

ORDINANCE NO. 20170413-036

AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE PROPERTY LOCATED AT 3409, 3420, 3429, 3445, 3520, 3636, 3701, 3721, 3724 AND 3737 EXECUTIVE CENTER DRIVE AND 7601, 7718 AND 7719 WOOD HOLLOW DRIVE FROM LIMITED OFFICE (LO), NEIGHBORHOOD COMMERCIAL (LR), COMMUNITY COMMERCIAL (GR), AND FAMILY RESIDENCE (SF-3) TO PLANNED UNIT DEVELOPMENT (PUD) DISTRICT.

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

PART 1. Austin Oaks Planned Unit Development (Austin Oaks PUD) is comprised of approximately 31.4 acres of land. The zoning map established by Section 25-2-191 of the City Code is amended to change the base district from limited office (LO), neighborhood commercial (LR), community commercial (GR), and family residence (SF-3) district to planned unit development (PUD) district on the property described in Zoning Case No. C814-2014-0120, on file at the Planning and Zoning Department, as follows:

Tract 1:

Lot 5, Koger Executive Center Unit Three, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 75, Page 322 of the Plat Records of Travis County, Texas, and;

Tract 2:

Lots 6A and 6B, Resubdivision Lot 6, Koger Executive Center Unit Three, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 77, Page 167 of the Plat Records of Travis County, Texas, and;

Tract 3:

Lots 8, 9 and 10, Koger Executive Center Unit Four, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 80, Page 176 of the Plat Records of Travis County, Texas, and;

Tract 4:

Lots 3A, 3B and 3C, Resubdivision of a Portion of Lot 3, Koger Executive Center Unit Two, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 76, Page 50 of the Plat Records of Travis County, Texas, and;

Tract 5:

Lot(s) 1, 2, 4A and 4B, Koger Executive Center Unit Five, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 84, Pages 6D-7A of

the Plat Records of Travis County, Texas (cumulatively, tracts referred to as Austin Oaks PUD).

PART 2. This ordinance, including exhibits, constitutes the land use plan for the Austin Oaks PUD. Development of and uses within the Austin Oaks PUD shall conform to the limitations and conditions set forth in this ordinance and in the land use plan. If this ordinance and an attached exhibit conflicts, this ordinance controls. Except as otherwise specifically modified by this ordinance, all other rules, regulations, and ordinances of the City in effect at the time of permit application apply to development within the Austin Oaks PUD. In this ordinance, Landowner means the owner of property located within the 31.4 acres of land described in Part 1, or the owner's successors and assigns.

PART 3. The attached exhibits are incorporated into this ordinance in their entirety as though set forth fully in the text of this ordinance. The exhibits are as follows:

- Exhibit A. Zoning Map
- Exhibit B. Land Use Plan
- Exhibit C. Phasing Plan
- Exhibit D. Permitted Use Table
- Exhibit E. Park Plan and Park Space
- Exhibit F. Creek Plan
- Exhibit G. Streetscape Plan
- Exhibit H. Tree Plan
- Exhibit I. Topography and Land Use Plan
- Exhibit J. Open Space Plan
- Exhibit K. Tree Survey
- Exhibit L. Affordable Housing Restrictive Covenant – Rental
- Exhibit M. Affordable Housing Restrictive Covenant – Owner-occupied

Exhibit N. Blanket Affordable Housing Restrictive Covenant

Exhibit O. Affordable Housing Agreement

PART 4. Definitions; Land Use Classifications.

A. Definitions. In this ordinance:

1. PARCEL means one of ten separate parcels as shown on **Exhibit B**.
2. PHASING PLAN means the plan of development for the Austin Oaks PUD as shown in **Exhibit C: Phasing Plan**. Any portion of any parcel may be developed as a phase and any phase may be implemented at any time.
3. SITE means a site within the Austin Oaks PUD that crosses a public street or right-of-way.

B. Land Use Classifications. In this ordinance:

1. AO Mixed Use is a classification on Parcels 8 and 9 as shown in **Exhibit B** with the uses shown on **Exhibit D**.
2. AO Restaurant is a classification on Parcels 4 and 5 as shown in **Exhibit B** with the uses shown on **Exhibit D**.
3. Mopac Expressway Office Mixed Use is a classification on Parcels 1, 2 and 3 as shown in **Exhibit B** with the uses shown on **Exhibit D**.
4. Spicewood Springs Office Mixed Use is a classification on Parcels 6 and 7 as shown in **Exhibit B** with the uses shown on **Exhibit D**.
5. Streetscape is a classification for the portions of all parcels as shown in **Exhibit B** and **Exhibit G: Streetscape Plan** and for the public rights-of-way for Executive Center Drive, Wood Hollow Drive, and Hart Lane located within, or adjacent to, the Austin Oaks PUD.

PART 5. Land Use.

The following conditions apply:

- A. A mixed-use development is required on Parcels 8 and 9 with at least 2,500 square feet of commercial use on the ground floor and multifamily residential above the ground floor.
- B. Automotive washing shall be considered an accessory use for office uses, provided it (1) may be used solely for employees or patrons of the buildings, (2) and may occur only within structured parking.

- C. The minimum size of a lot within any parcel within the Austin Oaks PUD is 20,000 square feet.
- D. The minimum width of a lot within any parcel within the Austin Oaks PUD is 100 feet.
- E. Total impervious cover within the Austin Oaks PUD is limited to 59% of the PUD's gross site area. This total impervious cover limit applies to the PUD overall, not on an individual subdivision or site plan basis. In addition to the overall limit, land uses within the PUD shall comply with the impervious cover limits in **Exhibit B**. Impervious cover is limited to 52% within 300 feet of the offsite springs as shown in **Exhibit B**. Impervious cover in dedicated parkland is limited to a combined total for all dedicated parkland of 27,000 square feet. Each subdivision or site plan application shall track the Austin Oaks PUD's compliance with the impervious cover limits.
- F. The maximum number of residential dwelling units within Parcels 8 and 9 combined shall not exceed total 425. The maximum number of each type of residential dwelling unit shall be as follows:
 - 1. The number of efficiency units shall not exceed 213 units.
 - 2. The number of one-bedroom units shall not exceed 213 units.
 - 3. The number of two-bedroom units shall not exceed 170 units.
- G. Any cell towers or similar communications or information relay facilities constructed on a parcel within the Austin Oaks PUD shall be screened concurrently with the construction of, or architecturally incorporated into, a building to be constructed on the parcel.
- H. The following uses and maximum building heights shall be included on **Exhibit B**:
 - 1. Building 3 on Parcel 3 is limited to 105 feet and 8 stories;
 - 2. Building 4 on Parcel 3 is limited to 117.5 feet and 9 stories;
 - 3. Parking garage 2 on Parcel 3 serving buildings 3 and 4 is limited to 83 feet and 8 levels;
 - 4. Building 5 on Parcel 4 is limited to the permitted uses on the ground floor as established in **Exhibit D: Permitted Use Table** with parking garage 3 above the ground floor. The maximum height of a building or structure on Parcel 4 is limited to 53 feet;

5. Building 6 on Parcel 5 is limited to the permitted uses on the ground floor as established in **Exhibit D** with parking garage 3 above the ground floor. The maximum height of a building or structure on Parcel 5 is limited to 53 feet;
6. An office use is required on Parcel 6 and is limited to 67.5 feet and 5 stories;
7. A residential use is required on Parcel 8 and is limited to 55 feet and 4 stories; and
8. A residential use is required on Parcel 9 and is limited to 55 feet and 4 stories.
9. Parking garage 6 on Parcel 9 is limited to 63 feet and 6 levels.

PART 6. Open Space and Parkland.

- A. The Austin Oaks PUD shall include (1) open space and (2) dedicated parkland for park and recreational purposes in accordance with **Exhibit E: Park Plan and Park Space**. Development of the dedicated parkland shall follow the Phasing Plan as shown in **Exhibit C**. Parkland dedication requirements set forth in **Exhibit E** and in this ordinance satisfy all City parkland requirements, including parkland development fee requirements, for the Austin Oaks PUD.
- B. The Austin Oaks PUD shall include at least 10.8 acres of open space, as generally shown on **Exhibit J: Open Space Plan**, which satisfies open space requirements for a subdivision or site plan submitted within the Austin Oaks PUD. Areas designated as open space may include, but are not limited to:
 1. Natural and undeveloped areas, landscaped areas, plazas, patios, open air gathering places, multi-use trails, and detention or water quality facilities designed and maintained as an amenity;
 2. Vegetative roofs and other landscaped areas on roofs, if accessible to building occupants and designed as an amenity; and
 3. All courtyards and other areas located within any building that are open and unobstructed from the surface to the sky and that are covered by grass, ground cover, or other landscaping.

PART 7. Environmental.

- A. All buildings in the Austin Oaks PUD will achieve a two-star or greater rating under the Austin Energy Green Building program using the applicable rating version in effect at the time a rating registration application is submitted for the building.
- B. Landscaping

1. At least 75% of trees planted within the street yard shall be from the Environmental Criteria Manual (ECM) Appendix N (City of Austin Preferred Plant List). Trees planted within the street yard shall be no less than three inch caliper in size and eight feet in initial height. If more than ten trees are required in the street yard, pursuant to the ECM, no more than 30% of planted trees shall be from the same species.
2. At least 75% of all non-turf plant materials shall be native to Central Texas or included in the 5th Edition of City of Austin's "Grow Green Native and Adapted Landscape Plants" guide (revised 2016). This requirement shall not apply to plantings within dedicated parkland.

C. Tree Protection

1. In this section, Protected and Heritage trees have the meanings provided in City Code Chapter 25-8, Subchapter B, Article 1 (*Tree and Natural Area Protection*).
2. The Landowner shall preserve a minimum of 3,150 caliper inches of Protected and Heritage Trees, calculated together, which represents 75% of the total caliper inches of Protected and Heritage Trees within the Austin Oaks PUD. The Landowner shall also preserve a minimum of 7,137 caliper inches of all trees eight inches in diameter at breast height or larger, which represents 63% of the total caliper inches of regulated trees within the Austin Oaks PUD. These requirements apply to the Austin Oaks PUD as a whole and not on an individual subdivision or site plan basis. Each subdivision, site plan, and building permit application that includes a tree removal request shall demonstrate that the Austin Oaks PUD is in compliance with these requirements.
3. The Landowner shall remove existing impervious cover and no new impervious cover shall be placed within the full critical root zone (CRZ) of Protected and Heritage Trees, except as follows:
 - a. Structures and access drives from a public street may be located within the outer half of the CRZ in compliance with ECM Section 3.5.2;
 - b. For Parcels 1, 3, 4 and 6, internal drive aisles and surface parking may be located within the outer half of the CRZ in compliance with ECM Section 3.5.2 or within the inner half of the CRZ as long as at least 75% of the entire area of the full CRZ is free of impervious cover;
 - c. Existing areas of impervious cover may remain within the CRZ of trees identified as tag numbers 1029, 1038, 1288, 1333, 1334, 2000, 2001,

2016, 2052, 2074, 2094, 2136, and 2173, but no additional impervious cover may be added within the CRZ; and

d. Sidewalks and multi-use trails are allowed within the CRZ in compliance with ECM Section 3.5.2.

4. Mitigation credit shall be granted for removing existing impervious cover from the CRZ of preserved trees. Mitigation credit shall be defined as the dollar value of the arboricultural services provided to remove the impervious cover, improve soil health and composition, and reduce compaction within the CRZ.
5. At least two of the Heritage Trees permitted to be removed under Part 10.B.10 shall be transplanted within the Austin Oaks PUD. The trees and locations selected for transplanting shall be approved by the City Arborist. Mitigation credit of 750 caliper inches per tree shall be granted for transplanting up to two Heritage Trees. The mitigation credit shall apply to the PUD as a whole, but each site plan shall replant replacement trees to the extent feasible, as determined by the City Arborist, prior to utilizing mitigation credit from the transplanted Heritage Trees.

D. Drainage

1. The Landowner shall provide a minimum of 20,000 cubic feet of on-site flood detention, as described in **Exhibit F: Creek Plan**.
2. Each subdivision or site plan shall demonstrate no adverse flooding impact to the confluence with Shoal Creek for the 2, 10, 25, and 100-year frequency storms, based on a PUD-wide analysis utilizing existing impervious cover as described in Part 10.B.5.

E. Riparian Restoration

1. The Landowner shall remove existing, non-compliant impervious cover from the critical water quality zone and critical environmental feature buffers within the Austin Oaks PUD, as illustrated in **Exhibit F**. The areas shall be restored as described in **Exhibit F**.
2. The Landowner shall lay back the west creek bank on Parcels 4 and 5, as illustrated in **Exhibit F**. The resulting inundation bench shall be restored as described in **Exhibit F**. Laying back the bank as described is a permitted floodplain modification within the critical water quality zone.

F. An integrated pest management (IPM) plan that complies with Section 1.6.9.2 (D) and (F) of the ECM shall be submitted for approval with each site plan application.

The Landowner shall provide copies of the IPM plan to all property owners within the Austin Oaks PUD.

- G. Excavation within 300 feet of the offsite springs, as shown in **Exhibit B**, shall be limited to a maximum of 15 feet in depth. This restriction does not apply to pilings, piers, columns, or similar limited diameter building support structures.

PART 8. Affordable Housing Program.

In this Part 8, MFI means median family income for the Austin-Round Rock metropolitan statistical area, as determined annually by the United States Department of Housing and Urban Development. In order to meet the City's affordable housing goals and to ensure long term affordability, the Landowner agrees to the following:

A. Multifamily Rental Housing

Except as otherwise provided in Section C, at least 10.8% of the total number of multifamily rental housing units located within the Austin Oaks PUD will be set aside for occupancy by households with incomes at 60% of or below the MFI for a rental affordability period of forty years from the date the unit is leased to an eligible household, so long as the unit remains in compliance with the terms of the affordable housing program. The 10.8% set aside under this section constitutes the "Affordable Rental Units." In addition the Landowner agrees to comply with the following:

1. Each lot sold or developed for multifamily development use that will include Affordable Rental Units shall be subject to a restrictive covenant using the form shown in **Exhibit L: Affordable Housing Restrictive Covenants – Rental** recorded at the time of sale or development in the official public records of the county where the affordable development is located. The form of the restrictive covenant may be revised by agreement of the Director of Neighborhood Housing and Community Development (NHCD) and the Landowner;
2. At least 50% of the Affordable Rental Units must contain 2 or more bedrooms and shall have the same minimum average unit size as the market rate units located in the same building; and
3. Income qualifications and rents must comply with NHCD compliance guidelines. For each Affordable Rental Unit, income qualifications shall include a requirement that households spend no more than 30% of the household's gross monthly income on utilities and rental payments. Compliance with the affordable housing requirements will be monitored by NHCD.

B. Owner-occupied Housing

Except as otherwise provided in Section C, at least 10.8% of the total number of units sold as owner-occupied residential housing units located within the Austin Oaks PUD will be set aside for occupancy by households with incomes at 80% of or below MFI for an affordability period of (1) ninety-nine years for fee-simple ownership units governed by a condominium declaration and community land trust units or (2) forty years for fee-simple units not governed by a condominium declaration. The 10.8% set aside under this section constitutes the Affordable Ownership Units. In addition the Landowner agrees to comply with the following:

1. The Affordable Ownership Units shall have substantially similar architectural design and restrictions as other residential units offered for sale to the general public;
2. At least 50% of the Affordable Ownership Units must contain 2 bedrooms or more and shall have the same minimum average unit size as the market rate units located in the same building;
3. Affordable Ownership Units:
 - a. Must be sold to an income eligible household at 80% of or below MFI; and
 - b. Shall be secured through a restrictive covenant using a form shown in **Exhibit M: Affordable Housing Restrictive Covenants – Owner-Occupied** and recorded at the time of sale in the official public records of the county where the Affordable Ownership Unit is located. The form of the restrictive covenant may be revised by agreement of the Director of NHCD and the Landowner. The restrictive covenant shall include, but not be limited to the following:
 - i. Resale restrictions that require that resale of the affordable unit must be to a household at 80% of or below MFI;
 - ii. Restrictions that will cap the equity gain to the homeowner that can be realized upon resale of the affordable unit to maintain the unit's long term affordability in accordance with NHCD guidelines; and
 - iii. Right of First Refusal to the Austin Housing Finance Corporation (AHFC) or other entity designated by the City that is assignable to an income-qualified buyer, to ensure long term affordability.

- C. Up to 0.8% of the Affordable Rental Units and Affordable Ownership Units described in Section A and B may be satisfied by payment into the Housing Trust

Fund of an amount of \$215,000 per one bedroom unit and \$355,000 per two bedroom unit; provided that:

1. The on-site Affordable Rental Units and Affordable Ownership Units may not be less than 10.0% of the total number of units rented or sold;
 2. Acceptance of this payment in lieu of on-site affordable units is within the sole discretion of the Director of NHCD; and
 3. The funds are used in a high opportunity area, as determined by NHCD, in the vicinity of Austin Oaks PUD.
- D. The Landowner has executed a blanket restrictive covenant in a form substantially similar to the form attached in **Exhibit N: Blanket Affordable Housing Restrictive Covenant**. To ensure that Affordable Ownership and Rental Units are set aside in compliance with Part 8 of this ordinance, the Landowner has executed the agreement with the City attached as **Exhibit O: Affordable Housing Agreement** that establishes the terms for releasing the blanket restrictive covenant once the Affordable Ownership Units and Affordable Rental Units have been identified within the Austin Oaks PUD. Council hereby authorizes the execution of the agreement in **Exhibit O** by the City Manager or designee.
- E. The Landowner shall submit a condo declaration to the Director of NHCD for review and approval and the declaration shall include provisions related to the affordable units.
- F. The Landowner shall file a written report, in a format approved by NHCD, with the Director of NHCD including the number and location of each Affordable Ownership Unit and Affordable Rental Unit meeting the Affordable Housing Requirements within the Austin Oaks PUD. The initial report shall be filed not later 15 calendar days following the date of recordation of a plat or site plan within the Austin Oaks PUD and shall be updated every six months until construction of the Austin Oaks PUD is complete.
- G. NHCD shall monitor compliance with the requirements of this ordinance, at a minimum, through annual audits.

PART 9. Transportation.

- A. The Landowner shall mitigate transportation impacts as set forth in the Development Services Department, Transportation Review Section's Transportation Impact Analysis (TIA) memo dated October 6, 2016, **Exhibit C**, and **Exhibit G: Streetscape Plan**. The Landowner shall pay 100% of costs, including design and overhead, of the improvements specified in **Exhibit C**.

- B. The portions of the public rights-of-way of Executive Center Drive, Wood Hollow Drive, and Hart Lane within, or adjacent to, the Austin Oaks PUD shall be developed in accordance with **Exhibit G** and as may be required by the TIA memo and **Exhibit C**.
- C. Cumulative parking tables shall be maintained as shown in **Exhibit B**.
- D. A site plan or building permit for the property may not be approved, released, or issued if the completed development or uses of the property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds 15,562 net new adjusted trips per day. A request to change the 15,562 net new adjusted trips per day limit requires approval by the City Council.

PART 10. Code Modifications. In accordance with City Code Chapter 25-2, Subchapter B, Article 2, Division 5 (*Planned Unit Development*), the following site development regulations apply to the Austin Oaks PUD instead of otherwise applicable City regulations:

A. Zoning

- 1. Chapter 25-2, Subchapter E (*Design Standards and Mixed Use*) is modified as follows:
 - a. Subsections 2.2.2.B.–E. of Article 2 (*Site Development Standards*), Section 2.2 (*Relationship of Buildings to Streets and Walkways*) are modified so that regulations for the construction of sidewalks, the supplemental zone, building placement, and off-street parking do not apply within the Austin Oaks PUD;
 - b. Except as required to comply with Federal ADA requirements, the regulations in Subsections 2.2.5.B.-H. (*Internal Circulation Routes: Sidewalks and Building Placement Requirements for Large Sites*), Section 2.2 (*Relationship of Buildings to Streets and Walkways*) related to the construction of sidewalks, internal circulation routes, block standards, circulation, building placement, parking, off-street parking, and joint access do not apply within the Austin Oaks PUD. Five foot sidewalks must be provided from building entrances to sidewalks adjacent to right-of-way and where necessary to comply with Federal ADA requirements;
 - c. Subsection 2.3.1.B. (*Standards*) of Article 2 (*Site Development Standards*), Section 2.3 (*Connectivity Between Sites*) is modified to allow building placement and pedestrian, bicycle, and vehicular connectivity within the Austin Oaks PUD as designated in **Exhibit B**;

- d. Section 2.4 (*Building Entryways*) is modified to allow entrances within the Austin Oaks PUD as designated in **Exhibit G**;
 - e. Subsections 3.2.2.A.–C. of Article 3 (*Building Design Standards*), Section 3.2 (*Glazing and Facade Relief Requirements*) are modified so that the regulations do not apply to the AO Mixed Use on Parcels 8 and 9;
 - f. Subsection 3.3.2. (*Building Design Options*) of Article 3 (*Building Design Standards*), Section 3.3 (*Options to Improve Building Design*) is modified to require a minimum total of five base points in the aggregate for all buildings within the Austin Oaks PUD; and
 - g. Subsection 4.2.1.D. (*District Standards*) of Article 4 (*Mixed Use*), Section 4.2 (*Mixed Use Zoning Districts*) is modified so that the minimum site area requirements for each dwelling unit within the zoning districts do not apply within the Austin Oaks PUD.
- 2. Section 25-2-531 (*Height Limit Exceptions*) as it exists on the effective date of this ordinance shall apply to development within the Austin Oaks PUD.
 - 3. Chapter 25-2, Subchapter C, Article 5 (*Accessory Uses*) as it exists on the effective date of this ordinance shall apply to development within the Austin Oaks PUD.
 - 4. Section 25-2-243 (*Proposed District Boundaries Must Be Contiguous*) is modified to provide that the boundaries of the Austin Oaks PUD may be noncontiguous.
 - 5. Section 25-2-1062 (*Height Limitations and Setbacks for Small Sites*) is modified to waive compatibility standards to allow for increased heights as shown on **Exhibit B**.
 - 6. Section 25-2-1063 (*Height Limitations and Setbacks for Large Sites*) modified to waive compatibility standards to allow for increased heights as shown on **Exhibit B**.
 - 7. Section 25-2-1065 (A)-(D) (*Scale and Clustering Requirements*) is modified to allow massing, clustering, and building placement within the Austin Oaks PUD as designated in **Exhibit B**.
 - 8. Chapter 25-2, Subchapter B, Article 2, Division 5 (*Planned Unit Development*) is modified to treat an amendment to **Exhibit B** that would not qualify as a substantial amendment as if it were a substantial amendment, solely for the purpose of notification, under Subsection 3.1.2 (*Substantial Amendments*).

B. Environmental

1. ECM Section 1.6.2.E (*Subsurface Ponds*) as it exists on the effective date of this ordinance shall apply to development within the Austin Oaks PUD.
2. ECM Section 2.4.3 (*Buffering*) is modified to allow shrubs used as buffering elements on Parcels 1 and 4 to be planted in a permeable landscape area at least three feet wide.
3. Section 25-2-1008(A) (*Irrigation Requirements*) is modified such that natural areas and existing trees where impervious cover is removed shall be considered undisturbed for purposes of this requirement. Portions of a site within the Austin Oaks PUD that cannot comply with this code section using a gravity fed conveyance system are exempt from its requirements.
4. Section 25-7-32 (*Director Authorized to Require Erosion Hazard Zone Analysis*) shall not apply to the Austin Oaks PUD. An erosion hazard zone analysis prepared by Urban Design Group, consisting of a report dated March 30, 2016 and an addendum dated August 15, 2016, was submitted with the Austin Oaks PUD application and the identified erosion hazard zone shall be used for future development applications.
5. Section 25-7-61(A)(5) (*Criteria for Approval of Development Applications*) and Drainage Criteria Manual Section 1.2.2.D (*General*) are modified such that the drainage analysis shall be based on the Austin Oaks PUD boundary rather than the parcel boundaries. The drainage analysis shall utilize the Austin Oaks PUD's existing impervious cover, which is 66% of gross site area, as the benchmark for identifying additional adverse impacts.
6. Section 25-8-25 (*Redevelopment Exception in Urban and Suburban Watersheds*) as it exists on the effective date of this ordinance shall apply to development within the Austin Oaks PUD with the following modifications: Section 25-8-25(B)(1) and (3) is modified such that impervious cover and vehicle trip limits shall apply to the Austin Oaks PUD overall rather than by site plan. For purposes of Section 25-8-25(B)(5), non-compliant development may be relocated within the critical water quality zone and critical environmental feature buffers if the degree of encroachment (total square footage and minimum distance to the protected feature) and overall impact to the protected feature do not increase.
7. Section 25-8-63(C)(2) (*Impervious Cover Calculations*) as it exists on the effective date of this ordinance shall apply to development within the Austin Oaks PUD.

8. Section 25-8-261(B)(3), (D), and (E) (*Critical Water Quality Zone Development*) as it exists on the effective date of this ordinance shall apply to development within the Austin Oaks PUD.
9. Section 25-8-262(C) (*Critical Water Quality Zone Crossings*) as it exists on the effective date of this ordinance shall apply to development within the Austin Oaks PUD.
10. Sections 25-8-621 (*Permit Required for Removal of Protected Trees: Exceptions*) and 25-8-641(B) (*Removal Prohibited*) are modified to allow the removal of trees identified to be removed in **Exhibit H: Tree Plan**, including those trees identified as tag numbers 904, 952, 1075, 1094, 1163, 2008, 2031, 2033, 2037, 2107, 2227 and 2233. The Heritage Tree identified as tag number 1289 shall be preserved. Notwithstanding any other provision of this ordinance, trees identified to be removed in **Exhibit H** may only be removed following a pre-construction meeting with the City's Environmental Inspector at the time of site plan for each particular parcel within the PUD.
11. ECM Section 3.3.2.A (*General Tree Survey Standards*) is modified to allow **Exhibit K: Tree Survey** to be used for development applications submitted until November 22, 2033. Development applications submitted after November 22, 2033 shall require a new tree survey that complies with the rules and regulations in effect at the time of application. This modification is not intended to set a precedent for future development. Any amendment to the Austin Oaks PUD that proposes a reduction in the tree preservation requirements set out in this ordinance shall require a new tree survey that complies with the rules and regulations in effect at the time of the amendment.

C. Transportation

1. Section 25-6-472(A) (*Parking Facility Standards*) and 25-6-478 (*Motor Vehicle Reductions General*) are modified to allow the following minimum parking requirements within the Austin Oaks PUD:
 - a. 3.5 parking spaces per 1,000 square feet of office;
 - b. 5 parking spaces per 1,000 square feet of retail uses;
 - c. 8 parking spaces per 1,000 square feet of restaurant uses; and
 - d. 1 parking space per each multifamily dwelling unit.
2. For office and residential uses, off-street bicycle parking shall comply with the requirements of Section 25-6-477 (*Bicycle Parking*), except that a minimum of 20% of all required bicycle parking spaces shall be located

within 50 feet of any principal building entrance and shall not be obscured from public view.

3. Section 25-6-531 (*Off-Street Loading Facility Required*) is modified to provide that no off-street loading spaces shall be required for buildings in the AO Restaurant use classification on Parcels 4 and 5.

D. Sign Regulations

Section 25-10-101(C) (*Signs Allowed In All Sign Districts Without An Installation Permit*) is modified to provide that:

1. The sign area may not exceed 32 square feet.
2. The height of such a sign may not exceed, for a freestanding sign, 6 feet above grade.
3. A wall sign may be a projecting sign if the sign complies with the following:
 - a. No more than 2 projecting signs for each building façade is permitted;
 - b. The sign area of a projecting sign may not exceed 35 square feet;
 - c. A projecting sign may extend from the building façade not more than the lesser of six feet or a distance equal to two-thirds the width of the abutting sidewalk; and
 - d. No projected signs on building façades facing Mopac Expressway.
4. A total of eight freestanding subdivision identification signs are permitted on the Property. For purposes of this ordinance, a subdivision sign is a freestanding sign that identifies a project, including a mixed use project, and may include a subdivision identification sign. Tenant signage is prohibited on a freestanding subdivision identification sign described in this paragraph.

E. Fire

Section 4.4.0 (*General Provisions for Fire Safety*) of the Fire Protection Criteria Manual is modified to provide that fire access from Spicewood Springs Road will be allowed by the construction of 3 access stairways installed approximately every 200 feet between approximately 350 feet west of Wood Hollow intersection to a point 200 east of Hart Lane intersection. The stairways shall be installed and maintained by the Landowner, and be a minimum 60 inches wide with handrails and landings.

F. Affordable Housing Requirements

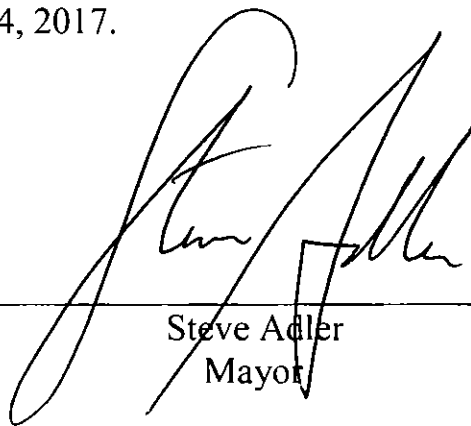
Section 25-1-704 (Fee Waivers) is modified to require Council approval of an applicant's eligibility for fee waivers before the director may waive all or a portion of the fees described in 25-1-704(A).

PART 11. This ordinance takes effect on April 24, 2017.

