

**CITY OF AUSTIN
Board of Adjustment
Decision Sheet**

DATE: Monday June 11, 2018

CASE NUMBER: C15-2018-0019

_____ Brooke Bailey
 _____ William Burkhardt
 _____ Christopher Covo
 _____ Eric Golf
 _____ Melissa Hawthorne OUT
 _____ Bryan King
 _____ Don Leighton-Burwell
 _____ Rahm McDaniel OUT
 _____ Martha Gonzalez (Alternate) OUT
 _____ Veronica Rivera
 _____ James Valdez
 _____ Michael Von Ohlen
 _____ Kelly Blume (Alternate)
 _____ Pim Mayo (Alternate) OUT

APPLICANT: Lauren & Joe Cunningham, Linda Sullivan-Clean Tag Permits

OWNER: Parker Estes

ADDRESS: 101 NORTH LOOP BLVD

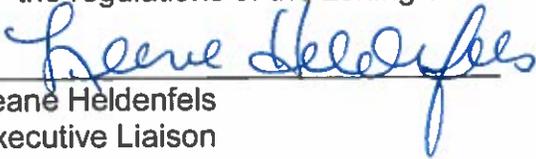
VARIANCE REQUESTED: The applicant has requested variance(s) from Section 25-2-492 (D) (*Site Development Regulations*) to Section 25-6, Appendix A (*Tables of Off-Street parking and Loading Requirements*) to reduce the number of required parking spaces from 7 spaces (required) to 5 spaces (requested, existing including 1 handicapped) in order to remodel the interior of an existing structure and change the use from Administrative Office (1 space per 275 square feet, grandfathered non-conforming) to Art Workshop (1 space per 500 square feet) in a "CS-CO-NP" General Commercial Services – Conditional Overlay - Neighborhood Plan zoning district. (North Loop)

BOARD'S DECISION: May 14, 2018 The public hearing was closed on Board Member Bryan King motion to Postpone to June 11, 2018, Board Member Rahm McDaniel second on an 11-0 vote; POSTPONED TO June 11, 2018. June 11, 2018 POSTPONED TO JULY 9, 2018 BY STAFF (RE-NOTICE)

FINDING:

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:
(b) The hardship is not general to the area in which the property is located because:

3. The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:



Leane Heldenfels
Executive Liaison



William Burkhardt
Chairman



Board of Adjustment General/Parking Variance Application

WARNING: Filing of this appeal stops all affected construction activity.

This application is a fillable PDF that can be completed electronically. To ensure your information is saved, [click here to Save](#) the form to your computer, then open your copy and continue.

The Tab key may be used to navigate to each field; Shift + Tab moves to the previous field. The Enter key activates links, emails, and buttons. Use the Up & Down Arrow keys to scroll through drop-down lists and check boxes, and hit Enter to make a selection.

The application must be complete and accurate prior to submittal. **If more space is required, please complete Section 6 as needed.** All information is required (if applicable).

For Office Use Only

| | | |
|--------------|-------------|-------------|
| Case # _____ | ROW # _____ | Tax # _____ |
|--------------|-------------|-------------|

Section 1: Applicant Statement

Street Address: _____

Subdivision Legal Description:

Lot(s): _____ Block(s): _____

Outlot: _____ Division: _____

Zoning District: _____

I/We _____ on behalf of myself/ourselves as
authorized agent for _____ affirm that on

Month _____, Day _____, Year _____, hereby apply for a hearing before the

Board of Adjustment for consideration to (select appropriate option below):

Erect Attach Complete Remodel Maintain Other: _____

Type of Structure: _____

Portion of the City of Austin Land Development Code applicant is seeking a variance from.

Four horizontal blue lines for text entry.

Section 2: Variance Findings

The Board must determine the existence of, sufficiency of, and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional supporting documents.

NOTE: The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

I contend that my entitlement to the requested variance is based on the following findings:

Reasonable Use

The zoning regulations applicable to the property do not allow for a reasonable use because:

Seven horizontal blue lines for text entry.

Hardship

a) The hardship for which the variance is requested is unique to the property in that:

Five horizontal blue lines for text entry.

b) The hardship is not general to the area in which the property is located because:

Five horizontal blue lines for text entry.

Area Character

The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

Parking (additional criteria for parking variances only)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed in the City of Austin Land Development Code Chapter 25-6, Appendix A with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

- 1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specific regulation because:

- 2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

- 3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

- 4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

Section 3: Applicant Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Applicant Signature:   Date: 03/23/2018

Applicant Name (typed or printed): Lauren and Joe Cunningham

Applicant Mailing Address: 3205 Perry Lane

City: Austin State: Texas Zip: 78731

Phone (will be public information): (512) 905-5182

Email (optional – will be public information): [Redacted]

Section 4: Owner Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Owner Signature:   Date: 06/27/2018

Owner Name (typed or printed): Folkmade, LLC

Owner Mailing Address: 3205 Perry Lane

City: Austin State: Texas Zip: 78731

Phone (will be public information): (512) 905-5182

Email (optional – will be public information):

Section 5: Agent Information

Agent Name: CleanTag Permits

Agent Mailing Address: 4804 Manchaca Rd.

City: Austin State: TX Zip: 78745

Phone (will be public information): 512-826-4209

Email (optional – will be public information): [Redacted]

Section 6: Additional Space (if applicable)

Please use the space below to provide additional information as needed. To ensure the information is referenced to the proper item, include the Section and Field names as well (continued on next page).

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Recording Requested By:

When Recorded Mail To:

RANDOLPH-BROOKS FEDERAL CREDIT UNION

One Randolph-Brooks Parkway

Live Oak, Texas 78233

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND
FIXTURE FILING**

MADE THIS 10th day of May, 2018.

BETWEEN FOLKMADE, LLC, a Texas limited liability company, whose address is 3205 Perry Lane, Austin, Texas 78731 (the Trustor and Owner), herein called "**Borrower**", **JONATHAN STARR**, whose address is 755 E. Mulberry Avenue, Suite 200, San Antonio, Texas 78212, herein called "**Trustee**", and **RANDOLPH-BROOKS FEDERAL CREDIT UNION** whose address is One Randolph-Brooks Parkway, Live Oak, Texas 78233 (the Beneficiary), herein called "**Lender**".

WITNESSETH: That **FOR THE PURPOSE OF SECURING** (1) Payment in the sum of **NINE HUNDRED FORTY-FIVE THOUSAND AND NO/100 DOLLARS (\$945,000.00)**, with interest thereon, according to the terms of a promissory note of even date herewith made by Borrower, payable to Lender or order, which, if not sooner paid (or extended as permitted therein), is due and payable in full on **May 1, 2023**, and all modifications, extensions, renewals, and/or replacements thereof (the "**Note**"). (2) Payment of such additional sums with interest thereon as may be incurred, paid out, or advanced by Lender or may otherwise be due to Trustee or Lender under any provision of this Deed of Trust, and all modifications, extensions, renewals and/or replacements thereof (hereinafter called "**Security Instrument**"). (3) Performance of each agreement or obligation of Borrower contained herein or incorporated herein by reference or contained in any papers executed by Borrower relating to the loan of money by Lender to Borrower as evidenced by the Note (the "**Loan**"). All of such documents and agreements are herein called the "**Loan Documents**." Notwithstanding the foregoing, this Security Instrument shall not be construed to secure any agreement or obligation of Borrower contained in any such papers or agreements which expressly provide that the same either are unsecured or are not secured by this Security Instrument. (4) Performance and keeping by Borrower of each of the covenants and agreements required to be kept and performed by Borrower pursuant to the terms of the lease, if this Security Instrument encumbers a leasehold estate (the "**Lease**"), and any and all other

instruments creating Borrower's interest in or defining Borrower's rights in respect to the property herein below described. (5) Payment by Borrower of each and every monetary provision to be performed by Borrower under any declaration of covenants, conditions, and restrictions pertaining to the property herein below described and upon written request of Lender, the enforcement by Borrower of any covenant to pay maintenance or other charges, which enforcement shall include, if the same have not been paid within 30 days after such written request is made, valid legal steps to enforce such payment. (6) Payment of all fees and charges owing to the Lender in connection with the Loan, whether or not herein set forth, except where the document or agreement relating to such fees and charges expressly provides that payment of the same is an unsecured obligation of Borrower or is otherwise not intended to be secured by this Security Instrument. (7) Payment of charges, as allowed by law when such charges are made, for any statement regarding the obligations secured hereby.

Borrower in consideration of the sum of **TEN DOLLARS (\$10.00)** to it in hand paid by the Trustee hereinafter named, the receipt of which is hereby acknowledged, and for the further consideration of the uses, purposes and trusts, hereinafter set forth has **GRANTED, SOLD and CONVEYED**, and by these presents does **GRANT, SELL and CONVEY** unto **JONATHAN STARR**, Trustee, for the benefit of **RANDOLPH-BROOKS FEDERAL CREDIT UNION**, and its substitutes or successors, all of the property, more particularly described as:

Lot 10, Block 2, of SMITH & ABRAHAMSON SUBDIVISION, a Subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Book 4, Page 252, of the Plat Records of Travis County, Texas (referred to herein as the "**Land**").

