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MEMORANDUM

TO: Members of the Planning Commission
FROM: Shandrian Jarvis, Transportation Review
DATE: May 10, 2011
SUBJECT: Variance Request for Salvation Army Subdivision
Case Number – C8-2010-0064.0A
Recommendation: **Approval**

The applicant for the above referenced subdivision is requesting a variance to Title 25 of the Land Development Code (LDC) Section 25-4-151. Per LDC 25-4-151, streets of new subdivisions are required to align with and connect to existing streets on adjoining property unless the Land Use Commission determines that the Comprehensive Plan, topography, requirements of traffic circulation, or other considerations make it desirable to depart from the alignment or connection.

The proposed tract is located within the City of Austin's full purpose jurisdiction at the southwest corner of Cumberland Road and South 5th Street. The tract is comprised of two multifamily lots on 9.941 acres. A site plan for a 123-unit condominium development at this location is currently under review by City of Austin staff.

Staff recommends approval of the variance for the following reasons:

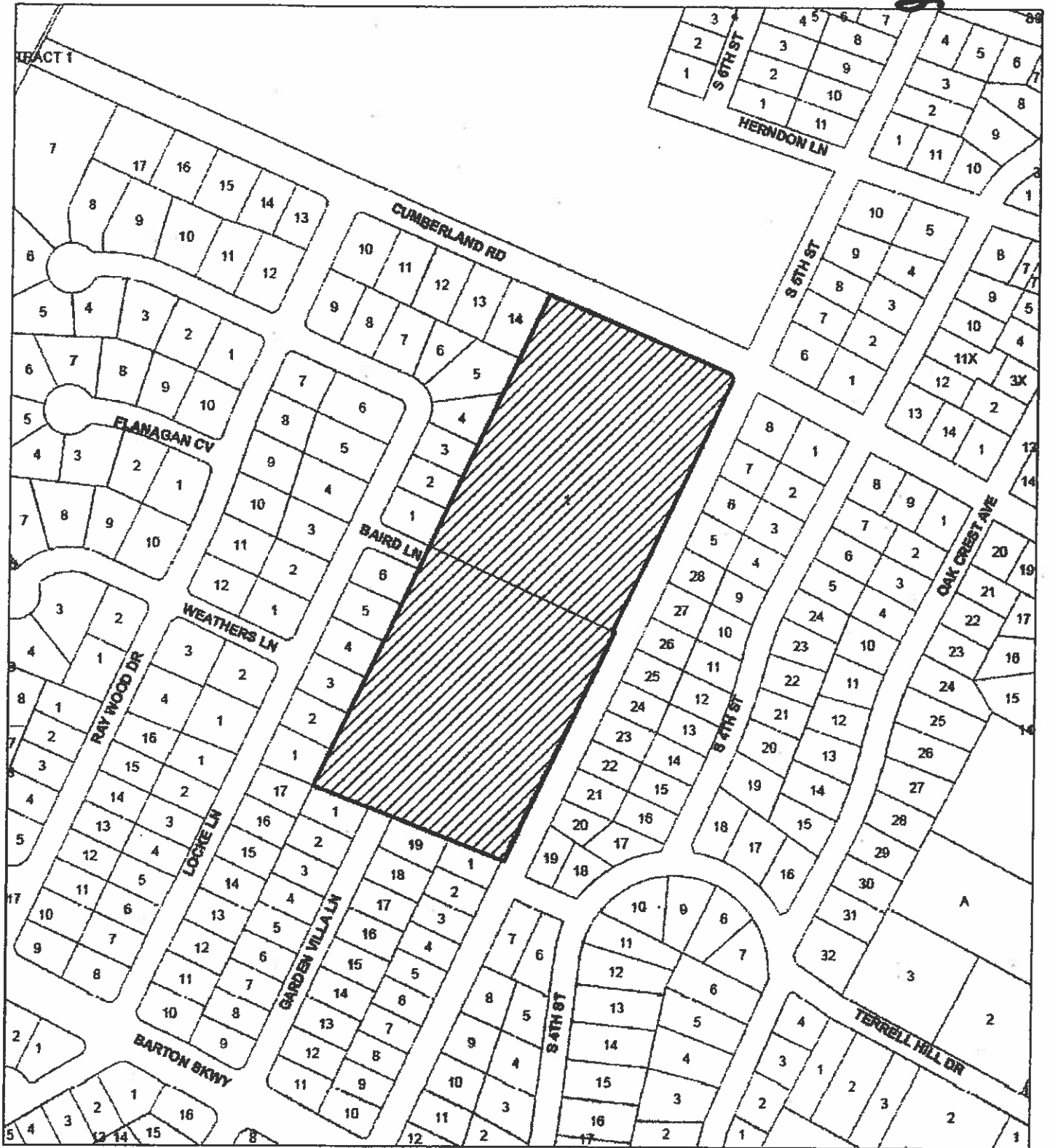
- The development would be adequately served by abutting Cumberland Road and South 5th Street. In addition, the applicant agreed to provide public access throughout the open space area of the property and a pedestrian connection to Garden Villa Lane as a condition of zoning.
- Extension of Baird and Garden Villa lanes would place undue hardship on the property. Connection of these two roadways through the property would reduce the developable area by approximately 40 percent and would require a redesign of the site. The applicant has invested approximately \$500,000 in the planning and development of this site, and is committed to providing an additional \$50,000 in off-site improvements to address traffic impacts.
- The applicant and the Galindo Elementary Neighborhood Association (GENA) have a private restrictive covenant that states that this development will not access Baird or Garden Villa lanes. Consequently, the neighborhood group fully supports the applicant's request not to extend Baird and Garden Villa lanes through the property.



If you have any further questions or required additional information, please contact me at 974-2628.

