

ZONING CHANGE REVIEW SHEET

CASE: C14-2016-0065
Pioneer Bank on W. 38th St.

P.C. DATE: September 13, 2016
August 23, 2016

ADDRESS: 623 West 38th Street

AREA: 1.069 acres

DISTRICT: 9

OWNER: Pioneer Bank, SSB (Brian May)

AGENT: Doucet & Associates (Ted McConaghy)

FROM: GR-CO-NP

TO: GR-CO-NP, to change a condition of zoning

WATERSHED: Waller Creek

SCENIC ROADWAY: No

DESIRED DEVELOPMENT ZONE: Yes

TIA: Not Applicable

NEIGHBORHOOD PLAN AREA: Central Austin Combined (West University)

SUMMARY STAFF RECOMMENDATION:

Staff supports the Applicant's rezoning request. The proposed rezoning includes the following:

1. Remove prohibition of drive-in services from the current site zoning, and
2. Add a conditional overlay limiting drive-in services as an accessory to financial services only.

Separate from the zoning ordinance, the Applicant proposes to record a private restrictive covenant with the Heritage Neighborhood Association stating that the drive-in services must be:

- a. Located within the enclosed parking garage;
- b. Maximum of two lanes, each permitted a window or pneumatic tube and one ATM.

ISSUES:

A prohibition against drive-in services was added to the subject property in 2004 during the neighborhood plan process for West University (now part of the Central Austin Combined neighborhood plan). (*Please see Exhibit A- Zoning Ordinance Excerpts*). The Applicant has prepared a private restrictive covenant to address items that cannot be incorporated into a zoning ordinance. (*Please see Exhibit B- Applicant Letter*).

The site is currently being developed in accordance with a site plan approved in 2014 (City File # SP-2014-0443C). The approved site plan includes a parking garage and a three-story office building to be used for financial services. The Applicant proposes adding drive-in land use as described in the rezoning request, which will trigger a Site Plan Correction. (*Please see Exhibit C- Approved Site Plan*).

PLANNING COMMISSION RECOMMENDATION:

August 23, 2017: TO GRANT POSTPONEMENT AS REQUESTED BY APPLICANT, ON CONSENT. (12-0) (N. Zaragosa-1st, J. Schissler- 2nd; M. Wilson- Absent]

September 13, 2016:

DEPARTMENT COMMENTS:

The subject property is located at the southeast corner of West 38th Street and Ronson Street, one block west of Guadalupe Street. The property also extends south to have frontage on West 37th Street. Across West to 38th street to the north is a portion of the Central Park planned unit development (PUD) that is developed with a pond and open space. East of the property, across an alley, is property zoned CS-V-CO-NP and CS-1-V-CO-NP that is developed with a small commercial building that contains limited restaurant, alternative financial services and other uses. Also east of the property is a limited retail property zoned CS-CO-NP. Across West 37th Street to the south are properties zoned SF-3-CO-NP and SF-4A-CO-NP; these include residences as well as an undeveloped lot. Also to the south are properties zoned MF-3-NP developed with condominiums as well as an automotive repair business zoned CS-CO-NP. Across Ronson Street to the west are professional offices zoned GR-CO-NP and multifamily zoned LR-MU-CO-NP. *Please see Exhibits D and E (Zoning Map and Aerial View).*

As stated in the Issues section of this report, a site plan was approved for this property in 2014 and the approved site development permit is currently under construction. The 2004 zoning ordinance prohibited drive-in services as an accessory to commercial uses on 19 properties in the West University neighborhood plan area; drive-in services as an accessory to commercial uses were made conditional on 21 properties in the plan area, and prohibited drive-in services as an accessory to restaurant uses on 21 properties in the West University neighborhood plan area.

Staff supports the rezoning request because the impact of the proposed drive-in services will be limited to accessory to financial services only, and will be contained within the footprint of the approved parking garage. The addition of any drive-in services will trigger a Site Plan Correction, at which time the layout will be reviewed for circulation, safety, parking requirements, etc.

