

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) pertains to the development of property located at 9710-9718 Anderson Mill Road, as further identified herein (“Property”), which is the subject of a lawsuit captioned *ZFB, Ltd. v. City of Austin v. The City of Austin*, No. 12-0336-C26, in the 26th Judicial District Court of Williamson County, Texas (the “Lawsuit”), and is entered into by the parties to the Lawsuit. Having negotiated a resolution to the dispute over the regulations applicable to the Property, the terms and conditions of this Agreement are agreed to, on behalf of the City of Austin, by: (1) the City of Austin’s Planning & Development Review Department and Watershed Protection Department, as represented by counsel (collectively, “PDRD”); and (2) ZFB Ltd.’s corporate representative and its attorneys (“ZFB”). PDRD and ZFB are collectively referred to as “the Parties.”

1. Scope & Applicability.

A. With the exception of Section 2.A, which applies upon the execution of this Agreement, all other terms and conditions of this Agreement shall apply if, and only if, the Austin City Council, in its sole discretion, approves: (i) an ordinance incorporating this Agreement and waiving any conflicting provisions of City Code Chapter 25-8 (*Environment*) (“Development Ordinance”); and (ii) an ordinance rezoning the property to general commercial services–mixed use–conditional overlay (CS-CO-MU), per the application pending with PDRD under Case No. C14-2013-0012 (“Zoning Ordinance”). The Development Ordinance and the Zoning Ordinance are collectively referred to as “the Ordinances.”

B. If the City Council, in its sole discretion, approves the Ordinances, then: (i) PDRD agrees to follow the terms and conditions in Section 2.B-C of this Agreement; (ii) ZFB agrees to follow the terms and conditions in Section 3 of this Agreement; and (iii) the Parties agree to follow the terms and conditions of Sections 4 and 5 of this Agreement.

C. If the City Council, in its sole discretion, chooses not to approve the Ordinances, then neither PDRD nor ZFB are bound by this Agreement.

2. PDRD's Obligations.

A. PDRD agrees to present the Development Ordinance to the City Council for consideration as soon as practicable and to recommend it for approval.

B. If the City Council approves the Ordinances, then PDRD shall review and act upon an application for a site plan submitted under the terms of this Agreement in accordance with the requirements in Section 4 and Exhibit A, provided that the application is submitted within three years from the effective date of the Development Ordinance. A site plan application is deemed to be "submitted under the terms of this Agreement" if ZFB or its successor in interest requests, in writing, that the application be reviewed in accordance with this Agreement.

C. PDRD agrees that, pursuant the Land Development Code, it has final authority to approve a site plan submitted under the terms of this Agreement, notwithstanding the comments of other city departments.

D. PDRD further agrees that, if the City Council approves the Ordinances, it will (i) not object to any application made to the Texas Commission on Environmental Quality ("TCEQ") for the purpose of conforming TCEQ permit(s) to the requirements of this Agreement, and (ii) if requested, notify TCEQ of its acceptance and approval of the terms of this Agreement, including, without limitation, Section 4.B below.

3. ZFB's Obligations.

A. If the City Council approves the Development Ordinance and ZFB submits a site plan application under the terms of this Agreement, then ZFB agrees, for as long the application remains active, not to prosecute this Lawsuit.

B. If PDRD approves a site plan application submitted under the terms of this Agreement, ZFB shall:

- (i) dismiss its pending action against the City with prejudice;
- (ii) bear its own attorney's fees and costs;
- (ii) comply with Section 4 and Exhibit A of this Agreement in the design and

construction of the development; and

(iii) ensure that any subsequent purchasers of the Property are aware of and bound by the terms of Section 4 and Exhibit A of this Agreement.

4. Development Terms.

Subject to compliance by the Parties with Sections 2 and 3, the requirements of this Section 4 shall apply to a site plan application submitted under the terms of this Agreement:

A. Except as provided by this Section 4, development of the Property shall comply with current site development regulations and applicable review criteria in effect on the date the application is submitted, including impervious cover limitations and requirements for variances, waivers, and alternative equivalent compliance.

B. The number of Critical Environmental Features (“CEFs”) and corresponding buffer requirements shall be as shown on Exhibit A.

C. The heritage trees shown on Exhibit A shall be preserved.

D. The driveway shall be permitted in the location generally shown on Exhibit A, provided that:

(i) the site plan utilizes substantially the same drainage system that ZFB previously included in Site Plan No. 2008-0090D, unless otherwise approved by PDRD, which drainage system may be located within the CEF buffers shown on Exhibit A; and

(ii) development shall be subject to standard City of Austin void mitigation criteria applicable under the Environmental Criteria Manual (“ECM”).

E. Water Quality requirements shall be met using bio-filtration ponds, rainwater harvesting, rain gardens, vegetative filter strips, and/or other innovative methods designed in accordance with the ECM.

F. Wastewater utility lines within the buffer areas shown on Exhibit A shall utilize steel sleeves, instead of un-sleeved PVC pipes. Wastewater utility lines within the entrance

driveway adjacent to the CEF buffers shown on Exhibit A shall be constructed with a steel outer sleeve and in accordance with Austin Water Utility criteria.