Shandrian Jarvis
Transportation Review Staff

cc: Sylvia Limon, Case Manager

Case 2



 Subject Tract
 Base Map

Salvation Subdivision
 CASE#: C8-2010-0064.0A
 ADDRESS: 1001 Cumberland Road
 MANAGER: Sylvia Limon

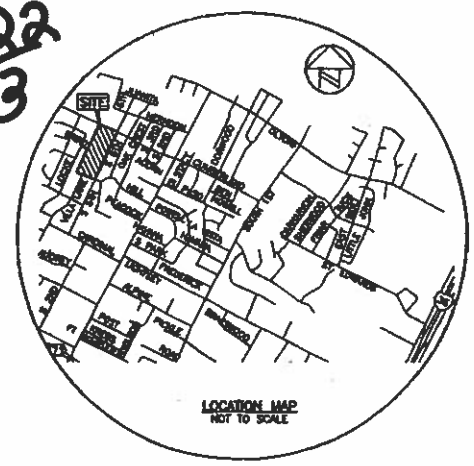
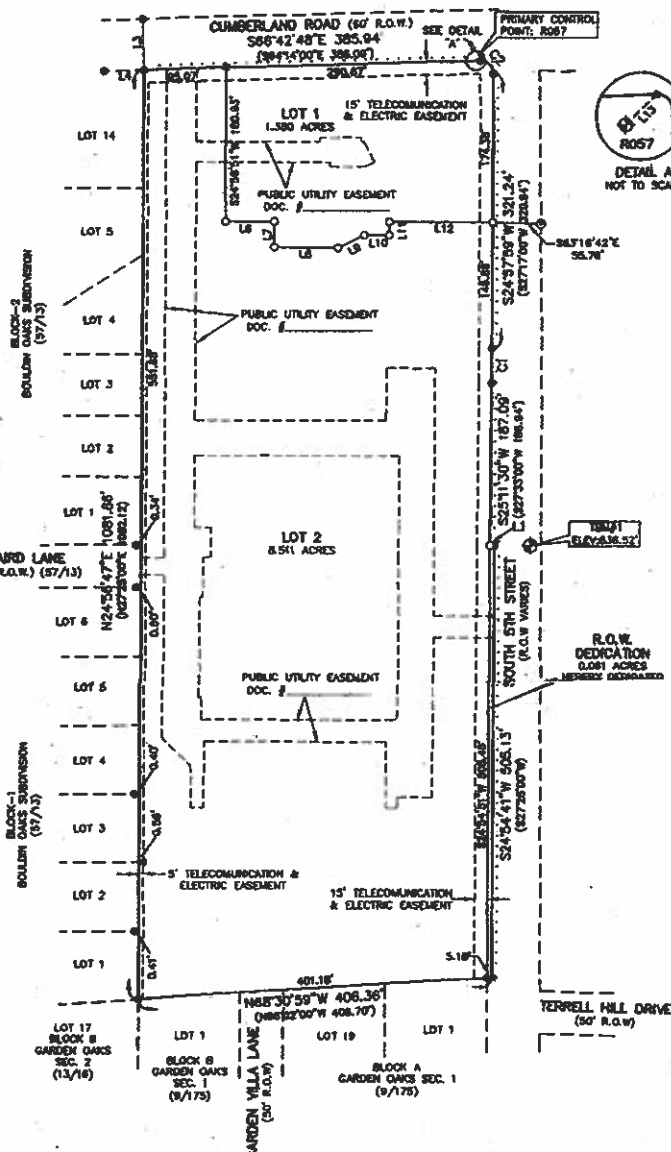
1" = 400' OPERATOR: D. SUSTAITA

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

SALVATION SUBDIVISION

1001 CUMBERLAND ROAD 78704

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- LEGEND**
- 1/2" REBAR FOUND
 - 1/2" REBAR WITH CAP SET
 - ⊙ 1/2" IRON PIPE FOUND
 - ⊛ COTTON SPINDLE WITH WASHER SET
 - ⊠ BENCHMARK/CONTROL PT. LOCATION
 - SIDEWALK

LINE TABLE

No.	BEARING	LENGTH	RECORD
L1	S89°00'30"E	5.15'	(8873500'E 3.21')
L2	N88°00'30"W	0.34'	
L3	S23°17'12"W	58.19'	
L4	N88°41'20"W	45.82'	(N641500'W)
L5	S2°17'12"W	0.59'	
L6	S89°03'10"E	55.85'	
L7	S2°55'31"W	30.28'	
L8	S84°28'28"E	73.75'	
L9	N89°23'44"E	33.79'	
L10	S89°03'15"E	28.48'	
L11	N24°56'49"E	18.00'	
L12	S89°03'11"E	117.85'	
L13	N71°18'00"W	4.93'	

CURVE TABLE

NO.	DELTA	RADIUS	TAN	ARC	CHORD	BEARING	BEARING
C1	076°01'	8594.35'	20.02'	40.03'	40.03'	S25°03'30"W	(S27°25'00"W 40.00')
C2	81°27'34'	15.00'	15.38'	23.94'	21.45'	S20°45'44"E	(S18°20'00"E 21.48')

PRIMARY CONTROL POINT: R057 1/2" REBAR WITH PLASTIC CAP STAMPED "RANDOM"

SURFACE COORDINATES:
 N 10080879.20
 E 3107330.14

TEXAS CENTRAL ZONE STATE PLANE COORDINATES:
 N 10080318.299
 E 3107198.899

COMBINED SCALE FACTOR:
 0.999944248

BEARING BASIS: GRID AZIMUTH FOR TEXAS CENTRAL ZONE STATE PLANE COORDINATES, 1983/83 MARK, BASED ON GPS SOLUTIONS FROM THE NATIONAL GEODETIC SURVEY (NGS) ON-LINE FORMING USER SERVICE (OPUS).

BENCHMARK INFORMATION:

TBM#1 IS A CONCRETE NAIL WITH SHINER STAMPED "CHAPARRAL" SET IN CONCRETE, LOCATED IN THE EAST RIGHT-OF-WAY OF SOUTH 5TH STREET, +/- 378'-FEET SOUTH OF THE INTERSECTION OF CUMBERLAND ROAD AND SOUTH 5TH STREET; TBM #2 IS +/- 18'-FEET NORTHEAST OF A POWER POLE AND +/- 54'-FEET SOUTHWEST OF A FIRE HYDRANT.

