workmanlike manner and in manner that will not materially interfere with the construction, use or operation of the Campus Crest Property or Holt Property, as applicable, free and clear of any and all mechanics' and materialmen's liens and in accordance with applicable laws, statutes, ordinances, rules, regulations, orders and all other requirements of any governmental

authority or similar entity which are applicable to or affect all or any portion of the Overall Easement Property.

7. Liens. If any lien or notice of lien shall be filed against any portion of the Overall Easement Property, the Campus Crest Property or the Holt Property arising out of or related to the construction, maintenance or repair of the Improvements other than a lien filed by a party hereto as provided in Section 8(b), the party causing such work to be done or materials to be delivered (the "Lien Defaulting Party"), within thirty (30) days after notice of the filing thereof, will cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. Should the Lien Defaulting Party fail to discharge said lien of record within said thirty (30)-day time period, the non-Lien Defaulting Party hereto, in addition to any other remedy provided at law, shall have the right (but not the obligation) to cause said lien to be discharged of record. The Lien Defaulting Party shall reimburse the non-Lien Defaulting Party hereto for the costs of discharging said lien of record within twenty (20) days after receipt of proof of payment thereof.

8. Remedies; Self-Help.

(a) Should either Campus Crest or Holt fail to perform any of its obligations hereunder with the exception of reimbursement obligations (the "Defaulting Party"), such non-defaulting party (the "Curing Party") shall give the Defaulting Party thirty (30) days' written notice thereof, setting forth with particularity the Curing Party's objections or claimed deficiencies, and if such objections and/or deficiencies are not corrected to the Curing Party's reasonable satisfaction within said thirty (30)-day period, or in the event that such correction requires more than thirty (30) days and is not commenced promptly and performed diligently or continues beyond the time reasonably needed to correct the deficiency, then the Curing Party, in addition to any other right or remedy available at law or in equity, shall have the right thereafter to correct any or all such deficiencies, or cause such deficiencies to be corrected, and to continue to do so without further notice unless and until the defaulting party resumes full performance of its obligations hereunder. The Defaulting Party shall reimburse the Curing Party for the cost of performing such work within twenty (20) days after receipt of proof of payment thereof.

(b) Should either Campus Crest or Holt fail to timely pay any reimbursement obligation as set forth hereunder (the "Monetary Defaulting Party"), the owner giving such notice (the "Monetary Curing Party") shall have the right, in addition to any other remedy provided at law or in equity, to record a lien on the property owned by the Monetary Defaulting Party to the extent of the amount paid by the Monetary Curing Party but not reimbursed by the Monetary Defaulting Party, which amount shall bear interest at a rate equal to twelve percent (12%) or the highest legal rate of interest, whichever is less, from the date of billing until paid.

9. Indemnity. Each party hereby agrees to indemnify, defend and hold the other party harmless from and against any and all claims, demands, causes of action, judgments, damages, costs, expenses and liabilities (including, without limitation, attorney's fees, whether before trial, at trial, on appeal, or in arbitration proceedings, and court costs) which relate to matters, actions or omissions arising or resulting from the construction, maintenance or use of the easements granted

hereunder, by the indemnifying party and/or any agents or employees of the indemnifying party.

10. Liability Insurance. During such time as either party is constructing, maintaining or repairing the Improvements, such party will maintain commercial general liability insurance (inclusive of umbrella coverages) covering injuries to persons and property on, in or about its property and the Overall Easement Property, with a single limit of not less than \$2,000,000, issued by a solvent and responsible insurer authorized to do business in the State of Texas, and all such policies will contain a waiver of the right of subrogation and shall name the other party hereto as an additional insured. Each party agrees to provide a copy of an insurance certificate evidencing such coverage to the other party hereunder, if requested by such other party.

11. Miscellaneous.

(a) Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

(b) Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas.

(c) Waiver and Amendment. This Agreement may be amended only by a written agreement executed by all of the parties hereto.

(d) Binding Effect; Covenants Run With the Land. The parties covenant and agree that the servitudes, agreements, covenants and restrictions and all other terms, conditions and provisions hereof shall be binding upon their respective successors and assigns and all other persons or entities having or hereafter acquiring any right, title or interest in the respective property, and all other persons and entities claiming by, through or under said owners and their respective successors and assigns. The rights, obligations and benefits established pursuant to this Agreement shall run with the land and shall be binding upon the owner of the Holt Property and the Campus Crest Property, and their respective successors and assigns and all subsequent owners of any portion of such property. Nothing contained herein is intended nor shall it be construed as creating any rights in or for the benefit of any third party or the general public.

(e) Default. In the event that either party or its successors and/or assigns violates the terms of this Agreement, the non-defaulting party or its successors and assigns (each an "Enforcing Party"), shall have the exclusive and only right to proceed with any legal or equitable remedy available to any such Enforcing Party against the owner(s) at the time of the violation of that portion of the Holt Property or Campus Crest Property in violation of this Agreement. The parties expressly agree that if Campus Crest or any of the undersigned parties signing on behalf of Holt (each called a "Holt Party") is not an owner or occupant of the Campus Crest Property or Holt Property, as applicable, at the time of the violation of this Agreement, no remedies shall be available against or exercised against any such non-owning Campus Crest or Holt Party.

(f) Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be personally delivered, or delivered by overnight courier, or mailed by First Class, Registered or Certified Mail, return receipt requested, postage prepaid, or delivered by facsimile (provided that a notice delivered by facsimile shall immediately thereafter be delivered by one of the other methods permitted in this Section 11(f)), as follows:

Notice to Campus Crest: Campus Crest Development, LLC
2100 Rexford Rd., Suite 414
Charlotte, North Carolina 28211
Attention: James W. McCaughan
Phone: (704) 496-2500
Facsimile: (704) 496-2598

with a copy to: Dawn Helms Sharff
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203
Phone: (205) 521-8200
Facsimile: (205) 488-6200

Notice to Holt: Armbruster Holt Ltd.
P.O. Box 2183
Manchaca, TX 78652
Phone: (512) 327-9799

with a copy to: William C. Holt
1525 21st Avenue North
Texas City, TX 77590-5232

with a copy to: Armbrust & Brown, LLP
100 Congress Avenue, Suite 1300
Austin, Texas 78701
Attention: Frank Brown
Phone: (512) 435-2302
Fax: (512) 435-2360

Any such notice, request, consent or other communications shall be deemed received at such time as it is actually delivered, on the first business day following an overnight delivery, or on the fifth business day after a mailing, as the case may be. Either party hereto may change the address for receiving notices hereunder by notice sent in accordance with the terms of this Section 11(f).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

HOLT:

ARMBRUSTER HOLT LTD.

By: Holt Armbruster LLC,
its General Manager

By: _____
Name: _____
Title: _____


WILLIAM CLIFTON HOLT


MARYEM A. HOLT

DAVID WAYNE HOLT


TIMOTHY JAMES HOLT

[SIGNATURES CONTINUE ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

HOLT:

ARMBRUSTER HOLT LTD.

By: Holt Armbruster LLC,
its General Manager

By: _____
Name: _____
Title: _____

WILLIAM CLIFTON HOLT

MARYEM A. HOLT

David Wayne Holt

DAVID WAYNE HOLT

TIMOTHY JAMES HOLT

[SIGNATURES CONTINUE ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

HOLT:

ARMBRUSTER HOLT LTD.