The Applicant has prepared a private restrictive covenant to address items that cannot be incorporated into a zoning ordinance—specifically the design and location of items on the property, and a maximum on the related features. *Please see Exhibit F (Private Restrictive Covenant).*

Correspondence is attached showing support from the Heritage Neighborhood Association for the rezoning request. *Please see Exhibit G (Correspondence).*

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	GR-CO-NP	Financial services (under construction)
<i>North</i>	PUD	Water feature/ open area
<i>South</i>	SF-3-CO-NP, SF-4A-CO-NP, MF-3-NP, CS-CO-NP	Residences, undeveloped, townhouse/condominiums
<i>East</i>	CS-V-CO-NP, CS-1-V-CO-NP	Limited restaurant, alternative financial services
<i>West</i>	GR-CO-NP, LR-MU-CO-NP	Professional offices, multifamily

ABUTTING STREETS:

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Capital Metro (within ¼ mile)
38 th Street	78-89 ft.	66 ft.	Arterial	Yes	Yes, shared lane	Yes
Ronson Street	50 ft.	27 ft.	Local	Yes	No	Yes
37 th Street	50 ft.	27 ft.	Local	Yes	No	Yes

NEIGHBORHOOD ORGANIZATIONS:

Austin Neighborhoods Council
Friends of Austin Neighborhoods
Central Austin Neighborhood Plan Area Committee
Central Austin Community Development Corporation
Heritage Neighborhood Association
Homeless Neighborhood Association
Preservation Austin
Shoal Creek Conservancy
Sierra Club, Austin Regional Group
SELTexas
Bike Austin

CITY COUNCIL DATE & ACTION: September 22, 2016

ORDINANCE READINGS: 1st 2nd 3rd **ORDINANCE NUMBER:**

CASE MANAGER: Heather Chaffin
e-mail: heather.chaffin@austintexas.gov

PHONE: 512-974-2122

SUMMARY STAFF RECOMMENDATION:

Staff supports the Applicant's rezoning request. The proposed rezoning includes the following:

1. Remove prohibition of drive-in services from the current site zoning, and
2. Add a conditional overlay limiting drive-in services as an accessory to financial services only.

Separate from the zoning ordinance, the Applicant proposes to record a private restrictive covenant with the Heritage Neighborhood Association stating that the drive-in services must be:

- a. Located within the enclosed parking garage;
- b. Maximum of two lanes, each permitted a window or pneumatic tube and one ATM.

BASIS FOR LAND USE RECOMMENDATION (ZONING PRINCIPLES)

1. *The proposed zoning should be consistent with the purpose statement of the district sought.*

The base district, Community Commercial (GR) is "the designation for an office or other commercial use that serves neighborhood and community needs and that generally is accessible from major traffic ways." The subject tract has frontage on East 38th Street and is a few hundred feet west of Guadalupe Street—it is not an internal, neighborhood location, but a bustling activity corridor. Removal of the drive-in prohibition makes the zoning more suitable for the location.

Comprehensive Plan:

The subject property is located within the boundaries of the Central Austin Combined NPA, in the West University. Surrounding land uses includes multi-family apartments to the north and west, a variety of retail uses to the west, and single family housing and retail to the south. The proposed use is a bank with a bank drive-thru. The existing zoning ordinance for this site prohibits drive-in service and the request is to remove the conditional overlay prohibiting drive-thrus.

Due to its proximity to the Heart Hospital of Austin and Seton Hospital, the segment of 38th Street between Guadalupe and Lamar Boulevard is more oriented toward the healthcare industry and serves both citywide and regional healthcare needs. New healthcare facilities being developed near the intersection of Lamar Boulevard and 38th Street will further reinforce the notion of a growing healthcare "district" in this part of the city.