ELEVATION = 628.85'

DETAIL - NAD 83
 GRID 95, FROM OPUS SOLUTIONS

SURVEYOR'S CERTIFICATION

I, ROBERT C. WATTS, JR., AM AUTHORIZED UNDER THE LAWS OF THE STATE OF TEXAS TO PRACTICE THE PROFESSION OF SURVEYING AND HEREBY CERTIFY THAT THIS PLAN COMPLIES WITH THE SURVEYING RELATED PORTIONS OF CHAPTER 25 OF THE AUSTIN CITY CODE OF 1989 AS AMENDED, IS TRUE AND CORRECT, AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE BY ME OR MADE UNDER MY SUPERVISION, MADE ON THE GROUND SEPTEMBER 25, 2011.

Robert C. Watts, Jr. 3-30-11
 ROBERT C. WATTS, JR., R.P.L.S. 4965



SURVEYED BY:
 CHAPARRAL PROFESSIONAL LAND SURVEYING, INC.
 3500 MCCALL LANE
 AUSTIN, TEXAS 78744
 (812) 443-1724

ENGINEER'S CERTIFICATION

I, THOMAS J. GROLL, AM AUTHORIZED UNDER THE LAWS OF THE STATE OF TEXAS TO PRACTICE THE PROFESSION OF ENGINEERING, AND HEREBY CERTIFY THAT THIS PLAN IS FEASIBLE FROM AN ENGINEERING STANDPOINT AND COMPLIES WITH THE ENGINEERING RELATED PORTIONS OF TITLE 25 OF THE AUSTIN CITY CODE OF 1989, AS AMENDED, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

THE 100 YEAR FLOOD PLAIN IS CONTAINED WITHIN THE DRAINAGE EASEMENTS SHOWN HEREON. NO PORTION OF THIS TRACT IS WITHIN THE BOUNDARIES OF THE 100 YEAR FLOOD OF A WATERWAY THAT IS WITHIN THE LIMITS OF STUDY OF THE FEDERAL FLOOD INSURANCE ADMINISTRATION FROM PANEL 484530585H, DATED SEPTEMBER 2A, 2008, FOR TARRANT COUNTY, TEXAS AND INCORPORATED AREAS.

Thomas J. Groll, P.E. 3/30/11
 THOMAS GROLL, P.E. 00976
 THOMAS GROLL ENGINEERING
 2222 WESTERN TRAILS BLVD. SUITE 107
 AUSTIN, TX 78745
 PH 512-446-0922
 FAX 512-446-0924



Chaparral
 Professional Land Surveying, Inc.
 Surveying and Mapping

3500 McCall Lane
 Austin, Texas 78744
 512-443-1724

PROJECT NO.: 471-002
 DRAWING NO.: 471-002-PL1
 PLOT DATE: 03/30/11
 PLOT SCALE: 1"=100'
 DRAWN BY: SP
 SHEET 01 OF 02

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Tom Groll Engineering

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May 9, 2011

City of Austin
Planning and Development Department
505 Barton Springs Road
Austin, TX 78704
Attn: Mr. George Zapalac

Re: Variance request for C8-2010-0064.0A & SP-2010-0179C
Salvation Army site
1001 Cumberland Road
Austin, TX 78704

Dear Mr. Zapalac,

This letter is provided on behalf of Mr. Terry Mitchell of Momark Development to request a variance to the City's Land Development Code Section 25-4-151 for the above referenced project.

The Salvation Army has owned the proposed project site since 1974. Prior to Momark Development's involvement, the site was zoned MF-1-CO per Zoning Ordinance No. 990506-62 (please see the attached copy of the ordinance). Part 2, Section 1 of this ordinance placed a condition on the site that "there shall be no vehicular access from the Property to Garden Villa Lane or Baird Lane. All vehicular access shall be from other adjacent public streets or through other adjacent property."

In 2007, Momark Development engaged in negotiations with the Galindo Elementary Neighborhood Association (GENA) in preparation to change the site zoning from MF-1 to SF-6 to facilitate approval of the currently proposed site plan (SP-2010-0179C). During those negotiations, one of GENA's primary concerns was that they did not want vehicular access from the project site to Garden Villa Lane or Baird Lane. Momark Development agreed to this condition as it was simply a continuance of the previous zoning covenant. In addition to the requirements of the zoning ordinance, Momark Development executed Restrictive Covenant No. 2008027441 with GENA to document other requirements for their support of the zoning change. Section 3(b) of this restrictive covenant limits vehicular access to the site to one location on Cumberland Road and one location on South 5th Street. Ultimately the Zoning Case No. C14-2007-0129 was approved by Council and the zoning was changed to SF-6-CO (please see the attached Zoning Ordinance No. 20080214-080). By all accounts, it is clear that Momark Development, the Galindo Elementary Neighborhood Association, and City Council all understood and agreed that vehicular access to the site shall be limited to one location on Cumberland Road and one location on South 5th Street, and shall not extend from Garden Villa Lane or Baird Lane.

We first submitted the applications for plat vacation, re-subdivision, and site plan approval in the latter part of 2008. Due to economic conditions, it became necessary to withdraw and resubmit the applications. As a result, we have had to make significant alterations to the site plan to address intervening changes in the development code. Our current applications are due to expire in mid-June. We have been working diligently toward clearing all of the comments in order to beat the expiration date and avoid having to once again withdraw and re-submit these applications. As recently as last Thursday we were unaware that Staff would require a variance request to LDC 25-4-151 to address the non-extension of Garden Villa Lane and Baird Lane into the proposed site plan. It has been implicit all along that due to the language found in the various ordinances and restrictive covenants that Garden Villa Lane and Baird Lane could not extend into the site, and that the City supported this well documented condition of the zoning case, which gained Council approval in February 2008.

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The City of Austin's Land Development Code Section 25-4-151 requires that "Streets of a new subdivision shall be aligned with and connect to existing streets on adjoining property unless the Land Use Commission determines that the Comprehensive Plan, topography, requirements of traffic circulation, or other considerations make it desirable to depart from the alignment or connection". Given the history of the negotiations between the developer, the City and the neighborhood association on this project we feel that "other considerations make it desirable to depart from the alignment or connection."

If you need any further information regarding this variance request, please do not hesitate to contact me by any of the means provided below. Thank you for your timely consideration and attention to this matter. We look forward to a quick resolution.

Sincerely,



Thomas J. Groll, P.E.