By: Holt Armbruster LLC,
its General ~~Manager~~ Partner

(119)

By: Alan L. Holt for Holt Armbruster LLC
Name: ALAN L. HOLT
Title: PRESIDENT

WILLIAM CLIFTON HOLT

MARYEM A. HOLT

DAVID WAYNE HOLT

TIMOTHY JAMES HOLT

[SIGNATURES CONTINUE ON FOLLOWING PAGE.]

WITNESS:

CAMPUS CREST:

CAMPUS CREST AT SAN MARCOS, LP

By: HSRE-Campus Crest GP I, LLC, a Delaware limited liability company, its sole general partner

By: HSRE-Campus Crest I, LLC, a Delaware limited liability company, its sole member

By: Campus Crest Ventures III, LLC, a Delaware limited liability company, a member

By: Campus Crest Properties, LLC, a North Carolina limited liability company, its manager


Print Name: James Webb

By: 
Name: F. Brian Schneiderman
Its Manager

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of November, 2008, by _____, as _____ of Holt Armbruster LLC, general manager of Armbruster Holt LTD., on behalf of said limited liability company as general manager of said partnership.

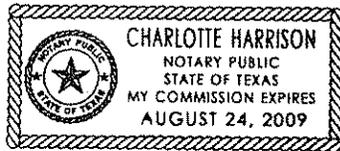
NOTARY PUBLIC

My commission expires (if not legible on seal): _____

[NOTARIAL SEAL]

STATE OF Texas)
COUNTY OF Dallas

This instrument was acknowledged before me on this 12th day of November, 2008 by William C. Holt.



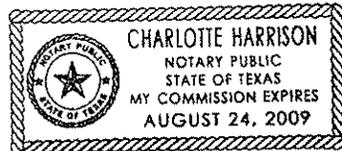
[NOTARIAL SEAL]

Charlotte Harrison
NOTARY PUBLIC

My commission expires (if not legible on seal): Aug 24th 2009

STATE OF Texas)
COUNTY OF Dallas

This instrument was acknowledged before me on this 12th day of November, 2008 by Maryem Holt.



[NOTARIAL SEAL]

Charlotte Harrison
NOTARY PUBLIC

My commission expires (if not legible on seal): Aug 24th 2009

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of November, 2008 by David W. Holt.

NOTARY PUBLIC

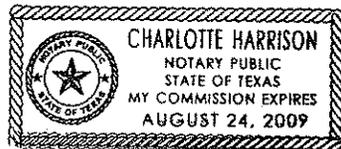
My commission expires (if not legible on seal): _____

[NOTARIAL SEAL]

STATE OF Texas)

COUNTY OF Dalworth

This instrument was acknowledged before me on this 12th day of November, 2008 by Timothy J. Holt.



Charlotte Harrison
NOTARY PUBLIC

My commission expires (if not legible on seal): Aug 24 2009

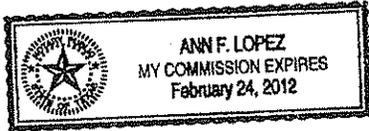
[NOTARIAL SEAL]

STATE OF TEXAS)

COUNTY OF Trans)

This instrument was acknowledged before me on this 11th day of November, 2008, by Alan Holt, as President of Holt Armbruster LLC, general ~~manager~~ ^{partner} of Armbruster Holt LTD., on behalf of said limited liability company as general manager of said partnership.

ALH



Ann F Lopez
NOTARY PUBLIC

My commission expires (if not legible on seal): _____

[NOTARIAL SEAL]

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of November, 2008 by William C. Holt.

NOTARY PUBLIC

My commission expires (if not legible on seal): _____

[NOTARIAL SEAL]

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of November, 2008 by Maryem Holt.

NOTARY PUBLIC

My commission expires (if not legible on seal): _____

[NOTARIAL SEAL]

STATE OF Texas)

COUNTY OF Uvalde)

This instrument was acknowledged before me on this 11 day of November, 2008 by David W. Holt.

[NOTARIAL SEAL]



Elda Alejandro
NOTARY PUBLIC

My commission expires (if not legible on seal): 4-11-2010

STATE OF _____)

COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of November, 2008 by Timothy J. Holt.

[NOTARIAL SEAL]

NOTARY PUBLIC

My commission expires (if not legible on seal): _____

STATE OF North Carolina
COUNTY OF Mecklenburg

This instrument was acknowledged before me on this 10 day of November, 2008 by F. Brian Scheidman, as Manager of Campus Crest Properties, LLC, a North Carolina limited liability company, manager of Campus Crest Ventures III, LLC, a Delaware limited liability company, member of HSRE-Campus Crest I, LLC, a Delaware limited liability company, sole member of HSRE-Campus Crest GP I, LLC, a Delaware limited liability company, general partner of Campus Crest at San Marcos, LP, a Delaware limited partnership.

CHARLOTTE Y McDARIS
NOTARY PUBLIC
MECKLENBURG COUNTY, NC
My Commission Expires 7-30-2013

[Signature]
NOTARY PUBLIC

My commission expires (if not legible on seal): _____

[NOTARIAL SEAL]



EXHIBIT A

Legal Description of Campus Crest Property

FIELD NOTE DESCRIPTION
OF A
19.390 ACRE TRACT OF LAND
OUT OF THE
J.M. VERAMENDI SURVEY NO. 2, ABSTRACT NO. 17,
SITUATED IN
THE CITY OF SAN MARCOS, HAYS COUNTY, TEXAS

BEING A 19.390 ACRE (844,628 SQUARE FOOT) TRACT OF LAND SITUATED IN THE J.M. VERAMENDI SURVEY NO. 2, ABSTRACT NO. 17, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS; BEING A PORTION OF THAT TRACT DESCRIBED AS "UNSOLD PORTIONS OF 189.6 ACRES" IN A SPECIAL WARRANTY DEED TO ARMBRUSTER HOLT LTD., FILED DECEMBER 28, 2005 AND RECORDED IN VOLUME (VOL.) 2834, PAGE (PG.) 86 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS (H.C.O.P.R.); SAID 19.390 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BYRN SURVEY" (HEREAFTER REFERRED TO AS "BYRN CAP") FOUND FOR THE EASTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT MARKING THE SOUTHERNMOST CORNER OF EAST RIVER RIDGE PARKWAY (HAVING A WIDTH OF 100 FEET) AS DEDICATED BY THE FINAL PLAT OF LOT 2, AND EAST RIVER RIDGE PARKWAY, BLANCO SHOALS SUBDIVISION, FILED JUNE 7, 2004 AND RECORDED IN VOL. 11, PG. 365, HAYS COUNTY PLAT RECORDS (H.C.P.R.), SAID POINT ALSO BEING ON THE COMMON NORTHWESTERLY LINE OF THAT CERTAIN CALLED 82.651 ACRE TRACT OF LAND DESCRIBED IN A DONATION DEED TO CITY OF SAN MARCOS, FILED FEBRUARY 17, 2004 AND RECORDED IN VOL. 2405, PG. 387, H.C.O.P.R. AND THE SOUTHEASTERLY LINE OF SAID PORTION OF 189.6 ACRE TRACT;