TOGETHER WITH all interests which Borrower now has or may hereafter acquire in or to the Land and in and to: (a) all tenements, hereditaments, licenses, easements, gores of land, streets, ways, alleys, passages, sewer rights, and rights of way appurtenant thereto; (b) all buildings, structures, improvements, fixtures, appliances, machinery, equipment, and other articles of real or personal property of every kind and nature (other than consumable goods), whether or not physically attached or affixed to the Land and now or hereafter installed or placed thereon, and used in connection with any existing or future operation thereof (including, but not limited to, all apparatus and equipment used to provide or supply air-cooling, air-conditioning, heat, gas, water, light, power, laundry, garbage disposal, fire prevention and extinguishing equipment, elevators, antennas, pool equipment, window coverings, floor coverings, ranges, ovens, dishwashers, and water heaters), it being intended and agreed that such items be conclusively deemed to be affixed to and to be part of the Land that is conveyed hereby (all of the herein above described property called the "**Improvements**"); (c) all water, water courses and water rights (whether or not appurtenant) and shares of stock pertaining to such water or water rights, ownership of which affects the Land; (d) all shrubs, trees, crops, and plants; (e) all adjacent lands included in enclosures or occupied by buildings located partly on the Land; and (f) all claims, demands and causes of action of every kind (including proceeds of settlements of any such claim, demand, or cause of action of any kind) which Borrower now has or may hereafter acquire arising out of acquisition or ownership of the Land, including insurance proceeds of any kind whatsoever (whether or not from insurance specifically required by the Loan Documents), and any award of damages or compensation for injury to or in connection with any condemnation for public use of the Land or any part thereof (whether or not eminent domain proceedings have been instituted), subject

however to the right, power and authority given to and conferred upon Lender by Paragraph 9 below, incorporated herein by reference, it being agreed, however, that Trustee shall have no duty to prosecute any such claim, demand or cause of action; (g) all plans and specifications prepared for construction of any Improvements, and all contracts and agreements of Borrower relating to such plans and specifications or to the construction of the Improvements, provided that nothing herein shall be deemed to be an assumption by Lender of any obligation of Borrower with respect to such plans and specifications or such construction or under any agreement relating thereto, nor shall Lender otherwise incur any liability with respect thereto unless and until Lender, in its sole and absolute discretion, shall hereafter expressly agree in writing; (h) all sales agreements, deposits, escrow agreements, and other documents and agreements entered into by Borrower with respect to the sale of all or any part of the Land or any interest therein; (i) all permits, governmental approvals and entitlements, licenses, management contracts, and other contracts and agreements in which Borrower now has or may hereafter have an interest arising out of acquisition or ownership of the Land (but without Lender assuming or incurring any obligation or liability of Borrower arising thereunder or relating thereto), and all other general intangibles relating to the development or use of the Land, including all names by which the Improvements or other property associated therewith may at any time be known or operated and all rights to carry on business under such names or any variant thereof and all trademarks and goodwill in any way relating to the Improvements or such other property;

ALSO TOGETHER WITH, if this Security Instrument secures a leasehold estate, all of the estate, right, title, and interest of Borrower, both at law and in equity, therein and thereto, and in and to any deposits of cash, securities or other property which may be held at any time and from time to time by the Landlord under the Lease, to secure the performance by Borrower of the covenants, conditions and agreements to be performed by Borrower thereunder, and any option to purchase the fee simple title to the Land, or any greater interest therein than Borrower now owns; and any and all other further or additional title, estate, interest or right which may at any time be acquired by Borrower in or to the Land, Borrower hereby agreeing that if Borrower shall, at any time prior to payment in full of all indebtedness secured hereby, acquire the fee simple title or any other or greater estate than Borrower now owns in the Land, then, and in that event, the lien of this Security Instrument shall automatically, and without the need for further action by any party hereto, attach, extend to, cover and be a lien upon such fee simple title or other greater estate, and Borrower will promptly execute, acknowledge and deliver such instruments as Lender may reasonably require to accomplish such result;

ALSO TOGETHER WITH all rights of Borrower, Borrower's bankruptcy trustee, and Borrower in the capacity of a debtor-in-possession to deal with the Lease or otherwise exercise any rights or remedies with respect thereto as provided in Paragraph 10 hereof;

ALSO TOGETHER WITH all rents, issues, profits, royalties, tolls, earnings, income and other benefits, therefrom and installments of money payable pursuant to any agreement for sale of the Land or any part thereof or interest therein, subject however to the right, power and authority given to and conferred upon Lender and Borrower by Paragraph 18 below, incorporated herein by this reference.

The foregoing provisions shall, to the extent permitted by applicable law, constitute an absolute, present and executed assignment of the rents, issues, profits, royalties, tolls, earnings, income and other benefits therefrom ("**Rents and Profits**"), subject, however, to the conditional license given to Borrower to collect and use such Rents and Profits and to hold the rent security deposits to the extent provided in Paragraph 18 hereof.

ALSO TOGETHER WITH all right, title, and interest of Borrower in and to any and all leases, rental agreements, tenancy agreements and occupancy agreements now or hereafter on or affecting the Land or the Improvements together with all security therefor and all monies payable thereunder, and all books and records pertaining thereto, subject, however, to the conditional license hereinabove given to Borrower to collect the rents, income and other benefits arising under any such lease or agreement.

(For the purpose of this instrument, including all provisions incorporated by reference herein, all of the foregoing described real property, property rights, and interests shall be referred to as "**the Property**" or "**such Property**".)

BORROWER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:

1. PERFORMANCE OF NOTE AND OTHER LOAN DOCUMENTS. Borrower shall perform, observe and comply with all provisions hereof, of the Note, and of every other Loan Document and will promptly pay to Lender the principal with interest thereon and all other sums required to be paid by Borrower under the Note and pursuant to the provisions of this Security Instrument and of every other Loan Document when payment shall become due, provided that nothing herein shall be construed to cause this Security Instrument to secure any covenant or other obligation of Borrower under any Loan Document which is expressly stated to be an unsecured obligation of Borrower or to be an obligation of Borrower which is not secured by this Security Instrument.

2. GENERAL REPRESENTATIONS, COVENANTS AND WARRANTIES. Borrower represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof: (a) Borrower is the lawful owner of good and indefeasible fee simple title to the Property and has the right and authority to grant, bargain, sell, convey, transfer, and assign the Property or, if this Security Instrument secures a leasehold estate, Borrower is the owner of the Tenant's interest under the Lease and the holder of the estate thereunder, and is the owner of the Improvements hereby secured, and has good right to grant, bargain, sell, convey, transfer, and assign the same as security under this Security Instrument. If this Security Instrument secures a leasehold estate, the terms "Lease", "Landlord" and "Tenant" shall have the meanings ascribed thereto in Exhibit "1" attached hereto (if any). If the Property is a leasehold, the Lease is in full force and effect and is unmodified and no event of default has occurred thereunder; (b) Borrower will warrant and forever defend the title to the Property against the claims of all persons whomsoever claiming the same or any part thereof, and this warranty of title shall survive the foreclosure of this Security Instrument and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property pursuant to foreclosure; (c) Borrower is now able to meet its debts as they mature, the fair market value of its assets exceeds its liabilities, no bankruptcy or insolvency proceedings are pending or contemplated by or against the Borrower, no assignment to creditors has been made by Borrower and no portion of Borrower's assets are presently subject to any attachment, execution or judicial seizure, and Borrower covenants immediately to provide notice to Lender in the event that any change in any of the circumstances described in this sentence should occur; (d) All reports, statements and other data furnished by or on behalf of the Borrower, or any partner, officer, employee or agent of Borrower or any guarantor in connection with the Loan are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading; (e) Borrower is duly organized, validly existing and in good standing under the laws of Texas and is qualified and authorized to do business Texas, and has full power and authority to

own its property, to carry on its business as presently being conducted and as contemplated to be conducted hereunder and to execute, deliver and perform its obligations under this Security Instrument, the Note and the other Loan Documents; the person(s) executing this Security Instrument, the Note and the other Loan Documents on behalf of Borrower have been duly authorized to execute and deliver this Security Instrument, the Note and other Loan Documents on behalf of Borrower; this Security Instrument, the Note and the other Loan Documents constitute legally valid and binding obligations of Borrower enforceable in accordance with their terms; and the execution, delivery and performance of this Security Instrument, the Note and the other Loan Documents by the Borrower will not conflict with, or constitute a breach of, or default under, the Borrower's governing instruments or any indenture, mortgage, deed of trust, note, lease, commitment, agreement or other instrument or obligation to which Borrower is a party or by which Borrower or its properties is bound; (f) There are no actions, suits or proceedings pending, or to the knowledge of Borrower threatened, against or affecting the Borrower or the Property of any nature other than those that have been disclosed to Lender in writing prior to the date hereof; (g) or that we have not received notice of any default under the terms of any instrument evidencing or securing any indebtedness of the Borrower and there has occurred no event which would, if incurred or uncorrected, constitute a default under any such instrument with the giving of notice, passage of time or both; (h) all necessary utilities, are available (or, if this is a construction loan, will be available at such time during or after construction as Lender deems necessary) and shall continue to be available in sufficient capacity to service the Property satisfactorily for its intended uses; and (i) Borrower has not received any notice that the Property, including without limitation the Improvements thereon, is not in compliance with (or if this is a construction loan, the Improvements at such time during or after construction as Lender deems necessary, will comply with) and will continue throughout the term hereof to comply with all applicable restrictive covenants, applicable zoning and subdivision ordinances and building codes, all applicable health, disability and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations, including among other things, the Americans With Disabilities Act of 1990, flood disaster laws and health and environmental laws and regulations and permits, licenses and/or certificates that may be necessary from time to time to comply with any of these requirements.

3. SECURITY AGREEMENT AND FINANCING STATEMENTS. Borrower (as Debtor) hereby grants to Lender (as Creditor and Secured Party) a security interest in all tangible and intangible personal property constituting the Property, including without limitation, fixtures, machinery, appliances, equipment, furniture, claims, demands and causes of actions, licenses, permits, contracts and agreements and other general intangibles described hereinabove.