President

Tom Groll Engineering, PC

2222 Western Trails Blvd., Suite 107

Austin, TX 78745

Firm #9799

(512) 448-0922 (o)

(512) 448-0924 (f)

(512) 848-5796 (m)

tomg@tg-eng.com

Attachments: Zoning Ordinance No. 990506-62
Zoning Ordinance No. 20080214-080
Restrictive Covenant No. 2008027441
Restrictive Covenant No. 2008084481

Cc: Mr. Terry Mitchell – Momark Development
Ms. Alice Glasco – Alice Glasco Consulting

TG/tjg

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ORDINANCE NO. 990506-62

AN ORDINANCE REZONING AND CHANGING THE ZONING MAP ACCOMPANYING CHAPTER 25-2 OF THE CITY CODE AS FOLLOWS:

LOT 1, ISSAC DECKER LEAGUE SUBDIVISION, IN TRAVIS COUNTY, FROM FAMILY RESIDENCE (SF-3) DISTRICT TO MULTI-FAMILY RESIDENCE LIMITED DENSITY-CONDITIONAL OVERLAY (MF-1-CO) DISTRICT, LOCALLY KNOWN AS 2900 SOUTH 5TH STREET, IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS.

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

PART 1. The Zoning Map established by Chapter 25-2-191 of the City Code is amended to change the base zoning district from Family Residence (SF-3) district to Multi-Family Residence Limited Density-Conditional Overlay (MF-1-CO) district on the property described in File C14-98-0084, as follows:

Lot 1, Issac Decker League Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat of record in Plat Book 575, Pages 585-588, of the Plat Records of Travis County, Texas, (the "Property")

locally known as 2900 South 5th Street, in the City of Austin, Travis County, Texas, and as more particularly identified in the map attached as Exhibit "A".

PART 2. The Property is subject to the following conditions:

1. There shall be no vehicular access from the Property to Garden Villa Lane or Baird Lane. All vehicular access to the Property shall be from other adjacent public streets or through other adjacent property.
2. Obstructions to pedestrian access from the Property to Garden Villa Lane or Baird Lane are prohibited.
3. The number of residential dwelling units located on the Property may not exceed 60 units.

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4. No structure of any kind may be built to a height greater than 35 feet above ground level on the Property.

5. The following uses of the Property are prohibited:

- Condominium Residential
- Multifamily Residential
- Townhouse Residential
- Two-Family Residential
- Residential Treatment
- Day Care Services (General)

Except as specifically restricted under this ordinance, the Property may be developed and used in accordance with the regulations established for the Multi-Family Residence Limited Density (MF-1) base district and other applicable requirements of the Land Development Code.

PART 3. The Council waives the requirements of Sections 2-2-3, 2-2-5, and 2-2-7 of the City Code for this ordinance.

PART 4. This ordinance takes effect on May 17, 1999.