THENCE, WITH THE COMMON NORTHWESTERLY LINE OF SAID 82.651 ACRE TRACT AND THE SOUTHEASTERLY LINE OF SAID PORTION OF 189.6 ACRE TRACT, THE FOLLOWING TWELVE (12) CALLS:

- 1) SOUTH 58 DEGREES 30 MINUTES 36 SECONDS WEST, A DISTANCE OF 62.40 FEET TO A 1/2-INCH IRON ROD WITH RED PLASTIC CAP STAMPED "BAKER-AICKLEN & ASSOC. ROUND ROCK, TX" (HEREAFTER REFERRED TO AS "BAKER CAP") FOUND FOR CORNER;
- 2) NORTH 26 DEGREES 13 MINUTES 58 SECONDS WEST, A DISTANCE OF 46.34 FEET TO A 1/2-INCH IRON ROD WITH "BAKER CAP" FOUND FOR CORNER;
- 3) SOUTH 45 DEGREES 34 MINUTES 30 SECONDS WEST, A DISTANCE OF 51.63 FEET TO A 1/2-INCH IRON ROD WITH "BAKER CAP" FOUND FOR CORNER;
- 4) SOUTH 32 DEGREES 17 MINUTES 24 SECONDS WEST, A DISTANCE OF 93.04 FEET TO A 1/2-INCH IRON ROD WITH "BAKER CAP" FOUND FOR CORNER;
- 5) SOUTH 36 DEGREES 13 MINUTES 24 SECONDS WEST, A DISTANCE OF 113.84 FEET TO A 1/2-INCH IRON ROD WITH "BAKER CAP" FOUND FOR CORNER;
- 6) SOUTH 50 DEGREES 31 MINUTES 08 SECONDS WEST, A DISTANCE OF 67.79 FEET TO A 1/2-INCH IRON ROD WITH "BAKER CAP" FOUND FOR CORNER;
- 7) SOUTH 31 DEGREES 58 MINUTES 50 SECONDS WEST, A DISTANCE OF 156.95 FEET TO A 1/2-INCH IRON ROD WITH "BAKER CAP" FOUND FOR CORNER;
- 8) SOUTH 11 DEGREES 51 MINUTES 44 SECONDS WEST, A DISTANCE OF 54.99 FEET TO A 1/2-INCH IRON ROD WITH "BAKER CAP" FOUND FOR CORNER;
- 9) SOUTH 31 DEGREES 15 MINUTES 12 SECONDS WEST, A DISTANCE OF 141.41 FEET TO A 1/2-INCH IRON ROD FOUND FOR CORNER;

- 10) SOUTH 23 DEGREES 47 MINUTES 07 SECONDS WEST, A DISTANCE OF 155.33 FEET TO A 1/2-INCH IRON ROD WITH "BAKER CAP" FOUND FOR CORNER;
- 11) SOUTH 23 DEGREES 18 MINUTES 13 SECONDS WEST, A DISTANCE OF 135.96 FEET TO A 1/2-INCH IRON ROD WITH "BAKER CAP" FOUND FOR CORNER;
- 12) SOUTH 37 DEGREES 05 MINUTES 47 SECONDS WEST, A DISTANCE OF 181.79 FEET TO A 1/2-INCH IRON ROD WITH "BAKER CAP" FOUND FOR THE SOUTHERNMOST CORNER OF THE HEREIN DESCRIBED TRACT AND SAID PORTION OF 189.6 ACRE TRACT, SAME MARKING THE WESTERNMOST CORNER OF SAID 82.651 ACRE TRACT, SAID POINT ALSO BEING ON THE NORTHEASTERLY LINE OF LOT 4-G, BLOCK 2, FAIRLAWN ADDITION, FILED APRIL 27, 2001 AND RECORDED IN VOL. 10, PG. 5, H.C.P.R.;

THENCE, NORTH 24 DEGREES 07 MINUTES 55 SECONDS WEST, WITH THE COMMON SOUTHWESERLY LINE OF SAID PORTION OF 189.6 ACRE TRACT AND THE NORTHEASTERLY LINE OF SAID LOT 4-G, A DISTANCE OF 284.04 FEET TO A 5/8-INCH IRON PIPE IN CONCRETE FOUND FOR CORNER OF THE HEREIN DESCRIBED TRACT, SAME MARKING THE COMMON NORTHERNMOST CORNER OF SAID LOT 4-G, THE EASTERNMOST CORNER OF BLOCK 4, FAIRLAWN ADDITION, DATED JUNE 1, 1940, RECORDED IN VOL. 120, PG. 368, HAYES COUNTY DEED RECORDS (H.C.D.R.) AND THE EASTERNMOST CORNER OF THAT CERTAIN TRACT OF LAND (TRACTS I & II) DESCRIBED IN A WARRANTY DEED TO JOSE HINOJOSA, ET ALI, FILED AUGUST 6, 1996 AND RECORDED IN VOL. 1245, PG. 087, H.C.O.P.R.;

THENCE, NORTH 46 DEGREES 06 MINUTES 58 SECONDS WEST, CONTINUING WITH THE SOUTHWESTERLY LINE OF SAID PORTION OF 189.6 ACRE TRACT, SAME BEING THE NORTHEASTERLY LINE OF SAID BLOCK 4, AND WITH THE NORTHEASTERLY LINE OF SAID HINOJOSA TRACT AND SEVERAL OTHER SMALL TRACTS, AT A DISTANCE OF 748.10 FEET PASSING A 5/8-INCH IRON PIPE FOUND ON LINE, CONTINUING IN ALL A TOTAL DISTANCE OF 748.38 FEET TO A CALCULATED POINT FOR THE WESTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAID CALCULATED POINT BEING ON THE EASTERLY RIGHT-OF-WAY (R.O.W.) LINE OF INTERSTATE HIGHWAY NO. 35 (HAVING A VARIABLE WIDTH), SAID POINT ALSO BEING ON A CURVE TO THE LEFT FROM WHICH THE RADIUS POINT BEARS NORTH 56 DEGREES 38 MINUTES 31 SECONDS WEST, AT A DISTANCE OF 11,649.19 FEET;

THENCE, IN A NORTHERLY DIRECTION, WITH THE EASTERLY R.O.W. LINE OF SAID INTERSTATE HIGHWAY NO. 35 (IH-35), AND WITH SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 00 DEGREES 14 MINUTES 53 SECONDS, AN ARC LENGTH OF 50.43 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 33 DEGREES 14 MINUTES 02 SECONDS EAST - 50.40 FEET TO A CALCULATED POINT FOR CORNER OF THE HEREIN DESCRIBED TRACT, SAME MARKING THE WESTERNMOST CORNER OF THAT CERTAIN CALLED 1.0 ACRE TRACT OF LAND DESCRIBED IN A WARRANTY DEED WITH VENDOR'S LIEN TO HOUSING CORPORATION OF ETA TAU CHAPTER OF SIGMA NU FRATERNITY, A TEXAS NONPROFIT CORPORATION, FILED OCTOBER 24, 2005 AND RECORDED IN VOL. 2794, PG. 339, H.C.O.P.R.;