Borrower shall execute any and all such documents, including without limitation financing statements pursuant to the Uniform Commercial Code of Texas as the Lender may request, to preserve and maintain the priority of the lien created hereby on property which may be deemed personal property or fixtures, and shall pay to Lender on demand any expenses incurred by Lender in connection with the preparation, execution and filing of any such documents. Said financing statements shall be filed in records of the **Texas Secretary of State** and such other offices as Lender deems advisable. Borrower hereby authorizes and empowers Lender to execute and file, on the Borrower's behalf, all financing statements and refilings and continuations thereof as Lender deems necessary or advisable to create, preserve and protect said lien and security interest. This Security Instrument constitutes a security agreement for any and all items of Property which are personal property and fixtures and which, under applicable law, may be subject to a security interest pursuant to the applicable Uniform Commercial Code and which are not herein

effectively made part of the Land. Borrower hereby grants Lender a security interest in said property, and in all additions, substitutions and proceeds thereof, for the purpose of securing all indebtedness and obligations of Borrower now or hereafter secured by this Security Instrument. The remedies available to Lender for violations of the covenants, terms and conditions set forth in this security agreement shall be (i) as set forth in this Security Instrument and (ii) as permitted under the laws of Texas, including the Uniform Commercial Code as adopted in Texas. Each of these remedies shall be distinct and cumulative as to all other rights or other remedies and may be exercised concurrently, independently or successively, as Lender may elect.

This Security Instrument constitutes a financing statement filed as a fixture filing in the Official Records of **Travis County, Texas** with respect to any and all fixtures included within the term "**Property**" as used herein and with respect to any goods or other personal property that may now be or hereafter become such fixtures.

The Borrower and Lender agree that neither the filing of a financing statement in the public records normally having to do with personal property nor the taking of any other action described in the above Paragraph shall be construed in any way as derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Property and/or adapted for use therein and/or which is described or reflected in this Security Instrument is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded, to the extent permitted by applicable law, as part of the real estate encumbered by this Security Instrument irrespective of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment or other items capable of being thus identified in a recital contained herein or in any list filed with Lender, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Borrower's interest as lessor in any present or future lease, rental agreement, tenancy agreement or occupancy agreement or right to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender as determined by this Security Instrument or impugning the priority of Lender's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of the Lender in the event any court or judge shall at any time hold with respect to clauses (1), (2), and (3) of this Paragraph 3 that notice of the Lender's priority of interest to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, must be filed in such public records.

4. REPAIR AND MAINTENANCE OF PROPERTY. Borrower covenants and agrees with Lender to keep the Property in good condition and repair reasonable wear and tear and causality excepted; not substantially to alter, remove or demolish any buildings or other Improvements except when incident to the replacement of fixtures, machinery or appliances with items of like kind and of at least equivalent value; to restore promptly and in a good and workmanlike manner to no less than the equivalent of its condition on origination of the Loan any buildings or other Improvements which may be damaged or destroyed, including, without restricting the generality of the foregoing, damage from termites and earth movement, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair; to pay when due all claims for labor performed and materials furnished on behalf of Borrower in

connection with the Property and not to permit any mechanic's or materialman's lien to be filed or remain against the Property for more than 30 days unless bond has been provided in accordance with the Texas Property Code; to comply with all laws affecting the Property or the operation or leasing thereof or requiring any alterations or improvements to be made thereon; to fully remedy in a manner acceptable to Lender any notice of violation or any other notice issued by any governmental entity having jurisdiction over the Property within thirty (30) days of the date of such notice; not to commit or permit waste thereon; not to commit, suffer or permit any act upon the Property in violation of law; to cultivate, irrigate, fertilize, fumigate and prune all landscaping on the Property; and to do all other acts that from the character or use of the Property may be reasonably necessary to keep the Property in the same or better condition (reasonable wear and tear and casualty excepted) as at the date of this Security Instrument; to perform and keep each of the covenants and agreements required to be kept and performed by Borrower pursuant to the terms of the Lease and any and all other instruments creating Borrower's interest in or defining Borrower's rights in respect to the Property. Without the prior written consent of Lender, Borrower shall not (i) initiate or acquiesce in a change in the zoning classification of and/or restrictive covenants affecting the Property or seek any variance under existing zoning ordinances, (ii) use or permit the use of the Property in a manner which may result in the use of the Property becoming a non-conforming use under applicable zoning ordinances, or (iii) subject the Property to restrictive covenants.

5. CONSTRUCTION OF IMPROVEMENTS. If all or any part of the Loan secured hereby is used for land development and improvement or construction purposes, Borrower shall comply in all respects with any agreement between Borrower and Lender relating thereto.

6. INSURANCE. Insurance shall be provided in accordance with the provisions of the Loan Agreement executed in connection herewith.

7. DISPOSITION OF THE PROCEEDS OF ANY INSURANCE POLICY, CONDEMNATION OR OTHER RECOVERY. The amount received by Lender pursuant to this Security Instrument under any insurance policy, or in connection with any condemnation for public use of the Property, or for injury or damage to the Property, or in connection with the transaction financed by the Loan secured hereby (collectively, the "**Proceeds**"), at the option and in the sole discretion of Lender, and without regard to the adequacy of Lender's security, may be (a) applied by Lender upon any indebtedness secured hereby and in such order as Lender may determine, or (b) without reducing the indebtedness secured hereby, used by Lender or, with Lender's express prior written consent, by Borrower to replace, restore, or reconstruct the Property to a condition satisfactory to Lender and Borrower, or (c) released by Lender to Borrower, or (d) divided by Lender in any manner among any such application, use or release. No such application, use or release shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice (or alter the amount of any payment provided under the Note, this Security Instrument, or any other Loan Document or postpone or extend the due date of any payment due under the Note, this Security Instrument or any other Loan Document).

Notwithstanding the foregoing provisions of this Paragraph 7, Lender shall permit Borrower to use the Proceeds to replace, restore or reconstruct the Property (herein "**Restoration**") following any injury or damage to the Property or condemnation of a portion of the Property for public use on the following terms and conditions, each of which must be satisfied as determined by Lender in its reasonable judgment:

(i) the Proceeds shall first be applied to reimburse Lender for all costs and expenses incurred by Lender in recovering the Proceeds and Restoration of the Property, including

without limitation, reasonable attorneys' fees, and the balance of the Proceeds (herein "**Net Claims Proceeds**") shall be used by Borrower only to pay the actual reasonable costs of Restoration;

(ii) the Improvements affected by such injury, damage or condemnation shall be replaced, restored or reconstructed to at least the same condition as the Improvements in existence on the Property immediately prior to the injury, damage or condemnation, in full compliance with all applicable zoning, building, health and safety, and other laws, ordinances and governmental requirements applicable to the Restoration;

(iii) the plans, specifications, cost breakdown, architect and engineering agreements, construction contracts, construction schedule, contractors, major subcontractors, and any payment and performance bonds required by Lender, shall be approved by Lender in its reasonable discretion;

(iv) if the Net Claims Proceeds are not sufficient, in the reasonable judgment of Lender, to fully pay for all costs of Restoration, Borrower shall deposit with Lender, within ten (10) days following written request, cash in such amount as Lender shall determine to be sufficient at such time for the full payment of all costs of Restoration, and Borrower shall make such additional cash deposits, within thirty (30) days following written request, as Lender shall reasonably determine from time to time during the course of the Restoration are necessary to ensure that sufficient funds will be available at all times to pay for all costs of Restoration; all such sums deposited by Borrower with Lender shall be held by Lender in a non-interest bearing account at an office of Lender, and Lender shall be granted a first priority security interest therein to secure Borrower's obligation to pay for all costs of Restoration;

(v) the Net Claims Proceeds and all funds deposited by Borrower to pay for the costs of Restoration as provided in clause (iv) above shall be disbursed by Lender in progress payments (less a ten percent (10%) retention, which shall be disbursed only upon full and final completion of Restoration as determined by Lender in its reasonable judgment) in accordance with and subject to Lender's standard construction loan disbursement procedures and requirements and such additional construction-related requirements as Lender may reasonably impose in connection with the Restoration;

(vi) Lender shall receive satisfactory evidence that (a) the proceeds of existing rental insurance payable on account of the damage or destruction together with the net cash flow from the undamaged portions of the Property will be sufficient to pay debt service on all indebtedness secured by the Property during the full period of Restoration, (b) the continued use of the Property upon completion of Restoration is economically feasible and will be in full compliance with all applicable laws and ordinances, (c) all leases of the Property which Lender may require to be and remain in place following completion of the Restoration will be in full force and effect after such completion, and (d) Restoration will be completed within a reasonable time and in any event no less than six (6) months prior to the Final Payment Date (as defined in the Note); and

(vii) no default under the Note, this Security Instrument or any other Loan Document shall have occurred and be continuing.

Borrower agrees that in no event shall Lender's consent to or approval of any Restoration be deemed to extend the due date of any payments owing under the Note or any other Loan Document, or otherwise be construed to cure or waive any default of Borrower under the Note, this Security Instrument or any other Loan Document. In the event that, prior to completion of Restoration, Borrower is in default under the Note (after the passage of any applicable grace or notice and right to cure periods), this Security Instrument or any other Loan Document, then

without limiting any other rights and remedies of Lender, Lender shall have the right to apply any funds of Borrower held on deposit with Lender as provided in clause (iv) above against such obligations of Borrower under the Note, this Security Instrument or any other Loan Document as Lender may determine in its sole discretion.