PASSED AND APPROVED

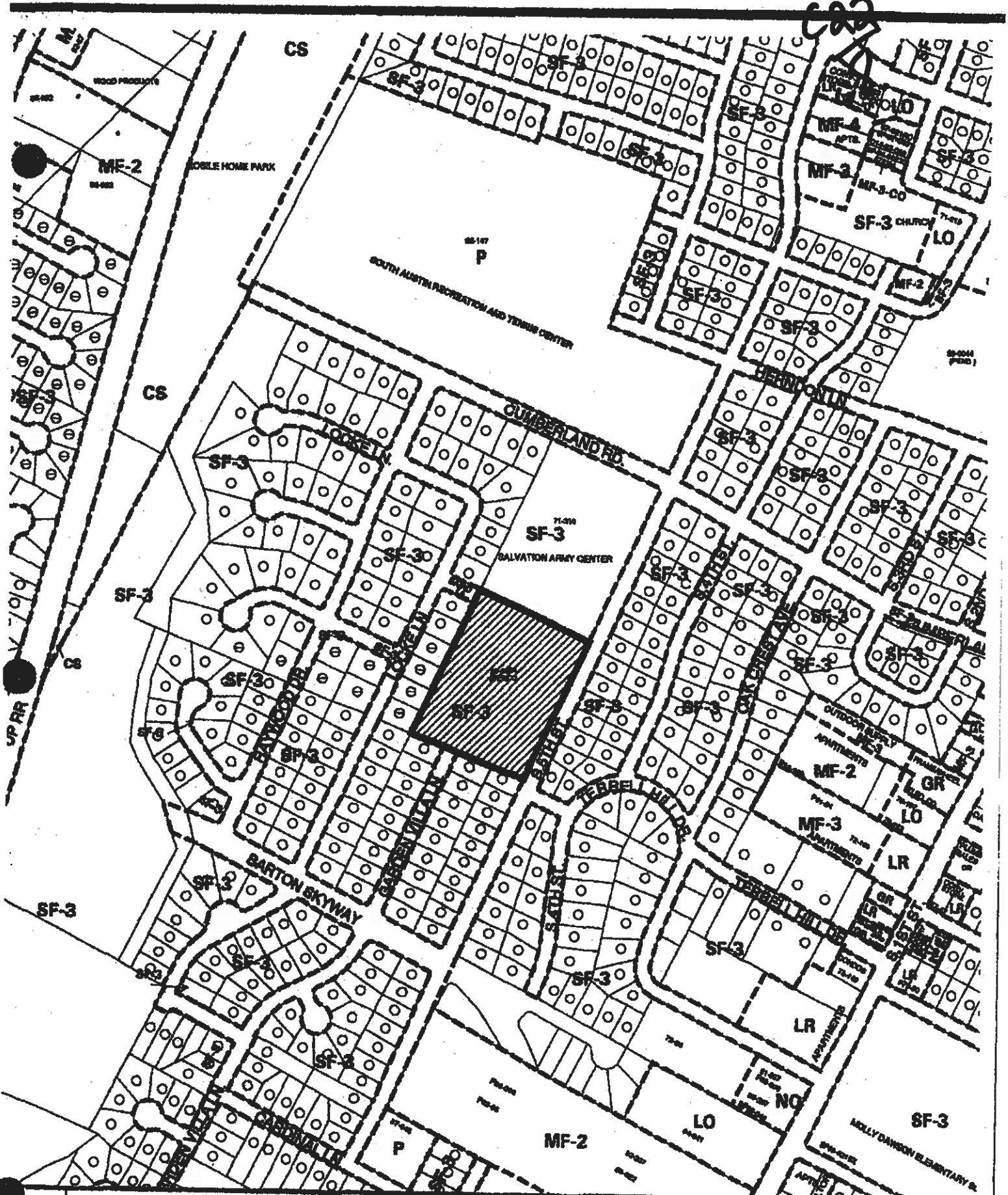
May 6, 1999

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Kirk Watson
Mayor

APPROVED: Andrew Martin
Andrew Martin
City Attorney

ATTEST: Shirley A. Brown
Shirley A. Brown
City Clerk



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<p>1" = 400'</p>	<p>SUBJECT TRACT </p> <p>PENDING CASE </p> <p>ZONING BOUNDARY </p> <p>CASE MGR: INARAN JO 990506-62</p>	<p>CASE #: C14-98-0084</p> <p>ADDRESS: 2800 S. 5TH ST.</p> <p>SUBJECT AREA (acres): 4.810</p>	<p>ZONING EXHIBIT 'A'</p> <p>DATE: 99-04</p> <p>INTLS: TRC</p>	<p>CITY GRID REFERENCE NUMBER</p> <p>H19</p>
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ORDINANCE NO. 20080214-080

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AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE PROPERTY LOCATED AT 1001 CUMBERLAND ROAD FROM MULTIFAMILY RESIDENCE LIMITED DENSITY (MF-1) DISTRICT AND MULTIFAMILY RESIDENCE LIMITED DENSITY-CONDITIONAL OVERLAY (MF-1-CO) COMBINING DISTRICT TO TOWNHOUSE AND CONDOMINIUM RESIDENCE-CONDITIONAL OVERLAY (SF-6-CO) COMBINING DISTRICT .

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

PART 1. The zoning map established by Section 25-2-191 of the City Code is amended to change the base districts on the property described in Zoning Case No. C14-2007-0129, on file at the Neighborhood Planning and Zoning Department, as follows:

Tract One: From multifamily residence limited density (MF-1) district to townhouse and condominium residence-conditional overlay (SF-6-CO) combining district.

Lot 1, Cumberland Center Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat of record in Plat Book 70, Page 48, of the Plat Records of Travis County, Texas; and

Tract Two: From multifamily residence limited density-conditional overlay (MF-1-CO) combining district to townhouse and condominium residence-conditional overlay (SF-6-CO) combining district.

A 4.812 acre tract of land, more or less, being the south part of a 10.02 acre tract of land in the Issac Decker League, Survey 20, Abstract 8, said 10.02 acre tract of land being more particularly described by metes and bounds in a deed of record in Volume 4338, Page 810, Deed Records of Travis County, Texas (the "Property"),

locally known as 1001 Cumberland Road, in the City of Austin, Travis County, Texas, and generally identified in the map attached as Exhibit "A".

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

- A. 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 2,000 trips per day.
- B. The maximum number of residential units is 123 units.
- C. A 25-foot wide vegetative buffer shall be provided and maintained along the south property line. Improvements permitted within the buffer zone are limited to (i) community garden, playground, sidewalk, trails or egress to Garden Villa Lane, (ii) trees and other plantings, and (iii) drainage, underground utility improvements or those improvements that may be otherwise required by the City of Austin or specifically authorized in this ordinance.
- D. No single building within the Property shall have a footprint or foundation/slab area which exceeds 10,000 square feet.
- E. Vehicular access from the Property to South 5th Street and to Cumberland Road is limited to one curb cut to each roadway.
- F. Except as otherwise provided in Sections G and H of this part, the maximum height of a building or structure constructed within 75 feet from South 5th Street and Cumberland Road is:
 - 1) two stories; and
 - 2) 35 feet.
- G. The portion of a building in a habitable attic shall not be counted as a story if it meets the requirements of Chapter 25-2, Subchapter F, Article 3.3.2.C. (*Definitions and Measurement*).

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H. If the first story of a two-story building or structure constructed on South 5th Street is not more than three feet above the average elevation of South 5th Street as measured along the front elevation of the building or structure, then:

- 1) a garage may be built below grade; and
- 2) a garage built below grade shall not count as a story; and
- 3) a garage built below grade shall not be used as a residential unit.

Except as specifically restricted under this ordinance, the Property may be developed and used in accordance with the regulations established for the townhouse and condominium residence-conditional overlay (SF-6) base district, and other applicable requirements of the City Code.

PART 3. This ordinance takes effect on February 25, 2008.