THENCE, SOUTH 46 DEGREES 09 MINUTES 01 SECONDS EAST, DEPARTING THE EASTERLY R.O.W. LINE OF SAID IH-35, WITH THE SOUTHWESTERLY LINE OF SAID 1.0 ACRE TRACT, AT A DISTANCE OF 0.81 FEET PASSING A 5/8-INCH IRON PIPE FOUND ON LINE, CONTINUING IN ALL A TOTAL DISTANCE OF 212.52 FEET TO A 5/8-INCH IRON PIPE FOUND FOR CORNER OF THE HEREIN DESCRIBED TRACT AND MARKING THE SOUTHERNMOST CORNER OF SAID 1.0 ACRE TRACT;

THENCE, NORTH 32 DEGREES 24 MINUTES 20 SECONDS EAST, PARTWAY WITH THE SOUTHEASTERLY LINE OF SAID 1.0 ACRE TRACT AND PARTWAY WITH THE SOUTHEASTERLY LINE OF THAT CERTAIN CALLED 1.071 ACRE TRACT OF LAND DESCRIBED IN A WARRANTY DEED WITH VENDOR'S LIEN TO WS LTD., FILED JULY 27, 1999 AND RECORDED IN DOCUMENT NO. 9917646, H.C.O.P.R., AT A DISTANCE OF 210.17 FEET PASSING A 1/2-INCH IRON PIPE FOUND MARKING THE COMMON EASTERNMOST CORNER OF SAID 1.0 ACRE TRACT AND THE SOUTHERNMOST CORNER OF SAID 1.071 ACRE TRACT, CONTINUING IN ALL A TOTAL DISTANCE OF 469.76 FEET TO A 3/8-INCH IRON ROD FOUND FOR

CORNER OF THE HEREIN DESCRIBED TRACT AND MARKING THE EASTERNMOST CORNER OF SAID 1.071 ACRE TRACT;

THENCE, NORTH 65 DEGREES 49 MINUTES 45 SECONDS WEST, WITH THE NORTHEASTERLY LINE OF SAID 1.071 ACRE TRACT, A DISTANCE OF 212.35 FEET TO A CALCULATED POINT FOR CORNER OF THE HEREIN DESCRIBED TRACT, AND FROM WHICH A 1-INCH IRON PIPE FOUND BEARS NORTH 65 DEGREES 49 MINUTES 45 SECONDS WEST, AT A DISTANCE OF 0.53 FEET AND A 1/2-INCH IRON ROD FOUND BEARS NORTH 86 DEGREES 20 MINUTES 55 SECONDS EAST, AT A DISTANCE OF 0.18 FEET, SAID CALCULATED POINT BEING ON THE EASTERLY R.O.W. LINE OF SAID IH-35, SAID POINT ALSO BEING ON A CURVE TO THE LEFT FROM WHICH THE RADIUS POINT BEARS NORTH 58 DEGREES 50 MINUTES 34 SECONDS WEST, AT A DISTANCE OF 11,649.19 FEET;

THENCE, IN A NORTHERLY DIRECTION, WITH THE EASTERLY R.O.W. LINE OF SAID IH-35, AND WITH SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 00 DEGREES 58 MINUTES 03 SECONDS, AN ARC LENGTH OF 196.71 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 30 DEGREES 40 MINUTES 24 SECONDS EAST - 196.68 FEET TO A 1/2-INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "WALLACE GROUP" (HEREAFTER REFERRED TO AS "WALLACE CAP") SET FOR CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, DEPARTING THE EASTERLY R.O.W. LINE OF SAID IH-35, AND TRAVELING THROUGH THE INTERIOR OF SAID PORTION OF 189.6 ACRE TRACT, THE FOLLOWING TWO (2) CALLS:

- 1) SOUTH 65 DEGREES 49 MINUTES 45 SECONDS EAST, A DISTANCE OF 450.03 FEET TO A 1/2-INCH IRON ROD WITH "WALLACE CAP" SET FOR AN INTERIOR CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT BEING ON THE EASTERLY LINE OF THAT CERTAIN CALLED 100 FOOT WIDE EASEMENT AND R.O.W. DESCRIBED IN A DEED TO LOWER COLORADO RIVER AUTHORITY (L.C.R.A.), FILED MARCH 28, 1951 AND RECORDED IN VOL. 149, PG. 334, H.C.D.R.;
- 2) NORTH 29 DEGREES 41 MINUTES 56 SECONDS EAST, WITH THE EASTERLY LINE OF SAID 100 FOOT WIDE EASEMENT AND R.O.W. , A DISTANCE OF 430.64 FEET TO A 1/2-INCH IRON ROD WITH "BYRN CAP" FOUND MARKING THE NORTHERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT BEING ON THE SOUTHWESTERLY R.O.W. LINE OF SAID EAST RIVER RIDGE PARKWAY DEDICATED BY THE FINAL PLAT OF LOT 2, AND EAST RIVER RIDGE PARKWAY, BLANCO SHOALS SUBDIVISION, SAID POINT ALSO BEING ON A CURVE TO THE RIGHT FROM WHICH THE RADIUS POINT BEARS SOUTH 41 DEGREES 36 MINUTES 52 SECONDS WEST, AT A DISTANCE OF 768.51 FEET;

THENCE, DEPARTING THE EASTERLY LINE OF SAID 100 FOOT WIDE EASEMENT AND R.O.W., AND WITH THE SOUTHWESTERLY R.O.W. LINE OF SAID EAST RIVER RIDGE PARKWAY, THE FOLLOWING TWO (2) CALLS:

- 1) IN A SOUTHEASTERLY DIRECTION, WITH SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 18 DEGREES 19 MINUTES 27 SECONDS, AN ARC LENGTH OF 245.78 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 39 DEGREES 13 MINUTES 24 SECONDS EAST - 244.73 FEET TO A 1/2-INCH IRON ROD WITH "BYRN CAP" FOUND FOR CORNER OF THE HEREIN DESCRIBED TRACT AND BEING THE END OF SAID CURVE;
- 2) SOUTH 30 DEGREES 03 MINUTES 14 SECONDS EAST, A DISTANCE OF 421.98 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT, DELINEATING AND ENCOMPASSING WITHIN THE METES RECITED 19.390 ACRES (844,628 SQUARE FEET) OF LAND, MORE OR LESS, BASED ON THE ALTA/ACSM LAND TITLE SURVEY AND DRAWING MADE BY THE WALLACE GROUP, INC., ROUND ROCK, TEXAS IN FEBRUARY AND MARCH OF 2008, AND WITH BEARINGS SHOWN HEREON BEING REFERENCED TO THE CITY OF SAN

MARCOS GPS CONTROL MONUMENTS NO. 02 AND 10 USING NAD-83 IN THE TEXAS STATE
PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE NO. 4204.