PASSED AND APPROVED

____ April 13 _____, 2017

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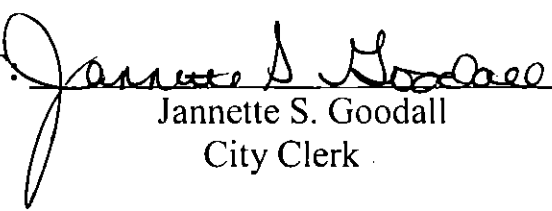
Steve Adler
Mayor

APPROVED:

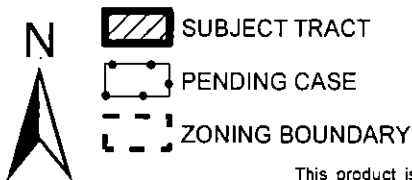
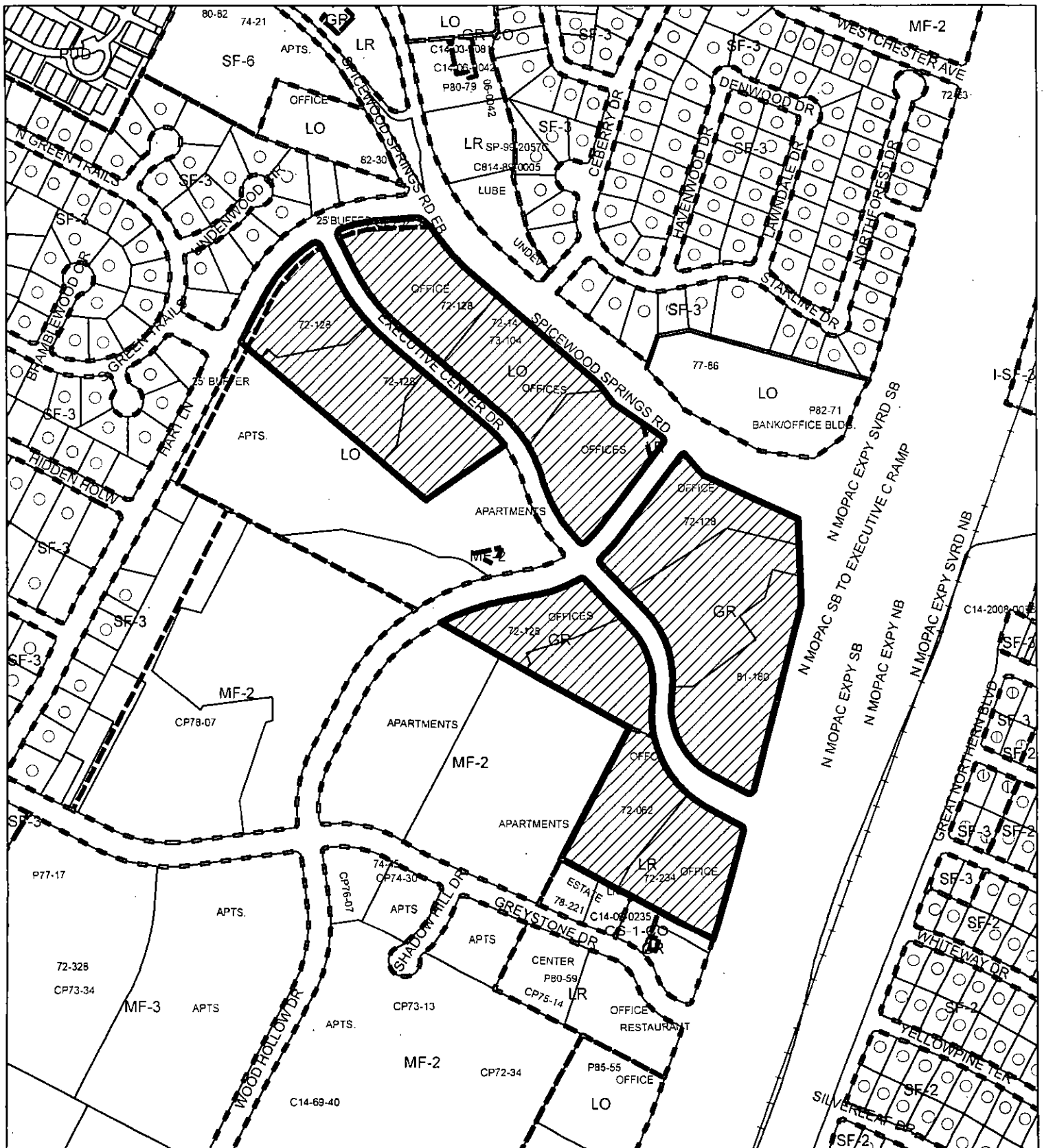


Anne L. Morgan
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk



PLANNED UNIT DEVELOPMENT
ZONING CASE#: C814-2014-0120

1" = 400'

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.

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

EXHIBIT A



EXHIBIT A



- [illegible]

REVISÉ : AVRIL 25, 2017

EXHIBIT C

PHASING PLAN

A. The Austin Oaks PUD is divided into ten (10) separate parcels identified on **Exhibit B: Land Use Plan** as specific classifications. The Austin Oaks PUD shall be developed in phases to accommodate the redevelopment of the existing office building and parking improvements. Any one or more parcels may be included in a phase.

B. Within one (1) year of the Effective Date of this Ordinance, the amount of \$561,324.38 shall be deposited with the City which must first be used for the installation of a traffic signal at the intersection of Hart Lane and Spicewood Springs Road, and thereafter for other traffic improvements within the geographic boundaries of the TIA to the extent the funds allow.

C. The following shall be developed as part of the first phase of the development of the Austin Oaks PUD and shall be completed prior to, and as a condition to, the issuance of a permanent Certificate of Occupancy for the first new building to be constructed within the Austin Oaks PUD:

- (1) Subject to the approval of Texas Department of Transportation ("TxDOT"), the Landowner will offer to enter into an agreement with TxDOT to complete the work for the following three projects that were identified in the TIA: (i) construct a free eastbound right-turn movement from Spicewood Springs Road to Loop 1 SBFR, (ii) construct a southbound right-turn deceleration lane on Loop 1 SBFR (upstream of Executive Center Drive), and (iii) construct a southbound acceleration lane on Loop 1 SBFR (downstream of Executive Center Drive). The implementation of the construction will be done through an agreement with TxDOT that either (i) allows for the Landowner to design and construct the improvements with TxDOT approval or (ii) permits the Landowner to pay TxDOT to construct the improvements. If TxDOT refuses to enter into such agreement, the Landowner will contribute \$325,000 to the City for the City's implementation of transportation improvements within the area of the Property to provide alternative mitigation.
- (2) Subject to the City's approval, the Landowner will complete the work for the following two projects within the City's right-of-way that were identified in the TIA: (i) extend the westbound left-turn bay of Spicewood Springs Road to Wood Hollow Drive and (ii) provide a right-turn overlap operation at the northbound right-turn movement of Wood Hollow Drive to Spicewood Springs Road. If the City refuses or cannot approve the work set forth in this paragraph, the Landowner will contribute \$60,000 to the City for the City's implementation of

transportation improvements within the area of the Property to provide alternative mitigation.

D. As a condition to the issuance of a permanent Certificate of Occupancy for Building 4 on Parcel 3, the Landowner shall deposit \$685,000 to be used by the City for additional traffic improvements identified in the TIA, including but not limited to the following projects:

- (1) widen Hart Lane at Spicewood Springs Road & Hart Lane,
- (2) create channelized turn from MoPac to Spicewood Springs at Spicewood Springs Road & Loop 1 SBFR,
- (3) provide a right-turn overlap signal operation at Far West Blvd & Wood Hollow Drive,
- (4) widen Executive Center Drive to a four-lane cross-section at Executive Center Drive & Wood Hollow Drive,
- (5) restripe westbound approach of Executive Center Drive and Hart Lane at Executive Center Drive & Hart Lane,
- (6) restripe Hart Lane at Executive Center Drive & Hart Lane,
- (7) install a fully actuated traffic signal at Executive Center Drive & Wood Hollow Drive, and
- (8) restripe Northbound approach at Greystone Drive & Wood Hollow Drive.

The funds provided under this section may be used for traffic improvements identified in the geographic scope of the TIA but not specifically listed above, if city staff determines that the proposed improvement would be superior to a listed improvement and that the listed improvement is unwarranted, unfeasible, or no longer recommended.

E. The issuance of a certificate of occupancy for not less than 250 multi-family units of the AO Mixed Use on Parcels 8 and 9 shall occur prior to issuance of a certificate of occupancy for a building containing the 500,000th leasable square foot of commercial space within any one or more new buildings on the other Parcels within the Austin Oaks PUD and, further, the buildings on AO Mixed Use Parcels 8 and 9 must have residential above the ground floor.

F. The park on Parcel 10 shall be dedicated after improvements shown on a site plan are constructed and approved by the City; and prior to the issuance of either (1) a certificate of occupancy for any of the 250 multi-family units or (2) of a building containing the 500,000th square foot of constructed leasable space calculated across all parcels of the Austin Oaks PUD.

G. The Landowner will spend up to \$1,546,500 to redevelop Parcel 10 as a public park. Redevelopment costs may include, but are not limited to, additional soil, landscaping, and shade structures; but may not include costs related to demolition. The Landowner will be responsible for demolition of the building and removal of building infrastructure, including surface parking, and such cost shall not be included in the \$1,546,500 allocated amount. Any remaining portion of the \$1,546,500 not spent on Parcel 10 shall be used to develop parkland to

be dedicated on Parcel 8, including for the placement of historic markers or interpretative signage related to the heritage trail as shown in **Exhibit E: Park Plan and Park Space**.

H. Prior to construction of any park facilities on Parcels 8 and 10, the Landowner shall develop a Park Master Plan for Parcels 8 and 10 to submit for approval by the Parks and Recreation Department (PARD) Director, only after review and recommendations from the Parks and Recreation Board. The Park Master Plan will be developed with input from neighbors surrounding the Austin Oaks PUD and PARD. The Park Master Plan approved by the PARD Director may include costs exceeding \$1,546,500; however, the Landowner will only construct a combination of improvements on the public park on Parcel 10 or the heritage park on Parcel 8 totaling \$1,546,500. Proposed utility lines and systems, and necessary connections to such lines and systems to provide services to the buildings and improvements within the Austin Oaks PUD must be shown on the Park Master Plan submitted to the Parks and Recreation Board for review and recommendation and to the PARD Director for approval.

I. The AO Creek shall be restored consistent with **Exhibit F: Creek Plan** in phases as follows:

- (1) The parking areas on the southern portion of the creek, south of Executive Center Drive, shall be restored prior to or concurrently with the development of the office on Parcel 2. Such restoration of the parking areas shall be completed prior to, and as a condition to, the issuance of a temporary or permanent Certificate of Occupancy for the primary building constructed on Parcel 2. The southern portion of the creek south of Executive Center Drive, as shown in **Exhibit E** as parkland shall be conveyed to the City as a condition to the issuance of the permanent Certificate of Occupancy for the first building to be constructed on Parcel 2.
- (2) The northern portion of the creek, north of Executive Center Drive, that is located on Parcels 4 and 5 shall be restored prior to or concurrently with the development of improvements on all or any part of either Parcel 4 or 5, and shall be completed prior to, and as a condition to, the issuance of a temporary or permanent Certificate of Occupancy for the first building to be constructed on either Parcel 4 or 5. The northern portion of the creek, north of Executive Center Drive, that is located on Parcels 4 and 5 and shown in **Exhibit E** as parkland shall be conveyed to the City as a condition of issuance of the permanent Certificate of Occupancy for the first building to be constructed on Parcel 4 or 5.
- (3) The northern portion of the creek, north of Executive Center Drive, that is located on Parcel 3, including the pedestrian bridge with any necessary support piers over the unnamed branch of the creek, shall be restored prior to or concurrently with the development of improvements on all or any part of Parcel 3, and shall be completed prior to, and as a condition to, the issuance of a temporary or permanent Certificate of Occupancy for the first building to be constructed on Parcel 3. The Landowner of Parcel 3 will be responsible for the

maintenance of the hard surfaced trails and pedestrian bridge within the creek park for 10 years from the date of the permanent Certificate of Occupancy for the first building to be constructed on Parcel 3; and thereafter the City will be responsible for such maintenance. The pedestrian bridge will be a pre-engineered steel frame bridge with a minimum width of 8 feet. The northern portion of the creek, north of Executive Center Drive, which is located on Parcel 3 and shown in **Exhibit E** as parkland shall be conveyed to the City as a condition of issuance of the permanent Certificate of Occupancy for the first building to be constructed on Parcel 3.

- J. The Streetscape shall be developed in phases as follows:
- (1) The portion of the Streetscape within the northern right-of-way of Executive Center Drive from Hart Lane to Wood Hollow Drive and within the western right-of-way of Wood Hollow Drive from Executive Center Drive to Spicewood Springs Road shall be developed prior to or concurrently with the development of the improvements on all or any part of either of the Spicewood Springs Office Parcels 6 or 7, and shall be completed prior to, and as a condition to, the issuance of the permanent Certificate of Occupancy for the first building to be constructed on either of the Spicewood Springs Office Parcels 6 or 7.
 - (2) The portion of the Streetscape within the southern right-of-way of Executive Center Drive from Hart Lane to Wood Hollow Drive shall be developed prior to or concurrently with the development of the improvements on all or any part of the AO Mixed Use Parcel 9, and shall be completed prior to, and as a condition to, the issuance of the permanent Certificate of Occupancy for the primary building to be constructed on the AO Mixed Use Parcel 9.
 - (3) The portion of the Streetscape within the eastern right-of-way of Wood Hollow Drive from Executive Center Drive to Spicewood Springs Road shall be developed prior to or concurrently with the development of the improvements on all or any part of either AO Restaurant Parcels 4 or 5, and shall be completed prior to, and as a condition to, the issuance of the permanent Certificate of Occupancy for the first building to be constructed on either AO Restaurant Parcel 4 or 5.
 - (4) The portion of the Streetscape within the eastern right-of-way of Wood Hollow Drive from Executive Center Drive to the southern boundary of the Austin Oaks PUD shall be developed prior to or concurrently with the development of the improvements on all or any part of the MoPac Expressway Office Parcel 2, and shall be completed prior to, and as a condition to, the issuance of the permanent Certificate of Occupancy for the primary building to be constructed on the MoPac Expressway Office Parcel 2.

- (5) The portion of the Streetscape located outside of the right-of-way of Executive Center Drive and Wood Hollow Drive within each Parcel shall be developed prior to or concurrently with the development of the improvements on each such Parcel, and shall be completed prior to, and as a condition to, the issuance of the permanent Certificate of Occupancy for the primary building constructed on each such Parcel.

K. During construction of any phase, the required parking for then existing uses shall be provided on a cumulative basis on the entire Austin Oaks PUD property.

L. During construction of any phase of the Austin Oaks PUD, a construction office and a sales and leasing office may be located in the retail or garage portions of the building(s) within such phase.

EXHIBIT D

PERMITTED USES TABLE

LAND USE CLASSIFICATION:	Mopac Expressway Office	Spicewood Springs Office	AO Mixed Use	AO Restaurant
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RESIDENTIAL USES

Condominium Residential	N	N	P	N
Multifamily Residential	N	N	P	N

COMMERCIAL USES

Administrative & Business Office	P	P	P	N
Art Gallery	N	P	P	N
Art Workshop	N	P	P	N
Business or Trade School	P	P	N	N
Business Support Services	P	P	N	N
Commercial Off-Street Parking	P	P	P	P
Communication Services	P	P	P	N
Consumer Convenience Services	P	P	P	N
Consumer Repair Services	P	P	P	N
Financial Services	P	P	P	P
Food Preparation	P	P	P	P
Food Sales	P	P	P	P
General Retail Sales (Convenience)	N	P	P	P
General Retail Sales (General) (any one venue shall not exceed 15,000 sq. ft.)	N	P	P	N
Indoor Entertainment	P	P	P	N
Indoor Sports & Recreation	N	P	P	N
Medical Office (exceeding 5,000 sq. ft. gross floor area)	P	P	N	N
Medical Office (not exceeding 5,000 sq. ft. gross floor area)	P	P	N	N

LAND USE:	MoPac Expressway	Spicewood Springs	AO Mixed Use	AO Restaurant
CLASSIFICATION	Office	Office		

COMMERCIAL USES (continued)

Off-Site Accessory Parking	P	P	P	P
Personal Improvement Services	P	P	P	N
Personal Services	P	P	P	P
Pet Services	P	P	P	N
Printing & Publishing	P	P	P	N
Professional Office	P	P	P	N
Research Services	P	P	N	N
Restaurant (General)	P	P	P	P
Restaurant (Limited)	P	P	P	P
Software Development	P	P	P	N

CIVIC USES

College and University Facilities	P	P	N	N
Communication Services Facilities	P	P	N	N
Counseling Services	P	P	P	N
Cultural Services	P	P	P	N
Day Care Services (Commercial)	P	P	P	N
Day Care Services (General)	P	P	P	N
Day Care Services (Limited)	P	P	P	N
Employee Recreation	P	P	N	N
Guidance Services	P	P	P	N
Hospital Services (General)	P	P	N	N
Hospital Services (Limited)	P	P	N	N
Park and Recreation (General)	P	P	P	P
Religious Assembly	P	P	P	P

Note: "P" means a use is a permitted use, "N" means a use is prohibited.

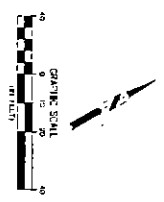
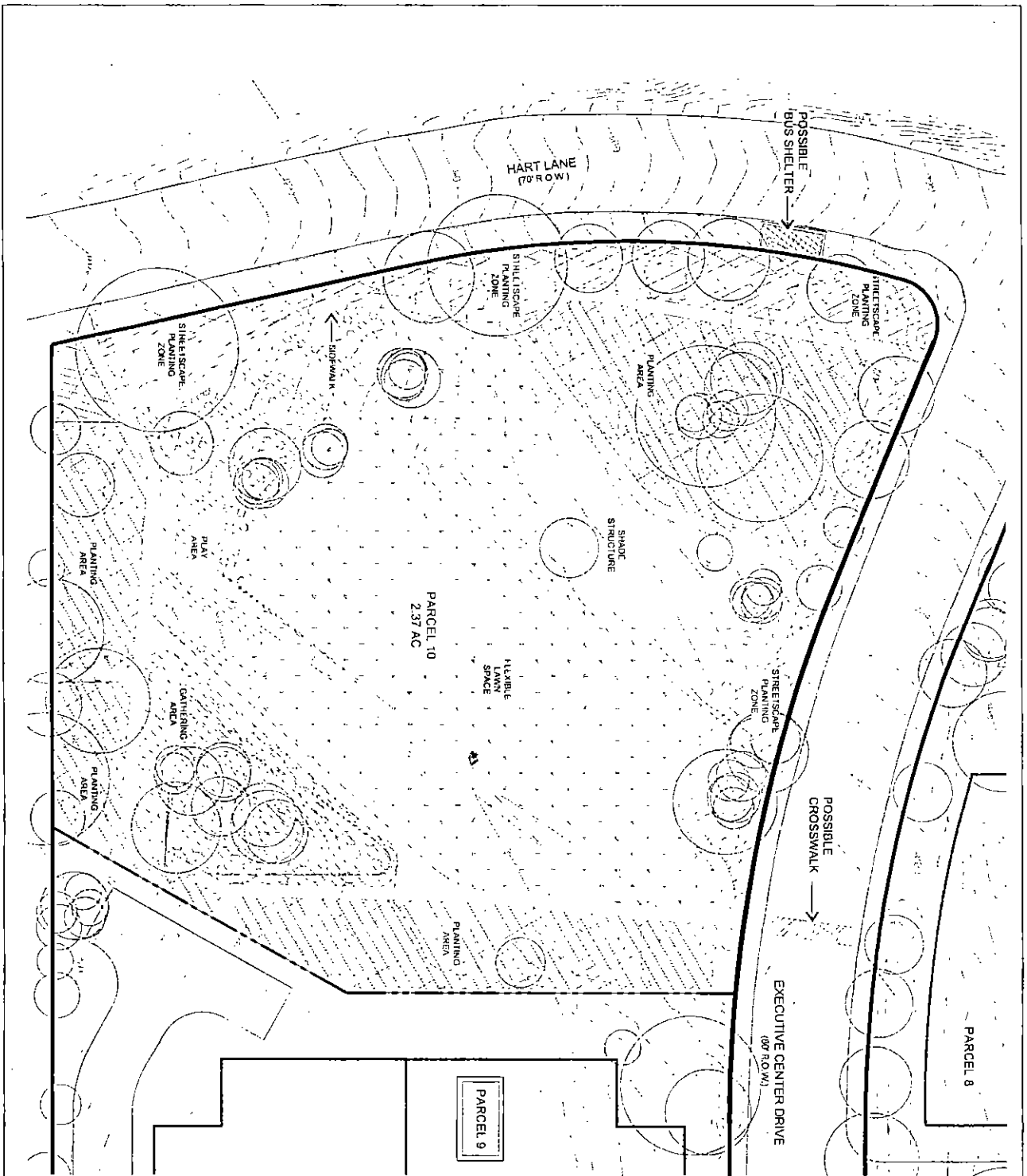


PARKLAND DEDICATION

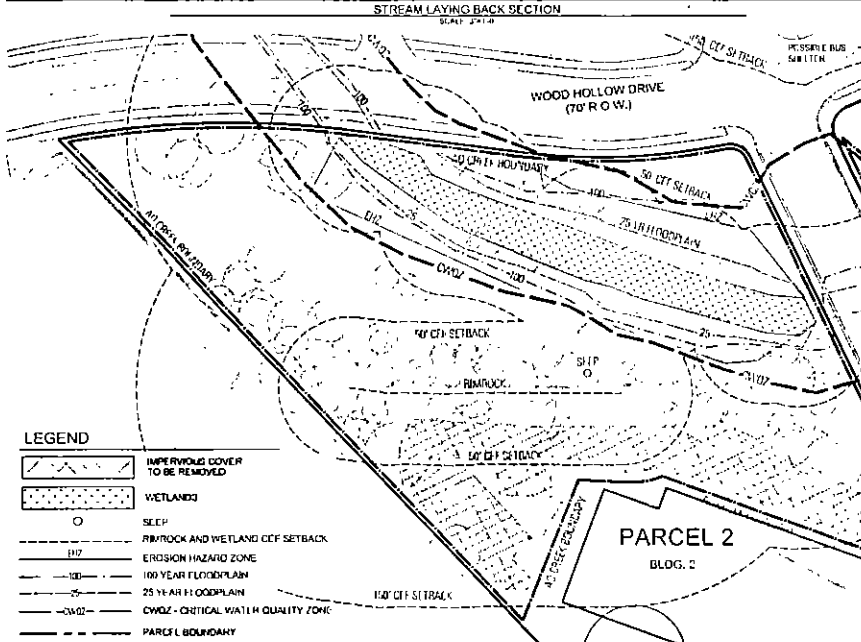
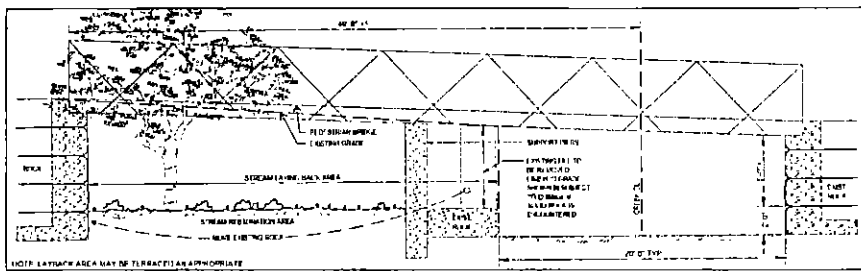


LN LN CS-100 LN LG

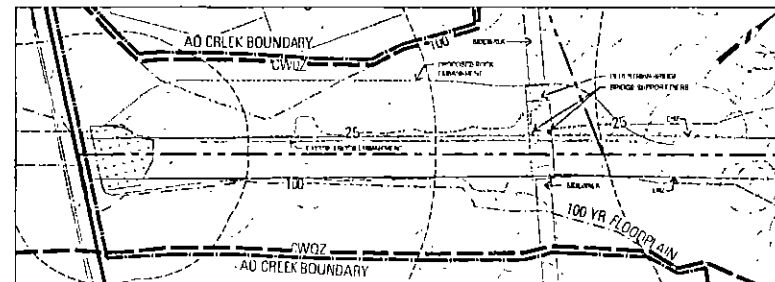
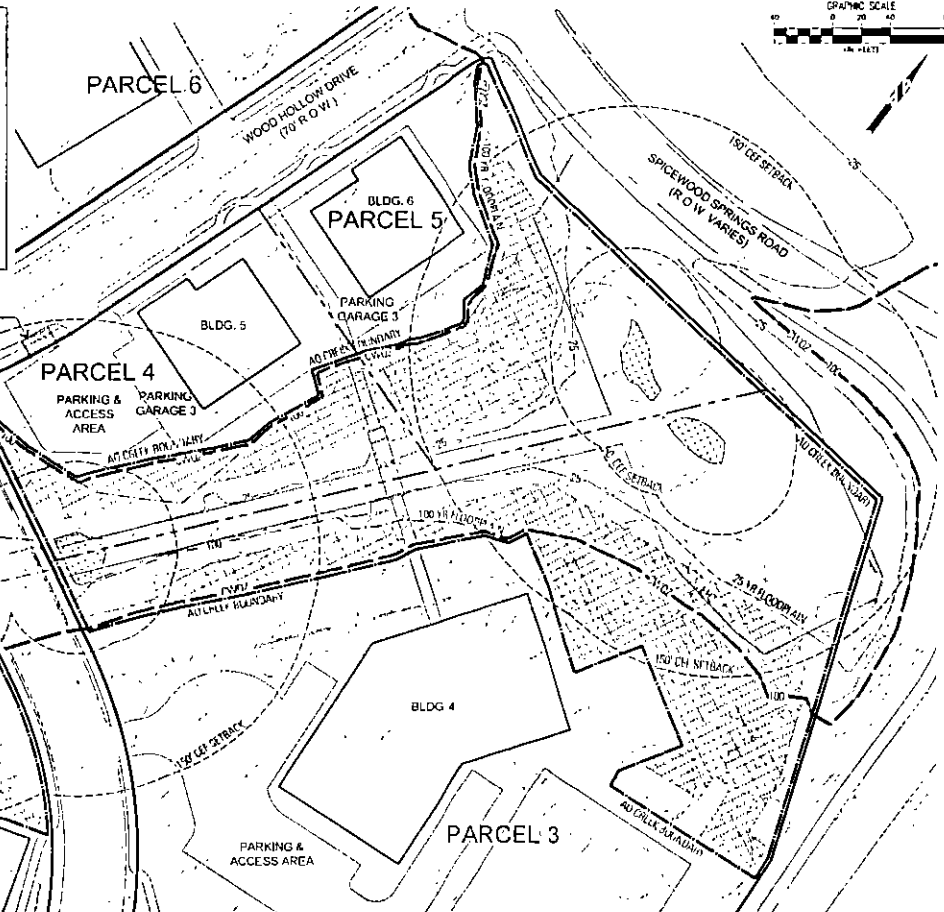
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- Notes
1. The Owner will provide up to 5' (500,000) to relocate Parcel 10 to a new location. The relocation of the parcel shall be subject to the approval of the City of Austin, Texas. The relocation of the parcel shall be subject to the approval of the City of Austin, Texas. The relocation of the parcel shall be subject to the approval of the City of Austin, Texas.
 2. This subject subject to Council Action and approval.
 3. The building, structure, and other improvements shall be subject to the approval of the City of Austin, Texas. The building, structure, and other improvements shall be subject to the approval of the City of Austin, Texas. The building, structure, and other improvements shall be subject to the approval of the City of Austin, Texas.
 4. The 20-4000' multi-use trail on the subject land and easements shall be subject to the approval of the City of Austin, Texas.



- LEGEND**
- IMPERVIOUS COVER TO BE REMOVED
 - WETLANDS
 - SLEEP
 - RIMROCK AND WETLAND CCF SETBACK
 - EROSION HAZARD ZONE
 - 100 YEAR FLOODPLAIN
 - 25 YEAR FLOODPLAIN
 - CWQZ - CRITICAL WATER QUALITY ZONE
 - PARCEL BOUNDARY
- Notes**
- Construction within the CWQZ and CCF buffer shall include the removal of existing surface parking lots and restoration of such areas. A restoration plan shall be submitted to the City for review and approval and implemented with such plan for Parcels 2, 3, 4, and 5. The restoration plan shall be approved and implemented with the following: (1) planning and zoning compliance to the standard specifications (SSPs), and (2) implementation shall be adequate to achieve a score of "Level 3" or better for the following parameters of Environmental Online Manual Appendix A "Scoring" (Level 1 - Plantation Health, Soil Diversity, and Composition, Structural Diversity, and Topography). The CWQZ and CCF buffer shall be restored to all existing areas within the CWQZ and CCF buffer. Restoration of existing parking lots within the AO Creek Flow, and outside of the CWQZ or CCF buffer shall be planned and executed pursuant to standard specifications (SSPs). The restoration plan shall be implemented prior to certificate of occupancy, and restoration shall be completed complete if the goals of this restoration plan have been met following a one year warranty period.
 - Construction of the pedestrian bridge to be pre-engineered steel frame with concrete decking at a minimum of 5 ft wide and shall allow for pier supports on the inundation bench. The pedestrian bridge as to be constructed as part of Parcel 3 and maintained by the Owner for ten years from the date of installation and maintained by the City thereafter.
 - The lower side of the unarmored creek bank on Parcels 4 and 5 shall be laid back to create an inundation bench as shown on the plan sheet 1, unless uniform column bedrock prevents excavation to the depth shown. The Owner will not be required to excavate further if bedrock is encountered. The inundation bench will be limited to 10 feet above the existing ground surface, unless otherwise indicated. The design shall accommodate a minimum of 10 feet at the top of the bank for a future trail or other permitted improvements. To the extent the Owner is unable to achieve 20,000 cubic feet of detention storage by laying back the third side of the unarmored creek bank on Parcels 4 and 5, the Owner will create a detention pond within the AO Creek boundary on the third side of the unarmored creek bank such that a total of at least 20,000 cubic feet of detention is provided.
 - Except as provided in Note 3 above, the existing water bank including the sections consisting of stacked limestone boulders shall remain undisturbed except for rearmenments and repairs, including, but not limited to, any work required to maintain existing flows which direct unarmored bank directly to the creek area. The construction in the CWQZ may also include hard surfacing and other improvements, including, but not limited to, any work required to maintain existing flows which direct unarmored bank directly to the creek area. The design shall accommodate a minimum of 10 feet at the top of the bank for a future trail or other permitted improvements. To the extent the Owner is unable to achieve 20,000 cubic feet of detention storage by laying back the third side of the unarmored creek bank on Parcels 4 and 5, the Owner will create a detention pond within the AO Creek boundary on the third side of the unarmored creek bank such that a total of at least 20,000 cubic feet of detention is provided.
 - Bus shelter subject to Capital Metro review and approval.
 - The buildings, structures, parking, sidewalks, trails and other improvements shown on this exhibit are graphic representations and are not exact. The exact locations and specifications for the buildings, structures, parking and other improvements shall be determined as site development permits are issued as is consistent with the provisions and intent of the ordinance.