G. Any onsite or offsite storm sewer discharge from water quality or detention facilities to buffer areas shall utilize flow spreading techniques consistent with the ECM to prevent erosion and to evenly distribute flow across receiving land.

H. Swimming pools shall be prohibited.

I. Development of the Property shall be subject to an Integrated Pest Management Plan, as currently required by the ECM.

J. Access to buffer areas shall be restricted according to the following requirements:

(i) a six-foot fence, with a lockable access gate, shall be used to prohibit access around the 50-foot portion of the CEF buffer, as shown on Exhibit A; and

(ii) a four-foot ornamental fence, which may include vegetative screening, shall be provided at the boundary of the buffer, which shall include signage reasonably acceptable to the landowner which states the area is a sensitive environmental buffer and that public access is prohibited.

K. The owner of the Property must retain maintenance responsibility for stormwater controls and ensure that, if the Property is sold, the maintenance responsibility is legally assigned to a subsequent owner or a homeowner's or condominium association.

L. Uses on the Property are limited to residential, except that non-residential development is allowed on the portion of the site shown on Exhibit A. For purposes of compliance with City Code Chapter 25-2, Subchapter E (*Design Standards and Mixed Use*), , and notwithstanding the Zoning Ordinance, the project authorized under this Agreement shall be considered residential and the standards applicable to a residential zoning district shall control for purposes of allowing Alternative Equivalent Compliance consistent with the terms of this Agreement..

5. General Terms & Obligations.

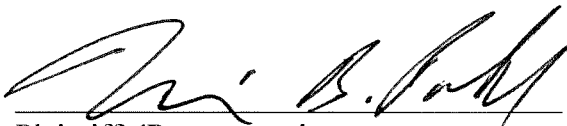
A. If PDRD approves a site plan application under the terms of this Agreement, ZFB and PDRD will (i) execute mutual releases of all claims against the other party concurrent with ZFB's dismissal of the Lawsuit with prejudice under Section 3.B(i) of this Agreement, and (ii) execute and record a release, reasonably acceptable to ZFB, of that certain Water Quality Drainage Easement and Restrictive Covenant Agreement for Critical Environmental Features dated February 12, 2009 and recorded as Document No. 2009010344 in the Official Public Records of Williamson County, Texas.

B. ZFB and the City agree to cooperate in obtaining any necessary continuances while a site application submitted under this Agreement remains pending.


C. If a site plan application submitted under this Agreement expires after the three-year submittal period established under Section 2.B, this Agreement expires in its entirety.

D. After consulting with their attorney(s), and after having had the opportunity to consult the agents, representatives or other advisors of their choosing, the Parties knowingly enter into this Agreement and memorialize the terms of this settlement in accordance with Texas Civil Practice & Remedies Code Section 154.071 and Texas Rule of Civil Procedure 11. The Parties acknowledge that they have full authority to compromise and settle all claims or potential claims related to the Lawsuit.

SIGNED and AGREED on this 27th day of June 2013.



Plaintiff's Representative



Plaintiff's Attorney

City of Austin Representative

Assistant City Attorney

C. If a site plan application submitted under this Agreement expires after the three-year submittal period established under Section 2.B, this Agreement expires in its entirety.