EXHIBIT B

Legal Description of Holt Property

FIELD NOTE DESCRIPTION
OF A
4.768 ACRE TRACT OF LAND
OUT OF THE
J.M. VERAMENDI SURVEY NO. 2, ABSTRACT NO. 17,
SITUATED IN
THE CITY OF SAN MARCOS, HAYS COUNTY, TEXAS

BEING A 4.768 ACRE (207,681 SQUARE FOOT) TRACT OF LAND SITUATED IN THE J.M. VERAMENDI SURVEY NO. 2, ABSTRACT NO. 17, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS; BEING A PORTION OF THAT TRACT DESCRIBED AS "UNSOLD PORTIONS OF 189.6 ACRES" IN A SPECIAL WARRANTY DEED TO ARMBRUSTER HOLT LTD., FILED DECEMBER 28, 2005 AND RECORDED IN VOLUME (VOL.) 2834, PAGE (PG.) 86 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS (H.C.O.P.R.); SAID 4.768 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BYRN SURVEY" (HEREAFTER REFERRED TO AS "BYRN CAP") FOUND FOR THE NORTHERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAME MARKING THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY (R.O.W.) LINE OF INTERSTATE HIGHWAY NO. 35 (HAVING A VARIABLE WIDTH) WITH THE SOUTHWESTERLY R.O.W. LINE OF EAST RIVER RIDGE PARKWAY (HAVING A WIDTH OF 100 FEET) AS DEDICATED BY THE FINAL PLAT OF LOT 2, AND EAST RIVER RIDGE PARKWAY, BLANCO SHOALS SUBDIVISION, FILED JUNE 7, 2004 AND RECORDED IN VOL. 11, PG. 365, HAYS COUNTY PLAT RECORDS (H.C.P.R.);

THENCE, DEPARTING THE EASTERLY R.O.W. LINE OF SAID INTERSTATE HIGHWAY NO. 35 (IH-35), AND WITH THE SOUTHWESTERLY R.O.W. LINE OF SAID EAST RIVER RIDGE PARKWAY, THE FOLLOWING TWO (2) CALLS:

- 3) SOUTH 63 DEGREES 33 MINUTES 40 SECONDS EAST, A DISTANCE OF 251.61 FEET TO A 1/2-INCH IRON ROD WITH "BYRN CAP" FOUND FOR CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT ALSO BEING THE BEGINNING OF A CURVE TO THE RIGHT FROM WHICH THE RADIUS POINT BEARS SOUTH 26 DEGREES 26 MINUTES 28 SECONDS WEST, AT A DISTANCE OF 768.51 FEET;
- 2) IN A SOUTHEASTERLY DIRECTION, WITH SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 15 DEGREES 10 MINUTES 24 SECONDS, AN ARC LENGTH OF 203.52 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 55 DEGREES 58 MINUTES 20 SECONDS EAST - 202.93 FEET TO A 1/2-INCH IRON ROD WITH "BYRN CAP" FOUND FOR THE EASTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT ALSO BEING ON THE EASTERLY LINE OF THAT CERTAIN CALLED 100 FOOT WIDE EASEMENT AND R.O.W. DESCRIBED IN A DEED TO LOWER COLORADO RIVER AUTHORITY (L.C.R.A.), FILED MARCH 28, 1951 AND RECORDED IN VOL. 149, PG. 334, HAYS COUNTY DEED RECORDS (H.C.D.R.);

THENCE, DEPARTING THE SOUTHWESTERLY R.O.W. LINE OF SAID EAST RIVER RIDGE PARKWAY, AND TRAVELING THROUGH THE INTERIOR OF SAID PORTION OF 189.6 ACRE TRACT, THE FOLLOWING TWO (2) CALLS:

- 1) SOUTH 29 DEGREES 41 MINUTES 56 SECONDS WEST, WITH THE EASTERLY LINE OF SAID 100 FOOT WIDE EASEMENT AND R.O.W., A DISTANCE OF 430.64 FEET TO A 1/2-INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "WALLACE GROUP" (HEREAFTER REFERRED

TO AS "WALLACE CAP") SET FOR THE SOUTHERNMOST CORNER OF THE HEREIN DESCRIBED TRACT;

- 2) NORTH 65 DEGREES 49 MINUTES 45 SECONDS WEST, DEPARTING THE EASTERLY LINE OF SAID 100 FOOT WIDE EASEMENT AND R.O.W., A DISTANCE OF 450.03 FEET TO A 1/2-INCH IRON ROD WITH "WALLACE CAP" SET FOR THE WESTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT BEING ON THE EASTERLY R.O.W. LINE OF SAID IH-35, SAID POINT ALSO BEING ON A CURVE TO THE LEFT FROM WHICH THE RADIUS POINT BEARS NORTH 59 DEGREES 48 MINUTES 37 SECONDS WEST, AT A DISTANCE OF 11,649.19 FEET;

THENCE, IN A NORTHERLY DIRECTION, WITH THE EASTERLY R.O.W. LINE OF SAID IH-35, AND WITH SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 02 DEGREES 20 MINUTES 12 SECONDS, AN ARC LENGTH OF 475.08 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 29 DEGREES 01 MINUTES 17 SECONDS EAST - 475.03 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT, DELINEATING AND ENCOMPASSING WITHIN THE METES RECITED 4.768 ACRES (207,681 SQUARE FEET) OF LAND, MORE OR LESS, BASED ON AN ON-THE-GROUND SURVEY PERFORMED BY THE WALLACE GROUP, INC., ROUND ROCK, TEXAS IN FEBRUARY AND MARCH OF 2008, AND WITH BEARINGS SHOWN HEREON BEING REFERENCED TO THE CITY OF SAN MARCOS GPS CONTROL MONUMENTS NO. 02 AND 10 USING NAD-83 IN THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE NO. 4204.

EXHIBIT C

Legal Description of Holt Easement Property

FIELD NOTE DESCRIPTION OF A
0.148 ACRE TRACT OF LAND OUT OF THE
ARMBRUSTER HOLT LTD. TRACT,
LOCATED IN THE CITY OF SAN MARCOS, HAYS COUNTY, TEXAS

BEING A 0.148 ACRE (6,442 SQUARE FOOT) TRACT OF LAND SITUATED IN THE J.M. VERAMENDI SURVEY NO. 2, ABSTRACT NO. 17, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS; BEING A PORTION OF THAT TRACT DESCRIBED AS "UNSOLD PORTIONS OF 189.6 ACRES" IN A SPECIAL WARRANTY DEED TO ARMBRUSTER HOLT LTD., FILED DECEMBER 28, 2005 AND RECORDED IN VOLUME 2834, PAGE 86 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS; SAID 0.148 TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A 1/2-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BYRN SURVEY" FOUND MARKING THE INTERSECTION OF THE SOUTHWESTERLY LINE OF EAST RIVER RIDGE PARKWAY (HAVING A WIDTH OF 100 FEET) AS DEDICATED BY THE FINAL PLAT OF LOT 2, AND EAST RIVER RIDGE PARKWAY, BLANCO SHOALS SUBDIVISION, FILED JUNE 7, 2004 AND RECORDED IN VOLUME 11, PAGE 365, HAYS COUNTY PLAT RECORDS, AND THE EASTERLY RIGHT-OF-WAY (R.O.W.) LINE OF INTERSTATE HIGHWAY NO. 35 (IH-35), SAID POINT MARKING A CORNER OF SAID PORTION OF 189.6 ACRE TRACT AND BEING ON A CURVE TO THE RIGHT, AND FROM WHICH A 1/2-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BYRN SURVEY" FOUND MARKING A CORNER ALONG THE SOUTHWESTERLY LINE OF SAID EAST RIVER RIDGE PARKWAY BEARS SOUTH 63 DEGREES 33 MINUTES 40 SECONDS EAST, AT A DISTANCE OF 251.61 FEET;