STREAM LAYING BACK AREA
SCALE: 1"=10'

REVISED: APRIL 4, 2017

EXHIBIT F

UG
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AUSTIN OAKS PUD
AO CREEK PLAN

EXHIBIT F




AUGUST 30, 2016

UGO JOB NO. 15-854

15-17

CITY OF AUSTIN



- | | |
|---|--|
|  | EXECUTIVE CENTER DRIVE STREETSCAPE |
|  | WOOD HOLLOW DRIVE STREETSCAPE |
|  | HARTLAND STREETSCAPE |
|  | INDICATES AT LEAST ONE ENTRY ON STREET FACING FACADE OF BUILDING |



1. AT THE TIME OF SITE PLAN AND A PUBLIC ACCESS/DRIVEWAY EASEMENT WILL BE PROVIDED FOR THE PORTION OF THE HERITAGE TRAIL LOCATED WITHIN THE PARCEL FOR WHICH A SITE EASEMENT IS BEING REQUESTED FOR APPROVAL.
2. AT THE TIME OF SITE PLAN (AND AT THE OWNER'S DISCRETION) A PEDESTRIAN PATHWAY WITHIN A PUBLIC EASEMENT THAT IS A MINIMUM OF 8' WIDE SHALL BE LOCATED FROM A HERITAGE CENTER DRIVE TO SPICEWOOD SPRINGS ROAD ON EITHER PARCEL 7 OR PARCEL 8, WITH SPECIFIC LOCATION SUBJECT TO THE PARCEL EASEMENT.
3. GRIFFITH/CAPAC DESIGN WITHIN R.O.W. ARE SUBJECT TO TRAFFIC IMPACT ANALYSIS IMPROVEMENTS AND CITY APPROVAL.
4. BUSINESS CENTER SUBJECT TO CAPITAL METRO NEED AND APPROVAL.
5. THE BUILDINGS, STRUCTURES, PARKING, DRIVEWAYS, TRAILS, AND OTHER IMPROVEMENTS SHOWN ON THIS LAYOUT ARE GRAPHIC REPRESENTATIONS AND ARE NOT EXACT. THE EXACT LOCATIONS AND SPECIFICATIONS FOR THE BUILDING, STRUCTURES, PARKING, DRIVEWAYS, IMPROVEMENTS SHALL BE DETERMINED AS SITE DEVELOPMENT PERMITS ARE ISSUED AS IS CONSISTENT WITH THE PROVISIONS AND INTENT OF THIS ORDINANCE.

Trips will be tracked through the following chart that shall be updated with each site plan application.

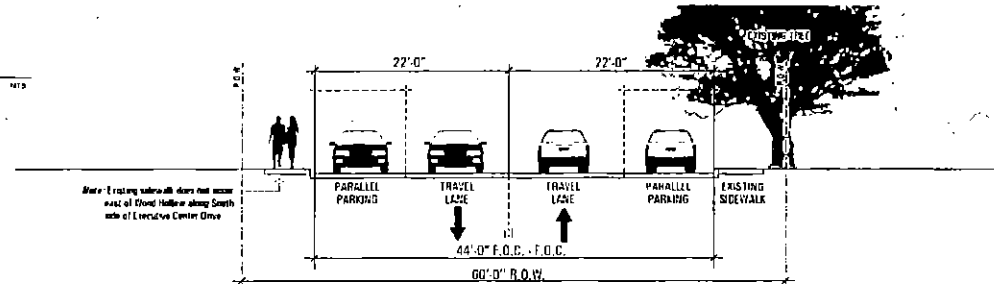
Site Plan #	Parcel #	Trips
	Total	

Parking will be tracked through the following chart that shall be updated with each site plan application:

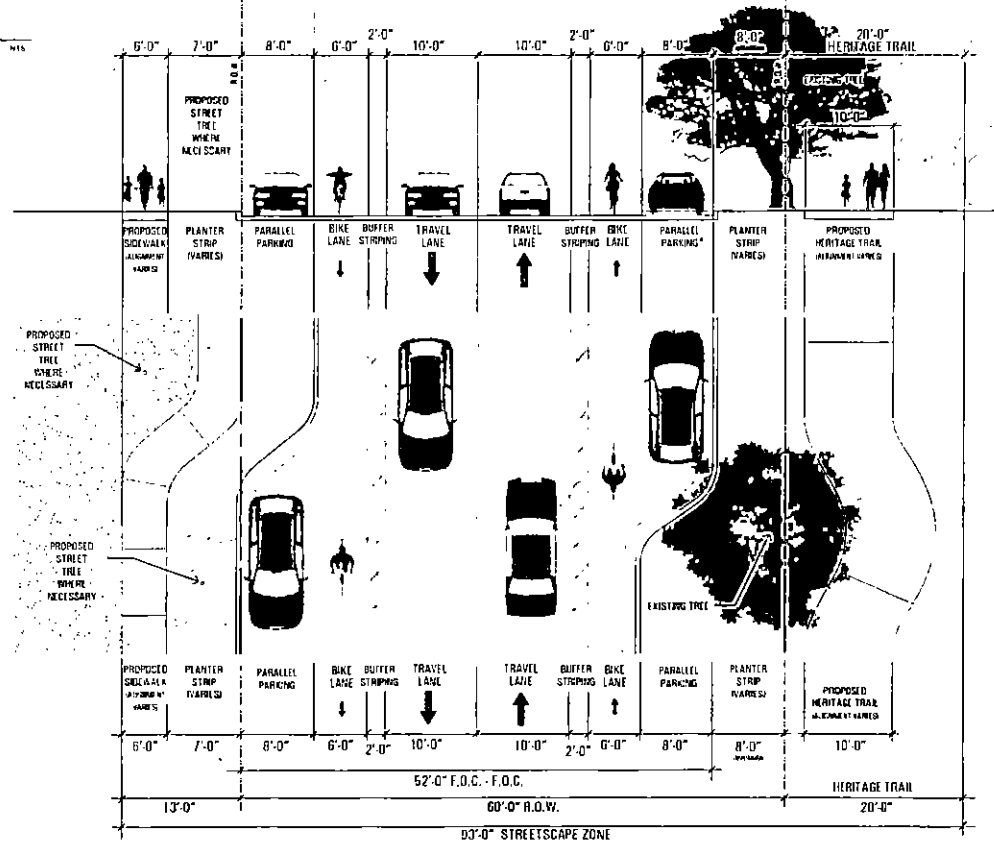
Site Plan #	Parcel #	Proposed Structured Spaces #	Proposed Surface Spaces #	Proposed On-Street Spaces #	Total Spaces #

REVISÉ : AVRIL 4, 2017

EXECUTIVE CENTER DRIVE - EXISTING CONDITIONS



EXECUTIVE CENTER DRIVE - PROPOSED CONDITIONS



NOTES

- ON-STREET PARALLEL PARKING MAY BE LOCATED WHERE NOT IN CONFLICT WITH EXISTING SITE CONDITIONS. EXISTING SIDEWALK TO BE REMOVED WHERE PARALLEL PARKING OCCURS.
- HERITAGE TRAIL (10' WIDE) EXTENDS ALONG THE NORTH SIDE OF EXECUTIVE CENTER DRIVE FROM HART LANE TO WOOD HOLLOW. THE HEATER, THE SIDEWALK WIDTH IS 8 FT MINIMUM TO VARIOUS FRONTAGE.
- WHERE FEASIBLE, GIVEN EXISTING TREES, UTILITIES, SITE VISIBILITY, STREET LIGHTS, DRIVEWAYS AND OTHER REQUIRED REGULATORY RESTRICTIONS, STREET TREES SHALL BE PLACED AT AN AVERAGE SPACING OF 30 FT ON CENTER WITHIN THE PLANTER STRIP.
- SIDEWALK AND PLANTER STRIP ALIGNMENT WILL VARY DEPENDING ON EXISTING TREES AND OTHER SITE CONDITIONS.
- POSSIBLE STREET AND CURB VARIATION TO ALLOW FOR ON-STREET PARKING AND LANDSCAPE DUMP-OUTS, AT OWNER'S DISCRETION.

REVISED : APRIL 4, 2017

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AUSTIN OAKS PUD
STREETSCAPE PLAN

EXHIBIT G

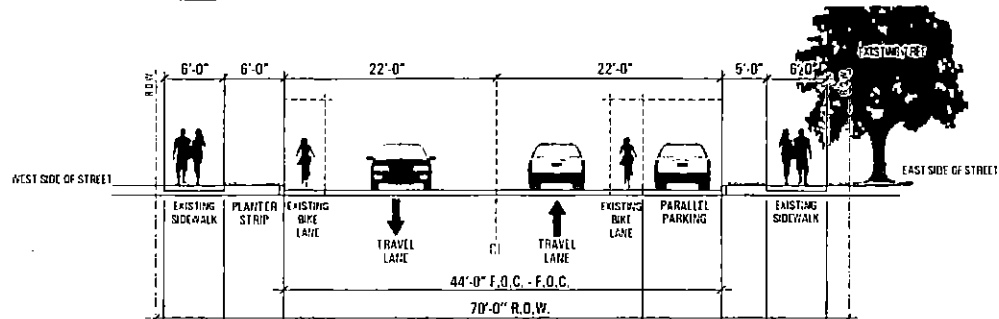
PAGE 2 OF 5

AUGUST 20, 2018

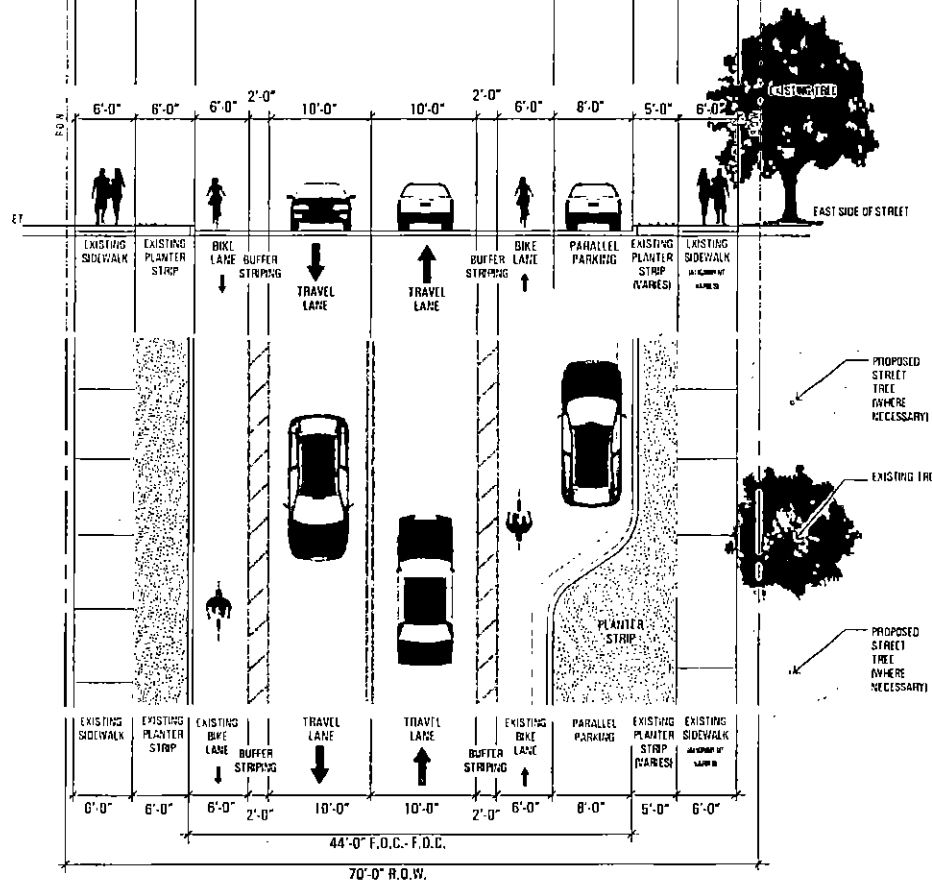
UDG JOB NO. 15-004

LAST NUMBER CHANGED: 04/04/17

WOOD HOLLOW DRIVE - EXISTING CONDITIONS



WOOD HOLLOW DRIVE - PROPOSED CONDITIONS



NOTES

1. WHERE FEASIBLE, GIVEN EXISTING TREES, UTILITIES, SITE VISIBILITY, STREET LIGHTS, DRIVEWAYS AND OTHER REQUIRED REGULATORY RESTRICTIONS, STREET TREES SHALL BE PLACED AT AN AVERAGE SPACING OF 30 FT ON CENTER WITHIN THE PLANTER STRIP.
2. SIDEWALK AND PLANTER STRIP ALIGNMENT WILL VARY DEPENDING ON EXISTING TREES AND OTHER SITE CONDITIONS.
3. POSSIBLE STREET AND CURB VARIATION TO ALLOW FOR ON-STREET PARKING AND LANDSCAPE BUMPOUTS, AT OWNERS DISCRETION.

REVISED : APRIL 4, 2017

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AUSTIN OAKS PUD
STREETSCAPE PLAN

DATE	2017.04.04
BY	UDG
CHECKED BY	TBG
APPROVED BY	
DATE	2017.04.04

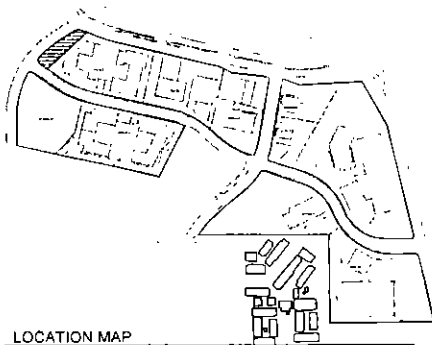
EXHIBIT G
PAGE 3 OF 5
AUGUST 30, 2016
UDG JOB NO. 13-004
DATE NUMBER 13-004-04-02

HART LANE- EXISTING CONDITIONS AT PARCEL 8

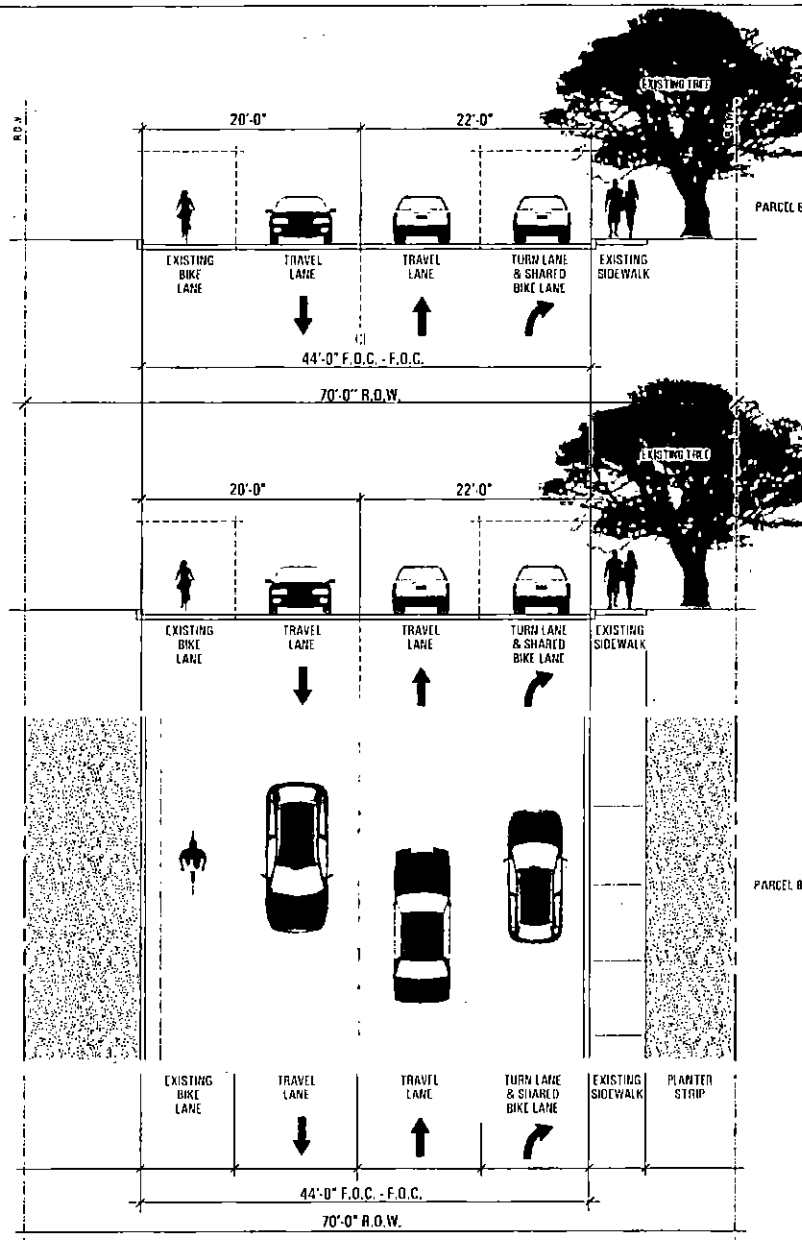
HTS

HART LANE- PROPOSED CONDITIONS AT PARCEL 8

HTB



LOCATION MAP
PLAN OF HART LANE STREETSCAPE ALONG PARCEL 8



NOTES
1. WHERE FEASIBLE, GIVE EXISTING TREES, UTILITIES, SITE VISIBILITY, STREET LIGHTS DRIVEWAYS AND OTHER REQUIRED REGULATORY RESTRICTIONS. STREET TREES SHALL BE PLACED AT AN AVERAGE SPACING OF 30 FT ON CENTER WITHIN THE PLANTER STRIP ALONG PARCEL 8 FRONTAGE.

REVISED : APRIL 4, 2017

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AUSTIN OAKS PUD

STREETSCAPE PLAN

NO.	DATE	DESCRIPTION
1	08/01/16	ISSUED FOR PERMIT
2	08/01/16	ISSUED FOR PERMIT
3	08/01/16	ISSUED FOR PERMIT
4	08/01/16	ISSUED FOR PERMIT

EXHIBIT G

PAGE 4 OF 5

AUGUST 30, 2016

UDG JOB NO. 15-004

CASE NUMBER CPM-16-02151

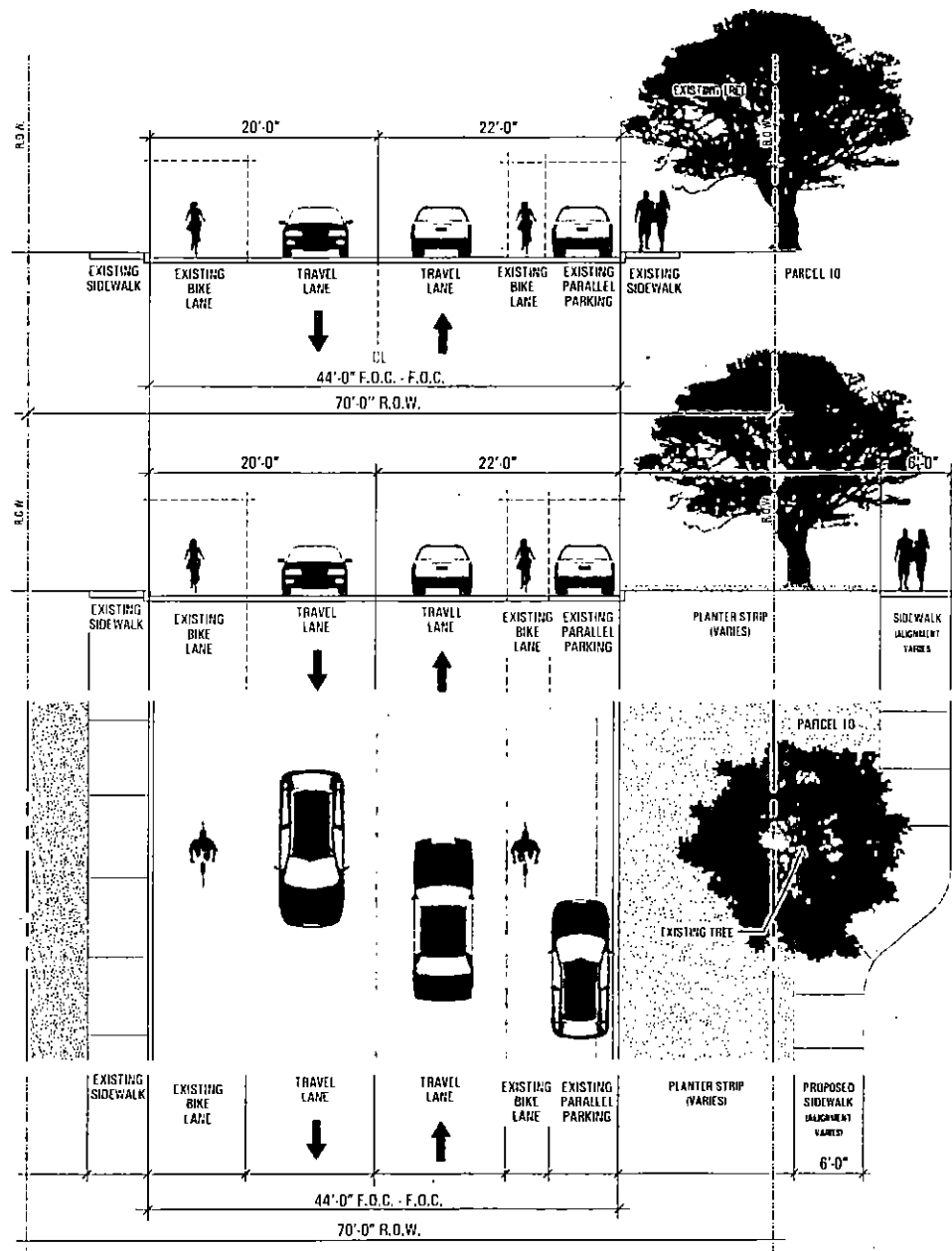
AUSTIN OAKS PUD

HART LANE - EXISTING CONDITIONS AT PARCEL 10

HART LANE - PROPOSED CONDITIONS AT PARCEL 10

LOCATION MAP

PLAN OF HART LANE, STREETSCAPE ALONG PARCEL 10



NOTES

1. WHERE FEASIBLE, GIVEN EXISTING TREES, UTILITIES, SITE VISIBILITY, STREET LIGHTS, DRIVEWAYS AND OTHER REQUIRED REGULATORY RESTRICTIONS, BICYCLE TRAILS SHALL BE PLACED AT AN AVERAGE SPACING OF 30 FT ON CENTER WITHIN THE PLANTER STRIP ALONG PARCEL 10 FRONTAGE.
2. SIDEWALK AND PLANTER STRIP ALIGNMENT WILL VARY DEPENDING ON EXISTING TREES AND OTHER SITE CONDITIONS.

REVISED : APRIL 4, 2017

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AUSTIN OAKS PUD
STREETSCAPE PLAN

DATE	BY	CHKD
04/04/17	UDG	TBG
04/04/17	UDG	TBG
04/04/17	UDG	TBG

EXHIBIT G
PAGE 5 OF 5

AUGUST 30, 2018

UDG JOB NO. 13-284

LAW NUMBER: 0142070-0178

EXHIBIT H

UDG
 Urban Design Group, P.C.
 3600 N. Highway 180, Suite 110
 Austin, TX 78716
 512.441.0840

T.B.G.
 Tree Biology Group, P.C.
 3600 N. Highway 180, Suite 110
 Austin, TX 78716
 512.441.0840