8. TAXES, LIENS, AND OTHER SUMS DUE. Borrower covenants and agrees with Lender to pay, satisfy and discharge: (a) at least 10 days before delinquency, all general and special city and county taxes, affecting the Property, (b) when due, all special assessments for public improvements on or benefiting the Property, (c) on demand of Lender but in no event later than the date such amounts and/or performance become due (1) all encumbrances, charges and liens (including, without limitation, income tax liens, or liens of a similar character, imposed or levied by the United States Government, the state in which the Property is located, any municipality or county, or an agency of any of them), with interest, on such Property, or any part thereof which are prior to or superior to this Security Agreement, (2) all costs, fees and expenses under this Security Instrument, (3) fees or charges for any statement regarding the obligation secured hereby in any reasonable and customary amount demanded by Lender not to exceed the maximum amount allowed by law therefor at the time when such request is made, (4) Lender's and Trustee's fees, charges and expenses for any other statement, information or services furnished by Lender or Trustee in connection with the obligations secured hereby (said services may include, but shall not be limited to, the processing by Lender or Trustee, or both, of assumptions, substitutions, modifications, extensions, renewals, subordinations, rescissions, changes of owners, recordation of maps, plats or records of survey, grants of easements, and full and partial reconveyances, and the obtaining by Lender of any policies of insurance pursuant to any of the provisions contained in this Security Instrument), (5) all payments and monetary obligations required of the owner of the Property under any declaration of covenants, conditions and restrictions pertaining to the Property or any modification thereof, and (6) any sums advanced or paid by Lender or Trustee under any clause or provision of this Security Instrument. After three (3) days written notice to Borrower, should Borrower fail to make any such payment, Lender, without contesting the validity or amount, may elect, but without obligation to do so, to make or advance such payment together with any costs, expenses, fees, or charges relating thereto, including employing counsel and paying attorneys' fees. Any such sum, until so repaid, shall be secured hereby and bear interest from the date it was advanced or paid at the **Default Rate** (as defined in the Note) and shall be secured by this Security Instrument. Borrower agrees to notify Lender immediately upon receipt by Borrower of notice of any increase in the assessed value of the Property and agrees that Lender, at its own expense and in the name of Borrower, may contest by appropriate proceedings such increase in assessment. Borrower will obtain the written consent of Lender prior to permitting any issuance of any improvement bond for unpaid special assessments. Borrower agrees to notify Lender and appropriate taxing authorities immediately upon the happening of any event which does or may affect the value of Property, the amount or basis of assessment of the Property, or the availability of any exemption to which Borrower is or may be entitled.

Borrower will pay when due and payable, all reasonable and customary appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, attorneys' fees, fees of inspecting architect(s) and engineer(s), fees of environmental engineers and consultants, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Lender in connection with the issuance of its commitment for the Loan, the preparation and execution of Loan Documents, the funding of the

Loan, and the administration and enforcement of this Security Instrument, the Note and the other Loan Documents. During the term of the Loan, Borrower will, upon demand by the Lender, reimburse Lender for all such expenses, together with accrued interest at the Default Rate, which have been incurred or which shall be incurred by Lender, and Borrower will defend, indemnify and hold harmless Lender and Trustee from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs, and expenses (including, without limitation, attorneys' fees) which may be imposed upon, asserted against, or incurred or paid by Lender or Trustee by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property, or with this Security Instrument or any of the indebtedness evidenced by the Note.

9. CLAIMS, DEMANDS AND ACTIONS. Borrower covenants and agrees with Lender: (a) To give Lender immediate notice of any action or proceeding purporting to affect the Property or purporting to affect the security hereof (whether or not it affects the security hereof), or the condition and integrity of the Improvements constructed thereon or purporting to affect the rights or powers of Lender or Trustee, (b) to defend any such action or proceeding; and (c) to file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of the Property, and enforce against others each and every obligation to be performed by them under any declaration of covenants, conditions, and restrictions pertaining to the Property. To the extent Borrower is not taking reasonable steps to do so, both Trustee and/or Lender are hereby authorized, without obligation so to do, to commence, appear in, and defend any action or proceeding, after three (3) days written notice to Borrower, whether or not brought by or against Borrower to exercise or enforce any other right, remedy, or power available or conferred hereunder, whether or not judgment be entered in any action or proceeding. If Borrower is not taking reasonable actions in any action or proceeding, after three (3) days written notice to Borrower, Trustee and/or Lender may appear or intervene in any action or proceeding, and retain counsel therein, and take such action therein as either may deem advisable, and may settle, compromise or pay the same or any other claims and, for any of said purposes, may expend and advance such sums of money as either may deem necessary. Borrower covenants that, in addition to the present assignment of actions, claims, damages and awards set forth herein, Borrower will execute and deliver to Lender such assignments of actions, claims, damages, and awards as Lender may, from time to time, request. Whether or not Borrower so appears or defends, Borrower shall pay on demand all reasonable and necessary costs and expenses of Lender and Trustee, including without limitation, costs of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Lender or Trustee may appear by virtue of being made a party defendant or otherwise and irrespective of whether the interest of Lender or Trustee in the Property is directly questioned by such action including, but not limited to, any action for the condemnation or partition of the Property and any suit brought by Lender to foreclose this Security Instrument. Lender may apply, use or release such monies so received by it in the same manner as in Paragraph 7 provided for the proceeds of insurance.

10. LEASEHOLD ESTATE. If the Property is a leasehold estate: (a) Borrower will: (i) pay the rent reserved by the Lease and all other monetary obligations thereunder as the same become due and payable; (ii) promptly perform and observe all of the covenants, agreements, obligations and conditions required to be performed and observed by the Tenant under the Lease, and do all things necessary to preserve and keep unimpaired its rights thereunder; (iii) promptly

notify Lender in writing of the commencement of a proceeding under the federal bankruptcy laws by or against Borrower or Landlord under the Lease; (iv) if any of the indebtedness secured hereby remains unpaid at the time when notice may be given by the Tenant under the Lease of the exercise of any right to renew or extend the term of the Lease, promptly give notice to the Landlord of the exercise of such right of extension or renewal; (v) in case any proceeds of insurance upon the Property or any part thereof are deposited with any person other than Lender pursuant to the requirements of the Lease, promptly notify Lender in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited; and (vi) promptly notify Lender in writing of any request made by either party to the Lease to the other party thereto for arbitration or appraisal proceedings pursuant to the Lease, and of the institution of any arbitration or appraisal proceedings and promptly deliver to Lender a copy of the determination of the arbitrators or appraisers in each such proceeding; and (b) Borrower will not surrender the Lease or Borrower's leasehold estate and interest therein, nor terminate or cancel the Lease; and will not, without prior written consent of Lender, modify, change, supplement alter or amend the Lease, either orally or in writing and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, agreements, obligations and conditions herein and in the Lease contained, Borrower hereby assigns to Lender all of its rights, privileges and prerogatives as Tenant under the Lease to terminate, cancel, modify, change, supplement, alter or amend the Lease and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Lease, without the prior written consent thereto by Lender shall be void and of no force and effect. Without limiting the generality of the foregoing, Borrower will not reject the Lease pursuant to 11 U.S.C. Section 365(a) or any successor law, or allow the Lease to be deemed rejected by inaction and lapse of time, and will not elect to treat the Lease as terminated by the Landlord's rejection of the Lease pursuant to 11 U.S.C. Section 365(h)(1) or any successor law, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, agreements, obligations and conditions herein and in the Lease contained, Borrower hereby assigns to Lender all rights, privileges and prerogatives of Borrower, Borrower's bankruptcy trustee, and Borrower in the capacity of a debtor-in-possession, to deal with the Lease, or otherwise exercise any rights or remedies with respect thereto, which right may arise as a result of the commencement of a proceeding under the federal bankruptcy laws by or against Borrower or Landlord under the Lease, including, without limitation, the right to assume or reject, or to compel the assumption or rejection of the Lease pursuant to 11 U.S.C. Section 365(a) or any successor law, the right to seek and obtain extensions of time to assume or reject the Lease, the right to elect whether to treat the Lease as terminated by the Landlord's rejection of the Lease or to remain in possession of the Property and offset damages pursuant to 11 U.S.C. Section 365(h)(1) or any successor law; and any exercise of such rights, privileges or prerogatives by Borrower, Borrower's bankruptcy trustee, or Borrower in the capacity of a debtor-in-possession, without the prior written consent thereto by Lender shall be void and of no force and effect. As further security for Lender, Borrower hereby agrees to deposit with Lender a duplicate original of the Lease and all supplements thereto and amendments thereof, to be retained by Lender until the indebtedness secured hereby is fully paid. So long as there is no breach of or default under any of the covenants, agreements, obligations and conditions herein contained to be performed by Borrower, or in the performance by Borrower of any of the covenants, agreements, obligations and conditions in the Lease to be performed by the Tenant thereunder, Lender shall have no right to terminate, cancel, modify, change, supplement, alter or amend the Lease. No release or forbearance of any of Borrower's obligations as Tenant under the Lease, whether

pursuant to the Lease or otherwise, shall release Borrower from any of its obligations under this Security Instrument, including, but not limited to, Borrower's obligations with respect to the payment of rent as provided for in the Lease and the observance and performance of all of the covenants, agreements, obligations and conditions contained in the Lease to be observed and performed by the Tenant thereunder. Unless Lender shall otherwise expressly consent in writing, the fee title to the Property demised by the Lease and the leasehold estate thereunder shall not merge, but shall always remain separate and distinct, notwithstanding the union of such estates either in the Borrower or in a third party by purchase or otherwise.