THENCE, IN A SOUTHWESTERLY DIRECTION, DEPARTING THE SOUTHWESTERLY LINE OF SAID EAST RIVER RIDGE PARKWAY, AND WITH THE COMMON EASTERLY R.O.W. LINE OF SAID IH-35 AND A WESTERLY LINE OF SAID PORTION OF 189.6 ACRE TRACT, AND WITH SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 02 DEGREES 12 MINUTES 47 SECONDS, AN ARC LENGTH OF 449.95 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 28 DEGREES 57 MINUTES 35 SECONDS WEST - 449.90 FEET TO A CALCULATED POINT FOR THE **POINT OF BEGINNING** AND NORTHERNMOST CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE, DEPARTING THE EASTERLY R.O.W. LINE OF SAID IH-35, AND TRAVELING THROUGH THE INTERIOR OF SAID PORTION OF 189.6 ACRE TRACT, THE FOLLOWING THREE (3) CALLS:

- 1) SOUTH 65 DEGREES 49 MINUTES 45 SECONDS EAST, A DISTANCE OF 256.39 FEET TO A CALCULATED POINT FOR THE EASTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT;
- 2) SOUTH 24 DEGREES 10 MINUTES 15 SECONDS WEST, A DISTANCE OF 25.00 FEET TO A CALCULATED POINT FOR THE SOUTHERNMOST CORNER OF THE HEREIN DESCRIBED TRACT;
- 3) NORTH 65 DEGREES 49 MINUTES 45 SECONDS WEST, A DISTANCE OF 259.00 FEET TO A CALCULATED POINT FOR THE WESTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT BEING ON THE COMMON EASTERLY R.O.W. LINE OF SAID IH-35 AND A WESTERLY LINE OF SAID PORTION OF 189.6 ACRE TRACT, SAID POINT ALSO BEING ON A CURVE TO THE LEFT;

THENCE, IN A NORTHERLY DIRECTION, WITH SAID COMMON LINE, AND WITH SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 00 DEGREES 07 MINUTES 25 SECONDS, AN ARC LENGTH OF 25.13 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 30 DEGREES 07 MINUTES 41 SECONDS EAST - 25.13 FEET TO THE **POINT OF BEGINNING**, DELINEATING AND ENCOMPASSING WITHIN THE

METES RECITED 0.148 ACRE (6,442 SQUARE FEET) OF LAND, MORE OR LESS, BASED ON THE ALTA/ACSM LAND TITLE SURVEY AND DRAWING MADE BY THE WALLACE GROUP, INC., ROUND ROCK, TEXAS, WITH BEARINGS BEING REFERENCED TO THE CITY OF SAN MARCOS GPS CONTROL MONUMENTS NO. 02 AND 10 USING NAD-83 IN THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE NO. 4204.

EXHIBIT D

Legal Description of Campus Crest Easement Property

FIELD NOTE DESCRIPTION OF A
0.149 ACRE TRACT OF LAND OUT OF THE
ARMBRUSTER HOLT LTD. TRACT,
LOCATED IN THE CITY OF SAN MARCOS, HAYS COUNTY, TEXAS

BEING A 0.149 ACRE (6,508 SQUARE FOOT) TRACT OF LAND SITUATED IN THE J.M. VERAMENDI SURVEY NO. 2, ABSTRACT NO. 17, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS; BEING A PORTION OF THAT TRACT DESCRIBED AS "UNSOLD PORTIONS OF 189.6 ACRES" IN A SPECIAL WARRANTY DEED TO ARMBRUSTER HOLT LTD., FILED DECEMBER 28, 2005 AND RECORDED IN VOLUME 2834, PAGE 86 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS; SAID 0.149 TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A 1/2-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BYRN SURVEY" FOUND MARKING THE INTERSECTION OF THE SOUTHWESTERLY LINE OF EAST RIVER RIDGE PARKWAY (HAVING A WIDTH OF 100 FEET) AS DEDICATED BY THE FINAL PLAT OF LOT 2, AND EAST RIVER RIDGE PARKWAY, BLANCO SHOALS SUBDIVISION, FILED JUNE 7, 2004 AND RECORDED IN VOLUME 11, PAGE 365, HAYS COUNTY PLAT RECORDS, AND THE EASTERLY RIGHT-OF-WAY (R.O.W.) LINE OF INTERSTATE HIGHWAY NO. 35 (IH-35), SAID POINT MARKING A CORNER OF SAID PORTION OF 189.6 ACRE TRACT AND BEING ON A CURVE TO THE RIGHT, AND FROM WHICH A 1/2-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BYRN SURVEY" FOUND MARKING A CORNER ALONG THE SOUTHWESTERLY LINE OF SAID EAST RIVER RIDGE PARKWAY BEARS SOUTH 63 DEGREES 33 MINUTES 40 SECONDS EAST, AT A DISTANCE OF 251.61 FEET;

THENCE, IN A SOUTHWESTERLY DIRECTION, DEPARTING THE SOUTHWESTERLY LINE OF SAID EAST RIVER RIDGE PARKWAY, AND WITH THE COMMON EASTERLY R.O.W. LINE OF SAID IH-35 AND A WESTERLY LINE OF SAID PORTION OF 189.6 ACRE TRACT, AND WITH SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 02 DEGREES 20 MINUTES 12 SECONDS, AN ARC LENGTH OF 475.07 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 29 DEGREES 01 MINUTES 17 SECONDS WEST - 475.03 FEET TO A CALCULATED POINT FOR THE **POINT OF BEGINNING** AND NORTHERNMOST CORNER OF THE HEREIN DESCRIBED TRACT,

THENCE, DEPARTING THE EASTERLY R.O.W. LINE OF SAID IH-35, AND TRAVELING THROUGH THE INTERIOR OF SAID PORTION OF 189.6 ACRE TRACT, THE FOLLOWING THREE (3) CALLS:

- 1) SOUTH 65 DEGREES 49 MINUTES 45 SECONDS EAST, A DISTANCE OF 259.00 FEET TO A CALCULATED POINT FOR THE EASTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT;
- 2) SOUTH 24 DEGREES 10 MINUTES 15 SECONDS WEST, A DISTANCE OF 25.00 FEET TO A CALCULATED POINT FOR THE SOUTHERNMOST CORNER OF THE HEREIN DESCRIBED TRACT;
- 3) NORTH 65 DEGREES 49 MINUTES 45 SECONDS WEST, A DISTANCE OF 261.66 FEET TO A CALCULATED POINT FOR THE WESTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT BEING ON THE COMMON EASTERLY R.O.W. LINE OF SAID IH-35 AND A WESTERLY LINE OF SAID PORTION OF 189.6 ACRE TRACT, SAID POINT ALSO BEING ON A CURVE TO THE LEFT;

THENCE, IN A NORTHERLY DIRECTION, WITH SAID COMMON LINE, AND WITH SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 00 DEGREES 07 MINUTES 25 SECONDS, AN ARC LENGTH OF 25.13 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 30 DEGREES 15 MINUTES 06 SECONDS EAST - 25.13 FEET TO THE **POINT OF BEGINNING**, DELINEATING AND ENCOMPASSING WITHIN THE

METES RECITED 0.149 ACRE (6,508 SQUARE FEET) OF LAND, MORE OR LESS, BASED ON THE ALTA/ACSM LAND TITLE SURVEY AND DRAWING MADE BY THE WALLACE GROUP, INC., ROUND ROCK, TEXAS, WITH BEARINGS BEING REFERENCED TO THE CITY OF SAN MARCOS GPS CONTROL MONUMENTS NO. 02 AND 10 USING NAD-83 IN THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE NO. 4204.