Imagine Austin-- The subject property is located along an Activity Corridor as identified on the Imagine Austin Growth Concept Map. Activity corridors are characterized by a variety of activities and types of buildings located along the roadway — shopping, restaurants and cafés, parks, schools, single-family houses, apartments, public buildings, houses of worship, mixed-use buildings, and offices. The following Imagine Austin policies are also applicable to this case:

- LUT P3 Promote development in compact centers, communities or along corridors that are connected by roads and transit, are designed to encourage walking and bicycling, and reduce healthcare, housing and transportation costs.
- LUT P5. Create healthy and family-friendly communities through development that includes a mix of land uses and housing types and affords realistic opportunities for transit, bicycle, and pedestrian travel and provides both community gathering spaces, parks and safe outdoor play areas for children.
- HN P11. Protect neighborhood character by directing growth to areas of change and ensuring context sensitive infill in such locations as designated redevelopment areas, corridors, and infill sites.

Based on the property being located along an Activity Corridor, the proposed commercial use appears to be supported by Imagine Austin.

Site Plan:

SP1) Site plans will be required for any new development other than single-family or duplex residential.

SP2) Any development which occurs in an SF-6 or less restrictive zoning district which is located 540-feet or less from property in an SF-5 or more restrictive zoning district will be subject to compatibility development regulations.

SP3) The site is subject to compatibility standards. Along the south property line, the following standards apply:

- No structure may be built within 25 feet of the property line.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- No parking or driveways are allowed within 25 feet of the property line.
- A landscape area at least 25 feet wide is required along the property line. In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.

SP4) Any new development is subject to Subchapter E. Design Standards and Mixed Use. Additional comments will be made when the site plan is submitted.

Transportation:

TR1. According to the Austin 2014 Bicycle Plan approved by Austin City Council in November, 2014, a protected bike lane is recommended for 38th Street.

TR2. This project is adjacent to a street where the curb is proposed to be moved to achieve superior bicycle facilities (38th Street). However, the existing building conflicts with the curb realignment, therefore, the curb will not be proposed for realignment at this time.

TR3. Nadia Barrera, Urban Trails, Public Works Department and Nathan Wilkes, Bicycle Program, Austin Transportation Department may provide additional comments regarding bicycle and pedestrian connectivity per the Council Resolution No. 20130620-056.

TR4. Existing Street Characteristics:

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Capital Metro (within ¼ mile)
38 th Street	78-89 ft.	66 ft.	Arterial	Yes	Yes, shared lane	Yes
Ronson Street	50 ft.	27 ft.	Local	Yes	No	Yes
37 th Street	50 ft.	27 ft.	Local	Yes	No	Yes

TR5. FYI: Staff will review internal circulation design at time of site plan. At time of site plan, to ensure that the proposed development will not adversely impact the public right-of-way, please provide information regarding the location of the drive-in within the garage, internal site circulation, and the entrance and exit for the drive-in.

TR6. A drive-in bank use proposes a lower trip generation than other drive-in uses; therefore, transportation staff recommends to only allow drive-ins for bank uses at this site (at this time).

Environmental:

1. The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Waller Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.
2. Zoning district impervious cover limits apply in the Urban Watershed classification.
3. According to floodplain maps there is no floodplain within the project location.
4. Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.
5. Trees will likely be impacted with a proposed development associated with this rezoning case. Please be aware that an approved rezoning status does not eliminate a proposed development's requirements to meet the intent of the tree ordinances. If further explanation or specificity is needed, please contact the City Arborist at 974-1876. At this time, site specific information is unavailable regarding other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.
6. This site is required to provide on-site water quality controls (or payment in lieu of) for all development and/or redevelopment when 8,000 s.f. cumulative is exceeded, and on site control for the two-year storm.

Water/Wastewater:

FYI: The landowner intends to serve the site with City of Austin water and wastewater utilities. The landowner, at own expense, will be responsible for providing any water and wastewater utility improvements, offsite main extensions, utility relocations and or abandonments required by the proposed land use. Depending on the development plans submitted, water and or wastewater service extension requests may be required. Water and wastewater utility plans must be reviewed and approved by the Austin Water Utility for compliance with City criteria. All water and wastewater construction must be inspected by the City of Austin. The landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.