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Plaintiff's Representative


City of Austin Representative

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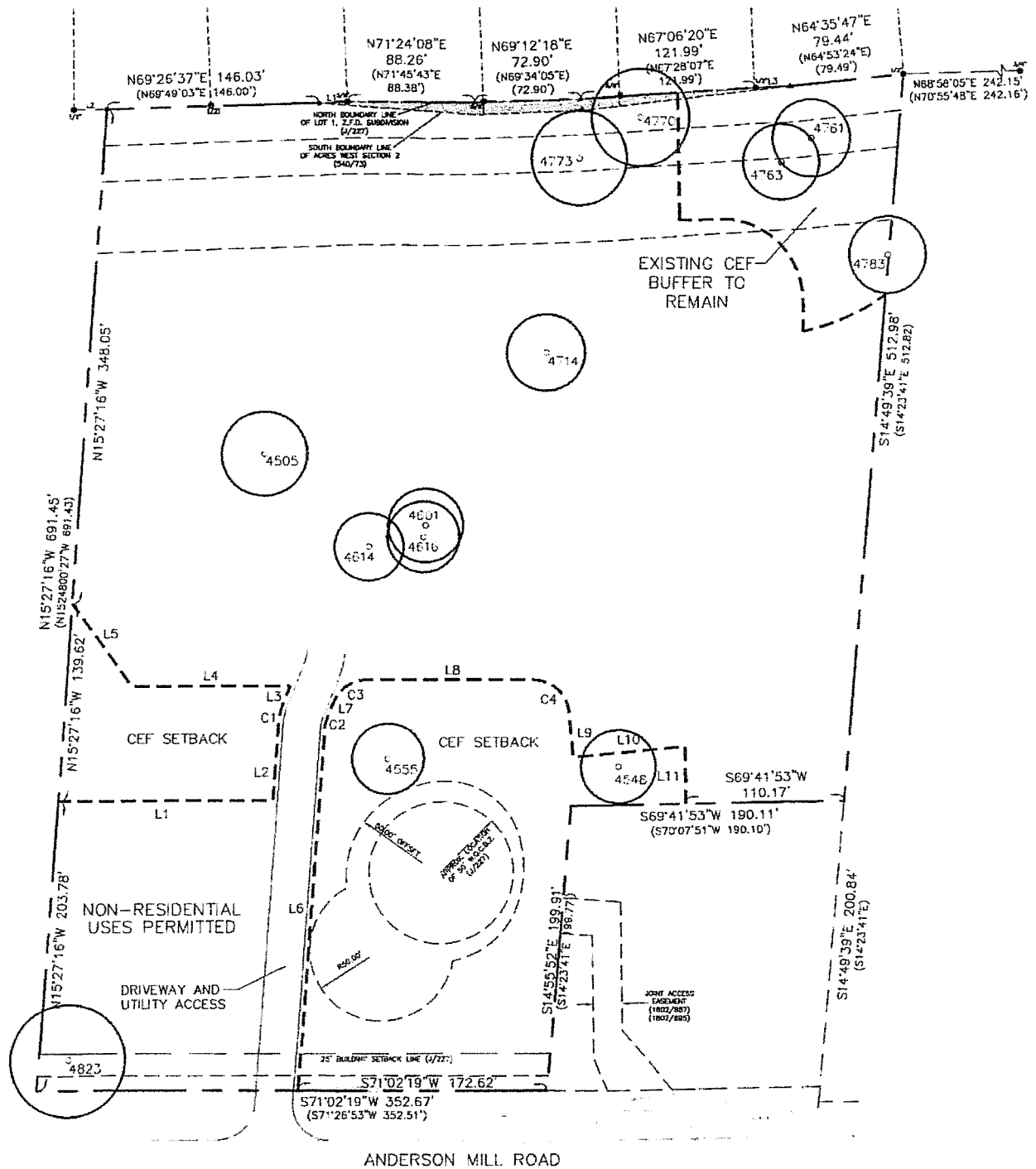

Assistant City Attorney

EXHIBIT "A"

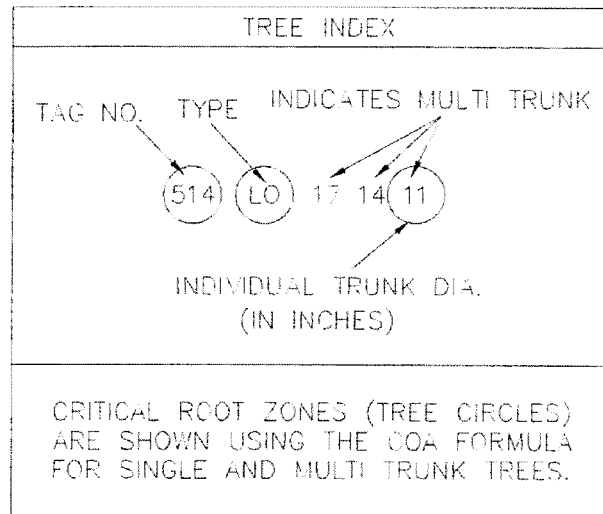


SCALE: 1"=100'



HERITAGE TREE LIST					
4505	PEC	16	15	12	
4548	LO	26			
4555	LO	25			
4601	LO	26			
4614	LO	18	12		
4616	LO	13	12	12	
4714	LO	21	12		
4761	LO	12	10	10	10
4763	LO	20	13		
4770	LO	23	22		
4773	LO	19	15	13	
4783	LO	16	13	9	
4823	LO	26	15	12	

TREE KEY LIST	
CE	- CEDAR
CED	- CEDAR ELM
ELM	- ELM
HB	- HACKBERRY
LO	- LIVE OAK
MSQ	- MESQUITE
PEC	- PECAN
WO	- WHITE OAK



CEF SETBACK LINE TABLE		
No.	BEARING	LENGTH
L1	N00°00'00"E	148.00'
L2	N03°32'44"E	53.55'
L3	N21°45'23"E	11.65'
L4	N00°00'00"W	109.41'
L5	N35°28'32"W	71.34'
L6	N03°32'44"E	255.59'
L7	N21°45'23"E	11.89'
L8	S89°57'41"E	114.84'
L9	S05°39'37"E	32.38'
L10	N84°20'23"E	78.23'
L11	S01°18'07"E	40.63'

CEF SETBACK CURVE TABLE				
No.	RADIUS	LENGTH	CHORD BEARING	CHORD LENGTH
C1	55.00'	17.48'	N12°39'03"E	17.41'
C2	23.00'	7.31'	N12°39'03"E	7.28'
C3	25.00'	29.79'	N55°53'51"E	28.06'
C4	25.00'	36.78'	S47°48'39"E	33.55'