Hays County
Liz Q. Gonzalez
County Clerk
San Marcos, Texas 78666



70 2014 14026568

Instrument Number: 2014-14026568

Recorded On: September 09, 2014 As
Electronic Recording

Parties: ARMBRUSTER HOLT LTD
To

Billable Pages: 7
Number of Pages: 8

Comment: ERECORDING PARTNERS NETWO

(Parties listed above are for Clerks reference only)

**** THIS IS NOT A BILL ****

Electronic Recording 50.00
Total Recording: 50.00

***** 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: 2014-14026568
Receipt Number: 376830
Recorded Date/Time: September 09, 2014 08:50:28A
Book-Vol/Pg: BK-OPR VL-5017 PG-422
User / Station: O Mejia - Indexing Station #1

Record and Return To:

EFILE
EFILE
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 hereon and was recorded on the volume and page of the named records
of Hays County, Texas

Liz Q. Gonzalez
Liz Q. Gonzalez, County Clerk

15 ITC/LBA/#1420665-SMA

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

ARMBRUSTER HOLT, LTD., WILLIAM CLIFTON HOLT, JR., TIMOTHY JAMES HOLT and DAVID WAYNE HOLT, (collectively, the "Declarant") are the owners of the following described property:

Being 4.768 acres of land, more or less, out of the J. M. VERAMENDI SURVEY NO. 2, in Hays County, Texas and being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof ("Property").

Declarant, by deed of even date herewith, has conveyed the property described as Lot 6, BLANCO SHOALS SUBDIVISION, SECTION 2, according to the map or plat thereof, recorded in Volume 16, page 361, Plat Records, Hays County, Texas ("Benefited Property"), to SHVASAI HOLDINGS, LLC. For the consideration expressed in that conveyance, Declarant will hold and convey the Property, subject to certain protective covenants, conditions, restrictions, liens, and charges as hereinafter set forth:

PART 1. LAND USE RESTRICTIONS

Declarant hereby declares that the property described above shall be held, sold and conveyed subject to the following restrictions, covenants, and conditions, which shall run with the Property and portions thereof and shall be binding on all parties having any right, title or interest in or to the Property or any part thereof, and their heirs, successors, and assigns, and which restrictions, covenants, and conditions shall inure to the benefit of SHVASAI HOLDINGS, LLC as owner of the Benefited Property;

The Property, or any portion thereof, shall be expressly prohibited from use for any of the following purposes: hotel, motel or other similar commercial lodging.

PART 2. AMENDMENT

This Declaration may be amended only by written instrument signed by Declarant or Declarant's successor(s) in interest and SHVASAI HOLDINGS, LLC.

PART 3. DURATION

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for ten (10) years from the date hereof or such date as SHVASAI HOLDINGS, LLC,, conveys the Benefited Property to an unrelated third party, whichever is earlier, at which time said covenants shall automatically terminate and be of no further force and effect, without necessity of any further action by any party.

PART 4. ENFORCEMENT

If the owners of any portion of the property or their heirs, executors, administrators, successors, assigns or tenants shall violate or attempt to violate any of the covenants set forth in this Declaration, or in the Restrictions, it shall be lawful for SHVASAI HOLDINGS, LLC, to prosecute any proceedings against the person or persons violating or attempting to violate any such Covenants or Restrictions. The failure of the owner to perform his or her obligation hereunder would result in irreparable damage to the owners of the Benefited Property; thus the breach of any provision of this Declaration or the Restrictions may not only give rise to an action for damages at law but also may be enjoined by an action for specific performance in equity in any court of competent jurisdiction without the proof of an specific damages. In the event enforcement actions are instituted and the enforcing party recovers, then in addition to the remedies specified above, court costs and reasonable attorney's fees shall be assessed against the violator.

PART 5. PARTIAL INVALIDITY

Partial Invalidity. In the event any of the foregoing covenants, conditions, restrictions, reservations or charges are held invalid or unenforceable by a court of competent jurisdiction, it shall not affect the validity and enforceability of the other covenants, conditions, restrictions, or charges. If one of the foregoing is subject to more than one interpretation, the interpretation which more clearly reflects the intent hereof shall be enforced.

PART 6. SEVERANCE

Severance. In the event any of the foregoing covenants, conditions, restrictions, reservations or charges are held invalid or unenforceable by a court of competent jurisdiction, it shall not affect the validity and enforceability of the other covenants, conditions, restrictions, reservations or charges. If one of the foregoing is subject to more than one interpretation, the interpretation which more clearly reflects the intent hereof shall be enforced.

EXECUTED this 8th day of September, 2014.

Remainder of this page is intentionally left blank; signature and acknowledgment pages follow.

ARMBRUSTER HOLT LTD.

By: HOLT ARMBRUSTER, LLC,
General Partner

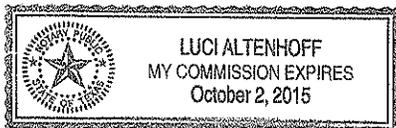
By: *Alan L. Holt*

ALAN L. HOLT, President

STATE OF TEXAS §

COUNTY OF HAYS §
§

This instrument was acknowledged before me on the 8th day of Sept.,
2014, by ALAN L. HOLT, President of HOLT ARMBRUSTER, LLC, on behalf of said
limited liability company acting in its capacity as General Partner of ARMBRUSTER
HOLT LTD., on behalf of said limited partnership.



Luci Altenhoff
NOTARY PUBLIC, State of Texas

David Wayne Holt
DAVID WAYNE HOLT

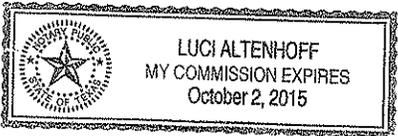
Timothy James Holt
TIMOTHY JAMES HOLT

William Clifton Holt
WILLIAM CLIFTON HOLT, JR.

STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on the 8th day of Sept., 2014, by DAVID WAYNE HOLT.

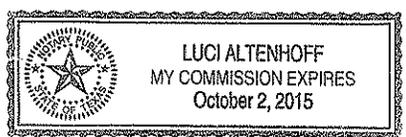


Luci Altenhoff
NOTARY PUBLIC, State of Texas

STATE OF TEXAS §

COUNTY OF HAYS §

This instrument was acknowledged before me on the 8th day of Sept., 2014, by TIMOTHY JAMES HOLT.