AUSTIN OAKS RUD

TREE PLAN

DATE	BY	REV
10/1/16	UDG	1
10/1/16	TBG	1
10/1/16	UDG	1
10/1/16	TBG	1
10/1/16	UDG	1
10/1/16	TBG	1

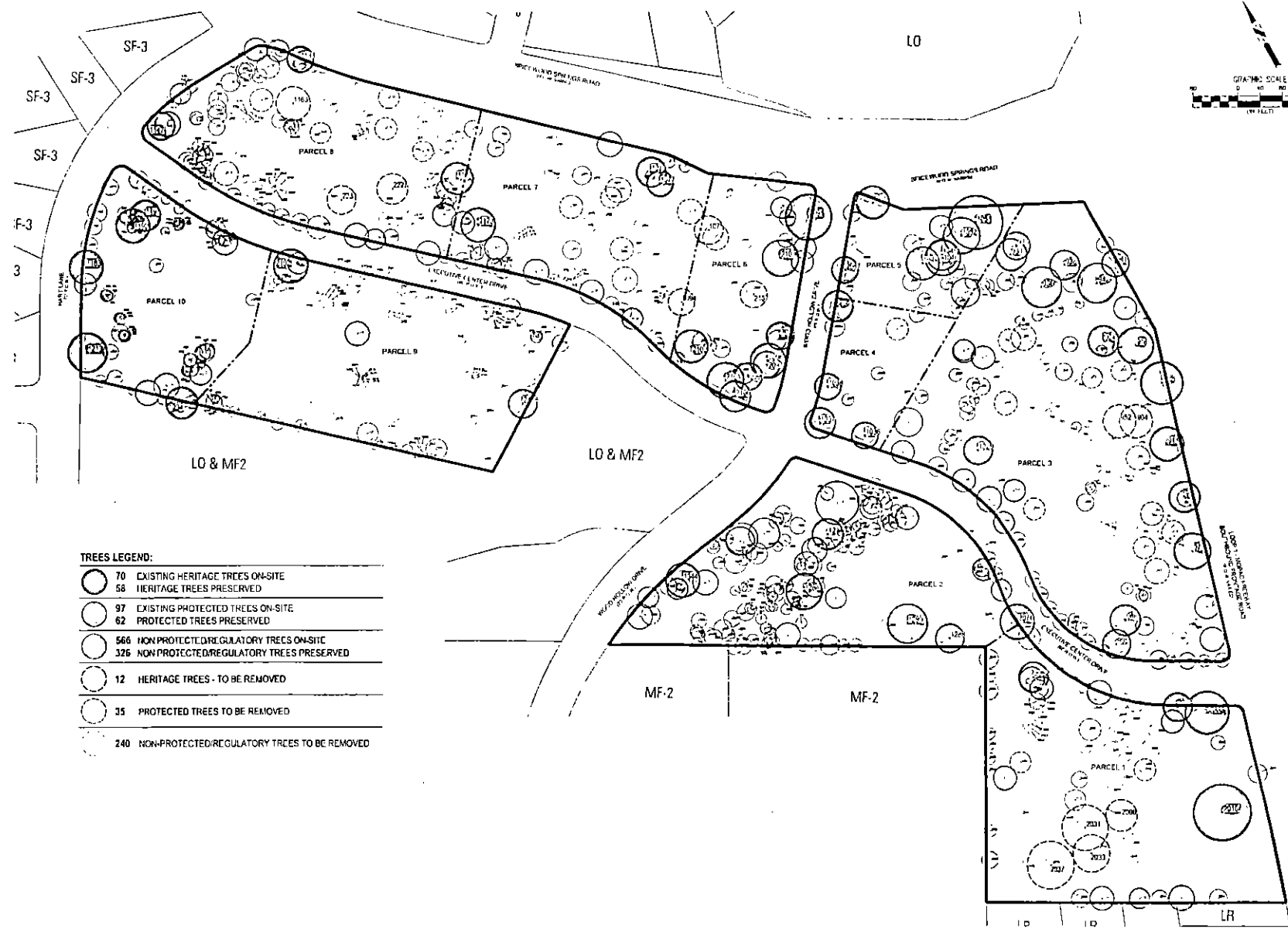
EXHIBIT H

AUGUST 30, 2016

UDG JOB NO. 15-004

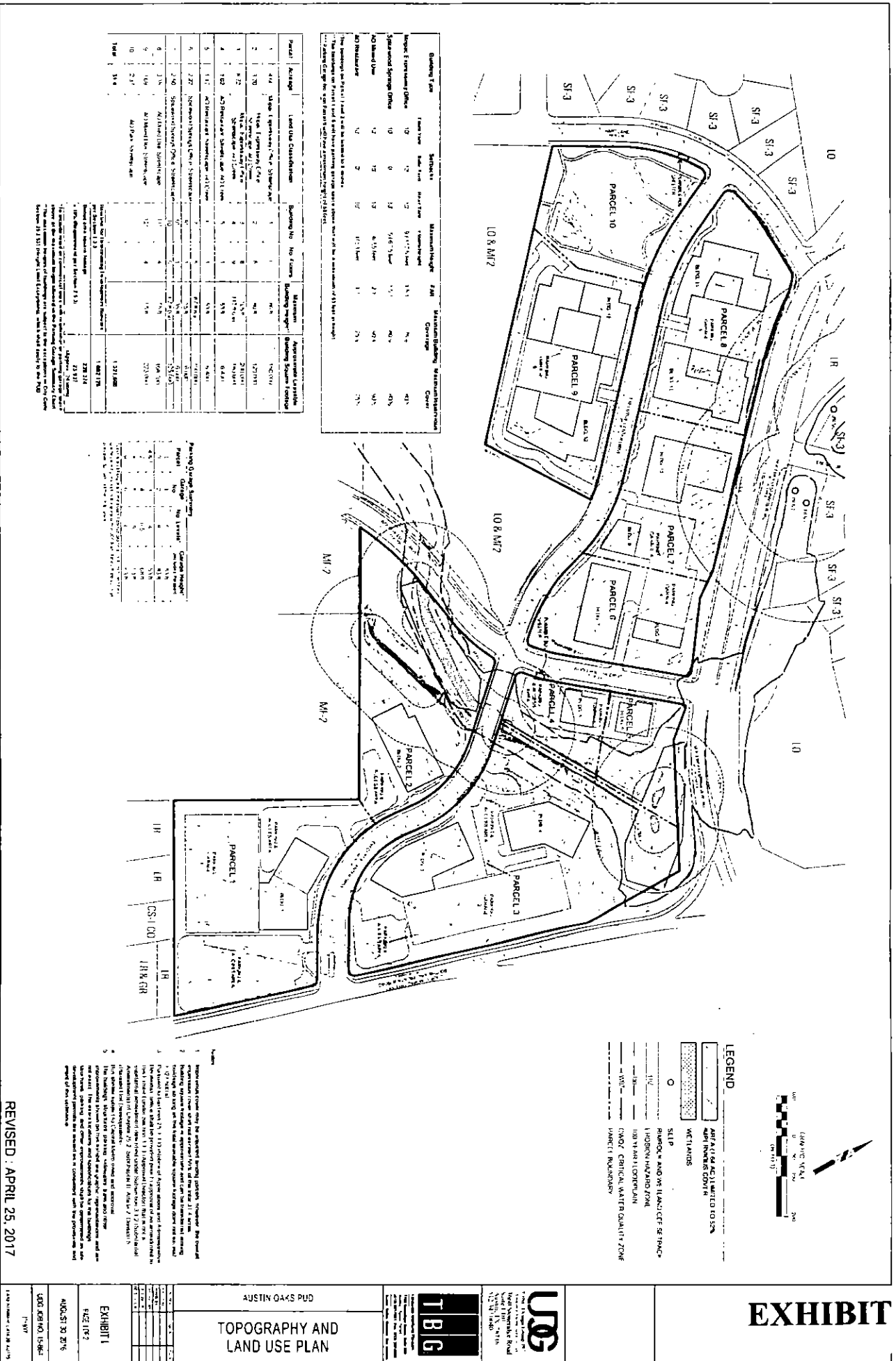
10/1/16

CASE NUMBER: 15-004-0001



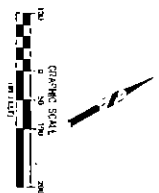
REVISED : APRIL 4, 2017

EXHIBIT I



REVISED: APRIL 25, 2017

EXHIBIT J



LEGEND

PROVIDED OPEN SPACE

Parcel Number	Parcel Area (Acres)	Parcel Area (Sq. Ft.)	Parcel Area (Sq. Ft.)	Parcel Area (Sq. Ft.)	Parcel Area (Sq. Ft.)
Parcel 1	21.00	20%	4.20	7.00	7.00
Parcel 2	7.04	10%	0.71	1.43	1.43
Parcel 3	29.01	10%	2.90	5.80	5.80
Parcel 4	2.37	10%	0.24	0.47	0.47
Parcel 5	21.4	10%	2.14	4.28	4.28
Parcel 6	21.4	10%	2.14	4.28	4.28
Parcel 7	21.4	10%	2.14	4.28	4.28
Parcel 8	21.4	10%	2.14	4.28	4.28
Parcel 9	21.4	10%	2.14	4.28	4.28
Parcel 10	21.4	10%	2.14	4.28	4.28
Parcel 11	21.4	10%	2.14	4.28	4.28
Parcel 12	21.4	10%	2.14	4.28	4.28
Parcel 13	21.4	10%	2.14	4.28	4.28
Parcel 14	21.4	10%	2.14	4.28	4.28
Parcel 15	21.4	10%	2.14	4.28	4.28
Parcel 16	21.4	10%	2.14	4.28	4.28
Parcel 17	21.4	10%	2.14	4.28	4.28
Parcel 18	21.4	10%	2.14	4.28	4.28
Parcel 19	21.4	10%	2.14	4.28	4.28
Parcel 20	21.4	10%	2.14	4.28	4.28
Parcel 21	21.4	10%	2.14	4.28	4.28
Parcel 22	21.4	10%	2.14	4.28	4.28
Parcel 23	21.4	10%	2.14	4.28	4.28
Parcel 24	21.4	10%	2.14	4.28	4.28
Parcel 25	21.4	10%	2.14	4.28	4.28
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Parcel 27	21.4	10%	2.14	4.28	4.28
Parcel 28	21.4	10%	2.14	4.28	4.28
Parcel 29	21.4	10%	2.14	4.28	4.28
Parcel 30	21.4	10%	2.14	4.28	4.28
Parcel 31	21.4	10%	2.14	4.28	4.28
Parcel 32	21.4	10%	2.14	4.28	4.28
Parcel 33	21.4	10%	2.14	4.28	4.28
Parcel 34	21.4	10%	2.14	4.28	4.28
Parcel 35	21.4	10%	2.14	4.28	4.28
Parcel 36	21.4	10%	2.14	4.28	4.28
Parcel 37	21.4	10%	2.14	4.28	4.28
Parcel 38	21.4	10%	2.14	4.28	4.28
Parcel 39	21.4	10%	2.14	4.28	4.28
Parcel 40	21.4	10%	2.14	4.28	4.28
Parcel 41	21.4	10%	2.14	4.28	4.28
Parcel 42	21.4	10%	2.14	4.28	4.28
Parcel 43	21.4	10%	2.14	4.28	4.28
Parcel 44	21.4	10%	2.14	4.28	4.28
Parcel 45	21.4	10%	2.14	4.28	4.28
Parcel 46	21.4	10%	2.14	4.28	4.28
Parcel 47	21.4	10%	2.14	4.28	4.28
Parcel 48	21.4	10%	2.14	4.28	4.28
Parcel 49	21.4	10%	2.14	4.28	4.28
Parcel 50	21.4	10%	2.14	4.28	4.28
Parcel 51	21.4	10%	2.14	4.28	4.28
Parcel 52	21.4	10%	2.14	4.28	4.28
Parcel 53	21.4	10%	2.14	4.28	4.28
Parcel 54	21.4	10%	2.14	4.28	4.28
Parcel 55	21.4	10%	2.14	4.28	4.28
Parcel 56	21.4	10%	2.14	4.28	4.28
Parcel 57	21.4	10%	2.14	4.28	4.28
Parcel 58	21.4	10%	2.14	4.28	4.28
Parcel 59	21.4	10%	2.14	4.28	4.28
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Parcel 62	21.4	10%	2.14	4.28	4.28
Parcel 63	21.4	10%	2.14	4.28	4.28
Parcel 64	21.4	10%	2.14	4.28	4.28
Parcel 65	21.4	10%	2.14	4.28	4.28
Parcel 66	21.4	10%	2.14	4.28	4.28
Parcel 67	21.4	10%	2.14	4.28	4.28
Parcel 68	21.4	10%	2.14	4.28	4.28
Parcel 69	21.4	10%	2.14	4.28	4.28
Parcel 70	21.4	10%	2.14	4.28	4.28
Parcel 71	21.4	10%	2.14	4.28	4.28
Parcel 72	21.4	10%	2.14	4.28	4.28
Parcel 73	21.4	10%	2.14	4.28	4.28
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Parcel 75	21.4	10%	2.14	4.28	4.28
Parcel 76	21.4	10%	2.14	4.28	4.28
Parcel 77	21.4	10%	2.14	4.28	4.28
Parcel 78	21.4	10%	2.14	4.28	4.28
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Parcel 80	21.4	10%	2.14	4.28	4.28
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Parcel 97	21.4	10%	2.14	4.28	4.28
Parcel 98	21.4	10%	2.14	4.28	4.28
Parcel 99	21.4	10%	2.14	4.28	4.28
Parcel 100	21.4	10%	2.14	4.28	4.28

- NOTES
1. Open space requirements for the property are provided and calculated on a PUD basis and therefore, individual parcels do not have to achieve open space requirements at the time of sale plan.
 2. The architect includes primary open space areas, it does not include additional open space areas incidental to the property, located between buildings and parking areas and private lot of which would further reduce the overall open space provided.

REVISED : APRIL 4, 2017

U3G
The U3G Group, Inc.
10000 North Loop West
Suite 1000
Houston, TX 77037
(281) 441-1000

TBG
The TBG Group, Inc.
10000 North Loop West
Suite 1000
Houston, TX 77037
(281) 441-1000

AUSTIN OAKS PUD

OPEN SPACE PLAN

EXHIBIT J

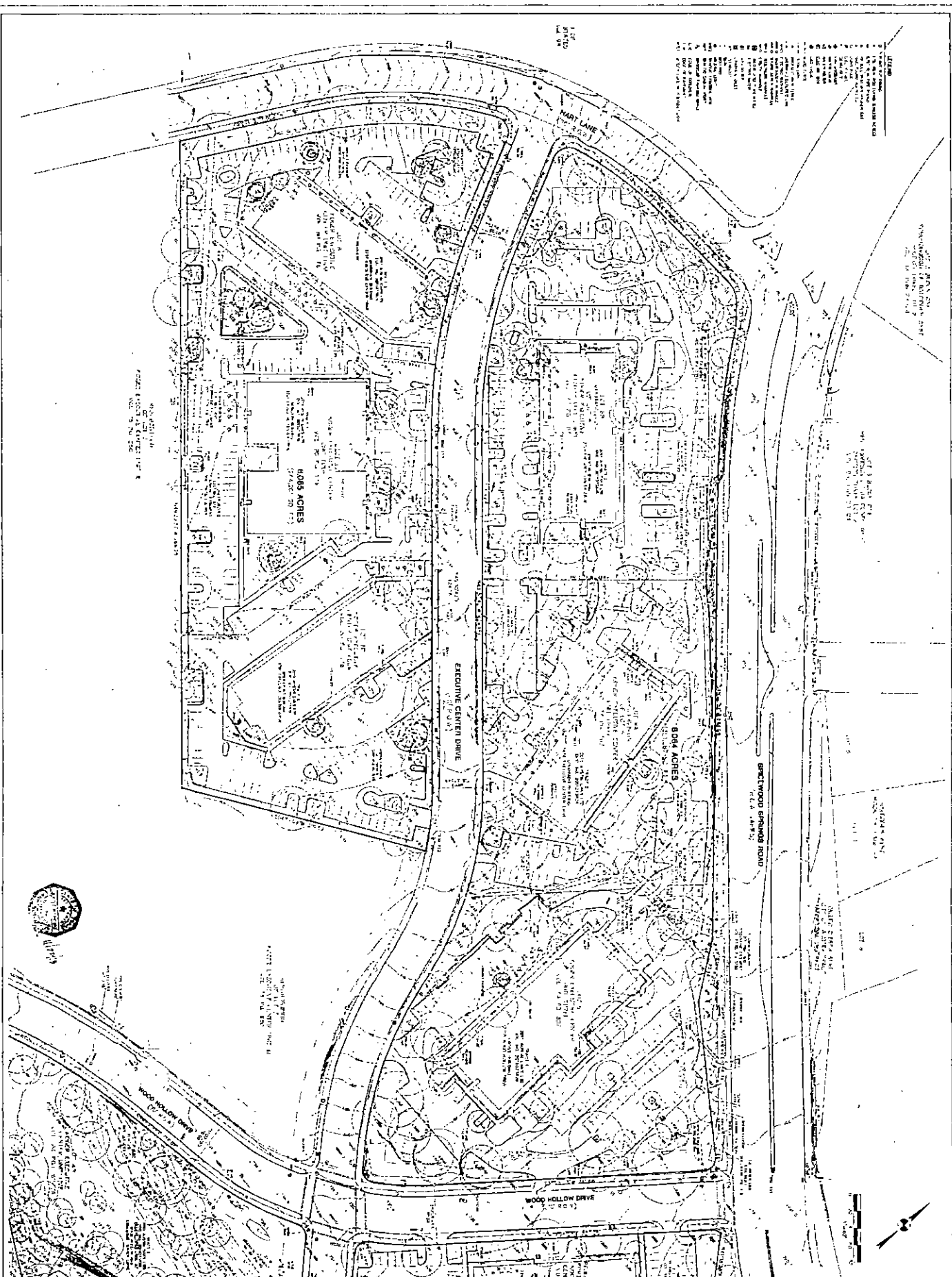
AUGUST 30, 2016

1000 JOB NO. 15864

1"=80'

COPY DRAWING (24" X 36")

1. ALL EXISTING BUILDINGS, FENCES, AND OTHER STRUCTURES SHOWN ON THIS SURVEY ARE LOCATED AS SHOWN ON THE PLAT.
 2. ALL EXISTING EASEMENTS, RIGHTS-OF-WAY, AND OTHER INTERESTS IN THE LAND ARE SHOWN ON THE PLAT.
 3. ALL EXISTING CURBS, GUTTERS, AND OTHER STREET FEATURES ARE SHOWN ON THE PLAT.
 4. ALL EXISTING UTILITY LINES, INCLUDING WATER, SEWER, GAS, AND ELECTRIC, ARE SHOWN ON THE PLAT.
 5. ALL EXISTING TREES AND OTHER VEGETATION ARE SHOWN ON THE PLAT.
 6. ALL EXISTING ROADS, DRIVEWAYS, AND OTHER ACCESSWAYS ARE SHOWN ON THE PLAT.
 7. ALL EXISTING BOUNDARIES AND SURVEY DATA ARE SHOWN ON THE PLAT.
 8. ALL EXISTING RECORDS AND DOCUMENTS ARE SHOWN ON THE PLAT.
 9. ALL EXISTING RECORDS AND DOCUMENTS ARE SHOWN ON THE PLAT.
 10. ALL EXISTING RECORDS AND DOCUMENTS ARE SHOWN ON THE PLAT.



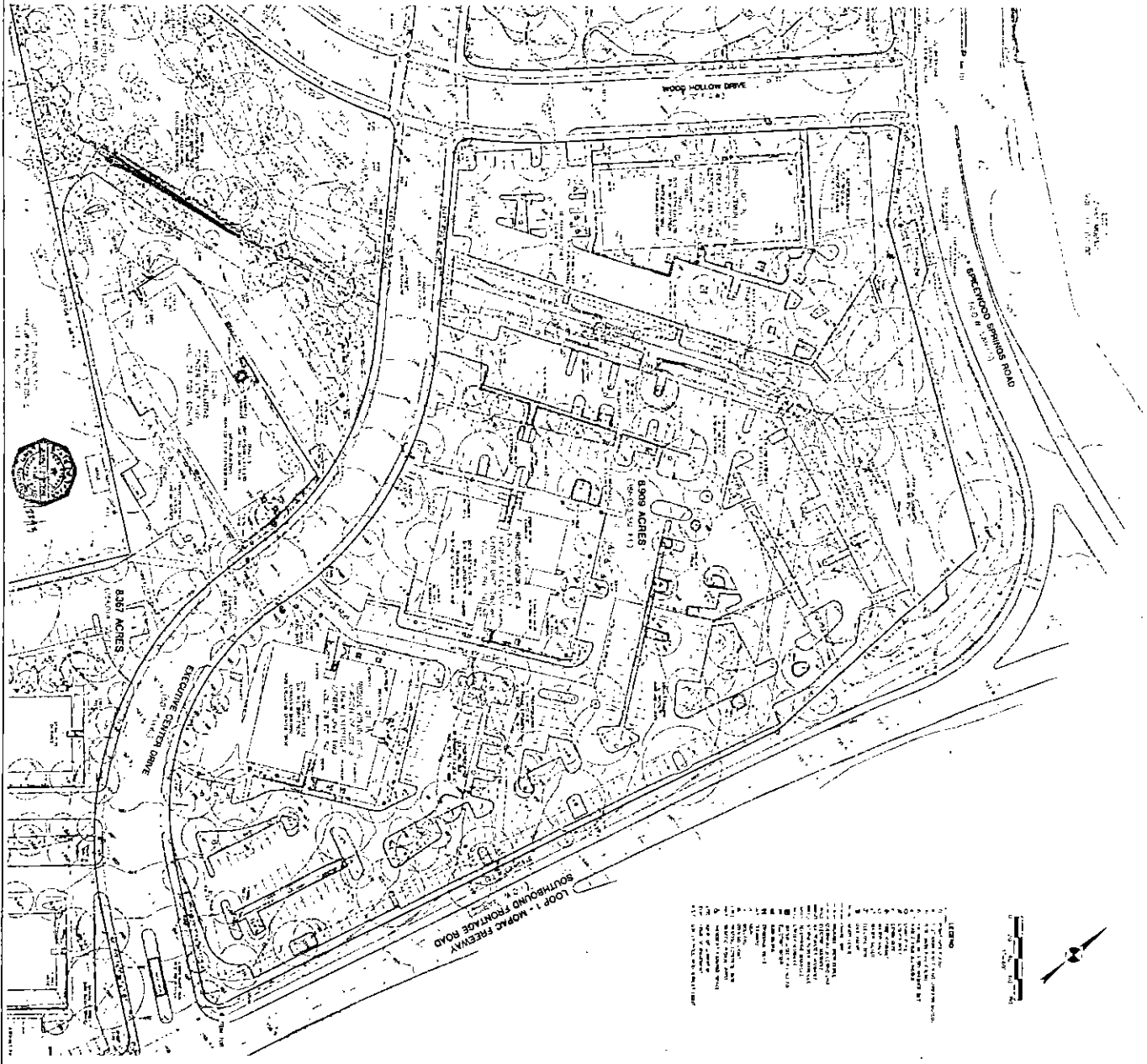
Surveyed by: [Signature]
 Date: [Date]
 The [Firm Name]
 Austin, Texas
 Project: [Project Name]
 Drawn by: [Signature]
 Checked by: [Signature]
 Project No.: [Project Number]

SPIRE REALTY GROUP, LP
AUSTIN OAKS - MOPAC AT SPICEWOOD SPRINGS

BOUNDARY, TOPOGRAPHIC AND TREE SURVEY
 OF 31.565 ACRES OF LAND SITUATED IN THE CITY OF AUSTIN, TEXAS, BEING ALL OF THOSE TRACTS OF LAND CONVEYED TO 2015 AUSTIN OAKS, L.P., AS DESCRIBED IN DEED OF RECORD IN DOCUMENT NO. 2010173820 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

BURY
 2015 Austin Oaks Survey
 Austin, Texas 78701
 Tel: 512.452.1111 Fax: 512.452.1112
 1000 N. Loop West, Suite 1000
 Copyright 2015

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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Restrictive Covenant for Affordable Units

Multifamily Rental

Owner: Twelve Lakes LLC., a Texas limited liability company

Owner's Address:

Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

City: City of Austin, Texas, a Texas home rule municipal corporation situated in the counties of Hays, Travis and Williamson.

City's Address: P.O. Box 1088, Austin, Texas 78767-1088

Property: 3409, 3420, 3429, 3445, 3520, 3636 3701, 3724, and 3737 Executive Center Drive, and 7601, 7718, and 7719 Wood Hollow Drive, Austin, Travis County, Texas 78731

Project: Austin Oaks

- A. The Property is subject to Planned Unit Development zoning under Ordinance No. _____, which includes affordability requirements.

NOW, THEREFORE, it is declared that the Owner of the Property, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid to the Owner, the receipt and sufficiency of which are hereby acknowledged, agrees that the property shall be held, developed, used, sold and conveyed subject to the following covenants and restrictions impressed upon the Property by this Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be binding on the Owners of the Property, their heirs, successors and assigns.

1. Development Restrictive Covenants. Development of the Property shall provide the following:

- a. At least ____ percent (____%) of the net rentable square footage on the Property must be available to house persons whose household income is no more than ____ percent of the median family income in the Austin-Round Rock metropolitan statistical area (MFI), as determined by the director of the City of Austin's Neighborhood Housing and Community Development Office; and

- b. Units developed in accordance with section A.1.a above will be rented at affordable rents for a period of forty (40) years from the date a certificate of occupancy is issued for rental units. Affordable means a household that is required to spend no more than 30% of its gross monthly income on rental payments and utilities for the unit. Maximum flat monthly rental rates are established annually by the City of Austin's Neighborhood Housing and Community Development Office based on the current Annual Median Family Incomes for the Austin Metropolitan Statistical Area, for households earning ____% MFI.

2. Compliance and Monitoring. The Neighborhood Housing and Community Development Office will conduct compliance and monitoring of the affordability requirements of this Restrictive Covenant. The director of Neighborhood Housing and Community Development shall establish compliance and monitoring guidelines and criteria for implementing the affordability requirements of this Restrictive Covenant.

3. Modification and Amendment. This Restrictive Covenant may be modified, amended or terminated only upon the filing of a modification, amendment or termination in the Official Public Records of Travis County, Texas, executed, acknowledged and approved by (i) the Owner; and (ii) the officer or employee signing on behalf of the City . The joint action shall only become effective after it is reduced to writing and signed by the parties listed above.

4. Duration. This Restrictive Covenant shall be effective for no more than 40 years of documented compliance with the affordability terms listed above in Section A.1.b unless modified, amended, or terminated in accordance with Section 3 (Modification and Amendment).

5. Violation. If any person or entity shall violate or attempt to violate this Restrictive Covenant, it shall be lawful for the City to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant to prevent the person or entity from taking actions in violation of this Restrictive Covenant.

6. No Waiver. The failure to enforce any provision of this Restrictive Covenant at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Restrictive Covenant. A violation of any provision of this Restrictive Covenant shall never be grounds for,

nor give rise to the modification, amendment or termination of any provision of this Restrictive Covenant.

7. **Governing Law; Place of Performance.** This Restrictive Covenant and all rights and obligations hereunder shall be governed by the laws of the State of Texas. This Restrictive Covenant is performable on the Property.

8. **Severability.** The provisions of this Restrictive Covenant are deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion does not affect the validity or enforceability of any other provision.

9. **Entire Agreement.** This Restrictive Covenant and the attached Exhibit " A " hereto contain all the representations and the entire agreement between the parties with respect to the subject matter. Any prior correspondence, memoranda or agreements are superseded in total.

10. **Counterparts.** This Restrictive Covenant may be executed in any number of counterparts which will, together, be deemed to constitute one document.

11. **Interpretation.** Regardless of which Party prepared the initial draft of this Restrictive Covenant, this Restrictive Covenant shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for nor against any party.

EXECUTED to be effective the _____ day of _____, 20____.

OWNER:

By: _____

CITY OF AUSTIN:

By: _____

Bert Lumbreras
Assistant City Manager
City of Austin

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____,
20____, by _____.

Notary Public, State of Texas

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____,
20____, by Bert Lumbreras, as Assistant City Manager of the City of Austin, a municipal corporation, on
behalf of said municipal corporation.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

City of Austin
Neighborhood Housing and Community Development
1000 East 11th Street, Suite 200
Austin, TX 78702
Attn: Regina Copic/Sandra Harkins

**THE AUSTIN OAKS RESTRICTIVE COVENANT FOR
AFFORDABLE UNITS MULTIFAMILY RENTAL**

EXHIBIT A

**Legal Description of the Multifamily Rental Property
(Placeholder)**

**Restrictive Covenant for Affordable Units
Owner Occupied Condominium
For**

Austin, Travis County, Texas 78731

This Restrictive Covenant regarding Affordable Housing Requirements for the condominium project proposed at _____, Austin, Travis County, Texas 78731 (the "**Restrictive Covenant**"), is executed on _____ 20____, _____, a Texas limited liability company ("**Declarant**") and is as follows:

I. RECITALS

- A. Declarant owns that certain real property ("the Property") located at _____, Austin, Travis County, Texas 78731 and more particularly described below:

LEGAL DESCRIPTION

B. Definitions:

Owners. The term "**Owner**" means, individually, and the term "**Owners**" means, collectively, Declarant and all future owners of the fee interest or any portion of the Property (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.

Affordable Housing Requirements. The term "**Affordable Housing Requirements**" means the requirements in the Restrictive Covenant burdening the Property and substantially in the form attached as Exhibit "A" which shall restrict the Affordable Unit to be primarily occupied by a homeowner household whose adjusted gross income for the year immediately preceding the date of occupancy of the dwelling housing unit which is constructed on the Property is no more than ____% of the current Annual Median Family Income for the City of Austin Metropolitan Statistical Area and is verified in writing as acceptable by the Neighborhood Housing and Community Development Office of the City of Austin, or its successor department.

- C. Declarant has agreed to impose upon the Property these covenants and conditions for the benefit of the Property.

NOW, THEREFORE, Declarant declares that the Property is subject to the following covenants, conditions and restrictions, which run with the Property and bind all parties having right, title, or interest in or to such portion of the Property or any part, their respective heirs, successors, and assigns, and which inure to the benefit of each Owner. Each contract, deed or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

EXHIBIT M

1. Recitals Incorporated. The above Recitals and all terms defined therein are incorporated into this Restrictive Covenant for all purposes as if set forth in full herein.
2. Compliance with Affordability Standards. The Property is subject to Planned Unit Development zoning under Ordinance No. _____, which includes affordability requirements and Owner shall reserve the Property as affordable for not less than 99 years from the date a certificate of occupancy is issued, for ownership and occupancy by households earning no more than _____ percent of the current Annual Median Family Income for the Austin-Round Rock Metropolitan Statistical Area Unit.
3. Breach Does Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant entitles the Owners to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations do not affect in any manner any other rights or remedies which the Owners may have hereunder by reason of any breach of this Restrictive Covenant.
4. General Provisions.
 - A. Inurement. This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind Owners, and their successors and assigns. When an Owner conveys all or any portion of the Property, that former Owner will thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the Property conveyed by it arising from and after the date of recording of such conveyance, but no such sale releases that former Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance or arising from any breach occurring prior to conveyance.
 - B. Duration. Unless this Restrictive Covenant is modified, amended, or terminated in accordance with Paragraph 4(K), this Restrictive Covenant begins on the effective date of this Restrictive Covenant for a period of not less than ninety-nine (99) years from the date a certificate of occupancy is issued by the City of Austin for the Property Compliance with the Affordability Requirements of Section 2, and shall be evidenced by the recordation in the Official Records of Travis County, Texas, of a Resale Restriction Agreement and Covenant Limitations on Resale Price and Buyer Income in the form attached hereto as Exhibit "A" and made a part hereof for all purposes ("Resale Restriction"), which shall impose resale price and buyer income limitations and afford the City certain rights to cure a default in any mortgage loan as provided in the Resale Restriction on an individual residential unit.
 - C. Non-Merger. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
 - D. Severability. The provisions of this Restrictive Covenant must be deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.

- E. Entire Agreement. This Restrictive Covenant, and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Restrictive Covenant with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Restrictive Covenant and the exhibits attached hereto. The provisions of this Restrictive Covenant will be construed as a whole according to their common meaning and not strictly for or against any Owner.
- F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of this Restrictive Covenant.
- G. Governing Law: Place of Performance. This Restrictive Covenant and all rights and obligations created hereby will be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the county in Texas where the Property is located.
- H. Notices. Any Notice to the Owners or the City must be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- I. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant will be deemed to create a partnership between or among the Declarant, any Owner, or the City of Austin in their respective businesses or otherwise; nor will it cause them to be considered joint ventures or members of any joint enterprise.
- J. Enforcement. If any person, persons, corporation, or entity of any other character, violates or attempts to violate this Restrictive Covenant, it will be lawful for the City of Austin, its successors and assigns, to prosecute proceedings at law, or in equity, against the person or entity violating or attempting to violate these Restrictive Covenant and to prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by the City of Austin, its successors and assigns, whether any violations hereof are known or not, does not constitute a waiver or estoppel of the right to do so.
- K. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Official Records of the county in Texas where the Property is located, executed, acknowledged, and approved by (i) the Owner; and (ii) the officer or employee signing on behalf of the City. The joint action shall only become effective after it is reduced to writing and signed by the parties listed above.

Executed to be effective on _____, 20____.

DECLARANT: Twelve Lakes, LLC

By: _____

By: _____
- Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

The foregoing instrument was acknowledged before me, the undersigned Notary Public, ____ day of _____, by _____ as manager of Twelve Lakes, LLC.

Given under my hand and seal of office on _____, 20____.

Notary Public, State of Texas

{Additional signature page to follow}

CITY OF AUSTIN:

By: _____

Bert Lumbreras
Assistant City Manager
City of Austin

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 20____, by Bert Lumbreras, as Assistant City Manager of the City of Austin, a municipal corporation, on behalf of said Municipal Corporation.

Notary Public, State of Texas

APPROVED AS TO FORM:
BY CITY OF AUSTIN LAW DEPARTMENT

Assistant City Attorney
City of Austin

AFTER RECORDING RETURN TO:
Neighborhood Housing and Community Development
1000 East 11th Street, Suite 200
Austin, TX 78702
Attn: Regina Copic

[NOTICE TO TITLE COMPANY: THIS EXHIBIT SHOULD BE COMPLETED IN FULL BY THE HOME BUYER AT CLOSING AND RECORDED. PLEASE CONTACT THE NEIGHBORHOOD HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT AT THE CITY OF AUSTIN IF YOU HAVE ANY QUESTIONS OR NEED ASSISTANCE.]

EXHIBIT "A"

STATE OF TEXAS §

COUNTY OF TRAVIS §

**RESALE RESTRICTION AGREEMENT AND COVENANT
LIMITATIONS ON RESALE PRICE and BUYER INCOME**

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title.

AFFORDABLE HOUSING COVENANT

This Affordable Housing Agreement and Covenant ("Covenant") is entered into as of the _____ day of _____, 20____, by and between _____, and the City of Austin, Texas.

This Covenant applies only to the following described real property, including improvements, in Travis County, Texas ("Affordable Unit"):

Condominium Unit Number _____, in Building "_____", and the space encompassed by the boundaries thereof, the limited common elements appurtenant thereto, together with an undivided interest in the general common elements located in and being part of _____ CONDOMINIUMS, a Condominium project in Travis County, Texas, as fully described in and as located, delineated and as defined in the Condominium Declaration for _____ CONDOMINIUMS, recorded under Document No. _____, Official Public Records of Travis County, Texas.

RECITALS

WHEREAS, the City of Austin supports the goal of preserving affordable homeownership opportunities through long term affordability strategies; and

WHEREAS, the Affordable Unit (more completely described below in Section 1. Definitions) is subject to the Affordable Housing Declaration defined below in Section 1, but none of the other Condominium Units in the Condominium Project, other than the Affordable Units, are subject to the Affordable Housing Declaration or this Covenant; and

WHEREAS, the Affordable Housing Declaration requires, inter alia, that Grantor impose this Covenant on the Affordable Unit; and

WHEREAS, in accordance with such requirement, the Grantor has agreed to impose the affordable housing restrictions set forth in this Covenant against the Affordable Unit; and

WHEREAS, the intent of the City is to preserve the affordability of the Affordable Unit for persons of low or moderate income, including a surviving spouse or heirs of an Eligible Buyer; and

WHEREAS, subsequent purchasers will benefit from the limitations on the resale purchase price which this Covenant requires; and

WHEREAS, the intent of the Grantor is to preserve through this Covenant the affordability of the Affordable Unit for persons of low or moderate income, their surviving spouse, domestic partner, lineal descendants or siblings, and to assign to the City the right to enforce compliance with this Covenant.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

The following terms shall have the following meanings herein:

"Acknowledgment of Affordability Restrictions" means an acknowledgement in substantially the form of Exhibit A attached hereto, confirming the Owner's review and understanding of the terms and conditions of this Restrictive Covenant.

"Area Median Income" means the Area Median Income reported annually for single persons and households of various sizes by the United States Department of Housing and Urban Development, or by any successor United States Government department, agency, or instrumentality, for the metropolitan statistical area which includes the City of Austin, Texas.

"Affordable Housing Declaration" means the Declaration of Restrictive Covenant Regarding Affordable Housing Requirements for _____, recorded under Document No. _____ of the Official Public Records of Travis County, Texas.

"Affordable Unit" means Condominium Unit Number _____, in Building "_____", and the space encompassed by the boundaries thereof, the limited common elements appurtenant thereto, together with an undivided interest in the general common elements located in and being part of _____ CONDOMINIUMS, a Condominium project in Travis County, Texas, as fully described in and as located, delineated and as defined in the Condominium Declaration for _____ CONDOMINIUMS, recorded under Document No. _____, Official Public Records of Travis County, Texas.

"Asset Limits" means aggregate personal assets, including cash, personal property and real property assets of not more than Fifty-Thousand Dollars (\$50,000.00), excluding employer or tax deferred retirement plan assets and any amount used as the down payment for the Affordable Unit.

The Asset Limit shall be increased or decreased annually in accordance with the Federal Costs of Living Adjustment (COLA),

"Certified" means written acknowledgement of the City that an individual is an Eligible Buyer, Owner or Income Qualified Person, based on the Qualified Person's previous year federal income tax return and year to date income statements or paycheck stubs as the case may be, and meets the requirements of this Restrictive Covenant for ownership of the Affordable Unit.

"City" or "Grantee" means the City of Austin, a Texas home rule municipality.

"Condominium Declaration" means the _____ CONDOMINIUMS, a Condominium project in Travis County, Texas, described in the Condominium Declaration for _____ CONDOMINIUMS, recorded under Document No. _____, Official Public Records of Travis County, Texas.

"Condominium Project" means the Project defined in the Condominium Declaration.

"Declarant" or "Grantor" means the legal entity authorized to transfer ownership to Eligible Buyer.

"Eligible Buyer" means an Income-Qualified Person whose annual household earns no more than _____% of the current Annual Median Family Income for the City of Austin Metropolitan Statistical Area and has been certified by the City as meeting the City's Asset Limits and Income Limits, and has been qualified by an Institutional Lender for a mortgage to be used to purchase the Affordable Unit.