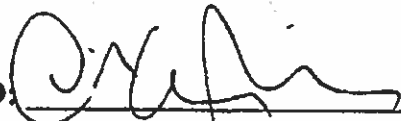
PASSED AND APPROVED

February 14, 2008


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Will Wynn
Mayor

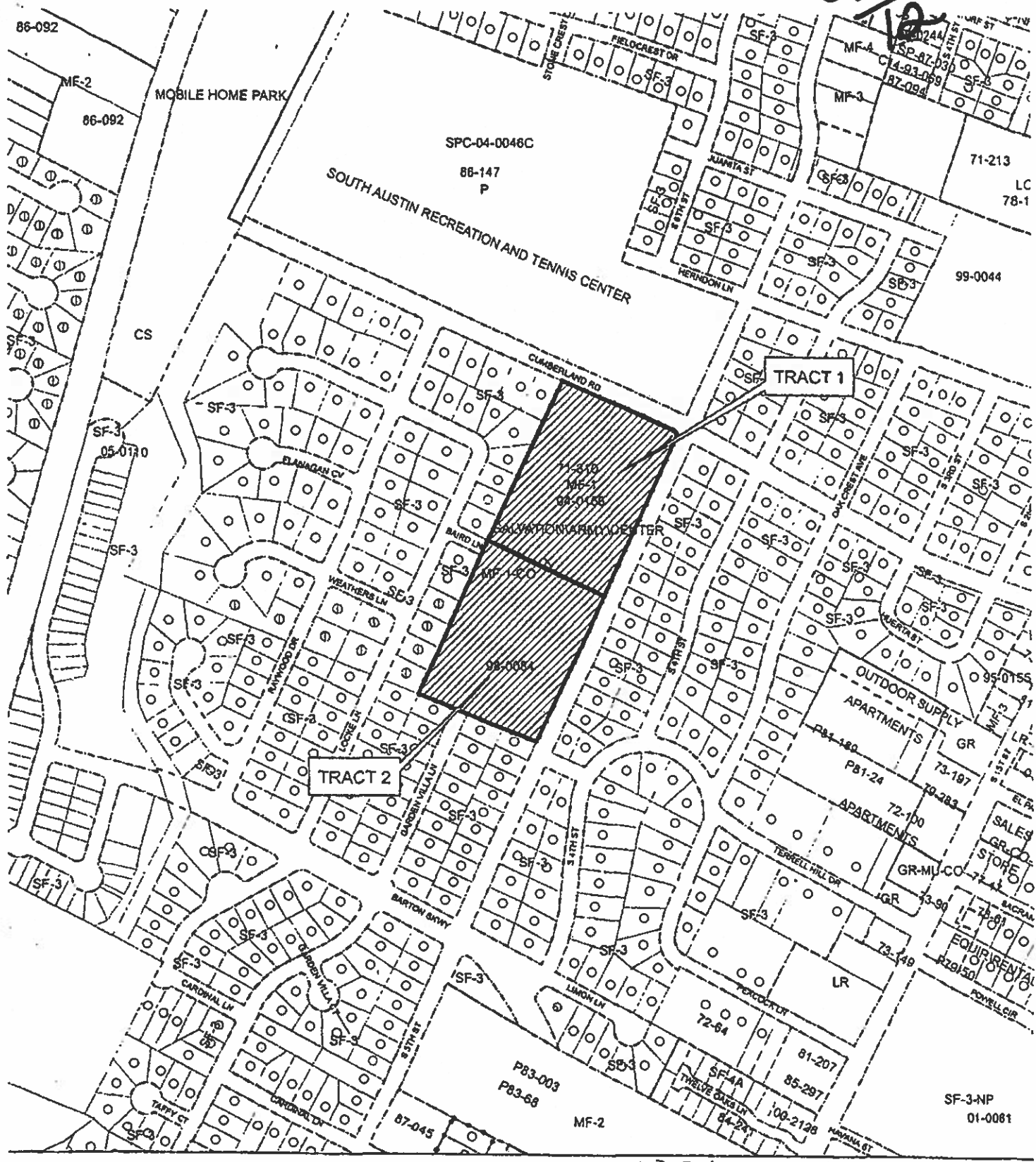
APPROVED: 

David Allan Smith
City Attorney





ATTEST: 

Shirley A. Gentry
City Clerk

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ZONING EXHIBIT A

-  N
-  Subject Tract
-  Zoning Boundary
-  Pending Cases

ZONING CASE#: C14-2007-0129
 ADDRESS: 1001 CUMBERLAND RD
 SUBJECT AREA: 10.02 ACRES
 GRID: H19-20
 MANAGER: R. HEIL



1" = 400' OPERATOR: SM

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



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RESTRICTIVE COVENANT

This Restrictive Covenant (this "*Restrictive Covenant*") is executed by Momark Development, LLC, a Texas limited liability company ("*Owner*") and Galindo Elementary Neighborhood Association (the "*Association*").

Recitals:

A. Owner has entered into a Real Estate Contract with The Salvation Army to purchase the real property located at 1001 Cumberland Road in Austin, Travis County, Texas, and more fully described as follows (the "*Property*"):

Approximately 9.9901 acres out of the Isaac Decker Survey No. 20, Abstract No. 8, and being (i) Lot 1 of CUMBERLAND CENTER, a subdivision in Austin, Travis County, Texas, according to the map or plat thereof recorded in Book 70, Page 48, of the Plat Records of Travis County, Texas (Travis County Appraisal District 04030501020000), and (ii) Lot 1, ISAAC DECKER LEAGUE SUBDIVISION, a subdivision in the City of Austin, Travis County, Texas, and being the same property described in City of Austin Zoning Ordinance No. 990506-62.

B. Owner is seeking SF-6 zoning for the Property, in Case No. C-14-2007-0219. The Association has agreed to support SF-6 zoning in consideration of the various concessions and agreements made by the Owner which are more fully set forth below.

Agreements:

NOW, THEREFORE, for \$10.00 paid by the Association to Owner and other good and valuable consideration, and in consideration of the mutual covenants and benefits herein, Owner and the Association covenant and agree as follows:

1. **Zoning.** The Association consents to and agrees to SF-6 zoning for the Property. Owner agrees to restrict development of residential units on the Property to no more than one hundred twenty-three (123) units.

2. **Buildings and Development.**

(a) **Height Limitation.** The maximum height of a building along or structure constructed within 75 feet from South 5th and Cumberland Road is: (i) two stories; and (ii) thirty-five feet (35') in height. The portion of a building in a habitable attic shall not be counted as a story if it meets the requirements of Chapter 25-2, Subchapter F, Article 3.3.2.C. (*Definitions and Measurements*). If the first story of a two-story building or structure constructed on South 5th Street is not more than three feet above the average elevation of South 5th Street as measured along the front elevation of the building or structure, then:

- (i) a garage may be built below grade; and
- (ii) a garage built below grade shall not count as a story; and
- (iii) a garage built below grade shall not be used as a residential unit.

(b) **Buffer.** There shall be a twenty-five foot (25') wide vegetative buffer along the south boundary of the Property. No improvements of any kind or character are permitted to be constructed or installed within this area and no variances or waivers will be

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sought from compatibility standards (Article 10), except for (i) a community garden, playground, sidewalk, trails or egress to Garden Villa Lane, (ii) trees and other plantings, and (iii) drainage and underground utility improvements, or improvements otherwise required by the City or specifically authorized by City codes.

(c) Maximum Square Footage. No single building within the Property shall have a "footprint" or foundation/slab area which exceeds 10,000 square feet.

(d) Rain Harvesting. Rooftop rainwater harvesting will be provided within the Property for use in the Community Garden described herein.

3. Transportation & Connectivity.

(a) Traffic Calming. Owner shall post with the City of Austin fiscal surety in the amount of \$50,000.00 for the installation of any traffic calming devices that the Director of Public Works and Transportation determines is appropriate along Cumberland Road, other adjacent street to the property or other street within the Galindo Neighborhood boundaries, prior to the time of site plan approval.