EXHIBIT A

TRACT	ADDRESSES	FROM	TO
230	801 W 34TH ST	LO	LO-NP
231	3205, 3207 GRANDVIEW AVE	LO	LO-CO-NP
232	806 W 32ND ST	MF-2	MF-2-CO-NP
233	808, 810 W 32ND ST	MF-2	SF-3-CO-NP
234	3200, 3204, 3206, 3208 (LOT 5 & S10FT OF LOT 6 BLK 5 OLT 75 DIV D PENN SUB OF BLK 5&6 SMYTH SUB) GRANDVIEW ST	MF-2, LO	MF-2-NP
235	3316 (N40FT OF LOT 6-8 BLK 5 OLT 75 DIV D PENN SUB OF BLK 5&6 SMYTH SUB PLUS ADJ VAC ALLEY) GRANDVIEW ST	LO	LO-NP
236	3303 (LOT 14-15 & S 15 FT OF LOT 13 & N 9 FT OF LOT 16 BLK 5 OLT 75 DIV D PENN SUB OF BLK 5&6 SMYTH SUB) N LAMAR BLVD	CS, CS-1	CS-CO-NP
237	3311 (LOT 12 & N 34 FT OF LOT 13 BLK 5 OLT 75 DIV D PENN SUB OF BLK 5&6 SMYTH SUB) N LAMAR BLVD	CS-1	CS-1-CO-NP
238	905 W 34TH ST; 3317 N LAMAR BLVD	CS	CS-CO-NP
239	3401, 3411, 3419, 3423 N LAMAR BLVD	CS	CS-CO-NP
240	3501 N LAMAR BLVD; 3400, 3406, 3408, 3412 OWEN AVE	CS	P-NP
241	800, 808 W 34TH ST; 3408 WEST AVE	LO	LO-NP
242	905, 907 W 37TH ST; 3507 N LAMAR BLVD; 3500, 3501, 3502, 3503 OWEN CIR	MF-2, MF-3, LO, CS	P-NP
243	711 W 38TH ST (N 323.29 FT MEDICAL SCIENCE CENTER CONDOMINIUMS)	LR	GR-CO-NP
244	711 (S 154.55 FT MEDICAL SCIENCE CENTER CONDOMINIUMS) W 38TH ST; 3509, 3511, 3513 WEST AVE	LO, LR	LO-MU-NP
245	700, 702, 704, 706, 710, 712, 714, 720 W 34TH ST; 3409 WEST AVE	SF-3, LO	LO-NP
245A	717 W 35TH ST	LO-CO	LO-CO-NP
246	631 W 38TH ST	GO	GR-CO-NP
247	624 W 37TH ST	MF-4	LR-MU-CO-NP
248	623 W 38TH ST	LO	GR-CO-NP
249	601 W 38TH ST; 3702 (LOT 1 BLK 7 PLUS 1/2 VAC ALLEY OLT 73 DIV D BUDDINGTON SUBD) GUADALUPE ST	CS	CS-CO-NP
250	3702 (LOT 2 BLK 6 PLUS 1/2 VAC ALLEY OLT 73 DIV D BUDDINGTON SUBD) GUADALUPE ST	CS-1	CS-1-CO-NP
251	604 W 37TH ST; 3700 GUADALUPE ST	CS	CS-CO-NP
252	605 W 37TH ST; 3510 (N 72.5 FT OF LOTS 1 & 2 BLK 1 OLT 76 DIV D BUDDINGTON SUBD) GUADALUPE ST	CS	CS-CO-NP
253	3510 (S 72.5 FT OF LOTS 1 & 2 BLK 1 OLT 76 DIV D BUDDINGTON SUBD) GUADALUPE ST	CS, CS-1	CS-1-CO-NP
254	606 MAIDEN LN	CS	CS-1-CO-NP
255	3500 GUADALUPE (E 100 FT LOTS 1-3 BLK 4 OLT 75-76 DIV D GYPSY GROVE SAVE AND EXCEPT A 6,158 SQUARE FOOT TRACT OF LAND MORE PARTICULARLY DESCRIBED IN EXHIBIT K)	CS	CS-CO-NP
256	3500 GUADALUPE (A 6,158 SQUARE FOOT TRACT OF LAND MORE PARTICULARLY DESCRIBED IN EXHIBIT K)	CS-1	CS-1-CO-NP