11. ACCUMULATION ACCOUNT. Borrower covenants and agrees to pay to Lender in addition to and concurrently with any other payments required in any note secured by this Security Instrument, while an Event of Default exists, monthly advance installments, as estimated by Lender from time to time for the purpose of establishing an account (the "Accumulation Account") for payment of any or all taxes, assessments and special assessments and, fire, casualty, liability, loss of rental income, and other insurance premiums, encumbrances and leasehold payments, security deposits, or other obligations secured by this Security Instrument or required to be paid with respect to the Property (hereafter in this Paragraph referred to as "**such obligations**"). Borrower shall deliver promptly to Lender all bills and notices of such obligations. If the amounts paid to Lender under the provisions of this Paragraph are not sufficient to pay such obligations as they become due, Borrower shall pay to Lender promptly upon demand the amount of the deficiency. All monies paid to Lender under this Paragraph shall be held in a separate non-interest bearing account. Lender may pay such obligations as or after they become due and payable, but before delinquency. In the event of a default in the payment of any note secured by this Security Instrument, default of any obligation secured hereby, or default in the performance of any of the covenants and obligations of this Security Instrument, and after the passage of any applicable grace or notice and right to cure periods, then any balance remaining from monies paid Lender under the provisions of this Paragraph may, at the option of Lender, be applied to the payment of principal, interest or obligations secured hereby in lieu of being applied to any of the purposes for which the Accumulation Account is established. At all times, any negative balance in the Accumulation Account shall constitute a secured advance made by Lender to protect its security under this Security Instrument and shall accrue interest at the Default Rate defined in the Note. Lender will make such reports of the Accumulation Account to Borrower on a monthly basis.

12. ACCELERATION CLAUSE. Lender shall have the right, at its option, to declare all sums secured hereby immediately due and payable, if Borrower or any successor in interest to Borrower (a) sells the Property or any of the Related Properties as defined in the Loan Agreement, or any part thereof, or interest therein, or agrees to do so, whether by deed, contract of sale, lease with option to buy, or otherwise and such conveyance, transfer or assignment is to an unrelated third party; or (b) except as expressly provided for in the Loan Documents, further encumbers or alienates the Property, or any part thereof, or interest therein (including permitting any junior lien to encumber the Property); or (c) suffers its title or any interest therein to be divested, whether voluntarily or involuntarily; or (d) without the written consent of the Lender, changes or permits to be changed the character or use of the Property from the character or use contemplated by Borrower and Lender upon execution of this Security Instrument, as specified in Borrower's application to Lender and other documents executed by Borrower in connection with the Loan, including, without limitation, drilling or extracting oil, gas, or other hydrocarbon substances, or any mineral of any kind or character; or (e) if suit be commenced to condemn the Property as being

unfit for human use and occupancy or to abate as a nuisance activities or conditions found thereon (and Lender reasonably believes that its security under this Security Instrument may be impaired by such suit or the activities or conditions which are the subject of such suit) or for the partition or sale of the Property; or (f) has made any oral or written material misrepresentations or failed to disclose any material fact, in order to induce Lender to enter into the transaction evidenced by the Note or any agreements which this Security Instrument secures. If any of the events enumerated in the preceding subparagraphs (a) to (f), inclusive, occur and if Lender fails to exercise its right to declare all sums secured hereby due and payable, such failure shall not be deemed or construed as a waiver or as a cure of any default of Borrower.

13. DUE ON SALE. Lender may, at its option, (a) declare immediately due and payable all sums secured by this Deed of Trust or (b) increase the interest rate provided in the Note or other document evidencing the debt secured hereby and impose such other conditions as Lender deems appropriate, upon the sale or transfer, without the Lender's prior written consent which consent shall not be unreasonably withheld, of all or any part of the Property, or any interest in the Property. A "sale or transfer" means the conveyance of the Property or any right, title or interest therein; whether legal or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Property, or by any other method of conveyance. If Borrower is a corporation or partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock or partnership interests or membership interests, as the case may be, of Borrower. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law.

14. WAIVERS AND CONSENTS PERTAINING TO NOTE. Borrower waives presentment, demand, protest and notice of nonpayment of the Note, and consents to delays, changes in time of payment, and the amount of installments due under the Note, and, to the extent provided in the Note, to the reduction or increase of the interest rate thereof.

15. WAIVER OF STATUTE OF LIMITATIONS. Time is of the essence in all Borrower's obligations hereunder, and to the fullest extent permitted by law, Borrower waives the right to assert any present or future statute of limitation with respect to any debt, demand or obligation secured hereunder in any action or proceeding for the purpose of enforcing this Security Instrument, the Note or any other Loan Document or any rights or remedies hereunder.

16. INSPECTION AND BUSINESS RECORDS. Borrower shall furnish to Lender a rent schedule and operating statements in accordance with the terms set forth in the Loan Agreement executed on even date herewith in connection with the Loan. In the event Borrower fails to comply with the provisions of this Paragraph 16, and subject to the Borrower's right to cure such default set forth herein, Lender shall have the right to have Borrower's books and records audited by an independent certified public accountant, and the cost of such audit shall be the obligation of the Borrower secured by this Security Instrument. In addition, Borrower's failure to comply may, at the option of Lender, be deemed a default under this Security Instrument and Lender may exercise any and all of its remedies under this Security Instrument.

17. ESTOPPEL CERTIFICATES. Borrower, within 10 days after written request from Lender, shall furnish a written statement, duly acknowledged to Lender and any third party designated by Lender, setting forth the unpaid principal and interest and any other sums and charges due under the Note, this Security Instrument and the other Loan Documents and any other unpaid sums secured hereby, and whether or not any offsets or defenses exist against such principal

and interest or other sums or charges and stating that the Note, Security Instrument and other Loan Documents have not been modified or stating that the Note, Security Instrument or other Loan Documents have been modified and specifying such modifications, and that the Note, Security Instrument and other Loan Documents, as unmodified or modified, as applicable, remain in full force and effect. If Borrower fails to execute and deliver such estoppel certificate within such 10-day period, and after being contacted by Lender, Borrower shall conclusively be deemed to have constituted and appointed Lender as Borrower's special attorney-in-fact to execute and deliver any such estoppel certificate to any third party and shall be deemed to have certified that the Note, Security Instrument and other Loan Documents remain in full force and effect, either unmodified or modified in the manner specified by Lender, whichever Lender reasonably may represent.

18. ASSIGNMENT OF LEASES AND RENTS.

18.1. *Assignment of Leases and Rents.*

(a) Borrower hereby assigns to Lender all of Borrower's right, title and interest in and to all current and future Leases (as defined below) and Rents (as defined below) pursuant to the terms of the Texas Assignment of Rents Act (Sections 64.001 et. seq. of the Texas Property Code) ("TARA"). Except as otherwise defined in this Deed of Trust, capitalized terms shall have the same meaning ascribed to them in TARA.

(b) Without in any way limiting Borrower's obligations under the Loan Documents, at any time upon the occurrence and during the continuance of any Default, Lender may deliver written notice as provided in TARA in accordance with Section 26 hereof to Borrower and within five (5) days after delivery of such notice, and without further notice and cure period (Borrower hereby waiving the 30 day notice requirement provided for in TARA and any right to withhold any amount permitted under Section 64.060(a) of TARA for expenses), Borrower will remit to Lender payment of all prepaid Rents for future periods, accrued, unpaid Rents and Rents accruing thereafter to Lender, without any deduction, setoff, or other reduction of any kind. Neither this assignment nor the receipt of Rents by Lender shall effect a *pro tanto* payment of the Note and no credit shall be given to Borrower for any Rents until the money is actually received and is applied to the Note by Lender. No such credit shall be given for any Rents collected or released after foreclosure or other transfer of the Property to Lender or any other third party.

(c) Lender may apply all such sums or any part thereof it receives, after the payment of all of its expenses (including, without limitation, costs and attorneys' fees), to one or more of the following: (i) on the Note secured by this Deed of Trust in such manner as Lender elects (without regard to Section 64.058 of the Texas Property Code) until paid in full, whether due or not, (ii) as otherwise permitted under the terms of this Deed of Trust or any of the other Loan Documents, or (iii) as specifically hereafter agreed to with Borrower in writing with respect to the payment received.

The term "Leases" shall mean all existing and future leases, subleases, lettings, licenses, concessions and other agreements (whether written or oral) including, without limitation, any and all extensions, renewals, modifications and replacements thereof, pursuant to which any tenant is granted a right to possess, use or occupy all or any portion of the Land and/or the Improvements, together with every guarantee of the performance of the tenant thereunder. The term "Rents" shall mean all rents, income, receipts, revenues, issues, profits and proceeds (including Cash Proceeds) to be derived from tenants of the Property or any part thereof, including, but not limited to, minimum rents, additional rents, percentage rents, deficiency rents and liquidated damages following default under a Lease, all proceeds payable under any policy of insurance covering the loss of Rents resulting from untenability caused by destruction or damage to the

Property or otherwise, and all of Borrower's rights to recover monetary amounts from any tenant in bankruptcy, including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, under any applicable Bankruptcy Law, together with any sums of money that may now or at any time hereafter become due and payable to Borrower by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and future oil, gas and mineral Leases.