(b) Access. Access to and from the Property shall be limited to one (1) ingress/egress point or curb cut along South 5th Street and one ingress/egress point or curb cut along Cumberland Road.

(c) Public Access. Public access will be allowed on all private streets, sidewalks and trails set forth within the Property, and throughout any other common areas or public open space located within the Subdivision.

(d) Trails and Sidewalks. A trail or sidewalk will be installed within the Property that links the sidewalks along Cumberland Road and South 5th Street. Pedestrian access will be provided from Garden Villa Lane.

4. Community Park. Owner shall provide a community park area of approximately two (2) acres of land, which shall include the Garden Site.

5. Community Garden. Owner shall develop and provide, for the benefit of the Property and all current and future owners thereof, a public community garden of not less than one-half (1/2) of an acre of land (the "Garden Site") which development obligations shall include:

- (a) relocate top soil from its current site to the new location;
- (b) install or construct three (3) water hose bibs;
- (c) install or construct a five foot (5') wrought iron fence around the perimeter of the Garden Site and a gate with controlled access;
- (d) remove and/or relocate trees at a new location that casts shade on and in the planting area;
- (e) establish a system that ensures equitable public access to the South Austin Community Gardens, with each gardener being assessed a monthly fee based on maintenance cost;
- (f) install or construct on-site lighting in and around the Garden Site which will be sensitive to plants and will be shielded away from plants;

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- exists;
- (g) the minimum lot size per gardener will be comparable to what currently exists;
 - (h) the Garden Site will be landscaped, terraced and/or flattened;
 - (i) existing fruit trees from the South Austin Community Gardens will be integrated into the site plan for the Property and orchard clustering shall be maintained wherever possible.

Upon completion of the foregoing, Owner shall have fulfilled all duties and obligations of Owner with respect to the Garden Site.

6. Zoning

(a) Rollback. If this Restrictive Covenant is violated, Owner will not object to any rollback in zoning to SF-3. Notwithstanding the foregoing, a rollback in zoning will not be triggered if, for whatever reason, the City refuses to allow the installation of the traffic calming devices referenced and described in Section 4 above.

(b) Rezoning Case. This Restrictive Covenant is being executed in connection with the pending approval of the rezoning of the Property by the Austin City Council, zoning case number C-14-2007-0219. As such, this Restrictive Covenant shall only be effective, and shall only be filed, after all of the zoning matters described in this Restrictive Covenant have been approved on third and final reading by the Austin City Council. If, after final approval of the zoning case(s) described in this Section, any portion of the Property is rezoned, then the restrictions described in this Restrictive Covenant applicable to that portion of the Property shall automatically expire and be of no further force or effect, without any further action by any party.

7. Enforcement of Restrictive Covenant. If any person or entity shall violate or attempt to violate this Restrictive Covenant, it shall be lawful for the Association, or its successor organizations, to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate this Restrictive Covenant, to prevent the person or entity from such actions, and to collect damages for such actions.

8. Miscellaneous

(a) Successors and Assigns. This Restrictive Covenant shall be a covenant running with the Land and shall be binding upon and inure to the benefit of Owner, the Association, and their respective successors and assigns.

(b) Severability. If any part of this Restrictive Covenant shall be declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Restrictive Covenant, and such remaining provisions of this Restrictive Covenant shall remain in full effect.

(c) Amendment. This Restrictive Covenant may be modified or amended only by joint action of both (a) the Board of the Association, or such other organization as may succeed the Association, and (b) Owner or the then-current owner(s) of the Property or portion thereof at the time of such modification or amendment.

(d) Private Restrictions. This Restrictive Covenant is a private restrictive covenant, and the City shall have no authority to enforce the provisions hereof.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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EXECUTED as of the dates of the acknowledgments set forth below, TO BE EFFECTIVE as of the 20th day of February, 2008.

OWNER:

Momark Development, LLC
(a Texas limited liability company)

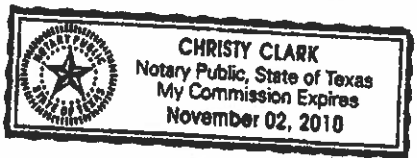
By: [Signature]
Name: Teddy E. Mitchell
Title: President

STATE OF TEXAS

COUNTY OF Travis

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This instrument was acknowledged before me, the undersigned authority, this 24th day of February, 2008, by Teddy E. Mitchell, President of Momark Development, LLC, a Texas limited liability company, on behalf of said limited liability company.



[Signature]
Notary Public ★ State of Texas

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

C22
17

ASSOCIATION:

Galindo Elementary Neighborhood Association
(a Texas non-profit corporation)

By: Patricia Sprinkle
Name: Patricia Sprinkle
Title: Galindo Elementary
Neighborhood Assoc - Pres.
02/22/2008

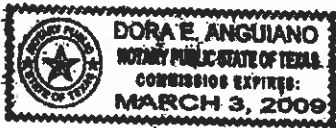
STATE OF TEXAS

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COUNTY OF Travis

This instrument was acknowledged before me, the undersigned authority, this 22 day of February, 2008, by Patricia Sprinkle of Galindo Elementary Neighborhood Association, a Texas non-profit corporation, on behalf of such non-profit corporation.

Dora E. Anguiano
Notary Public ★ State of Texas



Return.

ALICE GLASCO
5117 VALBURN CT.
AUSTIN, TX 78731

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2008 Feb 22 04:04 PM 2008027441

CLARKMM \$32.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS



RESTRICT 2008084481
3 PGS

Zoning Case No. C14-2007-0129

C22
/183

RESTRICTIVE COVENANT

OWNER: The Salvation Army, a Georgia corporation

ADDRESS: 5117 Valburn Dr., Austin, Texas 78731

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.