"Eligible Capital Improvement" means (i) a capital improvement to the Affordable Unit that is reasonably necessary to maintain the Affordable Unit in a good state of repair including necessary structural, mechanical, electrical and plumbing repairs, but specifically excludes normal and customary repairs and maintenance to the Affordable Unit and normal and customary repairs and maintenance to the mechanical, electrical or plumbing systems in the Affordable Unit; and (ii) replacing built-in appliances and fixtures. Eligible Capital Improvements shall also include amounts paid by the Owner of the Affordable Unit as a special assessment under the Condominium Declaration provided the special assessment is for capital improvement to the Condominium Project that is reasonably necessary to maintain the Condominium Project in a good state of repair including necessary structural, mechanical, electrical and plumbing repairs, but specifically excludes normal and customary repairs and maintenance to the Condominium Project.

"First Deed of Trust" means a deed of trust or mortgage which is recorded senior to any other deeds of trust or liens against the Affordable Unit to secure a loan used to purchase the Affordable Unit made by an Institutional Lender.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Low Income Limit" means the maximum gross household income which allows a household to be considered "low income" for the purposes of HUD financial assistance. These limits are reported annually by HUD and reflect the low income limit for a particular area.

"Income" means the definition of income under Section 8 of the United States Housing Act of 1937, codified at 42 U.S.C.S. § 1437a(b)(1990), as further determined by the United States Secretary of Agriculture in 24 CFR § 813.106 (1997). In the event that Section 8 is repealed or the definition of income under Section 8 is substantially modified, then "income" shall mean the anticipated total income for the next twelve month period received from all sources by each member of the household, excluding, however, temporary or non-recurring income (including gifts), income from the employment of children under age 18, payments for the care of foster children or foster adults, and amounts received specifically for the reimbursement of medical expenses for a member of the household.

"Income Limits" means a projected Income of not more than ____% of the median family income for the Austin Metropolitan Statistical Area as defined annually by HUD, adjusted to reflect the family size of the buyer or buyers.

"Income-Qualified Person(s)" means a person or persons who has been certified in writing by the City, as meeting the City's Asset Limits and Income Limits.

"Institutional Lender" means any bank or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.

"Notice of Exercise of Right" means the City's written notice to Owner of its exercise of its Purchase Right, or assignment of such right to an Eligible Buyer.

"Notice of Waiver of Right" means the City's written notice to Owner of its waiver of its Purchase Right.

"Owner" means any buyer, devisee, transferee, grantee, owner or holder of title of the Affordable Unit or any interest in the Affordable Unit, excluding Grantor.

"Purchase Right" means the City's limited right to purchase the Affordable Unit solely as provided in Section 6.B. of this Covenant.

"Transfer" means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, or bequest) of any interest in the Affordable Unit, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest (except for a lease allowed by this Covenant), or any interest evidenced by a contract for sale by which possession of the Affordable Unit is transferred and Owner retains title.

2. Requirement of Title and Term of Affordability

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title. Eligible Buyers must have a valid written income certification from the City approved within nine months from the closing of the purchase of the Affordable Unit in order to be eligible to purchase the Affordable Unit.

3. Term

This Covenant shall remain in effect for a period of ninety-nine (99) years from the date a certificate of occupancy is issued for the Affordable Unit unless the City, its successor or assigns, executes and records a notice of termination in the Official Records of Travis County, Texas.

4. Required Conveyance Deed Language

Grantor and each Owner shall use a form of special warranty deed, which includes in 12 point type and in all caps on the front page thereof the language immediately below:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF _____, 20____, RECORDED UNDER DOCUMENT NO. _____ OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

5. Eligible Buyers

A. Title to the Affordable Unit may only be transferred to an Eligible Buyer or Income Qualified Person; provided, however, upon the death of an Eligible Buyer, the Affordable Unit may be transferred to the surviving spouse, domestic partner, lineal descendants or siblings of an Eligible Buyer without any of such persons having to requalify as an Eligible Buyer. In order to qualify as an Eligible Buyer, the buyer's assets shall not exceed the Asset Limits and the buyer's projected income may be not be more than ____% of the median family income for the Austin Metropolitan Statistical Area as defined annually by HUD, adjusted to reflect the family size of the buyer or buyers. If the Affordable Unit is sold jointly to more than one buyer in the same transaction, or if the Affordable Unit is sold to a buyer who is married or who has a domestic partner, or if the Affordable Unit is sold to one or more buyers who have the custody of children under the age of eighteen, then (a) the buyer or buyers shall be considered to be a household for the purposes of this Covenant; (b) the income of all persons in the household (which will include each buyer of the Affordable Unit, the spouse or domestic partner of the buyer, and all buyer's children who are age eighteen or older) shall be used in determining the buyer's(s') income; and (c) the HUD Low Income Limit shall be adjusted to reflect the household's size.

B. The following transfers are exceptions to the above qualification requirement as an Eligible Buyer or Income Qualified Person, provided that the new Owners, other than an estate, shall use the Affordable Unit as his or her principal residence:

- i. A transfer resulting from the death of an Owner where the transfer is to the spouse or domestic partner of the Owner.
- ii. A transfer to the Owner's estate following his or her death for the purpose of administering the estate and distributing the assets thereof during a limited period of time.
- iii. A transfer resulting from the death of an Owner when the transfer is to one or more children or grandchildren of the deceased Owner or one or more siblings of a deceased Owner.
- iv. A transfer by an Owner where the spouse or domestic partner of the Owner becomes the co-owner of the Affordable Unit.

- v. A transfer resulting from a decree of dissolution of the marriage or from a property settlement agreement incidental to such a decree by which a spouse of an Owner becomes the sole Owner of the Affordable Unit.
- vi. A transfer directly resulting from a termination of a registered domestic partnership by which a domestic partner of an Owner becomes the sole Owner of the Affordable Unit.

Any other beneficiaries, heirs, legatees or devisees of Owner, must be certified by the City to be Income-Qualified Persons in order to retain title to the Affordable Unit. Such other beneficiaries, heirs, legatees or devisees who do not meet the requirements to be certified as an Income Qualified Person shall be required to transfer their interest in the Affordable Unit within 180 days of their receipt of title to the Affordable Unit. Such transfer must be in accordance with Section 6 herein.

6. Transfer of Ownership through Sale or Exchange.

A. An Owner wishing to transfer the Affordable Unit must provide the City with written notice of its intent to sell ("Intent to Sell Notice") and comply with subsections B., and C. of Section 6 of this Covenant.

B. The City's Purchase Right. If the Owner of the Affordable Unit delivers an Intent to Sell Notice to the City, then in such limited event, the City is hereby granted a Purchase Right to purchase the Affordable Unit. The City's Purchase Right must, if at all, be exercised by the City within forty-five (45) days after the City's receipt of said Intent to Sell Notice ("City's Exercise Period"). If the City fails to timely exercise the Purchase Right by delivering to the Owner a Notice of Exercise of Right prior to the expiration of the City's Exercise Period, then the City's Purchase Right to purchase the Affordable Unit shall be deemed to be waived as to the applicable Intent to Sell Notice. If the City exercises the Purchase Right by delivering the Notice of Exercise of Right prior to the expiration of the City's Exercise Period, then the City is obligated to either (i) purchase the Affordable Unit, or (ii) assign the Purchase Right to an Eligible Buyer. Prior to the expiration of the City's Exercise Period, the City must provide Owner either a Notice of Exercise of Right or Notice of Waiver of Right. In the event that the City provides a Notice of Waiver of Right, or fails to deliver either a Notice of Exercise of Right or Notice of Waiver of Right prior to the expiration of the City's Exercise Period, the Owner may proceed with sale of the Affordable Unit, in the manner prescribed by subsection C. of Section 6 of this Covenant. In the event the City provides a Notice of Exercise of Right, the sale of the Affordable Unit must close with either the City, or an Eligible Buyer who is the City's assignee, as stated in the Notice of Exercise of Right, within sixty (60) days of Owner's receipt of the Notice of Exercise of Right (the "City's Closing Period"). In the event that the sale does not close prior to the expiration of the City's Closing Period, and such failure is not due to a default by the Owner, the Owner may terminate the contract with the City, or its assignee, and sell the Affordable Unit in accordance with the provisions of subsection C. of Section 6 of this Covenant. In such event, the City shall provide Owner with such written confirmation or other documentation that may reasonably be necessary to satisfy a title insurer of Owner's compliance with this Section.

C. Good Faith Marketing and Selection Process. Provided an Owner: (i) has received a Notice of Waiver of Right from the City; or, (ii) the City has not timely exercised its Purchase Right prior to the expiration of the City's Exercise Period or, (iii) the City, or its assignee fails to timely close the

purchase of the Affordable Unit prior to the expiration of the City's Closing Period, an Owner may market the Affordable Unit for sale in accordance with this subsection. The purpose of this subsection is to assure that an Owner engages in a good faith marketing effort such that members of the public have a fair chance to become informed of the availability of the Affordable Unit, which shall include marketing the Affordable Unit for a minimum of thirty (30) days before any contract for sale may be executed by the Owner. Upon the expiration of the mandatory Intent to Sell Notice and marketing period, the Owner may enter into a contract for sale of the Affordable Unit with a ready, willing and able buyer; provided such buyer has been certified by the City as an Eligible Buyer.

7. Grantor's Sale of the Affordable Unit

The purchase price for Grantor's sale of the Affordable Unit to an Eligible Buyer may not be for more than \$_____.

8. Affordable Resale Price Limit.

A. After the first Transfer from Grantor to the first Owner of the Affordable Unit, the Affordable Unit may not be transferred for more than an amount calculated in accordance with this Paragraph. The "Affordable Resale Price" is equal to the original affordable sales price paid by such Owner, plus the affordable sales price multiplied by a fixed rate of 2% annual, simple interest multiplied by the number of ownership years the Affordable Unit is owned by such Owner (the "Fixed Rate of Appreciation"). Ownership years are calculated on an annual, pro-rated basis to credit the Owner with that portion of the year that may not be a full calendar year. "Ownership years" equals the total number of days of ownership divided by three hundred and sixty-five days, so that the Ownership Year is prorated daily. The amount of appreciation due to the Owner shall equal the affordable sales price paid by such Owner for the Affordable Unit multiplied by a Fixed Rate of Appreciation.

B. Nothing in this Covenant represents or guarantees that the Affordable Unit will be re-sold at an amount equal to the resale price limit. Depending upon conditions affecting the real estate market, the Affordable Unit may be re-sold for less than the Affordable Resale Price.

C. Adjustments to Affordable Resale Price. The Affordable Resale Price shall be increased or decreased, as applicable, by the following adjustment factors ("Adjustment").

- (i) Capital Improvements. Provided that prior to Owner's undertaking the Eligible Capital Improvement Owner obtains City's written approval to proceed, the Affordable Resale Price shall be increased in an amount equal the original cost to Owner for making the Eligible Capital Improvement. To receive City approval, Owner must submit evidence to City showing the purpose and cost of the capital improvements.
- (ii) Damages. Affordable Resale Price shall be decreased by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the City, including, without limitation, amounts attributed to making necessary structural, mechanical, electrical and plumbing repairs that would require the issuance of a building permit; and repairing or replacing built-in appliances and fixtures; however, Damages shall not include reasonable wear and tear to items such as painted surfaces,

drapery, flooring or carpeting or other normal and customary repairs for which a building permit from the City is not required.

9. City's Right to Acquire Owner's Interest Prior to Foreclosure.

A. The Owner shall give to the City written notice within three (3) business days from the date any notice of foreclosure is provided to the Owner or any foreclosure is commenced against the Property under the First Deed of Trust, or other instrument encumbering the Affordable Unit.

B. If the Owner has not cured the default under the First Deed of Trust within ten (10) business days prior to a scheduled foreclosure sale by an Institutional Lender who is the beneficiary under the First Deed of Trust, then the City may (but shall not be obligated to) proceed to make any payment required in order to avoid foreclosure of the Affordable Unit. Upon making any such payment, the City shall succeed to all beneficial rights of the Owner to the Affordable Unit and shall assume all of the Owner's rights and obligations under the First Deed of Trust, subject to the terms of this Covenant. In such event, the Owner shall relinquish possession thereof to the City.

C. The Owner may reacquire or repurchase his or her interest in the Affordable Unit by payment to the City of all sums paid by the City in connection with the First Deed of Trust, or other instrument encumbering the Affordable Unit, and all other sums reasonably expended by the City in relation to its acquisition of the Affordable Unit, plus two percent (2%), per annum, simple interest from each date of expenditure. This reacquisition or repurchase may only occur within twelve (12) months from the date the City expended money in connection with its acquisition of the Affordable Unit. As of the date of such reacquisition or repurchase, the Owner shall re-assume all of his or her rights and obligations under the First Deed of Trust. At the end of such twelve (12) month period, if the Owner's interest has not been so reacquired or repurchased, all right, title and interest of the Owner in the Affordable Unit shall be extinguished, and the Owner shall execute a quit claim deed to the City to evidence Transfer of title to the City. If the Owner fails or refuses to execute such a deed after being sent a written request therefor by the City, the City may execute it on behalf of the Owner as the Owner's attorney-in-fact. But prior to executing such a deed, the City shall pay to the Owner the down payment made by the Owner plus any reduction made by the Owner in the principal amount of the loan, plus the cost of any Eligible Capital Improvement, minus the City's costs to the date of execution of the deed.

D. Provided that the City declines to exercise its right to assume Owner's interest in the Affordable Unit, an Institutional Lender's foreclosure under a First Deed of Trust, shall terminate this Covenant as to the Affordable Unit, the City shall have no right to acquire the Affordable Unit after a foreclosure sale and the Institutional Lender shall have no obligation to account to, remit proceeds or otherwise deal with the City as a result of any foreclosure sale.

E. Notwithstanding the language of Section 9.D of this Covenant, if an Institutional Lender forecloses under a First Deed of Trust and the proceeds from such foreclosure sale exceed the amount the Institutional Lender would be entitled under the loan documents executed by the Owner in connection with a First Deed of Trust, then any such surplus shall be divided between Owner and City as follows:

- The Owner shall receive such surplus proceeds in an amount that does not exceed the Affordable Resale Price, as calculated at the time of the foreclosure sale.

- The City shall receive all surplus proceeds that exceed the Affordable Resale Price, as calculated at the time of the foreclosure sale.

Declarant acknowledges that it would be contrary to the purposes of this Covenant if, in the event of a foreclosure, a sale generates proceeds in excess of the amount an Institutional Lender is legally entitled to and Owner receives more than the Affordable Resale Price. Therefore, Declarant hereby covenants the following: (i) there shall be an irrevocable assignment of certain surplus proceeds to the City, as prescribed in the above bullet points, and that the Owner, at the time of such foreclosure sale shall execute all documents reasonably necessary to effectuate the assignment and shall instruct Institutional Lender to distribute any such surplus in accordance with this subsection; and, (ii) in the event that the amount of surplus proceeds for which the City is entitled is inadvertently paid to the Owner, Owner shall be obligated to pay such amount to the City promptly. It is not the intent of Declarant for the covenants set out in this subsection to in any way impair Institutional Lender from its recovery of all outstanding principal and interest, penalties, attorney's fees, and other fees and penalties it may be lawfully entitled in prosecuting such foreclosure, and the effect of this covenant is limited in scope to only such proceeds generated in surplus of that which Institutional Lender is legally entitled to recover.

10. Subordination of Covenant

The provisions of this Covenant shall be subordinate to the lien of a First Deed of Trust to secure a loan to purchase the Affordable Unit made by an Institutional Lender. This Covenant shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the first deed of trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed in lieu of foreclosure.

11. Re-Financing of the First Deed of Trust or Financing Eligible Capital Improvements.

The Owner may not mortgage, refinance or in any other manner encumber any of its interest in the Affordable Unit without the prior written consent of the City, which shall be in the City's sole and absolute discretion, with the exception of a First Deed of Trust. If the Owner wishes to refinance its First Deed of Trust, or sell the Affordable Unit, the Owner must (a) give notice to the City, and (b) deliver to the City copies of every document to be recorded in connection with the refinancing or sale in advance of the closing. **THESE RESTRICTIONS PROHIBIT THE OWNER FROM GETTING ADDITIONAL LOANS THAT USE THE AFFORDABLE UNIT AS COLLATERAL, INCLUDING, WITHOUT LIMITATION, LOANS TO REPAY CREDIT CARD DEBT, LOANS TO PURCHASE AUTOMOBILES, HOME EQUITY LOANS, DEBT CONSOLIDATION LOANS OR LOANS TO FINANCE THE PURCHASE OF OTHER PERSONAL PROPERTY.** The Owner acknowledges and agrees that the requirements of this Restrictions to Financing Section are necessary to ensure the continued affordability of the Affordable Unit to the Owner and to minimize the risk of loss of the Affordable Unit through default and foreclosure. The Owner shall pay to the City, at the City's option, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the City in connection with approving any deed of trust or refinancing. Any lien purported to be granted by the Owner to any party that is done in violation of this Restrictions to Financing Section shall be absolutely void

The Owner, with the City's prior written consent, may only re-finance the First Deed of trust or finance Eligible Capital Improvements, so long as the total amount of such re-financing and/or financing of Eligible Capital Improvements does not exceed ninety-three percent (93%) of the Affordable Resale Price

Limit in effect at the time of the re-financing of the Affordable Unit. Such re-financing must be with an Institutional Lender.

12. Taxes, Assessments and Utilities

A. Taxes, Assessments and Utilities. The Owner shall pay, at their own expense, when due all taxes, governmental assessments and charges of every kind against the Affordable Unit. The Owner shall also pay, when due, all other service bills and utility charges that relate to the Affordable Unit, including, without limitation, all charges for water, sewer, heat, air conditioning, gas, light, garbage, electricity, telephone service, power, and all other public and private services and utilities

B. Homeowner's Right to Contest. The Owner may, in good faith and with reasonable diligence, contest the amount or validity of any taxes relating to the Affordable Unit if, during any such contest, the enforcement of the lien of such taxes is stayed.

C. Payments in Event of Delinquency. If the Owner fails to pay the taxes or other amounts specified in this Section 12 when due, the Owner will hold the City harmless from and against any liens arising out of any failure to pay the taxes or other amounts specified in this Section.

D. Proof of Compliance. On an annual basis, within thirty (30) business days after payment of taxes Owner shall provide evidence of payment to the City. Within ten (10) business days after payment of any liens arising out of the non-payment of taxes or utilities, the Owner shall provide evidence of payment to the City.

13. Maintenance of Property

The Owner shall, at the Owner's sole expense, maintain the Affordable Unit in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Affordable Unit. The Owner shall not be required to obtain any permission from the City for normal and customary repairs and maintenance of the Affordable Unit; provided, however, the Owner is obligated to obtain any required building permits for Eligible Capital Improvements if such Eligible Capital Improvements are subject to the requirement to obtain building permits for same by applicable City building codes or ordinances.

14. Eligible Capital Improvements

Any post-purchase construction, excluding normal and customary repairs and maintenance, in about or to the Affordable Unit requiring issuance of a permit is subject to the following conditions: (a) such construction will not commence without the prior written consent of the City; (b) all costs shall be borne and paid for by the Owner; (b) all construction shall be performed in a good and workmanlike manner and shall comply with applicable laws.

15. Prohibited Liens

If any mechanic's, laborer's, materialman's or statutory lien is filed against the Affordable Unit, the Owner shall cause the lien to be discharged of record within sixty (60) calendar days thereafter by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted by law. If

the Owner fails to cause such lien to be discharged within the 60-day period, then, in addition to any other right or remedy, then the City, at the City's option, without releasing Owner from any obligation hereunder, may disburse such sums and take action as it determines necessary to protect the City's interest. Any amounts disbursed by the City pursuant to this paragraph, with interest thereon, will become an indebtedness of Owner to the City. Nothing contained in this paragraph will obligate the City to pay any sums secured by the lien. The Owner agrees to indemnify, defend and hold the City harmless from and against any liens arising out of any construction or other work on the Affordable Unit.

16. Use of Property as Owner's Primary Residence

A. **Occupancy.** At or before the time when title is transferred to the Affordable Unit, each new Owner shall certify to the City in writing his or her intent to occupy the Affordable Unit as his or her primary residence; and, the Owner must declare the Affordable Unit as the Owner's residential homestead, as provided in Texas Tax Code Chapter 11, as may be amended, revised or recodified. Except for leasing, allowed by this Section 16, Owner shall reside at the Affordable Unit at least nine of the twelve calendar months each year of Owner's possession of the Affordable Unit.

B. **Leasing.** An Owner may not lease the Affordable Unit except as provided in this subsection.

- i. Requirements for all leases. Any lease of the Affordable Unit shall be approved in writing by the City before it may become effective. The City shall approve the leasing of the Affordable Unit only if: (1) the Lease is in writing and conforms with Texas law; (2) the lease requires the tenant to maintain the Affordable Unit in good condition and prohibits subleasing; and (3) the rent for the Affordable Unit does not exceed Owner's monthly cost of principal and interest on the loan secured by the first deed of trust to an Institutional Lender, and property insurance, property taxes and condominium owners association assessments assessed against the Affordable Unit.
- ii. Requirements for leases that do not exceed a term of three (3) months. Provided that Owner complies with the nine (9) month primary residency requirements, Owner may lease the Affordable Unit for a period that does not exceed three (3) months during a calendar year; provided further that Owner complies with the requirements for all leases, as stated in sub-section 16.B.(i) above.
- iii. Leases greater than three (3) months. Except for Leases that do not exceed three (3) months during a calendar year, Owner shall not lease the Affordable Unit during the first five (5) years of ownership. Upon the fifth (5th) anniversary of Owner's ownership of the Affordable Unit, Owner may lease the Affordable Unit, provided that: (i) the lease term does not exceed twelve (12) months and is not renewable; (ii) no more than one (1) lease term occurs within a seven (7) year period of ownership; (iii) the Affordable Owner first provides the City with notice that the Affordable Unit is available for lease and obtains certification that such Affordable Unit has been inspected and is in compliance with all applicable statutory and regulatory housing requirements; and (iv) Owner complies with the requirements for all leases, as stated in sub-section 16.B.(i) above. In the event that a maximum lease term of twelve (12) months presents a condition of economic hardship on the Affordable Owner because of military

deployment, health problems or another reason causing the Affordable Owner to be required to leave the area temporarily, City may grant a temporary waiver to the Affordable Owner not to exceed twenty-four (24) months of the requirement to continuously occupy and reside in the Affordable Unit. Documentation substantiating the economic hardship must be submitted in writing for City to review. City will provide the Affordable Owner with a response, in its sole discretion, within a reasonable time period.

17. Liability, Insurance, Damage, Eminent Domain.

A. Owner's Liability. The Owner assumes sole responsibility and liability to all persons and authorities related to its possession, occupancy and use of the Affordable Unit. The City or its successors shall not be liable to the Owner or any third party for any losses, costs, damages, harms, claims or lawsuits connected with the Affordable Unit.

B. Indemnification of the City. The Owner shall, and does hereby, indemnify, protect, defend and hold harmless the City, and the City's agents, employees, officers, successors, designees and assigns, from and against any and all claims, damages, liabilities, obligations, losses, causes of action, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising directly or indirectly from: (a) the Owner's use of the Affordable Unit, or any activity, work or other things done, permitted or suffered by the Owner in, on or about the Affordable Unit; (b) the Owner's breach of this Restrictive Covenant or violation of any applicable Laws; (c) any act or omission of the Owner, or any guest or invitee of the Owner, or anyone claiming by, through or under the Owner; or (d) any cause in, on or about the Affordable Unit. The Owner hereby assumes all risk of damage to property or injury to persons in, on or about the Affordable Unit, from any cause, and the Owner hereby waives all claims in respect thereof against the City, and the City's respective agents, employees, officers, successors, designees and assigns.

18. Insurance.

The Owner shall, at the Owner's sole expense, keep the interior of the Affordable Unit (i.e., interior walls, flooring, carpeting, appliances, built-in cabinets, shelves, and any other installations or additions which are the Owner's insurance responsibility under the condominium documents) continuously insured against loss or damage by fire and the extended coverage hazards for its full replacement value. The Owner shall keep the Affordable Unit continuously insured throughout the Covenant Term in such amounts and against such risks and liabilities as the Senior Lender requires, or, if there is no Senior Lender, in such amounts and against such risks and liabilities as the City may reasonably require, provided that such insurance shall specifically insure the Owner against all liability assumed under this Restrictive Covenant and imposed by law. All insurance policies shall name the City as additional insured, and shall also contain endorsements providing that they shall not be canceled, reduced in amount of coverage or otherwise modified in any material respect, without prior written notice to the City of at least thirty (30) days. At the City's request, the Owner shall provide copies of all policies and renewals of policies or other evidence of insurance. The Owner shall pay the insurance premiums as they become due, and shall comply with all insurance requirements at any time in force; provided, however, the Owner's compliance, in whole or in part, with this Section shall not be deemed to limit, in any way or to any extent, the liabilities or obligations of the Owner to the City under the terms of this Restrictive Covenant. Notwithstanding anything herein to the contrary, Owner shall be deemed to have satisfied its obligation to make the insurance payments required by this Section and tax

payments required by Section 12 so long as it is making such payments through an escrow established by the Senior Lender for such purposes, in which case the Owner shall provide the City copies of any annual escrow accounting provided to the Owner by the Senior Lender promptly upon the City's written request.

19. Damage and Destruction.

A. Obligation to Restore. Except as provided in subsection (B) below, if the Affordable Unit is damaged by fire or any other cause, the Owner shall immediately give written notice to the City, and the Owner shall promptly repair or restore the Affordable Unit, as nearly as practicable, to its condition immediately prior to the damage and this Restrictive Covenant shall remain in full force and effect. The Owner shall also promptly and with due diligence take all steps necessary to ensure that the Affordable Unit does not constitute a danger to people or property.

B. Termination of Restrictive Covenant and Distribution of Insurance Proceeds. If repair or restoration is not economically feasible, or is otherwise prohibited by the Institutional Lender, or under the Condominium Instruments, then the Owner may terminate this Restrictive Covenant by delivering written notice to the City within sixty (60) calendar days after the date of the damage. Subject to the terms of the Institutional Lender any insurance proceeds shall be applied in the order provided for in Section 9.E, with the Affordable Resale Price determined as of the date immediately before the damage in accordance with Section 8.A.

20. Eminent Domain.

A. Obligation to Restore. Except as provided in (B) immediately below, in the event of any taking under the power of eminent domain, or conveyance in lieu of condemnation, the Owner shall promptly apply the proceeds of any such taking to the repair or restoration of the Affordable Unit, as nearly as practicable, to its condition immediately prior to the taking and this Restrictive Covenant shall remain in full force and effect.

B. Termination of Restrictive Covenant and Distribution of Condemnation Award. In the event of a total taking (or partial taking, if repair or restoration is not economically feasible or is otherwise prohibited under the Institutional Lender or the Condominium Instruments), the Restrictive Covenant shall terminate as of the date the Owner is required to give up possession of the Affordable Unit. Subject to the terms of the Institutional Lender, any condemnation award shall be applied in the order provided for in Section 9.E, with the Affordable Resale Price determined as of the date immediately before the taking in accordance with Section 8.A.

21. Enforcement of this Covenant

A. The Grantor and each Owner hereby grant and assign the City the right to enforce compliance with this Covenant.

B. Compliance may be enforced by the City by any lawful means, including without limitation specific performance.

C. If the City is required to pursue legal action to enforce this Covenant, then in such event, the City shall be entitled to an award of reasonable and necessary attorney's fees and other reasonable and necessary costs incurred in the enforcement of this Covenant.

D. Venue for a suit enforcing compliance shall be proper in Travis County, Texas.

22. Miscellaneous

A. This Covenant shall run with the Affordable Unit. It shall bind during its term, and the benefit hereof shall inure during its term to the Owner, his or her heirs, legal representatives, executors, successors in interest and assignees, and to the City, its successors, designees, or assignees.

B. The Affordable Unit may not be used by any other development to satisfy the requirements of this Covenant or any other off-site affordable housing obligations.

C. The Affordable Unit is held and hereafter shall be held, conveyed, encumbered (except to the first deed of trust), leased, rented, and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

D. Any buyer or transferee of the Affordable Unit or of any portion of or interest in the Affordable Unit, by acceptance of a deed therefor, or by the signing of a contract or agreement to purchase the same, shall, by acceptance of such deed or by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

E. Notices to the City shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by the City by like notice:

Neighborhood Housing and Community Development Office
Attn: Density Bonus Manager
1000 East 11th Street, Ste 200
Austin TX 78702

Notices to the Owner may be given in like manner addressed to the Owner of the Affordable Unit as shown on the City's tax rolls.

F. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

G. The captions of the paragraphs in this Covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.

H. The conditions of this Covenant shall be interpreted so as to avoid speculation on the Affordable Unit and to insure to the greatest extent possible that its purchase price and mortgage payments remain affordable during its term to persons and families of low or moderate income.

I. This Covenant shall not be revised, amended, repealed or otherwise modified without the written approval of City and the Owner of the Affordable Unit; and any such modification must be recorded in the public records of Travis County before becoming effective.

J. This Covenant shall apply to the Affordable Unit in addition to the terms and conditions of the Condominium Declaration that is applicable to the Condominium Project in which the Affordable Unit is located. The terms of this Covenant shall apply in addition to and in conjunction with the Condominium Declaration, and no provision of the Condominium Declaration shall in any way be impaired by this Covenant. Any amendment to said Condominium Declaration that attempts to repeal, amend, or modify this Covenant shall be void and without effect.

(remainder of page intentionally left blank; signature pages follow)

IN WITNESS WHEREOF, Grantor has executed this Covenant as of the date first stated above.

GRANTOR:

By: _____

STATE OF TEXAS §

COUNTY OF TRAVIS §

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____.

NOTARY PUBLIC, STATE OF TEXAS

My Commission Expires: _____

CITY OF AUSTIN:

By: _____

Bert Lumbreras
Assistant City Manager
City of Austin

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____, 20____, by
Bert Lumbreras, as Assistant City Manager of the City of Austin, a municipal corporation, on behalf of
said Municipal Corporation.

Notary Public, State of Texas

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

AFTER RECORDING RETURN TO:

Neighborhood Housing and Community Development

1000 East 11th Street, Suite 200

Austin, TX 78702

Attn: Regina Copic

EXHIBIT A to RESALE RESTRICTION AGREEMENT

HOMEOWNER'S ACKNOWLEDGMENT OF AFFORDABILITY RESTRICTIONS

TO: City of Austin

DATE: _____, 20__

I am giving this letter to the City of Austin to be made an exhibit to a Resale Restriction Agreement and Covenant Limitations on Resale Price and Buyer Income ("Restrictive Covenant") between the City and me. I am buying the condominium unit located at _____, Unit #_____, Austin, TX _____, which will be subject to the Restrictive Covenant.