Indoor sports and recreation
Kennels
Outdoor entertainment

Transportation terminal
Vehicle storage

19. The following uses are conditional uses of Tracts 156, 157, 158, and 195:

Automotive rentals
Automotive sales
Hotel-motel
Service station

Automotive repair services
Hospital services (general)
Residential treatment

20. Cocktail lounge use is a prohibited use of Tract 157.

21. The following uses are prohibited uses of Tracts 249 and 264:

Agricultural sales and services
Automotive repair services
Automotive washing (of any type)
Campground
Limited warehousing and distribution
Maintenance and service facilities
Convenience storage
Drop-off recycling collection facilities
Outdoor sports and recreation
Pawn shop services
Transportation terminal
Service station

Automotive rentals
Automotive sales
Building maintenance services
Kennels
Indoor sports and recreation
Construction sales and services
Monument retail sales
Outdoor entertainment
Electronic prototype assembly
Equipment repair services
Equipment sales
Vehicle storage

22. Drive-in service is prohibited as an accessory use to commercial uses of Tracts 141, 142, 146, 146A, 148, 160, 164, 166, 170, 172, 174, 243, 246, 248, 249, 261, 262, 264, and 266.

23. Drive-in service is a conditional use as an accessory use to commercial uses of Tracts 176, 177, 178, 179, 179A, 180, 209, 210, 213, 219, 220, 250, 251, 252, 253, 254, 255, 256, 257, 259, and 260.

24. Drive-in service is prohibited as an accessory use to restaurant (general and limited) uses of Tracts 176, 177, 178, 179, 179A, 180, 209, 210, 213, 219, 220, 250, 251, 252, 253, 254, 255, 256, 257, 259, and 260.



7401B Highway 71 West, Suite 160
Austin, TX 78735
Office: 512.583.2600
Fax: 512.583.2601

DoucetandAssociates.com

EXHIBIT
B

June 16, 2016

Greg Guernsey, Director
Planning and Zoning Department
City of Austin
505 Barton Springs Rd.
Austin, TX 78704

Re: Pioneer Bank on W. 38th St.
Re-Zoning Request (Remove C/O prohibiting drive-in services)

Dear Mr. Guernsey:

Please see the enclosed application and support documentation for a proposed re-zoning of the property at 623 W. 38th St. This property is owned by 'Pioneer Bank, SSB'. The site is currently under construction per site development permit plans SP-2014-0443C.

The existing zoning of the site is 'GR-CO-NP', per Ordinance No. 040826-57. The property is called Tract 248 in the zoning ordinance; the site is part of the overall West University Neighborhood Plan Area.

Per Conditional Overlay #22 on Page 18 of the ordinance, drive-in service is a prohibited use on this tract. Our re-zoning request is to remove this prohibition. All other aspects of the zoning ordinance would remain the same.

Our justification for the request includes the following:

- The proposed bank drive-in services create a nominal increase in trips. A study of a similar Pioneer Bank facility nearby showed an average daily trip generation of 16 trips.
- Pioneer Bank is primarily a 'business' rather than 'consumer' bank, and therefore has far fewer drive-in customers than a consumer-oriented bank such as Wells Fargo.
- The drive-in services will be located within the parking garage and will not cause additional noise or headlights in the adjacent neighborhood.
- Drive-in services are standard and expected services for bank customers, especially for those with children.
- We have already met with the local neighborhood group (Heritage) to obtain support for our re-zoning case. Our initial meeting went well and we are going to present to the entire group at their next formal meeting on July 11.