PROPERTY: Tract One. Lot 1, Cumberland Center Subdivision, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat of record in Plat Book 70, Page 48, of the Plat Records of Travis County, Texas; and

Tract Two. A 4.812 acre tract of land, more or less, being the south part of a 10.02 acre tract of land in the Issac Decker League, Survey 20, Abstract 8, said 10.02 acre tract of land being more particularly described by metes and bounds in a deed of record in Volume 4338, Page 810, Deed Records of Travis County, Texas

WHEREAS, the Owner of the Property and the Galindo Elementary Neighborhood Association ("GENA") have agreed the Owner shall perform certain obligations associated with the rezoning and development of the Property; and

WHEREAS, the Owner, GENA, and the City of Austin have agreed that the City should reserve the right to roll back the Owner's requested zoning if those obligations are not timely performed; and

WHEREAS, the Owner has agreed that the Property should be impressed with certain covenants and restrictions to give effect to these agreements:

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

1. Owner has agreed with GENA that Owner shall:
 - a. provide two acres of land for use as a community park of which one-half acre shall be a community garden;
 - b. provide rooftop rainwater harvesting for the community garden use;
 - c. provide pedestrian trails or sidewalks within the Property that link sidewalks along Cumberland Road and South 5th Street. Pedestrian access shall be provided to Garden Villa Lane;
 - d. provide for public access throughout the open space area of the Property; and

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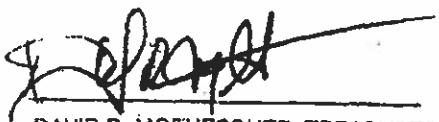
- e. post fiscal surety in the amount of \$50,000.00 for the installation of any traffic calming devices that the Director of the City's Public Works Department determines is appropriate along Cumberland Road, other street adjacent to the Property, or other street with the Galindo Neighborhood boundaries, prior to the time of site plan approval. The Owner's agreement with GENA to post surety for traffic calming shall not impair the City's ability under the City Code, and the City reserves the right, to require other traffic improvements to the degree necessary to mitigate other traffic impacts from development of the Property.
2. If Owner has not satisfied its obligations to GENA under Paragraph 1 within sixty (60) months after the date on which the City of Austin approves a site plan for the development of the Property (or a portion thereof), then the Owner will not object to the rezoning of the Property by the City to single family residence limited density (SF-3) zoning district.
 3. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
 4. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
 5. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
 6. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the 10th day of May, 2008.

OWNER:

THE SALVATION ARMY,
A Georgia corporation

By:



DAVID R. MOTHERSHED, TREASURER
(Title)

C22
2/20

APPROVED AS TO FORM:

[Handwritten Signature]

Assistant City Attorney
City of Austin

THE STATE OF Georgia §
COUNTY OF Fulton §

This instrument was acknowledged before me on this the 6th day of May, 2008, by DAVID R. MOTHERSHED, TREASURER of The Salvation Army, a Georgia corporation, on its behalf.

Willene J. Searcy WILLENE J. SEARCY
Notary Public, State of Georgia

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767-1088
Attention: Diana Minter, Paralegal



FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2008 May 20 11:43 AM 2008004491

CLARKMM \$24.00.

DANA DEBEAUVOIR COUNTY CLERK
TRAVIS COUNTY TEXAS

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

Alice Glasco Consulting

5117 Valburn Court, Suite A
Austin, TX 78731
aliceglasco@mindspring.com
512-231-8110 • 512-857-0187 Fax

C22
/21

Cumberland Site Zoning Conditions - C14-2007-0219 GENA and MOMARK

Original date: November 16, 2007

Updated: November 27, 2007 and December 13, 2007

1. Agree to SF-6 zoning limited to 123 units.
2. Limit development to two stories along Cumberland and South 5th Streets. All 2-story units will allow attic space to be used as a loft.
3. Provide a public community garden of not less than 0.5 acres with the following:
 - A. relocate the top soil from its current site to the new location.
 - B. provide 3 water hose bibs..
 - C. provide a 5 foot wrought iron fence and a gate with controlled access.
 - D. relocate or remove trees at the new location that cast shade in the planting area.
 - E. establish a system that ensures equitable public access to the South Austin Community Gardens. Each gardener will be assessed a monthly fee based on maintenance cost.
 - F. on-site area lighting in and around the garden area will be sensitive to plants and will be shielded away from plants.
 - G. the minimum lot size per gardener will be comparable to what currently exists.
 - H. the garden will be landscaped, terraced and/or flattened.
 - I. integrate the existing fruit trees of the South Austin Community Gardens into the site plan and maintain orchard clustering wherever possible.
4. Traffic calming: the developer (MOMARK) will pay for effective traffic calming along South 5th Street. The traffic calming devices will be located somewhere between the intersection of South 5th Street and Cumberland Road and the end of the subject property or immediately adjacent to the site.

Since it has not been determined as to what type of devices will eventually be installed, the developer (MOARK) has agreed to commit \$50,0000 (in his development budget) to allow for traffic calming in front of the subject property. The developer would like permission to install the devices as part of the site plan approval process, where final cost will be determined.

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ALICE GLASCO CONSULTING

Cumberland Site Zoning Conditions - C14-2007-0219

5. A 25-foot wide vegetative buffer shall be provided and maintained along the south property line. Improvements permitted within the buffer zone are limited to drainage, underground utility improvements or those improvements that may be otherwise required by the City of Austin or specifically authorized by City codes.
6. Provide a community park area of approximately 2 acres; this area includes a community garden.
7. A trail or sidewalk will be provided within the property that links sidewalks on Cumberland Road and South 5th Street. Pedestrian access will be provided from Garden Villa Lane.
8. Building footprints/slab will not exceed 10,000 square feet.
9. Access from the property will be limited to one ingress/egress point from South 5th Street and one from Cumberland Road.
10. No variances or waivers will be sought from compatibility standards (Article 10).
11. Public access will be allowed throughout the community's open space.
12. Rooftop rainwater harvesting will be provided for community garden use.
13. If the conditions listed above are not adhered to, the owner will not object to rollback in zoning to SF-3. A rollback in zoning will not be triggered if, for whatever reason, the city refuses to allow the installation of traffic calming devices.

The signatures below evidence the support for this agreement.

C22/23

ALICE GLASCO CONSULTING
Cumberland Site Zoning Conditions - C14-2007-0219

MOMARK

By: [Signature]
Name: Terry E. Mitchell
Title: President
Date: 12.13.07

GENA

By: [Signature]
Name: Patricia Sprinkle
Title: GENA President
Date: 12/13/07

GENA

By: [Signature]
Name: Gloria Aguilera
Title: GENA Member
Date: 12/13/07

GENA

By: _____
Name: _____
Title: _____
Date: _____