I understand how the terms and conditions of the Restrictive Covenant affect my rights as a homeowner, now and in the future. In particular, I understand and agree that:

- Long-Term Affordability. The purpose of the Restrictive Covenant is to keep housing affordable for future generations of low- and moderate-income households. I support this goal.
- Resale Restrictions. The City controls the resale of my home. If I want to sell my home, I must sell it to another income-eligible buyer (or to the City) for a restricted resale price determined in accordance with the resale formula in the Restrictive Covenant. If I violate the resale restrictions, the Restrictive Covenant gives the City the right, among other remedies, to sue for damages or terminate the Restrictive Covenant and recover any sale proceeds. I realize this limits my ability to resell my home (a "restraint on alienation"), but I agree that this limitation is reasonable under the circumstances set forth in the Restrictive Covenant.
- Refinancing Restrictions. The Restrictive Covenant may keep me from obtaining a home equity loan, debt consolidation loan, car loan or a similar loan that would use the home as collateral. I acknowledge that this constitutes a restraint on alienation, but likewise agree that it is a reasonable restraint under the circumstances of the Restrictive Covenant.
- Principal Residence. I must occupy and use my home as a principal residence. I may only lease it under the provisions under the Restrictive Covenant, and if I move out, I must sell it. I cannot continue to own the home as an absentee owner.

I will honor the terms of the Restrictive Covenant. I consider these terms fair to me and others.

By: _____

[Insert Name of Homeowner]

**DECLARATION OF RESTRICTIVE COVENANT REGARDING AFFORDABLE
HOUSING REQUIREMENTS FOR DEVELOPMENT LOCALLY KNOWN AS;
3409, 3420, 3429, 3445, 3520, 3636 3701, 3724, and 3737 Executive Center Drive, and 7601,
7718, and 7719 Wood Hollow Drive, Austin, Travis County, Texas 78731**

This Restrictive Covenant regarding Affordable Housing Requirements for the Austin Oaks Planned Unit Development, (the "**Restrictive Covenant**"), is executed on this April 13th, 2017, by the Twelve Lakes LLC., a Texas limited liability company ("**Declarant**") and is as follows:

1. RECITALS

A. Declarant owns that certain real property ("**Property**") described on attached Exhibit A.

B. Definitions:

Owners. The term "Owner" means, individually, and the term "Owners" means, collectively, Declarant and all future owners of the fee interest or any portion of the Property (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.

Affordable Housing Requirements. The Term "**Affordable Housing Requirements**" means restricting the Property as follows:

(a) Except as provided in section 2, at least 10.8% of the total number of housing units constructed on a portion of the Property on which residential is a permitted use as designated on the Land Use Plan for the Austin Oaks PUD is primarily occupied by a rental household (the "rental units") whose adjusted gross income for the year immediately preceding the date of occupancy of the dwelling housing unit is at or below 60% of the then current median family income for the Austin-Round Rock metropolitan statistical area as determined annually by the United States Department of Housing and Urban Development ("MFI") and is verified in writing as acceptable by the Neighborhood Housing and Community Development Office of the City of Austin (the "City");

(b) Except as provided in section 2, at least 10.8% of the total number of housing units constructed on a portion of the Property on which residential is a permitted use as designated on the Land Use Plan for the Austin Oaks PUD is primarily occupied by a homeowner household (the "ownership units") whose adjusted gross income for the year immediately preceding the date of occupancy of the dwelling housing unit which is at or below 80% of the then current MFI and is verified in writing as acceptable by the City;

(c) A unit is affordable for purchase or rental if the household is required to spend no more than 30% of its gross monthly income on mortgage and condominium association fees or rental and utility payments; and

(d) At least 50% of the affordable ownership units and at least 50% of the affordable rental units must contain 2 or more bedrooms and shall have the same minimum average size as the market rate units located in the same building.

Austin Oaks PUD. The term "Austin Oaks PUD" refers to the rezoning of the Property that occurred on or about April 13, 2017 in Case Number C814-2014-0120, Ordinance No. 20170413-036.

- C. The Austin Oaks PUD provides for residential development only on Parcel 8 and Parcel 9, as designated on the Land Use Plan.
- D. Declarant has agreed to impose upon the Property these covenants and conditions for the benefit of the Property.

NOW, THEREFORE, Declarant declares that the Property is subject to the following covenants, conditions and restrictions, which run with the Property and bind all parties having right, title, or interest in or to such portion of the Property or any part, their respective heirs, successors, and assigns, and which inure to the benefit of each Owner. Each contract, deed or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. Recitals Incorporated. The above Recitals and all terms defined therein are incorporated into this Restrictive Covenant for all purposes.
2. Compliance with Affordable Housing Requirements. Until such time as the Release (hereafter defined) is filed in the real property records of Travis County, Texas, all occupancy of the improvements to or modifications to improvements on the Property shall be in full compliance with the Affordable Housing Requirements.

IT IS THE EXPRESS INTENT OF DECLARANT THAT ONLY CERTAIN HOUSING UNITS CONSTRUCTED ON THE PROPERTY BE ENCUMBERED BY THE AFFORDABLE HOUSING REQUIREMENTS.

At such time as the Owner of a portion of the Property on which residential is a permitted use as designated on the Land Use Plan for the Austin Oaks PUD designates an affordable unit, such housing unit shall be encumbered (a "designated unit") by a restrictive covenant, recorded in the real property records of Travis County, Texas, to remain so encumbered for the period of time set forth in Section 5.B of this Restrictive Covenant.

The Declarant may request a partial release of units not to be designated as affordable, to be granted at the sole discretion of the City, to allow for sale of housing units not to be designated as affordable. The Declarant may also request the partial release of a portion of the Property not to contain housing from this Restrictive Covenant, subject to the following:

Declarant may request release of a parcel or multiple parcels, with all released property containing no more than a total of 500,000 leasable square feet of commercial space, which the City shall promptly execute. No additional releases shall be provided for property containing commercial or office space until such time as the certificates of occupancy have been issued for all Designated Units required to meet the Affordable Housing Requirements.

Prior to requesting a release for the first parcel containing housing units, the Owner shall provide 90 days' notice to the City. During the 90 days, the City, in its sole discretion, shall have the option to elect to modify the Affordable Housing Requirements to reduce the percentage of ownership units to 10% and the rental units to 10% in exchange for the Owner making a payment into the Housing Trust Fund. The amount of the payment shall be \$215,000 for a one bedroom unit and \$355,000 for a two bedroom unit. In the event that the City does not provide notice of its election to reduce the percentage of affordable units within the 90 days, the Owner shall record restrictive covenants on housing units at the percentages required under the Affordable Housing Requirements.

At such time as the Affordable Housing Requirements for the Property as designated on the Land Use Plan for the Austin Oaks PUD have been met, certificates of occupancy have been issued for all affordable units, and replacement restrictive covenants recorded encumbering all affordable units, the City shall execute a release ("Release") of this Restrictive Covenant for property other than the Designated Units.

3. Breach Does Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant entitles the Owners to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations do not affect in any manner any other rights or remedies which the Owners may have hereunder by reason of any breach of this Restrictive Covenant.
4. Excusable Delays. Whenever performance is required of the Owners, the Owners shall use all due diligence to perform and take all reasonable and necessary measures in good faith to perform within a reasonable time; provided, however, that if completion of performance is delayed at any time by reasons of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or material, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of the Owner (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified will be extended by the amount of delay actually so caused.
5. General Provisions.

- A. Inurement. This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind Owners, and their successors and assigns. When an Owner conveys all or any portion of the Property, that former Owner will thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the Property conveyed by it from and after the date of recording of such conveyance, but no such sale releases that former Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.
- B. Duration. Unless this Restrictive Covenant is modified, amended, or terminated in accordance with Paragraph 5(K), this Restrictive Covenant remains in effect for: (a) forty (40) years from the date the unit is leased to an eligible household for units occupied primarily by a rental household, so long as the unit remains in compliance; (b) for ninety-nine (99) years from the date a unit governed by a condominium declaration or held in a community land trust is either sold or leased to an eligible household for occupation primarily by a ownership household; or (c) forty (40) years from the date a unit sold in fee simple and not governed by a condominium declaration is sold to an eligible household for occupation primarily by an ownership household.
- C. Non-Merger. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
- D. Severability. The provisions of this Restrictive Covenant must be deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.
- E. Entire Agreement. This Restrictive Covenant, and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Restrictive Covenant with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Restrictive Covenant and the exhibits attached hereto. The provisions of this Restrictive Covenant will be construed as a whole according to their common meaning and not strictly for or against any Owner.
- F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of this Restrictive Covenant.
- G. Governing Law; Place of Performance. This Restrictive Covenant and all rights and obligations created hereby will be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the county in Texas where the Property is located.

- H. Notices. Any Notice to the Owners or the City must be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- I. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant will be deemed to create a partnership between or among the Declarant, any Owner, or the City of Austin in their respective businesses or otherwise; nor will it cause them to be considered joint ventures or members of any joint enterprise.
- J. Enforcement. If any person, persons, corporation, or entity of any other character, violates or attempts to violate this Restrictive Covenant, it will be lawful for the City of Austin, its successors and assigns, to prosecute proceedings at law, or in equity, against the person or entity violating or attempting to violate these Restrictive Covenant and to prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by the City of Austin, its successors and assigns, whether any violations hereof are known or not, does not constitute a waiver or estoppel of the right to do so.
- K. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Official Records of the county in Texas where the Property is located, executed, acknowledged, and approved by (a) the City of Austin or successor; and (b) all of the Owners of the Property at the time of the modification, amendment, or termination.

Executed to be effective on APRIL 13, 2017.

DECLARANT:

Twelve Lakes LLC, a Texas limited liability company

By: Twelve Lakes Managing Member, LLC, a Delaware limited liability company, its sole member

By: 
Jon M. Ruff
Senior Vice President

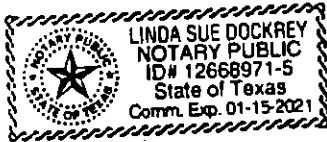
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ACKNOWLEDGEMENT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 13 day of April, 2017,
by Jon M. Ruff, as Senior Vice President of Twelve Lakes Managing Member, LLC, a Delaware
limited liability company, the sole member of Twelve Lakes LLC, a Texas limited liability
company, on behalf of said company.

[Seal]



Linda Sue Dockrey
Notary Public, State of Texas

ACCEPTED:

By: _____

Neighborhood Housing and Community Development

APPROVED AS TO FORM:

By: Katherine A. Kurpicks
Assistant City Attorney

AFTER RECORDING, RETURN TO:

City of Austin
Neighborhood Housing and Community Development
Attn:

TCAD:
FILE NO.
PROJECT:

Exhibit A to
Blanket Affordable Housing Restrictive Covenant

Legal Description of the Property

Tract 1:

Lot 5, Koger Executive Center Unit Three, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 75, Page 322 of the Plat Records of Travis County, Texas, and;

Tract 2:

Lots 6A and 6B, Resubdivision Lot 6, Koger Executive Center Unit Three, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 77, Page 167 of the Plat Records of Travis County, Texas, and;

Tract 3:

Lots 8, 9 and 10, Koger Executive Center Unit Four, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 80, Page 176 of the Plat Records of Travis County, Texas, and;

Tract 4:

Lots 3A, 3B and 3C, Resubdivision of a Portion of Lot 3, Koger Executive Center Unit Two, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 76, Page 50 of the Plat Records of Travis County, Texas, and;

Tract 5:

Lot(s) 1, 2, 4A and 4B, Koger Executive Center Unit Five, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 84, Pages 6D-7A of the Plat Records of Travis County, Texas.

AUSTIN OAKS AFFORDABLE HOUSING AGREEMENT

THE STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

This Affordable Housing Agreement ("*Agreement*") is entered into between the (i) CITY OF AUSTIN, TEXAS a home rule municipality ("*City*"), and (ii) TWELVE LAKES, LLC, a Texas limited liability company ("*Owner*"). In this Agreement, the City and the Owner are sometimes individually referred to as a "*Party*" and collectively referred to as the "*Parties*".

RECITALS

WHEREAS, the Owner is the owner of a 31.27 acre parcel of land in Austin, Travis County, Texas, located within the corporate municipal boundaries of the City, and more particularly described in the attached **Exhibit A** (the "*Property*"); and

WHEREAS, the City approved Planned Unit Development zoning for the Property in Ordinance 20170413-036 (the "*Austin Oaks PUD*"); and

WHEREAS, the Austin Oaks PUD requires the Owner to provide affordable housing in the form of either rental units or for-sale units, or both; and

WHEREAS, the Austin Oaks PUD authorized negotiation and execution of this Agreement;

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. DEFINITIONS

In addition to the terms defined in the Recitals, wherever used in this Agreement, the following terms shall have the meaning ascribed to them unless the context clearly indicates otherwise:

- A. ***Affordable Ownership Units*** means the owner-occupied residential housing units meeting the requirements in the Austin Oaks PUD, Part 8.B.
- B. ***Affordable Rental Units*** means the multifamily rental housing units meeting the requirements in the Austin Oaks PUD, Part 8.A.
- C. ***Affordable Units*** means the Affordable Ownership Units and the Affordable Rental Units collectively.

- D. **Director** means the Director of the City of Austin Neighborhood Housing and Community Development Department, or successor Department.
- E. **MFI** means median family income for the Austin-Round Rock metropolitan statistical area, as determined annually by the United States Department of Housing and Urban Development.
- F. **NHCD** means the City of Austin Neighborhood Housing and Community Development Department, or successor Department.

II. FINDINGS

- A. The affordable units required in this Agreement shall be secured by the execution of a blanket restrictive covenant on the Property, attached as **Exhibit B**, which provides that a unit is considered affordable only if the owner or tenant is required to spend no more than 30% of gross monthly income on mortgage and condo association fees or rental and utility payments, and requires provision on the Property of Affordable Units meeting the following levels of affordability, except as modified under Section II, Paragraph C and Section III, Paragraph B of this Agreement:
1. 10.8% of the total multifamily rental units must be set aside for occupancy by and must be rented to households earning 60% or below of MFI for a 40 year affordability period;
 2. 10.8% of the total owner-occupied residential units must be available long-term at a price affordable to households earning 80% of or below MFI, and must be sold to an income eligible household; and
 3. At least 50% of the affordable ownership units and at least 50% of the affordable rental units must contain 2 or more bedrooms and shall have the same minimum average size as the market rate units located in the same building.
- B. After the affordable units are constructed, they shall be secured by the execution of a replacement restrictive covenant on each Affordable Unit, using the form attached as **Exhibit C-1 (rental) or Exhibit C-2 (owner occupied)**.
- C. Up to 0.8% of the Affordable Rental Units and Affordable Ownership Units described in Section A and B may be satisfied by payment into the Housing Trust Fund of an amount of \$215,000 per one bedroom unit and \$355,000 per two bedroom unit; provided that:
1. The on-site Affordable Rental Units and Affordable Ownership Units may not be less than 10.0% of the total number of units rented or sold;
 2. Acceptance of this payment in lieu of on-site affordable units is within the sole discretion of the Director of NHCD; and
 3. The funds are used in a high opportunity area, as determined by NHCD, in the vicinity of Austin Oaks PUD.

III. REQUIRED DOCUMENTATION

- A. Affordability Plan. No later than 30 days after the submission of a site plan containing any residential units, Owner shall submit to the Director for review and approval a plan for achieving the Affordable Housing requirements in the Austin Oaks PUD. The Director shall review the plan for adherence with the Austin Oaks PUD.
- B. Notice to City Regarding Release Request. Prior to requesting a release for the first parcel containing housing units, the Owner shall provide 90 days' notice to the City. During the 90 days, the City, in its sole discretion, shall have the option to elect to modify the Affordable Housing Requirements as detailed in Section II, Paragraph C of this Agreement. In the event that the City does not provide notice of its election to reduce the percentage of affordable units within the 90 days, the Owner shall record restrictive covenants on housing units at the percentages required under the Affordable Housing Requirements
- C. Blanket Restrictive Covenant. Prior to execution of this Agreement, Owner executed and recorded in the Official Records of Travis County a blanket restrictive covenant on the Property requiring the levels of Affordability established in the Austin Oaks PUD and in Section II. A. 1 and 2 of this Agreement. ("**Blanket RC**"). The Blanket RC is attached as **Exhibit B**. Certain housing units may be released from the Blanket RC as specified in this Agreement.
- D. Replacement Restrictive Covenant. Once an Affordable Unit is designated, Owner will replace the Blanket RC on that unit with the replacement restrictive covenant designating the unit as an affordable unit and providing a record of the individual restrictive covenant and performance deed of trust to be executed by the affordable homeowner at their purchase closing, using forms obtained from NHCD in a substantially similar format to those attached as **Exhibit C-1** and **Exhibit C-2**.
- E. Partial Release of Blanket RC. Construction on the Property is intended to proceed in phases. Under the terms of the phasing plan adopted as part of the zoning ordinance, the Owner may request release of a parcel or multiple parcels, together containing no more than 500,000 leaseable square feet of commercial space, prior to the construction of the affordable units, which the City shall promptly execute. No further property will be released until certificates of occupancy have been issued for all of the Affordable Units. As construction of Affordable Units proceeds, Owner may request that housing units not to be designated as affordable units ("**market rate units**") be released from the Blanket RC, using the form of the attached **Exhibit D**. NHCD shall review the request and shall execute the release only upon determination that the partial release is in compliance with the approved Affordability Plan. At such time as the certificates of occupancy have been issued for all affordable units, and replacement restrictive covenants recorded encumbering all affordable units, the City shall release of the Property, other than the parcels containing affordable units, from the Blanket RC. That release shall not affect the term of this Agreement.

- F. Condominium Declaration. In any condominium declaration recorded over the Property or a portion of the Property, Owner shall include provisions, in a form substantially similar to the attached **Exhibit E**, which serve to ensure the preservation of the Affordable Units.

Owner shall provide the condominium declaration to NHCD for review and approval prior to recording the document.

VI.

REPORTING AND MONITORING REQUIREMENTS

- A. Owner shall provide to the Director a project status report in the form and including the information referenced in the attached **Exhibit F**:
1. not later than three months after the submission of a site plan to the City containing any residential units, and quarterly thereafter, and
 2. not later than 14 days after termination of this Agreement.
- B. NHCD shall conduct long term compliance monitoring of the Affordable Units in accordance with NHCD monitoring process and procedure. Owner shall provide to the Director documentation in the form and including the information referenced in the attached **Exhibit G** to be used by the Director to monitor compliance with the Affordability Plan:
1. not later than three months after the submission of a site plan to the City containing any residential units, and quarterly thereafter, and
 2. not later than 14 days after termination of this Agreement.

VII.

TERM; TERMINATION

- A. This Agreement is effective upon execution by all Parties and terminates upon expiration of the Affordability period of all Affordable Units on the Property, unless terminated earlier under Section VII. C.
- B. The following obligations survive termination of this Agreement as follows:
1. The obligations under Section III. (*REQUIRED DOCUMENTATION*) of this Agreement survive until the Owner has completed construction of the Affordable Units in compliance with the Affordability Plan and has filed replacement restrictive covenants for each Affordable Unit.
 2. The obligations under Section VI. (*REPORTING AND MONITORING REQUIREMENTS*) of this Agreement survive until Owner submits a final status report and final monitoring report.
- C. This Agreement may be terminated by the Parties as follows:

1. by mutual written agreement of the Parties;
2. by the City with respect to a default by Owner, if the Owner defaults or breaches any of the terms of conditions of this Agreement, and such default or breach is not cured within thirty (30) days of written notice to Owner from the City, or, if such default or breach cannot be cured within thirty (30) days, Owner commences to cure the default or breach within thirty (30) days of written notice to the Owner from the City and thereafter diligently pursues such cure;
3. by the City, if the Owner suffers an event of Bankruptcy or Insolvency; and
4. by either Party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

D. Upon termination under Section VII. C. of this Agreement, the Parties shall adhere to the following:

1. Completed Affordable Units.

Affordable Units constructed as of the date of termination shall remain encumbered by the replacement restrictive covenant.

2. Pending Affordable Units.

- a) Affordable Units not yet constructed but for which a building permit has issued as of the date of termination shall continue to completion under the terms of this Agreement, including the filing of a replacement restrictive covenant after designation. The Affordable Unit shall remain encumbered by the replacement restrictive covenant.

- b) Affordable Units not yet constructed and for which no building permit has issued as of the date of termination are under no further obligation to comply with the Affordability Plan, unless the Agreement is terminated under section VII. C. 2. or VII. C. 3. of this Agreement, in which case the obligation shall continue.

VIII.

MISCELLANEOUS

B. Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto.

C. Limitation on Liability. It is understood and agreed between the Parties that the Owner and City, in satisfying the conditions of this Agreement, have acted independently, and neither the City nor the Owner assumes the responsibilities or liabilities of the other Party's performance, its subcontractors or third parties in connection with this Agreement.

- D. No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture between the Parties.
- E. Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.
- F. Notice. Any notice given under this Agreement must be in writing and may be given: (i) by depositing it with Federal Express or another delivery service guaranteeing "next day delivery", addressed to the Party to be notified and with all charges prepaid; or (ii) by personally delivering it to the Party, or any agent of the Party listed in this Agreement. Notice given in any manner will be effective when received. For purposes of notice, the addresses of the Parties will, until changed as provided below, be as follows:

CITY:

Rosie Truelove, Director
City of Austin Neighborhood Housing and Community Development Department
1000 East 11th Street, Ste 200
Austin TX 78702

with copy to:

Kait Kuzmickas
City of Austin Law Department
P.O. Box 1088
Austin, TX 78767-1088
Email: Katherine.kuzmickas@austintexas.gov

OWNER:

with copy to:

Michael J. Whellan
Graves Dougherty Hearon & Moody
401 Congress Avenue, Suite 2200
Austin, Texas 78701
Email: mwhellan@gdhm.com

The Parties may change their respective addresses to any other address within the United States of America or provide the names and addresses of its successors or assigns by giving at least five (5) days written notice to the other Parties. Any Party may, by giving at least five (5) days written notice, designate additional parties to receive copies of notices under this Agreement.

- G. Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.
- H. Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and venue for any action concerning this Agreement shall be in the State District Court of Travis County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.
- I. Amendment. This Agreement may only be amended by the mutual written agreement of the Parties. The City Manager or designee may modify the provisions of this Agreement on behalf of the City.
- J. Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.
- K. Successors and Assigns.
The City may not assign this Agreement without the prior written consent of the Owner.

The Owner has the right, from time to time, to assign this Agreement to a non-lender person or entity ("*Assignee*") provided the following conditions are met: (1) Assignee is a successor owner of all or any part of the Land; (2) Assignee expressly assumes in the assignment all obligations and expressly agrees in the assignment to observe, perform, and be bound by this Agreement; and (3) a copy of the executed assignment is provided to City not later than thirty (30) days after execution (collectively, the "*Assignment Conditions*") with documentation evidencing compliance with the Assignment Conditions. From and after the date a copy of the executed assignment is provided to City, and if the Assignment Conditions are each satisfied, City agrees to look solely to Assignee for the performance of all obligations assigned to Assignee and agrees that the assigning Owner shall be released from performing the assigned obligations and from any liability that results from the Assignee's failure to perform the assigned obligations. No assignment by such Owner shall release such Owner from any liability that resulted from an act or omission by such Owner that occurred prior to the effective date of the assignment unless Assignee accepts such liability as part of the assignment.

The Owner has the right, from time to time, to assign its respective interest in this Agreement, in whole but not in part, to a holder of any obligation or debt of such Owner or any successor owner of all or any part of the Land or this Agreement secured by any mortgage, deed of trust, collateral assignment, security interest, lien or other encumbrance, any amendment or modification of the terms thereof, including without

limitation any extension, renewal or refinancing thereof (a “**Lender**”) without City’s prior written consent. Any such assigning Owner shall provide notice to City of any Lender assignment within thirty (30) days after execution of the assignment with a copy of the documents and instruments created and governing Lender’s interests and rights. No assignment by such Owner to a Lender shall release such Owner from any of such Owner’s obligations under this Agreement.

Each Owner shall maintain written records of any and all assignments made by such Owner (including, for each Assignee and Lender, the documentation demonstrating compliance with the Assignment Conditions, and including a copy of each executed assignment) and, upon written request from any Party, Assignee, or Lender shall provide a copy of such records to the requesting person or entity.

- L. Recitals. The recitals to this Agreement are incorporated herein.
- M. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.
- N. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

(Signature pages to follow)

EXECUTED on this _____ day of _____, 2017.

**CITY OF AUSTIN, TEXAS,
a home rule municipality of the State of
Texas**

By: _____

Name: _____

Title: _____

Date: _____

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the _____ day of _____,
2017, by _____, _____ of the City of Austin, a Texas, a home
rule municipality of the State of Texas, on behalf of said municipality.

Notary Public, State of Texas

(SEAL)

EXECUTED on this _____ day of _____, 2017.

OWNER:

**TWELVE LAKES, LLC,
A Texas limited liability company**

**By: TWELVE LAKES MANAGING MEMBER,
LLC, A Delaware limited liability company, its
sole member**

By: _____
(Printed name and title)

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the _____ day of _____, 2017, by _____ as _____ of Twelve Lakes Managing Member, LLC, a Delaware limited liability company as the sole member of Twelve Lakes, LLC, a Texas limited liability company, on behalf of said company.

Notary Public, State of Texas

(SEAL)

THE AUSTIN OAKS AFFORDABLE HOUSING AGREEMENT

EXHIBIT A

Description of the Property

Exhibit A

Legal Description of the Property

Tract 1:

Lot 5, Koger Executive Center Unit Three, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 75, Page 322 of the Plat Records of Travis County, Texas, and;

Tract 2:

Lots 6A and 6B, Resubdivision Lot 6, Koger Executive Center Unit Three, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 77, Page 167 of the Plat Records of Travis County, Texas, and;

Tract 3:

Lots 8, 9 and 10, Koger Executive Center Unit Four, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 80, Page 176 of the Plat Records of Travis County, Texas, and;

Tract 4:

Lots 3A, 3B and 3C, Resubdivision of a Portion of Lot 3, Koger Executive Center Unit Two, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 76, Page 50 of the Plat Records of Travis County, Texas, and;

Tract 5:

Lot(s) 1, 2, 4A and 4B, Koger Executive Center Unit Five, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 84, Pages 6D-7A of the Plat Records of Travis County, Texas.

THE AUSTIN OAKS AFFORDABLE HOUSING AGREEMENT

EXHIBIT B

Blanket Restrictive Covenant on the Property

**DECLARATION OF RESTRICTIVE COVENANT REGARDING AFFORDABLE
HOUSING REQUIREMENTS FOR DEVELOPMENT LOCALLY KNOWN AS;
3409, 3420, 3429, 3445, 3520, 3636 3701, 3724, and 3737 Executive Center Drive, and 7601,
7718, and 7719 Wood Hollow Drive, Austin, Travis County, Texas 78731**

This Restrictive Covenant regarding Affordable Housing Requirements for the Austin Oaks Planned Unit Development, (the “**Restrictive Covenant**”), is executed on this _____, 2017, by the Twelve Lakes LLC., a Texas limited liability company (“**Declarant**”) and is as follows:

1. RECITALS

A. Declarant owns that certain real property (“**Property**”) described on attached Exhibit A.

B. Definitions:

Owners. The term “Owner” means, individually, and the term “Owners” means, collectively, Declarant and all future owners of the fee interest or any portion of the Property (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee’s sale or through a deed in lieu of foreclosure) and their successors and assigns.

Affordable Housing Requirements. The Term “**Affordable Housing Requirements**” means restricting the Property as follows:

(a) At least 10.8% of the total number of housing units constructed on a portion of the Property on which residential is a permitted use as designated on the Land Use Plan for the Austin Oaks PUD is primarily occupied by a rental household (the “rental units”) whose adjusted gross income for the year immediately preceding the date of occupancy of the dwelling housing unit is at or below 60% of the then current median family income for the Austin-Round Rock metropolitan statistical area as determined annually by the United States Department of Housing and Urban Development (“MFI”) and is verified in writing as acceptable by the Neighborhood Housing and Community Development Office of the City of Austin (the “City”);

(b) At least 10.8% of the total number of housing units constructed on a portion of the Property on which residential is a permitted use as designated on the Land Use Plan for the Austin Oaks PUD is primarily occupied by a homeowner household (the “ownership units”) whose adjusted gross income for the year immediately preceding the date of occupancy of the dwelling housing unit which is at or below 80% of the then current MFI and is verified in writing as acceptable by the City;

(c) A unit is affordable for purchase or rental if the household is required to spend no more than 30% of its gross monthly income on mortgage and condominium association fees or rental and utility payments; and

(d) At least 50% of the affordable ownership units and at least 50% of the affordable rental units must contain 2 or more bedrooms and shall have the same minimum average size as the market rate units located in the same building.

Austin Oaks PUD. The term "**Austin Oaks PUD**" refers to the rezoning of the Property that occurred on or about April 13, 2017 in Case Number C814-2014-0120, Ordinance No. 20170413-036.

C. The Austin Oaks PUD provides for residential development only on Parcel 8 and Parcel 9, as designated on the Land Use Plan.

D. Declarant has agreed to impose upon the Property these covenants and conditions for the benefit of the Property.

NOW, THEREFORE, Declarant declares that the Property is subject to the following covenants, conditions and restrictions, which run with the Property and bind all parties having right, title, or interest in or to such portion of the Property or any part, their respective heirs, successors, and assigns, and which inure to the benefit of each Owner. Each contract, deed or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. Recitals Incorporated. The above Recitals and all terms defined therein are incorporated into this Restrictive Covenant for all purposes.
2. Compliance with Affordable Housing Requirements. Until such time as the Release (hereafter defined) is filed in the real property records of Travis County, Texas, all occupancy of the improvements to or modifications to improvements on the Property shall be in full compliance with the Affordable Housing Requirements.

IT IS THE EXPRESS INTENT OF DECLARANT THAT ONLY CERTAIN HOUSING UNITS CONSTRUCTED ON THE PROPERTY BE ENCUMBERED BY THE AFFORDABLE HOUSING REQUIREMENTS.

At such time as the Owner of a portion of the Property on which residential is a permitted use as designated on the Land Use Plan for the Austin Oaks PUD designates an affordable unit, such housing unit shall be encumbered (a "designated unit") by a restrictive covenant, recorded in the real property records of Travis County, Texas, to remain so encumbered for the period of time set forth in Section 5.B of this Restrictive Covenant.

The Declarant may request a partial release of units not to be designated as affordable, to be granted at the sole discretion of the City, to allow for sale of housing units not to be designated as affordable. The Declarant may also request the partial release of a portion of the Property not to contain housing from this Restrictive Covenant, subject to the following:

Declarant may request release of a parcel or multiple parcels, with all released property containing no more than a total of 500,000 leasable square feet of commercial space, which the City shall promptly execute. No additional releases shall be provided for property containing commercial or office space until such time as the certificates of occupancy have been issued for all Designated Units required to meet the Affordable Housing Requirements.

At such time as the Affordable Housing Requirements for the Property as designated on the Land Use Plan for the Austin Oaks PUD have been met, certificates of occupancy have been issued for all affordable units, and replacement restrictive covenants recorded encumbering all affordable units, the City shall execute a release ("Release") of this Restrictive Covenant for property other than the Designated Units.