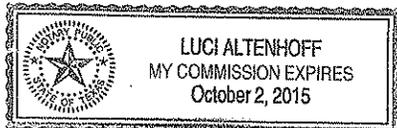


Luci Altenhoff
NOTARY PUBLIC, State of Texas

STATE OF TEXAS §

COUNTY OF HAYS §
§

This instrument was acknowledged before me on the 8th day of Sept.,
2014, by WILLIAM CLIFTON HOLT, JR.



[Handwritten Signature]

NOTARY PUBLIC, State of Texas

**FIELD NOTE DESCRIPTION
OF A
4.768 ACRE TRACT OF LAND
OUT OF THE
J.M. VERAMENDI SURVEY NO. 2, ABSTRACT NO. 17,
SITUATED IN
THE CITY OF SAN MARCOS, HAYS COUNTY, TEXAS**

BEING A 4.768 ACRE (207,681 SQUARE FOOT) TRACT OF LAND SITUATED IN THE J.M. VERAMENDI SURVEY NO. 2, ABSTRACT NO. 17, CITY OF SAN MARCOS, HAYS COUNTY, TEXAS; BEING A PORTION OF THAT TRACT DESCRIBED AS "UNSOLD PORTIONS OF 189.6 ACRES" IN A SPECIAL WARRANTY DEED TO ARMBRUSTER HOLT LTD., FILED DECEMBER 28, 2005 AND RECORDED IN VOLUME (VOL.) 2834, PAGE (PG.) 86 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS (H.C.O.P.R.); SAID 4.768 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2-INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "BYRN SURVEY" (HEREAFTER REFERRED TO AS "BYRN CAP") FOUND FOR THE NORTHERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAME MARKING THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY (R.O.W.) LINE OF INTERSTATE HIGHWAY NO. 35 (HAVING A VARIABLE WIDTH) WITH THE SOUTHWESTERLY R.O.W. LINE OF EAST RIVER RIDGE PARKWAY (HAVING A WIDTH OF 100 FEET) AS DEDICATED BY THE FINAL PLAT OF LOT 2, AND EAST RIVER RIDGE PARKWAY, BLANCO SHOALS SUBDIVISION, FILED JUNE 7, 2004 AND RECORDED IN VOL. 11, PG. 365, HAYS COUNTY PLAT RECORDS (H.C.P.R.);

THENCE, DEPARTING THE EASTERLY R.O.W. LINE OF SAID INTERSTATE HIGHWAY NO. 35 (IH-35), AND WITH THE SOUTHWESTERLY R.O.W. LINE OF SAID EAST RIVER RIDGE PARKWAY, THE FOLLOWING TWO (2) CALLS:

- 1) SOUTH 63 DEGREES 33 MINUTES 40 SECONDS EAST, A DISTANCE OF 251.61 FEET TO A 1/2-INCH IRON ROD WITH "BYRN CAP" FOUND FOR CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT ALSO BEING THE BEGINNING OF A CURVE TO THE RIGHT FROM WHICH THE RADIUS POINT BEARS SOUTH 26 DEGREES 26 MINUTES 28 SECONDS WEST, AT A DISTANCE OF 768.51 FEET;
- 2) IN A SOUTHEASTERLY DIRECTION, WITH SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 15 DEGREES 10 MINUTES 24 SECONDS, AN ARC LENGTH OF 203.52 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 55 DEGREES 58 MINUTES 20 SECONDS EAST - 202.93 FEET TO A 1/2-INCH IRON ROD WITH "BYRN CAP" FOUND FOR THE EASTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT ALSO BEING ON THE EASTERLY LINE OF THAT CERTAIN CALLED 100 FOOT WIDE EASEMENT AND R.O.W. DESCRIBED IN A DEED TO LOWER COLORADO RIVER AUTHORITY (L.C.R.A.), FILED MARCH 28, 1951 AND RECORDED IN VOL. 149, PG. 334, HAYS COUNTY DEED RECORDS (H.C.D.R.);

THENCE, DEPARTING THE SOUTHWESTERLY R.O.W. LINE OF SAID EAST RIVER RIDGE PARKWAY, AND TRAVELING THROUGH THE INTERIOR OF SAID PORTION OF 189.6 ACRE TRACT, THE FOLLOWING TWO (2) CALLS:

- 1) SOUTH 29 DEGREES 41 MINUTES 56 SECONDS WEST, WITH THE EASTERLY LINE OF SAID 100 FOOT WIDE EASEMENT AND R.O.W., A DISTANCE OF 430.64 FEET TO A 1/2-INCH IRON ROD WITH ORANGE PLASTIC CAP STAMPED "WALLACE GROUP" (HEREAFTER REFERRED TO AS "WALLACE CAP") SET FOR THE SOUTHERNMOST CORNER OF THE HEREIN DESCRIBED TRACT;

DESCRIPTION OF 4.768 ACRE TRACT (CONTINUED)

- 2) NORTH 65 DEGREES 49 MINUTES 45 SECONDS WEST, DEPARTING THE EASTERLY LINE OF SAID 100 FOOT WIDE EASEMENT AND R.O.W., A DISTANCE OF 450.03 FEET TO A 1/2-INCH IRON ROD WITH "WALLACE CAP" SET FOR THE WESTERNMOST CORNER OF THE HEREIN DESCRIBED TRACT, SAID POINT BEING ON THE EASTERLY R.O.W. LINE OF SAID IH-35, SAID POINT ALSO BEING ON A CURVE TO THE LEFT FROM WHICH THE RADIUS POINT BEARS NORTH 59 DEGREES 48 MINUTES 37 SECONDS WEST, AT A DISTANCE OF 11,649.19 FEET;

THENCE, IN A NORTHERLY DIRECTION, WITH THE EASTERLY R.O.W. LINE OF SAID IH-35, AND WITH SAID CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 02 DEGREES 20 MINUTES 12 SECONDS, AN ARC LENGTH OF 475.08 FEET, AND A CHORD BEARING AND DISTANCE OF NORTH 29 DEGREES 01 MINUTES 17 SECONDS EAST - 475.03 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT, DELINEATING AND ENCOMPASSING WITHIN THE METES RECITED 4.768 ACRES (207,681 SQUARE FEET) OF LAND, MORE OR LESS, BASED ON AN ON-THE-GROUND SURVEY PERFORMED BY THE WALLACE GROUP, INC., ROUND ROCK, TEXAS IN FEBRUARY AND MARCH OF 2008, AND WITH BEARINGS SHOWN HEREON BEING REFERENCED TO THE CITY OF SAN MARCOS GPS CONTROL MONUMENTS NO. 02 AND 10 USING NAD-83 IN THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE NO. 4204.

I, DANIEL M. FLAHERTY, REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5004, STATE OF TEXAS, DO HEREBY CERTIFY THAT THIS FIELD NOTE DESCRIPTION WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY PERFORMED ON THE GROUND AND THAT THE SAME IS TRUE AND CORRECT.



Daniel M. Flaherty

DANIEL M. FLAHERTY, R.P.L.S. #5004
 THE WALLACE GROUP, INC.
 ONE CHISHOLM TRAIL, SUITE 130
 ROUND ROCK, TEXAS 78681
 PH. (512) 248-0065
 WORK ORDER NO. 20950
 20950-FN 4.768 ACRE TRACT

03-05-08
 DATE