- 18.2. Warranties Concerning Leases and Rents. Borrower represents and warrants that:
- (a) Borrower has good title to the Leases and Rents and authority to assign them, and no other person or entity has any right, title or interest therein;
 - (b) all existing Leases are valid, unmodified and in full force and effect, except as indicated herein, and no default exists thereunder;
 - (c) unless otherwise provided herein, no Rents have been or will be assigned, mortgaged or pledged;
 - (d) no Rents have been or will be anticipated, waived, released, discounted, set off or compromised;
 - (e) except as indicated in the Leases, Borrower has not received any funds or deposits from any Tenant for which credit has not already been made on account of accrued Rents; and
 - (f) all Leases shall specify U.S. addresses for notice to tenants, and prohibit prepayment of Rent more than one month in advance and contain waivers.
- 18.3. Borrower's Covenants of Performance. Borrower covenants to:
- (a) perform all of its obligations under the Leases and give prompt notice to Lender of any failure to do so;
 - (b) give immediate notice to Lender of any notice Borrower receives from any tenant or subtenant under any Leases, specifying any claimed default by any party under such Leases, excluding, however, notices of default under residential leases;
 - (c) enforce the tenant's obligations under the Leases;
 - (d) defend, at Borrower's expense, any proceeding pertaining to the Leases, including, if Lender so requests, any such proceeding to which Lender is a party;
 - (e) neither create nor permit any encumbrance upon its interest as lessor of the Leases, except this Deed of Trust and any other encumbrances permitted by this Deed of Trust; and
 - (f) cause all Leases executed after the date hereof to be expressly made subject to the provisions of TARA and include the following covenants:
 - (i) that upon the receipt by Tenant of a Notice to Pay Rents to Person Other Than Landlord ("NPROL") provided by Lender pursuant to Section 64.055 of TARA, whether prior to or after a Default, Tenant shall (1) immediately turn over all Rents and Proceeds Lender is entitled to collect under Section 64.053 of TARA; (2) not deduct any portion of the Rents for any purpose, notwithstanding any other provision of TARA, this Deed of Trust or other Loan Document; and (3) shall pay all Rents as they accrue to the Lender; and
 - (ii) that Tenant waives any right to delay payment of rent contemplated by Section 64.055(d) of TARA or numbered paragraph 3 of the statutory form of NPROL set forth in Section 64.056 of TARA.

18.4. Prior Approval for Actions Affecting Leases. Borrower shall not, without the prior written consent of Lender:

- (a) receive or collect Rents more than one month in advance;
- (b) encumber or assign future Rents;
- (c) waive or release any material obligation of any Tenant under the Leases;
- (d) cancel, terminate or modify any of the Leases; cause or permit any cancellation, termination or surrender of any of the Leases; or commence any proceedings for dispossession of any Tenant under any of the Leases, except upon default by the Tenant thereunder;
- (e) renew or extend any of the Leases, except pursuant to terms in existing Leases;
- (f) permit any assignment of the Leases; or
- (g) enter into any Leases after the date hereof.

18.5. Settlement for Termination. Borrower agrees that no settlement for damages for termination of any of the Leases under any applicable Bankruptcy Law shall be made without the prior written consent of Lender, and any check in payment of such damages will be made payable to both Borrower and Lender, whether or not a default then exists. Borrower hereby assigns any such payment to Lender to be applied to the Note as Lender may elect and agrees to endorse any check for such payment to the order of Lender.

18.6. Lender in Possession. Lender's acceptance of this assignment shall not, prior to entry upon and taking possession of the Property by Lender, be deemed to constitute Lender a "mortgagee in possession," nor obligate Lender to appear in or defend any proceedings relating to any of the Leases or to the Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Leases, or assume any obligation for any deposits delivered to Borrower by any tenant and not delivered to Lender. Lender shall not be liable for any injury or damage to any person or property in or about the Property.

18.7. Appointment of Attorney. Borrower hereby irrevocably appoints Lender its attorney-in-fact, coupled with an interest, empowering Lender to subordinate any Leases to this Deed of Trust.

18.8. Indemnification. BORROWER HEREBY INDEMNIFIES AND HOLDS LENDER (WHICH SHALL INCLUDE THE DIRECTORS, OFFICERS, PARTNERS, EMPLOYEES, REPRESENTATIVES AND AGENTS OF LENDER AND ANY PERSONS OR ENTITIES OWNED OR CONTROLLED BY, OWNING OR CONTROLLING, OR UNDER COMMON CONTROL OR AFFILIATED WITH LENDER) HARMLESS FROM ALL LIABILITY, DAMAGE OR EXPENSE IMPOSED ON OR INCURRED BY LENDER FROM ANY CLAIMS UNDER THE LEASES, INCLUDING, WITHOUT LIMITATION, ANY CLAIMS BY BORROWER WITH RESPECT TO PAYMENTS OF RENTS MADE DIRECTLY TO LENDER AFTER DEFAULT AND CLAIMS BY ANY TENANT FOR SECURITY DEPOSITS OR FOR RENTAL PAYMENTS MORE THAN ONE (1) MONTH IN ADVANCE AND NOT DELIVERED TO LENDER. ALL AMOUNTS INDEMNIFIED AGAINST HEREUNDER, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, IF PAID BY LENDER SHALL BEAR INTEREST AT THE MAXIMUM LAWFUL RATE AND SHALL BE PAYABLE BY BORROWER IN ACCORDANCE WITH THE TERMS HEREOF. THE FOREGOING INDEMNITIES SHALL NOT TERMINATE UPON THE FORECLOSURE, RELEASE OR OTHER TERMINATION OF THIS DEED OF TRUST BUT WILL SURVIVE FORECLOSURE OF THIS DEED OF TRUST OR CONVEYANCE IN LIEU OF

FORECLOSURE AND THE REPAYMENT OF THE NOTE AND THE DISCHARGE AND RELEASE OF THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS.

18.9. *Records*. Upon request by Lender, Borrower shall deliver to Lender executed copies of all Leases, Rent rolls in a format acceptable to Lender and copies of all records relating thereto.

18.10. *Merger*. There shall be no merger of the leasehold estates, created by the Leases, with the fee estate of the Land without the prior written consent of Lender.

18.11. *Right to Rely*. Borrower hereby irrevocably authorizes and directs the tenants to pay Rents, including all accrued, but unpaid Rents to Lender upon receipt of written notice from Lender as provided in TARA, without further consent of Borrower. Any such payment to Lender shall constitute payment to Borrower under the Leases. The provisions of this Section are intended solely for the benefit of the Tenants and shall never inure to the benefit of Borrower or any person claiming through or under Borrower, other than a Tenant who has not received such notice. The assignment of Rents set forth in Section 18.1 is not contingent upon any notice or demand by Lender to the tenants.

19. LEASES AFFECTING THE PROPERTY. Borrower warrants, represents and covenants as to each lease between Borrower and its tenants (each, a "**Tenant Lease**") now or hereafter covering all or any part of the Property, that (i) each Tenant Lease is in full force and effect, valid and enforceable in accordance with its terms and has not been modified, amended or altered, whether in writing or orally; (ii) no default exists on the part of the tenant under the Lease (the "**Tenant**") or, to its knowledge, Borrower thereunder and to the best of Borrower's knowledge, no event has occurred and is continuing which would result in default but for the requirement that notice be given in accordance with the terms of the Lease or that if the Tenant is in default thereof, Borrower is taking reasonable steps to enforce the Tenant Lease; (iii) no rent has been collected more than one (1) month in advance; (iv) no Tenant Lease, or any interest therein, nor Rents and Profits arising therefrom, has been previously assigned or pledged; (v) to Borrower's knowledge, no Tenant has any defense, setoff or counterclaim against Borrower under any Tenant Lease; (vi) all rent due under each Tenant Lease has been collected unless otherwise disclosed to Lender and no concession has been granted to any Tenant in the form of a waiver, release, reduction, discount or other alteration of rent due or to become due thereunder, except as expressly set forth in such Lease; (vii) no Tenant Lease grants to the Tenant thereunder, or anyone else, an option to purchase any part of the Property; (viii) Borrower is the sole owner of the entire landlord's interest in all Leases and it has not and will not perform or fail to perform any acts or execute any other instruments which might prevent Lender from fully exercising its rights under the terms, covenants and conditions of this Security Instrument; and (ix) Borrower has full right, power and authority to assign the Tenant Leases and the Rents and Profits to Lender and Borrower has not done any act which might prevent Lender from exercising its rights under this Security Instrument.

The assignment of leases set forth hereinabove shall not be deemed to impose upon the Lender any of the obligations or duties of the Borrower provided in any such lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease), and the Borrower shall comply with and observe its obligations as landlord under all leases affecting the Property or any part thereof.

Borrower shall not amend, modify, cancel, terminate or extend the term of any lease on the Property entered into by Borrower as landlord prior to the date hereof nor shall Borrower enter into any new lease on the Property after the date hereof without the prior written consent of Lender which consent shall not be unreasonably withheld or delayed, and which consent may be deemed given in advance as to any Lease by Lender pursuant to leasing guidelines prepared by

Borrower and approved by Lender in writing. In addition, Lender, hereby grants permission to Borrower, revocable at any time subsequent to an event of default (after the passage of any applicable notice and right to cure period), to amend, modify, cancel, terminate or extend the term of any existing lease and to enter into any new lease if in the judgment of Borrower, reasonably exercised, such actions do not adversely affect Lender's security interest in the Property. In addition, the Borrower, if requested by Lender, shall furnish promptly to Lender original or certified copies of all such leases now existing or hereafter created. Borrower shall not accept payment of rent more than 1 month in advance without the prior written consent of Lender.