3. Breach Does Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant entitles the Owners to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations do not affect in any manner any other rights or remedies which the Owners may have hereunder by reason of any breach of this Restrictive Covenant.
4. Excusable Delays. Whenever performance is required of the Owners, the Owners shall use all due diligence to perform and take all reasonable and necessary measures in good faith to perform within a reasonable time; provided, however, that if completion of performance is delayed at any time by reasons of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, unavailability of labor or material, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of the Owner (financial inability, imprudent management or negligence excepted), then the time for performance as herein specified will be extended by the amount of delay actually so caused.
5. General Provisions.
 - A. Inurement. This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind Owners, and their successors and assigns. When an Owner conveys all or any portion of the Property, that former Owner will thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the Property conveyed by it from and after the date of recording of such conveyance, but no such sale releases that former Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance.

- B. Duration. Unless this Restrictive Covenant is modified, amended, or terminated in accordance with Paragraph 5(K), this Restrictive Covenant remains in effect for: (a) forty (40) years from the date the unit is leased to an eligible household for units occupied primarily by a rental household, so long as the unit remains in compliance; (b) for ninety-nine (99) years from the date a unit governed by a condominium declaration or held in a community land trust is either sold or leased to an eligible household for occupation primarily by a ownership household; or (c) forty (40) years from the date a unit sold in fee simple and not governed by a condominium declaration is sold to an eligible household for occupation primarily by an ownership household.
- C. Non-Merger. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
- D. Severability. The provisions of this Restrictive Covenant must be deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.
- E. Entire Agreement. This Restrictive Covenant, and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Restrictive Covenant with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Restrictive Covenant and the exhibits attached hereto. The provisions of this Restrictive Covenant will be construed as a whole according to their common meaning and not strictly for or against any Owner.
- F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of this Restrictive Covenant.
- G. Governing Law; Place of Performance. This Restrictive Covenant and all rights and obligations created hereby will be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the county in Texas where the Property is located.
- H. Notices. Any Notice to the Owners or the City must be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

- I. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant will be deemed to create a partnership between or among the Declarant, any Owner, or the City of Austin in their respective businesses or otherwise; nor will it cause them to be considered joint ventures or members of any joint enterprise.
- J. Enforcement. If any person, persons, corporation, or entity of any other character, violates or attempts to violate this Restrictive Covenant, it will be lawful for the City of Austin, its successors and assigns, to prosecute proceedings at law, or in equity, against the person or entity violating or attempting to violate these Restrictive Covenant and to prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by the City of Austin, its successors and assigns, whether any violations hereof are known or not, does not constitute a waiver or estoppel of the right to do so.
- K. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Official Records of the county in Texas where the Property is located, executed, acknowledged, and approved by (a) the City of Austin or successor; and (b) all of the Owners of the Property at the time of the modification, amendment, or termination.

Executed to be effective on _____, 2017.

DECLARANT:

Twelve Lakes LLC, a Texas limited liability company

By: Twelve Lakes Managing Member, LLC, a Delaware limited liability company, its sole member

By: _____
Jon M. Ruff
Senior Vice President

ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 2017,
by Jon M. Ruff, as Senior Vice President of Twelve Lakes Managing Member, LLC, a Delaware
limited liability company, the sole member of Twelve Lakes LLC, a Texas limited liability
company, on behalf of said company.

[Seal]

Notary Public, State of Texas

ACCEPTED:

By: _____

Neighborhood Housing and Community Development

APPROVED AS TO FORM:

By: _____

Assistant City Attorney

AFTER RECORDING, RETURN TO:

City of Austin
Neighborhood Housing and Community Development
Attn:

TCAD:
FILE NO.
PROJECT:

Exhibit A to
Blanket Affordable Housing Restrictive Covenant

Legal Description of the Property

Tract 1:

Lot 5, Koger Executive Center Unit Three, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 75, Page 322 of the Plat Records of Travis County, Texas, and;

Tract 2:

Lots 6A and 6B, Resubdivision Lot 6, Koger Executive Center Unit Three, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 77, Page 167 of the Plat Records of Travis County, Texas, and;

Tract 3:

Lots 8, 9 and 10, Koger Executive Center Unit Four, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 80, Page 176 of the Plat Records of Travis County, Texas, and;

Tract 4:

Lots 3A, 3B and 3C, Resubdivision of a Portion of Lot 3, Koger Executive Center Unit Two, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 76, Page 50 of the Plat Records of Travis County, Texas, and;

Tract 5:

Lot(s) 1, 2, 4A and 4B, Koger Executive Center Unit Five, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 84, Pages 6D-7A of the Plat Records of Travis County, Texas.

THE AUSTIN OAKS AFFORDABLE HOUSING AGREEMENT

EXHIBIT C-1

**Replacement Restrictive Covenant form for Affordable Units
Multifamily Rental**

Restrictive Covenant for Affordable Units

Multifamily Rental

Owner: Twelve Lakes LLC., a Texas limited liability company

Owner's Address:

Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

City: City of Austin, Texas, a Texas home rule municipal corporation situated in the counties of Hays, Travis and Williamson.

City's Address: P.O. Box 1088, Austin, Texas 78767-1088

Property: 3409, 3420, 3429, 3445, 3520, 3636 3701, 3724, and 3737 Executive Center Drive, and 7601, 7718, and 7719 Wood Hollow Drive, Austin, Travis County, Texas 78731

Project: Austin Oaks

- A. The Property is subject to Planned Unit Development zoning under Ordinance No. _____, which includes affordability requirements.

NOW, THEREFORE, it is declared that the Owner of the Property, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid to the Owner, the receipt and sufficiency of which are hereby acknowledged, agrees that the property shall be held, developed, used, sold and conveyed subject to the following covenants and restrictions impressed upon the Property by this Restrictive Covenant. This Restrictive Covenant shall run with the Property and shall be binding on the Owners of the Property, their heirs, successors and assigns.

1. Development Restrictive Covenants. Development of the Property shall provide the following:

- a. At least ____ percent (____%) of the net rentable square footage on the Property must be available to house persons whose household income is no more than ____ percent of the median family income in the Austin-Round Rock metropolitan statistical area (MFI), as determined by the director of the City of Austin's Neighborhood Housing and Community Development Office; and

- b. Units developed in accordance with section A.1.a above will be rented at affordable rents for a period of forty (40) years from the date a certificate of occupancy is issued for rental units. Affordable means a household that is required to spend no more than 30% of its gross monthly income on rental payments and utilities for the unit. Maximum flat monthly rental rates are established annually by the City of Austin's Neighborhood Housing and Community Development Office based on the current Annual Median Family Incomes for the Austin Metropolitan Statistical Area, for households earning ____% MFI.

2. Compliance and Monitoring. The Neighborhood Housing and Community Development Office will conduct compliance and monitoring of the affordability requirements of this Restrictive Covenant. The director of Neighborhood Housing and Community Development shall establish compliance and monitoring guidelines and criteria for implementing the affordability requirements of this Restrictive Covenant.

3. Modification and Amendment. This Restrictive Covenant may be modified, amended or terminated only upon the filing of a modification, amendment or termination in the Official Public Records of Travis County, Texas, executed, acknowledged and approved by (i) the Owner; and (ii) the officer or employee signing on behalf of the City . The joint action shall only become effective after it is reduced to writing and signed by the parties listed above.

4. Duration. This Restrictive Covenant shall be effective for no more than 40 years of documented compliance with the affordability terms listed above in Section A.1.b unless modified, amended, or terminated in accordance with Section 3 (Modification and Amendment).

5. Violation. If any person or entity shall violate or attempt to violate this Restrictive Covenant, it shall be lawful for the City to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant to prevent the person or entity from taking actions in violation of this Restrictive Covenant.

6. No Waiver. The failure to enforce any provision of this Restrictive Covenant at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Restrictive Covenant. A violation of any provision of this Restrictive Covenant shall never be grounds for,

nor give rise to the modification, amendment or termination of any provision of this Restrictive Covenant.

7. **Governing Law; Place of Performance.** This Restrictive Covenant and all rights and obligations hereunder shall be governed by the laws of the State of Texas. This Restrictive Covenant is performable on the Property.

8. **Severability.** The provisions of this Restrictive Covenant are deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion does not affect the validity or enforceability of any other provision.

9. **Entire Agreement.** This Restrictive Covenant and the attached Exhibit " A " hereto contain all the representations and the entire agreement between the parties with respect to the subject matter. Any prior correspondence, memoranda or agreements are superseded in total.

10. **Counterparts.** This Restrictive Covenant may be executed in any number of counterparts which will, together, be deemed to constitute one document.

11. **Interpretation.** Regardless of which Party prepared the initial draft of this Restrictive Covenant, this Restrictive Covenant shall, in the event of any dispute, however its meaning or application, be interpreted fairly and reasonably and neither more strongly for nor against any party.

EXECUTED to be effective the _____ day of _____, 20_____.

OWNER:

By: _____

CITY OF AUSTIN:

By: _____

Bert Lumbreras
Assistant City Manager
City of Austin

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____,
20____, by _____.

Notary Public, State of Texas

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____,
20____, by Bert Lumbreras, as Assistant City Manager of the City of Austin, a municipal corporation, on
behalf of said municipal corporation.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

City of Austin
Neighborhood Housing and Community Development
1000 East 11th Street, Suite 200
Austin, TX 78702
Attn: Regina Copic/Sandra Harkins

THE AUSTIN OAKS AFFORDABLE HOUSING AGREEMENT

EXHIBIT C-2

**Replacement Restrictive Covenant form for Affordable Units
Owner Occupied Condominium**

**Restrictive Covenant for Affordable Units
Owner Occupied Condominium
For**

Austin, Travis County, Texas 78731

This Restrictive Covenant regarding Affordable Housing Requirements for the condominium project proposed at _____, Austin, Travis County, Texas 78731 (the "Restrictive Covenant"), is executed on _____ 20____, _____, a Texas limited liability company ("Declarant") and is as follows:

I. RECITALS

- A. Declarant owns that certain real property ("the Property") located at _____, Austin, Travis County, Texas 78731 and more particularly described below:

LEGAL DESCRIPTION

B. Definitions:

Owners. The term "**Owner**" means, individually, and the term "**Owners**" means, collectively, Declarant and all future owners of the fee interest or any portion of the Property (whether such fee interest is obtained through a purchase from Declarant or through a purchase at a foreclosure sale or trustee's sale or through a deed in lieu of foreclosure) and their successors and assigns.

Affordable Housing Requirements. The term "**Affordable Housing Requirements**" means the requirements in the Restrictive Covenant burdening the Property and substantially in the form attached as Exhibit "A" which shall restrict the Affordable Unit to be primarily occupied by a homeowner household whose adjusted gross income for the year immediately preceding the date of occupancy of the dwelling housing unit which is constructed on the Property is no more than ____% of the current Annual Median Family Income for the City of Austin Metropolitan Statistical Area and is verified in writing as acceptable by the Neighborhood Housing and Community Development Office of the City of Austin, or its successor department.

- C. Declarant has agreed to impose upon the Property these covenants and conditions for the benefit of the Property.

NOW, THEREFORE, Declarant declares that the Property is subject to the following covenants, conditions and restrictions, which run with the Property and bind all parties having right, title, or interest in or to such portion of the Property or any part, their respective heirs, successors, and assigns, and which inure to the benefit of each Owner. Each contract, deed or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in said contract, deed or conveyance.

SPECIFIC AGREEMENTS AND RESTRICTIONS:

1. Recitals Incorporated. The above Recitals and all terms defined therein are incorporated into this Restrictive Covenant for all purposes as if set forth in full herein.
2. Compliance with Affordability Standards. The Property is subject to Planned Unit Development zoning under Ordinance No. _____, which includes affordability requirements and Owner shall reserve the Property as affordable for not less than 99 years from the date a certificate of occupancy is issued, for ownership and occupancy by households earning no more than _____ percent of the current Annual Median Family Income for the Austin-Round Rock Metropolitan Statistical Area Unit.
3. Breach Does Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Restrictive Covenant entitles the Owners to cancel, rescind or otherwise terminate this Restrictive Covenant, but such limitations do not affect in any manner any other rights or remedies which the Owners may have hereunder by reason of any breach of this Restrictive Covenant.
4. General Provisions.
 - A. Inurement. This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind Owners, and their successors and assigns. When an Owner conveys all or any portion of the Property, that former Owner will thereupon be released and discharged from any and all further obligations, if any, under this Restrictive Covenant that it had in connection with the Property conveyed by it arising from and after the date of recording of such conveyance, but no such sale releases that former Owner from any liabilities, if any, actual or contingent, existing as of the time of such conveyance or arising from any breach occurring prior to conveyance.
 - B. Duration. Unless this Restrictive Covenant is modified, amended, or terminated in accordance with Paragraph 4(K), this Restrictive Covenant begins on the effective date of this Restrictive Covenant for a period of not less than ninety-nine (99) years from the date a certificate of occupancy is issued by the City of Austin for the Property Compliance with the Affordability Requirements of Section 2, and shall be evidenced by the recordation in the Official Records of Travis County, Texas, of a Resale Restriction Agreement and Covenant Limitations on Resale Price and Buyer Income in the form attached hereto as Exhibit "A" and made a part hereof for all purposes ("Resale Restriction"), which shall impose resale price and buyer income limitations and afford the City certain rights to cure a default in any mortgage loan as provided in the Resale Restriction on an individual residential unit.
 - C. Non-Merger. This Restrictive Covenant will not be subject to the doctrine of merger, even though the underlying fee ownership of the Property, or any parts thereof, is vested in one party or entity.
 - D. Severability. The provisions of this Restrictive Covenant must be deemed to be independent and severable, and the invalidity or partial invalidity of any provision or portion hereof does not affect the validity or enforceability of any other provision.

- E. Entire Agreement. This Restrictive Covenant, and the exhibits attached hereto contain all the representations and the entire agreement between the parties to this Restrictive Covenant with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Restrictive Covenant and the exhibits attached hereto. The provisions of this Restrictive Covenant will be construed as a whole according to their common meaning and not strictly for or against any Owner.
- F. Captions. The captions preceding the text of each section and subsection hereof are included only for convenience of reference and will be disregarded in the construction and interpretation of this Restrictive Covenant.
- G. Governing Law; Place of Performance. This Restrictive Covenant and all rights and obligations created hereby will be governed by the laws of the State of Texas. This Restrictive Covenant is performable only in the county in Texas where the Property is located.
- H. Notices. Any Notice to the Owners or the City must be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant will be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.
- I. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant will be deemed to create a partnership between or among the Declarant, any Owner, or the City of Austin in their respective businesses or otherwise; nor will it cause them to be considered joint ventures or members of any joint enterprise.
- J. Enforcement. If any person, persons, corporation, or entity of any other character, violates or attempts to violate this Restrictive Covenant, it will be lawful for the City of Austin, its successors and assigns, to prosecute proceedings at law, or in equity, against the person or entity violating or attempting to violate these Restrictive Covenant and to prevent said person or entity from violating or attempting to violate such covenant. The failure at any time to enforce this Restrictive Covenant by the City of Austin, its successors and assigns, whether any violations hereof are known or not, does not constitute a waiver or estoppel of the right to do so.
- K. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Official Records of the county in Texas where the Property is located, executed, acknowledged, and approved by (i) the Owner; and (ii) the officer or employee signing on behalf of the City. The joint action shall only become effective after it is reduced to writing and signed by the parties listed above.

Executed to be effective on _____, 20____.

DECLARANT: Twelve Lakes, LLC

By: _____

By: _____
- Manager

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

The foregoing instrument was acknowledged before me, the undersigned Notary Public, ____ day of _____, by _____ as manager of Twelve Lakes, LLC.

Given under my hand and seal of office on _____, 20____.

Notary Public, State of Texas

{Additional signature page to follow}

CITY OF AUSTIN:

By: _____

Bert Lumbreras
Assistant City Manager
City of Austin

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 20____, by Bert Lumbreras, as Assistant City Manager of the City of Austin, a municipal corporation, on behalf of said Municipal Corporation.

Notary Public, State of Texas

**APPROVED AS TO FORM:
BY CITY OF AUSTIN LAW DEPARTMENT**

Assistant City Attorney
City of Austin

AFTER RECORDING RETURN TO:
Neighborhood Housing and Community Development
1000 East 11th Street, Suite 200
Austin, TX 78702
Attn: Regina Copic

[NOTICE TO TITLE COMPANY: THIS EXHIBIT SHOULD BE COMPLETED IN FULL BY THE HOME BUYER AT CLOSING AND RECORDED. PLEASE CONTACT THE NEIGHBORHOOD HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT AT THE CITY OF AUSTIN IF YOU HAVE ANY QUESTIONS OR NEED ASSISTANCE.]

EXHIBIT "A"

STATE OF TEXAS §

COUNTY OF TRAVIS §

**RESALE RESTRICTION AGREEMENT AND COVENANT
LIMITATIONS ON RESALE PRICE and BUYER INCOME**

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title.

AFFORDABLE HOUSING COVENANT

This Affordable Housing Agreement and Covenant ("Covenant") is entered into as of the _____ day of _____, 20____, by and between _____, and the City of Austin, Texas.

This Covenant applies only to the following described real property, including improvements, in Travis County, Texas ("Affordable Unit"):

Condominium Unit Number _____, in Building "_____", and the space encompassed by the boundaries thereof, the limited common elements appurtenant thereto, together with an undivided interest in the general common elements located in and being part of _____ CONDOMINIUMS, a Condominium project in Travis County, Texas, as fully described in and as located, delineated and as defined in the Condominium Declaration for _____ CONDOMINIUMS, recorded under Document No. _____, Official Public Records of Travis County, Texas.

RECITALS

WHEREAS, the City of Austin supports the goal of preserving affordable homeownership opportunities through long term affordability strategies; and

WHEREAS, the Affordable Unit (more completely described below in Section 1. Definitions) is subject to the Affordable Housing Declaration defined below in Section 1, but none of the other Condominium Units in the Condominium Project, other than the Affordable Units, are subject to the Affordable Housing Declaration or this Covenant; and

WHEREAS, the Affordable Housing Declaration requires, inter alia, that Grantor impose this Covenant on the Affordable Unit; and

WHEREAS, in accordance with such requirement, the Grantor has agreed to impose the affordable housing restrictions set forth in this Covenant against the Affordable Unit; and

WHEREAS, the intent of the City is to preserve the affordability of the Affordable Unit for persons of low or moderate income, including a surviving spouse or heirs of an Eligible Buyer; and

WHEREAS, subsequent purchasers will benefit from the limitations on the resale purchase price which this Covenant requires; and

WHEREAS, the intent of the Grantor is to preserve through this Covenant the affordability of the Affordable Unit for persons of low or moderate income, their surviving spouse, domestic partner, lineal descendants or siblings, and to assign to the City the right to enforce compliance with this Covenant.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions

The following terms shall have the following meanings herein:

"Acknowledgment of Affordability Restrictions" means an acknowledgement in substantially the form of Exhibit A attached hereto, confirming the Owner's review and understanding of the terms and conditions of this Restrictive Covenant.

"Area Median Income" means the Area Median Income reported annually for single persons and households of various sizes by the United States Department of Housing and Urban Development, or by any successor United States Government department, agency, or instrumentality, for the metropolitan statistical area which includes the City of Austin, Texas.

"Affordable Housing Declaration" means the Declaration of Restrictive Covenant Regarding Affordable Housing Requirements for _____, recorded under Document No. _____ of the Official Public Records of Travis County, Texas.

"Affordable Unit" means Condominium Unit Number _____, in Building "_____", and the space encompassed by the boundaries thereof, the limited common elements appurtenant thereto, together with an undivided interest in the general common elements located in and being part of _____ CONDOMINIUMS, a Condominium project in Travis County, Texas, as fully described in and as located, delineated and as defined in the Condominium Declaration for _____ CONDOMINIUMS, recorded under Document No. _____, Official Public Records of Travis County, Texas.

"Asset Limits" means aggregate personal assets, including cash, personal property and real property assets of not more than Fifty-Thousand Dollars (\$50,000.00), excluding employer or tax deferred retirement plan assets and any amount used as the down payment for the Affordable Unit.

The Asset Limit shall be increased or decreased annually in accordance with the Federal Costs of Living Adjustment (COLA),

"Certified" means written acknowledgement of the City that an individual is an Eligible Buyer, Owner or Income Qualified Person, based on the Qualified Person's previous year federal income tax return and year to date income statements or paycheck stubs as the case may be, and meets the requirements of this Restrictive Covenant for ownership of the Affordable Unit.

"City" or "Grantee" means the City of Austin, a Texas home rule municipality.

"Condominium Declaration" means the _____ CONDOMINIUMS, a Condominium project in Travis County, Texas, described in the Condominium Declaration for _____ CONDOMINIUMS, recorded under Document No. _____, Official Public Records of Travis County, Texas.

"Condominium Project" means the Project defined in the Condominium Declaration.

"Declarant" or "Grantor" means the legal entity authorized to transfer ownership to Eligible Buyer.

"Eligible Buyer" means an Income-Qualified Person whose annual household earns no more than _____% of the current Annual Median Family Income for the City of Austin Metropolitan Statistical Area and has been certified by the City as meeting the City's Asset Limits and Income Limits, and has been qualified by an Institutional Lender for a mortgage to be used to purchase the Affordable Unit.

"Eligible Capital Improvement" means (i) a capital improvement to the Affordable Unit that is reasonably necessary to maintain the Affordable Unit in a good state of repair including necessary structural, mechanical, electrical and plumbing repairs, but specifically excludes normal and customary repairs and maintenance to the Affordable Unit and normal and customary repairs and maintenance to the mechanical, electrical or plumbing systems in the Affordable Unit; and (ii) replacing built-in appliances and fixtures. Eligible Capital Improvements shall also include amounts paid by the Owner of the Affordable Unit as a special assessment under the Condominium Declaration provided the special assessment is for capital improvement to the Condominium Project that is reasonably necessary to maintain the Condominium Project in a good state of repair including necessary structural, mechanical, electrical and plumbing repairs, but specifically excludes normal and customary repairs and maintenance to the Condominium Project.

"First Deed of Trust" means a deed of trust or mortgage which is recorded senior to any other deeds of trust or liens against the Affordable Unit to secure a loan used to purchase the Affordable Unit made by an Institutional Lender.

"HUD" means the United States Department of Housing and Urban Development.

"HUD Low Income Limit" means the maximum gross household income which allows a household to be considered "low income" for the purposes of HUD financial assistance. These limits are reported annually by HUD and reflect the low income limit for a particular area.

"Income" means the definition of income under Section 8 of the United States Housing Act of 1937, codified at 42 U.S.C.S. § 1437a(b)(1990), as further determined by the United States Secretary of Agriculture in 24 CFR § 813.106 (1997). In the event that Section 8 is repealed or the definition of income under Section 8 is substantially modified, then "income" shall mean the anticipated total income for the next twelve month period received from all sources by each member of the household, excluding, however, temporary or non-recurring income (including gifts), income from the employment of children under age 18, payments for the care of foster children or foster adults, and amounts received specifically for the reimbursement of medical expenses for a member of the household.

"Income Limits" means a projected Income of not more than ____% of the median family income for the Austin Metropolitan Statistical Area as defined annually by HUD, adjusted to reflect the family size of the buyer or buyers.

"Income-Qualified Person(s)" means a person or persons who has been certified in writing by the City, as meeting the City's Asset Limits and Income Limits.

"Institutional Lender" means any bank or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real property.

"Notice of Exercise of Right" means the City's written notice to Owner of its exercise of its Purchase Right, or assignment of such right to an Eligible Buyer.

"Notice of Waiver of Right" means the City's written notice to Owner of its waiver of its Purchase Right.

"Owner" means any buyer, devisee, transferee, grantee, owner or holder of title of the Affordable Unit or any interest in the Affordable Unit, excluding Grantor.

"Purchase Right" means the City's limited right to purchase the Affordable Unit solely as provided in Section 6.B. of this Covenant.

"Transfer" means any sale, assignment or transfer, voluntary, involuntary or by operation of law (whether by deed, contract of sale, gift, devise, or bequest) of any interest in the Affordable Unit, including but not limited to a fee simple interest, a joint tenancy interest, a tenancy in common, a life estate, a leasehold interest (except for a lease allowed by this Covenant), or any interest evidenced by a contract for sale by which possession of the Affordable Unit is transferred and Owner retains title.

2. Requirement of Title and Term of Affordability

Compliance with the provisions of this Covenant shall be deemed to be a requirement of title. Eligible Buyers must have a valid written income certification from the City approved within nine months from the closing of the purchase of the Affordable Unit in order to be eligible to purchase the Affordable Unit.

3. Term

This Covenant shall remain in effect for a period of ninety-nine (99) years from the date a certificate of occupancy is issued for the Affordable Unit unless the City, its successor or assigns, executes and records a notice of termination in the Official Records of Travis County, Texas.

4. Required Conveyance Deed Language

Grantor and each Owner shall use a form of special warranty deed, which includes in 12 point type and in all caps on the front page thereof the language immediately below:

THIS DEED IS DELIVERED AND ACCEPTED SUBJECT TO THE PROVISIONS AND CONDITIONS SET FORTH IN THAT CERTAIN AFFORDABLE HOUSING COVENANT, DATED AS OF _____, 20____, RECORDED UNDER DOCUMENT NO. _____ OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS.

5. Eligible Buyers

A. Title to the Affordable Unit may only be transferred to an Eligible Buyer or Income Qualified Person; provided, however, upon the death of an Eligible Buyer, the Affordable Unit may be transferred to the surviving spouse, domestic partner, lineal descendants or siblings of an Eligible Buyer without any of such persons having to requalify as an Eligible Buyer. In order to qualify as an Eligible Buyer, the buyer's assets shall not exceed the Asset Limits and the buyer's projected income may be not be more than ____% of the median family income for the Austin Metropolitan Statistical Area as defined annually by HUD, adjusted to reflect the family size of the buyer or buyers. If the Affordable Unit is sold jointly to more than one buyer in the same transaction, or if the Affordable Unit is sold to a buyer who is married or who has a domestic partner, or if the Affordable Unit is sold to one or more buyers who have the custody of children under the age of eighteen, then (a) the buyer or buyers shall be considered to be a household for the purposes of this Covenant; (b) the income of all persons in the household (which will include each buyer of the Affordable Unit, the spouse or domestic partner of the buyer, and all buyer's children who are age eighteen or older) shall be used in determining the buyer's(s') income; and (c) the HUD Low Income Limit shall be adjusted to reflect the household's size.

B. The following transfers are exceptions to the above qualification requirement as an Eligible Buyer or Income Qualified Person, provided that the new Owners, other than an estate, shall use the Affordable Unit as his or her principal residence:

- i. A transfer resulting from the death of an Owner where the transfer is to the spouse or domestic partner of the Owner.
- ii. A transfer to the Owner's estate following his or her death for the purpose of administering the estate and distributing the assets thereof during a limited period of time.
- iii. A transfer resulting from the death of an Owner when the transfer is to one or more children or grandchildren of the deceased Owner or one or more siblings of a deceased Owner.
- iv. A transfer by an Owner where the spouse or domestic partner of the Owner becomes the co-owner of the Affordable Unit.

- v. A transfer resulting from a decree of dissolution of the marriage or from a property settlement agreement incidental to such a decree by which a spouse of an Owner becomes the sole Owner of the Affordable Unit.
- vi. A transfer directly resulting from a termination of a registered domestic partnership by which a domestic partner of an Owner becomes the sole Owner of the Affordable Unit.

Any other beneficiaries, heirs, legatees or devisees of Owner, must be certified by the City to be Income-Qualified Persons in order to retain title to the Affordable Unit. Such other beneficiaries, heirs, legatees or devisees who do not meet the requirements to be certified as an Income Qualified Person shall be required to transfer their interest in the Affordable Unit within 180 days of their receipt of title to the Affordable Unit. Such transfer must be in accordance with Section 6 herein.

6. Transfer of Ownership through Sale or Exchange.

A. An Owner wishing to transfer the Affordable Unit must provide the City with written notice of its intent to sell ("Intent to Sell Notice") and comply with subsections B., and C. of Section 6 of this Covenant.

B. The City's Purchase Right. If the Owner of the Affordable Unit delivers an Intent to Sell Notice to the City, then in such limited event, the City is hereby granted a Purchase Right to purchase the Affordable Unit. The City's Purchase Right must, if at all, be exercised by the City within forty-five (45) days after the City's receipt of said Intent to Sell Notice ("City's Exercise Period"). If the City fails to timely exercise the Purchase Right by delivering to the Owner a Notice of Exercise of Right prior to the expiration of the City's Exercise Period, then the City's Purchase Right to purchase the Affordable Unit shall be deemed to be waived as to the applicable Intent to Sell Notice. If the City exercises the Purchase Right by delivering the Notice of Exercise of Right prior to the expiration of the City's Exercise Period, then the City is obligated to either (i) purchase the Affordable Unit, or (ii) assign the Purchase Right to an Eligible Buyer. Prior to the expiration of the City's Exercise Period, the City must provide Owner either a Notice of Exercise of Right or Notice of Waiver of Right. In the event that the City provides a Notice of Waiver of Right, or fails to deliver either a Notice of Exercise of Right or Notice of Waiver of Right prior to the expiration of the City's Exercise Period, the Owner may proceed with sale of the Affordable Unit, in the manner prescribed by subsection C. of Section 6 of this Covenant. In the event the City provides a Notice of Exercise of Right, the sale of the Affordable Unit must close with either the City, or an Eligible Buyer who is the City's assignee, as stated in the Notice of Exercise of Right, within sixty (60) days of Owner's receipt of the Notice of Exercise of Right (the "City's Closing Period"). In the event that the sale does not close prior to the expiration of the City's Closing Period, and such failure is not due to a default by the Owner, the Owner may terminate the contract with the City, or its assignee, and sell the Affordable Unit in accordance with the provisions of subsection C. of Section 6 of this Covenant. In such event, the City shall provide Owner with such written confirmation or other documentation that may reasonably be necessary to satisfy a title insurer of Owner's compliance with this Section.

C. Good Faith Marketing and Selection Process. Provided an Owner: (i) has received a Notice of Waiver of Right from the City; or, (ii) the City has not timely exercised its Purchase Right prior to the expiration of the City's Exercise Period or, (iii) the City, or its assignee fails to timely close the

purchase of the Affordable Unit prior to the expiration of the City's Closing Period, an Owner may market the Affordable Unit for sale in accordance with this subsection. The purpose of this subsection is to assure that an Owner engages in a good faith marketing effort such that members of the public have a fair chance to become informed of the availability of the Affordable Unit, which shall include marketing the Affordable Unit for a minimum of thirty (30) days before any contract for sale may be executed by the Owner. Upon the expiration of the mandatory Intent to Sell Notice and marketing period, the Owner may enter into a contract for sale of the Affordable Unit with a ready, willing and able buyer; provided such buyer has been certified by the City as an Eligible Buyer.

7. Grantor's Sale of the Affordable Unit

The purchase price for Grantor's sale of the Affordable Unit to an Eligible Buyer may not be for more than \$_____.