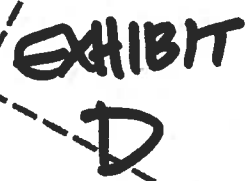
Thank you for your review of this material; please contact me if you have any questions.



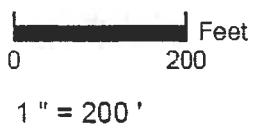
Sincerely,

A handwritten signature in black ink, appearing to read 'Ted McConaghy'.

Ted McConaghy, MA
Senior Planner
Doucet & Associates, Inc.
Authorized Agents for Pioneer Bank
7401-B Hwy. 71 W., Ste. 160
Austin, TX 78735



Case#: C14-2016-0065



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



Created: 6/22/2016



EXHIBIT F**RESTRICTIVE COVENANT REGARDING DRIVE-IN SERVICES**

This Restrictive Covenant Regarding Drive-In Services (this “Restrictive Covenant”) is executed this ____ day of _____, 2016, by and between Pioneer Bank, SSB, a Texas state savings bank (“Declarant”), and Heritage Neighborhood Association, a Texas non-profit corporation (the “Association”).

RECITALS

- A. Declarant is the owner of that certain tract of land situated in the City of Austin (the “City”), Travis County, Texas, more particularly described as Lot 1, Vescovo Subdivision, a subdivision of record in Book 73, Page 58 of the Plat Records of Travis County, Texas (the “Property”).
- B. Declarant intends to develop the Property with a bank and associated improvements and facilities, including, without limitation, drive-through banking teller stations, and to facilitate such development, Declarant has filed a rezoning application with the City, known as Zoning Case No. C14-2016-0065 (the “Rezoning Application”).
- C. In connection with Declarant’s Rezoning Application, Declarant has agreed to impose upon the Property these covenants and conditions for the benefit of each Owner (defined below) of the Property and the Association.
- D. 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.

NOW, THEREFORE, Declarant declares that the Property is subject to the following covenants, conditions and restrictions, which shall run with the Property and bind all parties having right, title, or interest in or to the Property or any part thereof, their respective heirs, successors, and assigns, and which shall inure to the benefit of each Owner and the Association. 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.

- 1. Recitals Incorporated. The above Recitals and all terms defined therein are incorporated into this Restrictive Covenant for all purposes.

2. Restrictions. Provided that the Zoning Application is finally approved by the Austin City Council, the Property shall be subject to the following covenants, conditions, and restrictions:
 - (a) No more than two drive-through banking teller station lanes ("Drive-Through Lanes") shall be constructed on the Property;
 - (b) Any Drive-Through Lanes constructed on the Property shall be located only within an enclosed parking garage; and
 - (c) No more than two automatic teller machines (ATMs) shall be permitted in the Drive-Through Lanes, and each Drive-Through Lane shall have no more than one teller window or pneumatic tube.
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 or the Association may have hereunder by reason of any breach of this Restrictive Covenant.
4. Inurement. This Restrictive Covenant and the restrictions created hereby inure to the benefit of and bind Owners, and their respective successors and assigns, and the Association. 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.
5. Duration. Unless modified, amended, or terminated in accordance with Paragraph 13 below, this Restrictive Covenant remains in effect in perpetuity.
6. 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 part thereof, is vested in one party or entity.
7. 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.
8. 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.
9. 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.