With respect to the assignment of leases hereinabove set forth, Borrower shall, from time to time upon request of Lender, specifically assign to Lender, by an instrument in writing in such form as may be approved by the Lender, all right, title and interest of the Borrower in and to any and all leases now or hereafter on or affecting the Property, together with all security therefor and all monies payable thereunder, subject to the conditional License hereinabove given to Borrower to collect the rents under any such lease. Borrower shall also execute and deliver to Lender any notification, financing statement or other document reasonably required by Lender to perfect the foregoing assignment as to any such leases. Lender shall have the right, at any time and from time to time, to notify any tenant of the rights of Lender as provided in the assignment by Borrower to Lender of all leases relating to the Property and to the rents, issues, profits, earnings, income and other benefits therefrom and from the Property.

In the event of the occurrence of any default by Borrower under any Loan Document (after the passage of any applicable grace or notice of right to cure periods) and the institution by Lender of any foreclosure, receivership or other proceeding for the enforcement of Lender's rights or remedies under this Security Instrument, Lender may elect at any time prior to consummation of a foreclosure sale of the Property, and the purchaser at such foreclosure sale (including Lender) may elect at any time within thirty (30) days following the consummation of such foreclosure sale, to declare any or all Tenant Leases to be prior and superior to the lien of this Security Instrument and to recognize the rights of the Tenant(s) thereunder, in which event such Tenant Lease(s) shall survive such foreclosure sale and shall be and remain in full force and effect, and the Tenant(s) thereunder shall be obligated to attorn to Lender or such purchaser and to execute and deliver such instruments of attornment as Lender or such purchaser shall require. Any such election shall be in the sole discretion of Lender or such purchaser, and shall be evidenced by written notice from Lender to Borrower and/or to the applicable Tenant(s) delivered either prior to or within thirty (30) days following such foreclosure sale, by a statement of such election contained in the notice of the foreclosure sale, and/or by announcement at such foreclosure sale.

20. FAILURE OF BORROWER TO COMPLY WITH SECURITY INSTRUMENT. Subject to the Cure Period (as defined in the Note), should Borrower fail to make any payment or to do any act as provided in this Security Instrument, the Note, or any other Loan Document or fail to perform any obligation secured by this Security Instrument, or should Borrower do any act Borrower agreed not to do, or should any of the representations and warranties made by Borrower be untrue in any material respect, or if (i) a petition is filed by Borrower, or any guarantor, co-maker or endorser of the Note seeking or acquiescing to any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency or an involuntary petition under such law is filed against Borrower and is still in effect 60 days from the date of such filing; or (ii) a receiver, trustee, master or liquidator is appointed with respect to the Property or the rents, issues, royalties, profits, income or other benefits therefrom; or (iii) the Borrower, or any guarantor, co-maker or endorser of the

Note is "insolvent" (unable to pay its debts as they become due and/or if the fair market value of its assets does not exceed its aggregate liabilities), or (iv) Borrower makes an assignment for Borrower's creditor's; or (v) any significant portion of Borrower's assets is attached, executed upon or judicially seized in any manner and such attachment, execution or seizure is not discharged within 10 days, Borrower shall be in default under this Security Instrument, and Lender (but without obligation so to do and without notice to or demand upon Borrower and without releasing Borrower from any obligation hereof, and without contesting the validity or amount of the same) shall have the right, at its option, to declare all sums secured hereby immediately due and payable, and may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Lender being authorized to enter upon the Property for such purposes, and in exercising any such power, pay necessary expenses, employ counsel and pay attorneys' fees. Furthermore, at any time after a default by Borrower (after the passage of any applicable grace or notice of right to cure periods), Lender shall have the following rights and remedies, all of such rights and remedies, together with the rights and remedies set forth in the previous sentence, shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies: (a) Lender may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property; (b) Lender may exercise any or all of the remedies granted to a secured party under the Uniform Commercial Code in the jurisdiction in which the Property is located; and/or (c) Lender may exercise any other right or remedy which is set forth in this Security Instrument or any other Loan Document or which is otherwise available at law or in equity. Additionally, in the event of the default in the payment of any installment, principal or interest, of the Note hereby secured, in accordance with the terms hereof, or any breach of the covenants herein contained to be performed by Borrower (after the passage of any applicable grace or notice of right to cure periods), then and in any of such events Lender may elect, Borrower hereby expressly waiving presentment and demand for payment, to declare the entire principal indebtedness hereby secured with all interest accrued thereon and all other sums hereby secured immediately due and payable, and in the event of default in the payment of said debt when due or declared due, it shall thereupon, or any time thereafter, be the duty of the Trustee, or his successor or substitute as hereinafter provided, at the request of the Lender (which request is hereby conclusively presumed), to enforce this trust; and after advertising the time, place and terms of the sale of the above described and conveyed Property, then subject to the lien hereof, and mailing and filing notices as required by Section 51.002, Texas Property Code, as then amended, and otherwise complying with that statute or any subsequent statute specifying the procedure for conducting non-judicial foreclosure sales, the Trustee shall sell the above described Property, then subject to the lien hereof, at public auction in accordance with such notices on the first Tuesday in any month between the hours of ten o'clock A.M. and four o'clock P.M., but not later than three (3) hours after the time of the sale specified in the Notice of Sale, to the highest bidder for cash, selling all of the Property as an entirety or in such parcels as the Trustee acting may elect, and make due conveyance to the purchaser or purchasers, with general warranty binding the Borrower, its successors and assigns; and out of the money arising from such sale, the Trustee acting shall first pay all actual expenses of advertising said sale and making the conveyance, and then to Lender the full amount of principal, interest, attorney's fees and other charges due and unpaid on said Note and all other indebtedness secured hereby, rendering the balance of the sale price, if any, to Borrower, its successors or assigns; and the recitals in the conveyance to said purchaser or purchasers shall be full and conclusive evidence of the truth of the matters therein stated, and all prerequisites to said sale shall be presumed to have been performed, and such sale and conveyance

shall be conclusive against Borrower, its successors and assigns. It is agreed that in the event a foreclosure hereunder shall be commenced by the Trustee, or his substitute or successor, Lender may at any time before the sale of the Property direct the Trustee to abandon said sale, and may then institute suit for the collection of said Note, and for foreclosure of the liens herein created; and it is further agreed that if Lender should institute suit for the collection thereof, and for a foreclosure of the liens herein created, that he may at any time before entry of final judgment in said suit dismiss the same, and require the said Trustee, his substitute or successor, to sell the Property in accordance with the power of sale herein granted. Lender shall have the right to purchase at any sale of the Property, if it is the highest bidder, and to have the amount for which the Property is sold credited on the debt then owing. Lender in any event is hereby authorized to appoint a substitute trustee, or a successor trustee, to act instead of the Trustee named herein without other formality than the designation in writing of a substitute or successor trustee, and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness hereby secured has been paid in full, or until the Property is sold hereunder and each substitute and successor trustee shall succeed to all of the rights and powers of the original trustee named herein. In the event of a sale of the Property herein described, or any portion thereof, under the terms of the power of sale herein created, Borrower, its successors and assigns, shall forthwith upon the making of such sale surrender and deliver possession of the Property so sold to the purchaser at such sale, and in the event of their failure to do so they shall thereupon from and after the making of such sale be, and continue as, tenants at will of such purchaser, and in the event of Borrower's failure to surrender possession of the Property upon demand, the purchaser, his heirs or assigns, shall be entitled to institute and maintain an action for forcible detainer of the Property in the Justice of the Peace Court in the Justice Precinct in which the Property, or any part thereof, is situated. Borrower and all persons dealing with the Property through or under the Borrower and their successors and assigns, including, without limitation all subsequent purchasers of all or any portion of the Property and all persons holding or obtaining an interest in the Property which is junior and subordinate to this Security Instrument, by taking and accepting their respective conveyances, encumbrances, security interests, deeds of trust, or liens do hereby acknowledge, covenant and agree with Lender that (i) in the event of any default in the repayment of the indebtedness secured hereby, or in the event of any default under the terms of this Security Instrument, or under any other deed of trust or security agreement securing the same indebtedness as is secured by this Security Instrument, whether directly or by virtue of a cross-collateralization agreement or under any other Loan Document, the Lender may proceed to seek foreclosure or any other relief available at law or in equity in any order which Lender may determine, in Lender's sole discretion, and Lender may proceed against any property or collateral securing said indebtedness in any order which Lender elects without regard to any matters which could or might be raised by any subsequent purchaser or by any junior lien or encumbrance under those certain equitable doctrines known as the doctrine of "marshalling of assets" and the doctrine of "inverse order of alienation", (ii) they will not assert, and they do hereby waive any right to assert, the doctrine of marshalling of assets or any similar equitable doctrines, and (iii) they will not assert, and they do hereby waive any right to assert, the doctrine of inverse order of alienation or any similar equitable doctrines.

21. NO WAIVER OR MODIFICATION UNLESS IN WRITING. No modification or waiver by Lender of any right under this Security Instrument shall be effective unless in writing. Waiver by Lender of any right granted to Lender under this Security Instrument or under any provision of this Security Instrument as to any transaction or occurrence shall not be deemed a

waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Borrower that Borrower was obligated hereunder but failed to make or perform, or by adding any payment so made by Lender to the indebtedness secured hereby, or by exercising Lender's rights to receive and collect the income, rents, issues and profits therefrom, Lender does not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all acts required hereunder, or to declare a default for failure so to pay or perform.

22. REMEDIES. No remedy herein provided shall be exclusive of any other remedy herein, or now or hereafter existing by law or in equity, but shall be cumulative. Every power or remedy hereby given to Trustee or to Lender or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue separate remedies. If Lender holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Borrower, Lender may, at its option, offset against any indebtedness owing by it to Borrower, the whole or any part of the indebtedness secured hereby, and Lender is hereby authorized and empowered, at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness secured hereby and of Borrower to Lender, any and all sums of money which Lender may have in its possession or under its control, including, without limiting the generality of the foregoing, the indebtedness evidenced by an investment certificate or any escrow or trust funds. In order to assure the definiteness and certainty of the rights and obligations herein provided, Borrower waives any and all rights of offset of claims and no offset shall relieve Borrower from paying installments on the obligations secured hereby as they become due.