8. Affordable Resale Price Limit.

A. After the first Transfer from Grantor to the first Owner of the Affordable Unit, the Affordable Unit may not be transferred for more than an amount calculated in accordance with this Paragraph. The "Affordable Resale Price" is equal to the original affordable sales price paid by such Owner, plus the affordable sales price multiplied by a fixed rate of 2% annual, simple interest multiplied by the number of ownership years the Affordable Unit is owned by such Owner (the "Fixed Rate of Appreciation"). Ownership years are calculated on an annual, pro-rated basis to credit the Owner with that portion of the year that may not be a full calendar year. "Ownership years" equals the total number of days of ownership divided by three hundred and sixty-five days, so that the Ownership Year is prorated daily. The amount of appreciation due to the Owner shall equal the affordable sales price paid by such Owner for the Affordable Unit multiplied by a Fixed Rate of Appreciation.

B. Nothing in this Covenant represents or guarantees that the Affordable Unit will be re-sold at an amount equal to the resale price limit. Depending upon conditions affecting the real estate market, the Affordable Unit may be re-sold for less than the Affordable Resale Price.

C. Adjustments to Affordable Resale Price. The Affordable Resale Price shall be increased or decreased, as applicable, by the following adjustment factors ("Adjustment").

- (i) Capital Improvements. Provided that prior to Owner's undertaking the Eligible Capital Improvement Owner obtains City's written approval to proceed, the Affordable Resale Price shall be increased in an amount equal the original cost to Owner for making the Eligible Capital Improvement. To receive City approval, Owner must submit evidence to City showing the purpose and cost of the capital improvements.
- (ii) Damages. Affordable Resale Price shall be decreased by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the City, including, without limitation, amounts attributed to making necessary structural, mechanical, electrical and plumbing repairs that would require the issuance of a building permit; and repairing or replacing built-in appliances and fixtures; however, Damages shall not include reasonable wear and tear to items such as painted surfaces,

drapery, flooring or carpeting or other normal and customary repairs for which a building permit from the City is not required.

9. City's Right to Acquire Owner's Interest Prior to Foreclosure.

A. The Owner shall give to the City written notice within three (3) business days from the date any notice of foreclosure is provided to the Owner or any foreclosure is commenced against the Property under the First Deed of Trust, or other instrument encumbering the Affordable Unit.

B. If the Owner has not cured the default under the First Deed of Trust within ten (10) business days prior to a scheduled foreclosure sale by an Institutional Lender who is the beneficiary under the First Deed of Trust, then the City may (but shall not be obligated to) proceed to make any payment required in order to avoid foreclosure of the Affordable Unit. Upon making any such payment, the City shall succeed to all beneficial rights of the Owner to the Affordable Unit and shall assume all of the Owner's rights and obligations under the First Deed of Trust, subject to the terms of this Covenant. In such event, the Owner shall relinquish possession thereof to the City.

C. The Owner may reacquire or repurchase his or her interest in the Affordable Unit by payment to the City of all sums paid by the City in connection with the First Deed of Trust, or other instrument encumbering the Affordable Unit, and all other sums reasonably expended by the City in relation to its acquisition of the Affordable Unit, plus two percent (2%), per annum, simple interest from each date of expenditure. This reacquisition or repurchase may only occur within twelve (12) months from the date the City expended money in connection with its acquisition of the Affordable Unit. As of the date of such reacquisition or repurchase, the Owner shall re-assume all of his or her rights and obligations under the First Deed of Trust. At the end of such twelve (12) month period, if the Owner's interest has not been so reacquired or repurchased, all right, title and interest of the Owner in the Affordable Unit shall be extinguished, and the Owner shall execute a quit claim deed to the City to evidence Transfer of title to the City. If the Owner fails or refuses to execute such a deed after being sent a written request therefor by the City, the City may execute it on behalf of the Owner as the Owner's attorney-in-fact. But prior to executing such a deed, the City shall pay to the Owner the down payment made by the Owner plus any reduction made by the Owner in the principal amount of the loan, plus the cost of any Eligible Capital Improvement, minus the City's costs to the date of execution of the deed.

D. Provided that the City declines to exercise its right to assume Owner's interest in the Affordable Unit, an Institutional Lender's foreclosure under a First Deed of Trust, shall terminate this Covenant as to the Affordable Unit, the City shall have no right to acquire the Affordable Unit after a foreclosure sale and the Institutional Lender shall have no obligation to account to, remit proceeds or otherwise deal with the City as a result of any foreclosure sale.

E. Notwithstanding the language of Section 9.D of this Covenant, if an Institutional Lender forecloses under a First Deed of Trust and the proceeds from such foreclosure sale exceed the amount the Institutional Lender would be entitled under the loan documents executed by the Owner in connection with a First Deed of Trust, then any such surplus shall be divided between Owner and City as follows:

- The Owner shall receive such surplus proceeds in an amount that does not exceed the Affordable Resale Price, as calculated at the time of the foreclosure sale.

- The City shall receive all surplus proceeds that exceed the Affordable Resale Price, as calculated at the time of the foreclosure sale.

Declarant acknowledges that it would be contrary to the purposes of this Covenant if, in the event of a foreclosure, a sale generates proceeds in excess of the amount an Institutional Lender is legally entitled to and Owner receives more than the Affordable Resale Price. Therefore, Declarant hereby covenants the following: (i) there shall be an irrevocable assignment of certain surplus proceeds to the City, as prescribed in the above bullet points, and that the Owner, at the time of such foreclosure sale shall execute all documents reasonably necessary to effectuate the assignment and shall instruct Institutional Lender to distribute any such surplus in accordance with this subsection; and, (ii) in the event that the amount of surplus proceeds for which the City is entitled is inadvertently paid to the Owner, Owner shall be obligated to pay such amount to the City promptly. It is not the intent of Declarant for the covenants set out in this subsection to in any way impair Institutional Lender from its recovery of all outstanding principal and interest, penalties, attorney's fees, and other fees and penalties it may be lawfully entitled in prosecuting such foreclosure, and the effect of this covenant is limited in scope to only such proceeds generated in surplus of that which Institutional Lender is legally entitled to recover.

10. Subordination of Covenant

The provisions of this Covenant shall be subordinate to the lien of a First Deed of Trust to secure a loan to purchase the Affordable Unit made by an Institutional Lender. This Covenant shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the first deed of trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed in lieu of foreclosure.

11. Re-Financing of the First Deed of Trust or Financing Eligible Capital Improvements.

The Owner may not mortgage, refinance or in any other manner encumber any of its interest in the Affordable Unit without the prior written consent of the City, which shall be in the City's sole and absolute discretion, with the exception of a First Deed of Trust. If the Owner wishes to refinance its First Deed of Trust, or sell the Affordable Unit, the Owner must (a) give notice to the City, and (b) deliver to the City copies of every document to be recorded in connection with the refinancing or sale in advance of the closing. **THESE RESTRICTIONS PROHIBIT THE OWNER FROM GETTING ADDITIONAL LOANS THAT USE THE AFFORDABLE UNIT AS COLLATERAL, INCLUDING, WITHOUT LIMITATION, LOANS TO REPAY CREDIT CARD DEBT, LOANS TO PURCHASE AUTOMOBILES, HOME EQUITY LOANS, DEBT CONSOLIDATION LOANS OR LOANS TO FINANCE THE PURCHASE OF OTHER PERSONAL PROPERTY.** The Owner acknowledges and agrees that the requirements of this Restrictions to Financing Section are necessary to ensure the continued affordability of the Affordable Unit to the Owner and to minimize the risk of loss of the Affordable Unit through default and foreclosure. The Owner shall pay to the City, at the City's option, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the City in connection with approving any deed of trust or refinancing. Any lien purported to be granted by the Owner to any party that is done in violation of this Restrictions to Financing Section shall be absolutely void

The Owner, with the City's prior written consent, may only re-finance the First Deed of trust or finance Eligible Capital Improvements, so long as the total amount of such re-financing and/or financing of Eligible Capital Improvements does not exceed ninety-three percent (93%) of the Affordable Resale Price

Limit in effect at the time of the re-financing of the Affordable Unit. Such re-financing must be with an Institutional Lender.

12. Taxes, Assessments and Utilities

A. Taxes, Assessments and Utilities. The Owner shall pay, at their own expense, when due all taxes, governmental assessments and charges of every kind against the Affordable Unit. The Owner shall also pay, when due, all other service bills and utility charges that relate to the Affordable Unit, including, without limitation, all charges for water, sewer, heat, air conditioning, gas, light, garbage, electricity, telephone service, power, and all other public and private services and utilities

B. Homeowner's Right to Contest. The Owner may, in good faith and with reasonable diligence, contest the amount or validity of any taxes relating to the Affordable Unit if, during any such contest, the enforcement of the lien of such taxes is stayed.

C. Payments in Event of Delinquency. If the Owner fails to pay the taxes or other amounts specified in this Section 12 when due, the Owner will hold the City harmless from and against any liens arising out of any failure to pay the taxes or other amounts specified in this Section.

D. Proof of Compliance. On an annual basis, within thirty (30) business days after payment of taxes Owner shall provide evidence of payment to the City. Within ten (10) business days after payment of any liens arising out of the non-payment of taxes or utilities, the Owner shall provide evidence of payment to the City.

13. Maintenance of Property

The Owner shall, at the Owner's sole expense, maintain the Affordable Unit in good, safe, and habitable condition in all respects, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the condition of the Affordable Unit. The Owner shall not be required to obtain any permission from the City for normal and customary repairs and maintenance of the Affordable Unit; provided, however, the Owner is obligated to obtain any required building permits for Eligible Capital Improvements if such Eligible Capital Improvements are subject to the requirement to obtain building permits for same by applicable City building codes or ordinances.

14. Eligible Capital Improvements

Any post-purchase construction, excluding normal and customary repairs and maintenance, in about or to the Affordable Unit requiring issuance of a permit is subject to the following conditions: (a) such construction will not commence without the prior written consent of the City; (b) all costs shall be borne and paid for by the Owner; (b) all construction shall be performed in a good and workmanlike manner and shall comply with applicable laws.

15. Prohibited Liens

If any mechanic's, laborer's, materialman's or statutory lien is filed against the Affordable Unit, the Owner shall cause the lien to be discharged of record within sixty (60) calendar days thereafter by payment, deposit, bond, order of a court of competent jurisdiction or as otherwise permitted by law. If

the Owner fails to cause such lien to be discharged within the 60-day period, then, in addition to any other right or remedy, then the City, at the City's option, without releasing Owner from any obligation hereunder, may disburse such sums and take action as it determines necessary to protect the City's interest. Any amounts disbursed by the City pursuant to this paragraph, with interest thereon, will become an indebtedness of Owner to the City. Nothing contained in this paragraph will obligate the City to pay any sums secured by the lien. The Owner agrees to indemnify, defend and hold the City harmless from and against any liens arising out of any construction or other work on the Affordable Unit.

16. Use of Property as Owner's Primary Residence

A. Occupancy. At or before the time when title is transferred to the Affordable Unit, each new Owner shall certify to the City in writing his or her intent to occupy the Affordable Unit as his or her primary residence; and, the Owner must declare the Affordable Unit as the Owner's residential homestead, as provided in Texas Tax Code Chapter 11, as may be amended, revised or recodified. Except for leasing, allowed by this Section 16, Owner shall reside at the Affordable Unit at least nine of the twelve calendar months each year of Owner's possession of the Affordable Unit.

B. Leasing. An Owner may not lease the Affordable Unit except as provided in this subsection.

- i. Requirements for all leases. Any lease of the Affordable Unit shall be approved in writing by the City before it may become effective. The City shall approve the leasing of the Affordable Unit only if: (1) the Lease is in writing and conforms with Texas law; (2) the lease requires the tenant to maintain the Affordable Unit in good condition and prohibits subleasing; and (3) the rent for the Affordable Unit does not exceed Owner's monthly cost of principal and interest on the loan secured by the first deed of trust to an Institutional Lender, and property insurance, property taxes and condominium owners association assessments assessed against the Affordable Unit.
- ii. Requirements for leases that do not exceed a term of three (3) months. Provided that Owner complies with the nine (9) month primary residency requirements, Owner may lease the Affordable Unit for a period that does not exceed three (3) months during a calendar year; provided further that Owner complies with the requirements for all leases, as stated in sub-section 16.B.(i) above.
- iii. Leases greater than three (3) months. Except for Leases that do not exceed three (3) months during a calendar year, Owner shall not lease the Affordable Unit during the first five (5) years of ownership. Upon the fifth (5th) anniversary of Owner's ownership of the Affordable Unit, Owner may lease the Affordable Unit, provided that: (i) the lease term does not exceed twelve (12) months and is not renewable; (ii) no more than one (1) lease term occurs within a seven (7) year period of ownership; (iii) the Affordable Owner first provides the City with notice that the Affordable Unit is available for lease and obtains certification that such Affordable Unit has been inspected and is in compliance with all applicable statutory and regulatory housing requirements; and (iv) Owner complies with the requirements for all leases, as stated in sub-section 16.B.(i) above. In the event that a maximum lease term of twelve (12) months presents a condition of economic hardship on the Affordable Owner because of military

deployment, health problems or another reason causing the Affordable Owner to be required to leave the area temporarily, City may grant a temporary waiver to the Affordable Owner not to exceed twenty-four (24) months of the requirement to continuously occupy and reside in the Affordable Unit. Documentation substantiating the economic hardship must be submitted in writing for City to review. City will provide the Affordable Owner with a response, in its sole discretion, within a reasonable time period.

17. Liability, Insurance, Damage, Eminent Domain.

A. Owner's Liability. The Owner assumes sole responsibility and liability to all persons and authorities related to its possession, occupancy and use of the Affordable Unit. The City or its successors shall not be liable to the Owner or any third party for any losses, costs, damages, harms, claims or lawsuits connected with the Affordable Unit.

B. Indemnification of the City. The Owner shall, and does hereby, indemnify, protect, defend and hold harmless the City, and the City's agents, employees, officers, successors, designees and assigns, from and against any and all claims, damages, liabilities, obligations, losses, causes of action, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) arising directly or indirectly from: (a) the Owner's use of the Affordable Unit, or any activity, work or other things done, permitted or suffered by the Owner in, on or about the Affordable Unit; (b) the Owner's breach of this Restrictive Covenant or violation of any applicable Laws; (c) any act or omission of the Owner, or any guest or invitee of the Owner, or anyone claiming by, through or under the Owner; or (d) any cause in, on or about the Affordable Unit. The Owner hereby assumes all risk of damage to property or injury to persons in, on or about the Affordable Unit, from any cause, and the Owner hereby waives all claims in respect thereof against the City, and the City's respective agents, employees, officers, successors, designees and assigns.

18. Insurance.

The Owner shall, at the Owner's sole expense, keep the interior of the Affordable Unit (i.e., interior walls, flooring, carpeting, appliances, built-in cabinets, shelves, and any other installations or additions which are the Owner's insurance responsibility under the condominium documents) continuously insured against loss or damage by fire and the extended coverage hazards for its full replacement value. The Owner shall keep the Affordable Unit continuously insured throughout the Covenant Term in such amounts and against such risks and liabilities as the Senior Lender requires, or, if there is no Senior Lender, in such amounts and against such risks and liabilities as the City may reasonably require, provided that such insurance shall specifically insure the Owner against all liability assumed under this Restrictive Covenant and imposed by law. All insurance policies shall name the City as additional insured, and shall also contain endorsements providing that they shall not be canceled, reduced in amount of coverage or otherwise modified in any material respect, without prior written notice to the City of at least thirty (30) days. At the City's request, the Owner shall provide copies of all policies and renewals of policies or other evidence of insurance. The Owner shall pay the insurance premiums as they become due, and shall comply with all insurance requirements at any time in force; provided, however, the Owner's compliance, in whole or in part, with this Section shall not be deemed to limit, in any way or to any extent, the liabilities or obligations of the Owner to the City under the terms of this Restrictive Covenant. Notwithstanding anything herein to the contrary, Owner shall be deemed to have satisfied its obligation to make the insurance payments required by this Section and tax

payments required by Section 12 so long as it is making such payments through an escrow established by the Senior Lender for such purposes, in which case the Owner shall provide the City copies of any annual escrow accounting provided to the Owner by the Senior Lender promptly upon the City's written request.

19. Damage and Destruction.

A. Obligation to Restore. Except as provided in subsection (B) below, if the Affordable Unit is damaged by fire or any other cause, the Owner shall immediately give written notice to the City, and the Owner shall promptly repair or restore the Affordable Unit, as nearly as practicable, to its condition immediately prior to the damage and this Restrictive Covenant shall remain in full force and effect. The Owner shall also promptly and with due diligence take all steps necessary to ensure that the Affordable Unit does not constitute a danger to people or property.

B. Termination of Restrictive Covenant and Distribution of Insurance Proceeds. If repair or restoration is not economically feasible, or is otherwise prohibited by the Institutional Lender, or under the Condominium Instruments, then the Owner may terminate this Restrictive Covenant by delivering written notice to the City within sixty (60) calendar days after the date of the damage. Subject to the terms of the Institutional Lender any insurance proceeds shall be applied in the order provided for in Section 9.E, with the Affordable Resale Price determined as of the date immediately before the damage in accordance with Section 8.A.

20. Eminent Domain.

A. Obligation to Restore. Except as provided in (B) immediately below, in the event of any taking under the power of eminent domain, or conveyance in lieu of condemnation, the Owner shall promptly apply the proceeds of any such taking to the repair or restoration of the Affordable Unit, as nearly as practicable, to its condition immediately prior to the taking and this Restrictive Covenant shall remain in full force and effect.

B. Termination of Restrictive Covenant and Distribution of Condemnation Award. In the event of a total taking (or partial taking, if repair or restoration is not economically feasible or is otherwise prohibited under the Institutional Lender or the Condominium Instruments), the Restrictive Covenant shall terminate as of the date the Owner is required to give up possession of the Affordable Unit. Subject to the terms of the Institutional Lender, any condemnation award shall be applied in the order provided for in Section 9.E, with the Affordable Resale Price determined as of the date immediately before the taking in accordance with Section 8.A.

21. Enforcement of this Covenant

A. The Grantor and each Owner hereby grant and assign the City the right to enforce compliance with this Covenant.

B. Compliance may be enforced by the City by any lawful means, including without limitation specific performance.

C. If the City is required to pursue legal action to enforce this Covenant, then in such event, the City shall be entitled to an award of reasonable and necessary attorney's fees and other reasonable and necessary costs incurred in the enforcement of this Covenant.

D. Venue for a suit enforcing compliance shall be proper in Travis County, Texas.

22. Miscellaneous

A. This Covenant shall run with the Affordable Unit. It shall bind during its term, and the benefit hereof shall inure during its term to the Owner, his or her heirs, legal representatives, executors, successors in interest and assignees, and to the City, its successors, designees, or assignees.

B. The Affordable Unit may not be used by any other development to satisfy the requirements of this Covenant or any other off-site affordable housing obligations.

C. The Affordable Unit is held and hereafter shall be held, conveyed, encumbered (except to the first deed of trust), leased, rented, and occupied subject to these covenants, conditions, restrictions and limitations. All of the herein-stated covenants, conditions, restrictions and limitations are intended to constitute both equitable servitudes and covenants running with the land.

D. Any buyer or transferee of the Affordable Unit or of any portion of or interest in the Affordable Unit, by acceptance of a deed therefor, or by the signing of a contract or agreement to purchase the same, shall, by acceptance of such deed or by the signing of such contract or agreement, be deemed to have consented to and accepted the covenants, conditions, restrictions and limitations set forth herein.

E. Notices to the City shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by the City by like notice:

Neighborhood Housing and Community Development Office
Attn: Density Bonus Manager
1000 East 11th Street, Ste 200
Austin TX 78702

Notices to the Owner may be given in like manner addressed to the Owner of the Affordable Unit as shown on the City's tax rolls.

F. If any provision of this Covenant shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

G. The captions of the paragraphs in this Covenant are for convenience only and shall not be used to interpret the meaning of any provision hereof.

H. The conditions of this Covenant shall be interpreted so as to avoid speculation on the Affordable Unit and to insure to the greatest extent possible that its purchase price and mortgage payments remain affordable during its term to persons and families of low or moderate income.

I. This Covenant shall not be revised, amended, repealed or otherwise modified without the written approval of City and the Owner of the Affordable Unit; and any such modification must be recorded in the public records of Travis County before becoming effective.

J. This Covenant shall apply to the Affordable Unit in addition to the terms and conditions of the Condominium Declaration that is applicable to the Condominium Project in which the Affordable Unit is located. The terms of this Covenant shall apply in addition to and in conjunction with the Condominium Declaration, and no provision of the Condominium Declaration shall in any way be impaired by this Covenant. Any amendment to said Condominium Declaration that attempts to repeal, amend, or modify this Covenant shall be void and without effect.

(remainder of page intentionally left blank; signature pages follow)

IN WITNESS WHEREOF, Grantor has executed this Covenant as of the date first stated above.

GRANTOR:

By: _____

STATE OF TEXAS §

COUNTY OF TRAVIS §

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____.

NOTARY PUBLIC, STATE OF TEXAS

My Commission Expires: _____

CITY OF AUSTIN:

By: _____

Bert Lumbreras
Assistant City Manager
City of Austin

THE STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____, 20____, by
Bert Lumbreras, as Assistant City Manager of the City of Austin, a municipal corporation, on behalf of
said Municipal Corporation.

Notary Public, State of Texas

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

AFTER RECORDING RETURN TO:

Neighborhood Housing and Community Development

1000 East 11th Street, Suite 200

Austin, TX 78702

Attn: Regina Copic

EXHIBIT A to RESALE RESTRICTION AGREEMENT

HOMEOWNER'S ACKNOWLEDGMENT OF AFFORDABILITY RESTRICTIONS

TO: City of Austin

DATE: _____, 20__

I am giving this letter to the City of Austin to be made an exhibit to a Resale Restriction Agreement and Covenant Limitations on Resale Price and Buyer Income ("Restrictive Covenant") between the City and me. I am buying the condominium unit located at _____, Unit #_____, Austin, TX _____, which will be subject to the Restrictive Covenant.

I understand how the terms and conditions of the Restrictive Covenant affect my rights as a homeowner, now and in the future. In particular, I understand and agree that:

- Long-Term Affordability. The purpose of the Restrictive Covenant is to keep housing affordable for future generations of low- and moderate-income households. I support this goal.
- Resale Restrictions. The City controls the resale of my home. If I want to sell my home, I must sell it to another income-eligible buyer (or to the City) for a restricted resale price determined in accordance with the resale formula in the Restrictive Covenant. If I violate the resale restrictions, the Restrictive Covenant gives the City the right, among other remedies, to sue for damages or terminate the Restrictive Covenant and recover any sale proceeds. I realize this limits my ability to resell my home (a "restraint on alienation"), but I agree that this limitation is reasonable under the circumstances set forth in the Restrictive Covenant.
- Refinancing Restrictions. The Restrictive Covenant may keep me from obtaining a home equity loan, debt consolidation loan, car loan or a similar loan that would use the home as collateral. I acknowledge that this constitutes a restraint on alienation, but likewise agree that it is a reasonable restraint under the circumstances of the Restrictive Covenant.
- Principal Residence. I must occupy and use my home as a principal residence. I may only lease it under the provisions under the Restrictive Covenant, and if I move out, I must sell it. I cannot continue to own the home as an absentee owner.

I will honor the terms of the Restrictive Covenant. I consider these terms fair to me and others.

By: _____

[Insert Name of Homeowner]

THE AUSTIN OAKS AFFORDABLE HOUSING AGREEMENT

EXHIBIT D

Partial Release of Blanket Easement form

PARTIAL RELEASE OF RESTRICTIVE COVENANT

Owner: Twelve Lakes, LLC., a Texas limited liability company

Owner Address:

City: The City of Austin, a home-rule city, municipal corporation and political subdivision of the State of Texas, in Travis County, Texas.

Consideration: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the Owner to the City of Austin, the receipt and sufficiency of which are hereby acknowledged.

WHEREAS, the property consisting of approximately _____ acres of land in Austin, Travis County Texas, located within the corporate municipal boundaries of the City, more particularly described as follows:

Add legal description for portion of the property to be released (the "Released Property"),

is a portion of that certain property described in Zoning File No. _____, consisting of approximately 31.27 acres of land (the "Original Property"), as more particularly described in those certain Restrictive Covenants recorded _____, in the Real Property Records of Travis County, Texas (the "Original Restrictive Covenant"), and was impressed with certain covenants and restrictions by the Original Restrictive Covenant. The Original Restrictive Covenant shall hereinafter be referred to as the Restrictive Covenant.

WHEREAS, the Restrictive Covenant provides that the Restrictive Covenant can be modified, amended, or terminated by joint action of both (a) the City and (b) the Owner of the Property at the time of such modification, amendment or termination.

WHEREAS, the Restrictive Covenant provides for the release of portions of the property that will not be encumbered by the Affordable Housing Requirements, as defined in the Restrictive Covenant.

WHEREAS, the current Owner of the Released Property desires to amend the Restrictive Covenant as to the Released Property.

WHEREAS, the City and the Owner agree the Restrictive Covenant should be amended as to the Released Property.

NOW, THEREFORE, for and in consideration of the premises and mutual promises, covenants, and agreements hereinafter set forth, the City of Austin and the Owner agree as follows:

1. The Restrictive Covenant is amended to release the Released Property from the terms and provisions of the Restrictive Covenant.
2. The remainder of the Original Property (if not previously released by the City from the Restrictive Covenant in a recorded instrument) remains subject to all terms and conditions of the Restrictive Covenant, and the execution, delivery and recording of this instrument shall not be construed to modify, amend or terminate the Restrictive Covenant in any way except with respect to the Released Property described herein.
3. The City Manager or designee, shall execute, on behalf of the City, this Partial Release. This Partial Release shall be filed in the Official Public Records of Travis County, Texas.

EXECUTED to be effective the _____ day of _____, 20_____.

OWNER:

Twelve Lakes LLC., a Texas limited liability company

By: _____

Manager

CITY OF AUSTIN:

By: _____

Assistant City Manager
City of Austin

APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

This instrument was acknowledged before me on this the ____ day of _____, 20____, by _____, Manager of Twelve Lakes LLC., a Texas limited liability company, on behalf of said company.

Notary Public, State of Texas

THE STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

This instrument was acknowledged before me on this the _____ day of _____, 20____, by _____, as Assistant City Manager of the City of Austin, a municipal corporation, on behalf of said municipal corporation.

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

After Recording, Please Return to:
Neighborhood Housing and Community Development
1000 East 11th Street, Suite 200
Austin, TX 78702
Attn:

THE AUSTIN OAKS AFFORDABLE HOUSING AGREEMENT

EXHIBIT E

Condominium Declaration Provisions

CONDOMINIUM DECLARATION REQUIRED PROVISIONS

Please review and replace defined terms as necessary to match those in the Declaration.

ARTICLE XXV

PROVISIONS RELATED TO RESTRICTED RESALE UNITS

1. Compliance with Affordable Housing Requirements. The Declarant is required by the Planned Unit Development zoning approved for the property in City Ordinance _____ to provide affordable housing and the Declarant shall restrict 10.8% percent of the ownership residential units in the development as affordable for not less than 99 years from the date a certificate of occupancy is issued, for ownership and occupancy by households earning no more than 80 percent of the current Annual Median Family Income for the Austin-Round Rock Metropolitan Statistical Area as determined annually by the United States Department of Housing and Urban Development. In the event the United States Department of Housing and Urban Development ceases publication of this information, the Annual Median Family Income for the Austin-Round Rock Metropolitan Statistical Area will be determined by the Neighborhood Housing and Community Development Department, or its successor, at the City of Austin.
2. Affordable Housing Units. *Insert identification information for each affordable units.* (each an "Restricted Resale Unit", collectively the "Restricted Resale Units") may from time to time be conveyed to Unit Owners subject to restrictions that, among other things, limit the resale price and the income of potential purchasers of the Restricted Resale Units (the "Restrictions"). The Restrictions may be set forth in the deeds conveying such Restricted Resale Units or in a separately recorded document. Such Restrictions run in favor of and are enforceable by the City of Austin, a Texas home-rule city and municipal corporation, its successors and assigns (the "City"). The Board and Association will observe the provisions of this Article XXV after control and management is turned over by the Declarant. Prior to turnover of the Association to the Board or Association, the Declarant shall observe the provisions of this Article XXV.
3. Right of First Refusal. To the extent that the Declaration now or hereafter shall contain any provision granting the Board or the Association the right of first refusal or other right to purchase any Unit (a "ROFR"), then the Board or the Association shall not exercise such ROFR against any Unit that is a Restricted Resale Unit, unless the City shall fail to enforce the Restrictions relating to resale of such Restricted Resale Unit. In the event of the failure by the City to enforce such Restrictions, the Board or the Association may exercise any otherwise-applicable ROFR, but in such purchase and any subsequent resale of the affected Restricted Resale Unit the Board and the Association shall observe the restrictions on sale price and income of potential purchasers expressed in the Restrictions. In the event the Board receives notice of the sale of a Restricted Resale Unit, the Board shall notify the Neighborhood Housing and Community Development Department at the

City to confirm the Restrictions have been satisfied prior to issuing any documents for the closing of the sale.

4. Notice to City. Notwithstanding anything in this Declaration to the contrary, City shall have all of the rights provided to an Eligible Mortgagee under this Declaration, including, without limitation, the right to (i) from time to time to examine current copies of the Declaration and other documents governing the administration of the Property, (ii) receive, upon request, any financial statements prepared by the Association for the Unit Owners and (iii) receive contemporaneous copies of all notices directed to the owner of any particular Restricted Resale Unit.
5. Assessments. The Restrictions provide, among other things, for the possible acquisition by the City of a Restricted Resale Unit in connection with the exercise of remedies by an Eligible Mortgagee (a "Foreclosure"). To the extent that in a Foreclosure an Eligible Mortgagee is entitled to acquire a Unit free and clear of the lien of assessments or other charges exists under this Declaration, the provisions of the next sentence shall apply. In the context of a Foreclosure, if the City shall exercise its rights under the Restrictions with respect to the subject Restricted Resale Unit, the City (and/or a buyer meeting the requirements of the Restrictions, as the case may be) shall acquire ownership of the Restricted Resale Unit free and clear of any lien for unpaid assessments or other charges in favor of the Association in the same manner as would be applicable in a Foreclosure.
6. Modification. The provisions of this Article XXV shall not be amended or eliminated without the prior written consent of the City, so long as the Restrictions shall remain in effect; provided however, upon the expiration or earlier termination of the Restrictions, the City shall promptly release and waive the provisions of this Article XXV.

THE AUSTIN OAKS AFFORDABLE HOUSING AGREEMENT

EXHIBIT F

Annual Status Report Form



**City of Austin
Neighborhood Housing and Community Development (NHCD) Office
Affordability Plan**

EXHIBIT F

Community Name: The Austin Oaks Planned Unit Development

[illegible]

**THE AUSTIN OAKS
AFFORDABLE HOUSING AGREEMENT**

EXHIBIT G

Monitoring Report Form – Affordability Plan

Community Name: The Austin Oaks Planned Unit Development
Phase & Builder: _____

[illegible]

Development's Representative Signature: _____

Date: _____