10. Notices. Any Notice to the Owners or the Association 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.
11. 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 Association in their respective businesses or otherwise; nor will it cause them to be considered joint ventures or members of any joint enterprise.
12. Enforcement. In the event of a breach of any of this Restrictive Covenant by any Owner, the Association shall be entitled to injunctive relief mandating compliance herewith, and shall be entitled to obtain a decree specifically enforcing the performance of the obligations, or enjoining the violation of this Restrictive Covenant, the parties hereby acknowledging the inadequacy of legal remedies for the irreparable harm which would be caused by a breach of this Restrictive Covenant. In such event, the Association shall also be entitled to exercise any other rights or remedies available to the Association, either at law or in equity, from the consequences of such breach. Should the Association, in an attempt to enforce the provisions of this Restrictive Covenant, bring suit for the enforcement of any of the provisions hereof, the prevailing party in such proceeding shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees, associated legal expenses and costs of court in connection with any such proceeding. As used herein, the "prevailing party" means the party who receives at the conclusion of a proceeding, or, as the case may be, dismisses an action for recovery hereunder in exchange for, payment of sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the proceeding. Except as otherwise specifically provided in this Restrictive Covenant, no remedy provided in this Restrictive Covenant shall be exclusive, but shall be cumulative with all other remedies provided for in this Restrictive Covenant, and all other remedies at law or in equity which are available to the Association.
13. Modification; Amendment; Termination. Except as set forth in this Paragraph, this Restrictive Covenant may only be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Official Public Records of Travis County, Texas, executed by all the Owners of the Property at the time of the modification, amendment, or termination and the Association. Notwithstanding the foregoing, however, in the event the Zoning Application is not finally approved by the Austin City Council within one year following the date hereof, then this Restrictive Covenant shall automatically TERMINATE and be RELEASED of record and shall be of no further force or effect, without further action or approval of any party; provided, however, in such case, Declarant shall have the right to execute and record in the Official Public Records of Travis County, Texas, without the joinder or consent of any other

party, a memorandum of termination of this Restrictive Covenant. Notwithstanding the foregoing or anything to the contrary herein, in the event the Association ceases to exist under the laws of the State of Texas, then this Restrictive Covenant may be modified, amended or terminated upon the filing of a written modification, amendment or termination document in the Official Public Records of Travis County, Texas, executed by all the Owners of the Property at the time of the modification, amendment, or termination.

[Remainder of This Page Intentionally Left Blank –
Signature Page Follows]

Executed to be effective on _____, 2016.

DECLARANT:

PIONEER BANK, SSB,
a Texas state savings bank

By: _____
Name: _____
Title: _____

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____ 2016, by
_____ (name), _____ (title)
of PIONEER BANK, SSB, a Texas state savings bank, on behalf of said bank.

Notary Public, State of Texas

[Signatures Continued on the Following Page]

ASSOCIATION:

**HERITAGE NEIGHBORHOOD
ASSOCIATION**, a Texas non-profit
corporation

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the ____ day of _____ 2016, by

(name), _____ (title)
of HERITAGE NEIGHBORHOOD ASSOCIATION, a Texas non-profit corporation, on behalf
of said corporation.

Notary Public, State of Texas

From: Brian May [REDACTED]
Sent: Wednesday, August 17, 2016 1:18 PM
To: Ted McConaghy
Cc: 'Michael McElhaney'; Isaac Perez
Subject: FW: Vote on Pioneer Bank variance request

EXHIBIT
G

Here is the original email from John Boardman with the Heritage NA. I have shared with them the zoning conditional overlay letter addressed to Heather Chaffin and promised him I would send the restrictive covenant once it is complete. He was fine with everything we stated in the letter



Brian May

Commercial Market President

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From: John Boardman [REDACTED]
Sent: Thursday, July 14, 2016 4:23 AM
To: Brian May
Cc: Heritage NA steering Committee
Subject: Vote on Pioneer Bank variance request

Hi Brian,

At our meeting Monday the Heritage NA passed a resolution to not oppose your variance request for a drive-through if it is amended to include the following restrictions:

- The drive through can only be for banking use
- The drive through is contained completely inside the parking garage
- The drive through has at most one tube, one window, and one ATM

The motion passed with no objections and one abstention.

The third restriction above was intended to ensure the drive through did not grow larger than what was sold (not that I can imagine you could fit three lanes).

I'd like to thank you and the rest of the Pioneer Bank team for doing a great job keeping the neighborhood informed on your project throughout the design and construction and for your responsiveness to our concerns.

Let me know if you have any questions or need clarifications about the restrictions. Can you send me the case officer on the variance so I can send her the information about our vote?

Regards,
John