23. GENERAL PROVISIONS. (a) As and when used herein, the term "**Borrower**" shall mean and include the Borrower above-named and its successors and permitted assigns and the term "**Lender**" shall mean and include the Lender hereinabove named and its successors and assigns; (b) wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural and vice-versa; (c) captions and Paragraph headings used herein are for convenience only, are not a part of this Security Instrument, and shall not be used in construing it; (d) Lender shall have the right at any time and from time to time to provide any information it has in its possession relating to the Borrower, or any guarantor of the Loan, or any other person or entity now or hereafter liable with respect to the Loan, or the Property to any party interested in acquiring all or any part of the Loan or any interest therein; (e) in exercising any right or remedy or taking any action provided herein, Lender may act through its employees, agents, counsel, or independent contractors, as authorized by Lender; (f) as and when used herein, the word "including" shall be deemed to mean "including without limitation"; and (g) if more than one person is named as Borrower, each obligation of Borrower hereunder shall be the joint and several obligation of each such person.

24. FURTHER ASSURANCES. At any time and from time to time, upon Lender's request, Borrower shall make, execute and deliver, or cause to be made, executed and delivered, to the Lender and where appropriate shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such further deeds of trust, instruments of further assurance, certificates and other documents as the Lender may consider necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve the obligations of the Borrower under the Note, this Security Instrument or any other Loan Document and the lien of this Security

Instrument or any other lien upon or security interest in all of the Property or any other property securing the indebtedness evidenced by the Note, whether now owned or hereafter acquired by the Borrower, and unto all and every person or persons deriving any estate, right, title or interest under this Security Instrument or the power of sale herein contained. Upon any failure by the Borrower to do so, the Lender may make, execute, record, file, re-record or refile any and all such deeds of trust, instruments, certificates and documents for and in the name of the Borrower, and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower to do so.

25. GOVERNING LAW; SEVERABILITY. This Security Instrument shall be governed by the law of the jurisdiction in which the Property is located, except to the extent such law is contrary or inconsistent with the laws, rules or regulations of the United States now in effect or hereafter promulgated or to the extent such law restricts activities otherwise permitted to federally chartered credit unions, in which event the laws, rules and regulations of the United States and the rules and regulations relating to the activities of federally chartered credit unions shall apply. In the event that any provision or clause of this Security Instrument, the Note or any other Loan Document is construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall not affect other provisions of this Security Instrument or the Note or the other Loan Documents which can be given effect without the void, invalid or unenforceable provision, and to this end the provisions of this Security Instrument, the Note and any other Loan Document are declared to be severable.

26. NOTICES. Except for any notice required by applicable law to be given in another manner, all notices provided pursuant to the Note, this Security Instrument or any other Loan Document shall be in writing and shall be deemed to have been duly given if sent by United States certified mail, with return receipt requested, postage prepaid, or by United States Express Mail or other comparable overnight courier service to the parties at the address set forth herein or such other address as the recipient party may have designated by notice given in the manner specified above. Each such notice shall be deemed received upon the earlier of (i) when given or received in the manner prescribed by applicable law, (ii) when received in person by the recipient party or (iii) two calendar days following the mailing of such notice, certified mail, postage prepaid, return receipt requested to the address set forth herein.

27. LOST INSTRUMENTS. In the event that following execution, the Note, Security Instrument, or any other Loan Document should be lost, destroyed or mutilated, Borrower agrees to execute another original of such Note, Security Instrument or Loan Document.

28. TRUSTEE. Trustee accepts appointment hereunder when this Security Instrument, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Borrower, Lender or Trustee shall be a party.

29. POWER OF TRUSTEE TO RECONVEY OR CONSENT. Without affecting the liability of any person, including Borrower, for the payment of any indebtedness secured hereby, Lender or Trustee (if so requested by Lender, from time to time, without liability therefor, and without notice to Borrower, upon written request of Lender and presentation of this Security Instrument and the Note or other agreement secured hereby, together with payment for any fees of Trustee therefor), may do any one or more of the following: (1) release any indebtedness; (2) extend the time or otherwise alter the terms of payment of such indebtedness; (3) accept additional security; (4) substitute or release any property securing such indebtedness; (5) reconvey all or any part of such property; (6) consent to the making of any map or plat thereof; (7) join in granting any

easement thereon; or (8) join in any extension agreement or any agreement subordinating or otherwise affecting the lien or charge hereof.

30. SUBSTITUTION OF TRUSTEE. Lender may, from time to time, by an instrument in writing, substitute a successor or successors to any trustee named herein or acting hereunder, which instrument, executed and acknowledged by Lender and recorded in the office of the recorder of the county or counties where the Property is situated, shall be conclusive proof of proper substitution of such successor trustee or trustees, who shall, without conveyances from the trustee predecessor, succeed in all its title, estate, rights, powers and duties. Such instrument shall contain the name and address of the new trustee. The procedure herein provided for substitution of trustees shall not be exclusive of other provisions for substitution provided by law.

31. PRIORITY; SUBROGATION. It is agreed that the lien hereby created shall take precedence over and be a prior lien to any other lien of any character, whether vendor's, materialmen's or mechanic's lien, hereafter created on the above described Property. In the event any or all of the proceeds of the indebtedness secured have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property or to satisfy any indebtedness or obligation secured by a lien or encumbrance of any kind, such proceeds have been advanced by Lender at Borrower's request, and, to the extent of such funds so used, the indebtedness hereby secured shall be subrogated to an extent to all of the rights, claims, liens, titles and interest heretofore existing against the Property to secure the indebtedness or obligation so extinguished, paid, extended or renewed, and the former rights, claims, liens, title and interests, if any, shall not be waived but rather shall be continued in full force and effect and in favor of Lender and shall not be merged with the lien and security for the repayment of the indebtedness hereby secured.

32. RECONVEYANCE. Upon payment of all sums secured by this Security Instrument, Lender shall release its lien upon the Property and shall surrender this Security Instrument and all notes evidencing indebtedness secured by this Security Instrument to Borrower. Lender shall release its lien upon the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay Lender's reasonable costs incurred in so releasing its lien.

33. ENVIRONMENTAL DEFINITIONS. "**Hazardous Material**" means: (i) "hazardous substances", as defined by the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**"), 42 U.S.C. Sec. 9601 et seq., as amended or hereafter amended; (ii) "**hazardous wastes**", as defined by the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. Sec. 6902 et seq., as amended or hereafter amended; (iii) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders), including, but not limited to, the Texas Water Code and/or the Texas Solid Waste Disposal Act, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended; (iv) more than 100 gallons of crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (v) any radioactive materials, including any source, special nuclear or by-product material as defined at 42 U.S.C. Sec. 2011 et seq., as amended or hereafter amended; and (vi) asbestos or asbestos-containing materials in any form or condition.

"**Remedial Work**" means all investigation, testing, analysis, monitoring, restoration, abatement, detoxification, containment, handling, treatment, removal, storage, decontamination, clean-up, transport, disposal or other ameliorative work or response action

required by (i) any Environmental Laws (as hereinafter defined), (ii) any order or request of any federal, state or local governmental agency, or (iii) any judgment, consent decree, settlement or compromise with respect to any and all enforcement, clean-up, removal, remedial or other governmental or regulatory actions or agreements or orders threatened, instituted, or completed pursuant to any Environmental Laws, or any actions, proceedings or claims by such entities or third parties relating to or arising out of the breach of any Environmental Laws or the presence of any Hazardous Material on, under or near the Property (collectively "**Claim**").

34. ENVIRONMENTAL REPRESENTATIONS, WARRANTIES AND COVENANTS. Borrower (also referred to herein as "**Indemnitor**") represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof:

COMPLIANCE. Borrower agrees that it will operate the Property from and after the date of this Security Instrument in compliance with all applicable laws, ordinances, requirements and regulations (including consent decrees and administrative orders) relating to public health and safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified in Paragraph 33 above, all as amended and modified from time to time (collectively, "**Environmental Laws**"). All Hazardous Materials generated or handled on the Property from and after the date of this Security Instrument will be stored and disposed of in a lawful manner. The Indemnitor will satisfy all requirements of applicable Environmental Laws for the maintenance and removal of all underground storage tanks on the Property, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

ABSENCE OF HAZARDOUS MATERIALS. No generation, manufacture, storage, use, handling, treatment, transportation or disposal of Hazardous Material has occurred as a result of the presence or disposal of Hazardous Materials or is occurring on or from the Property which is not in compliance with all applicable Environmental Laws. No environmental or public health or safety hazards currently exist as a result of the presence or disposal of Hazardous Materials with respect to the Property or the business or operations conducted thereon. No underground storage tanks (including petroleum storage tanks) have ever been or are present on or under the Property.

PROCEEDINGS AND ACTIONS. There have been no past, and there are no pending or threatened: (i) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Property, or the disposal or presence of Hazardous Materials, or regarding any Environmental Laws; or (ii) liens or governmental actions, notices of violations, notice of noncompliance or other proceedings of any kind relating to Hazardous Materials or Environmental Laws that could impair the value of the Property, or the priority of the Lender's mortgage lien. The Indemnitor shall immediately notify the Lender and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Property or compliance with Environmental Laws. The Indemnitor shall promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of the Lender. The Indemnitor shall keep the Property free of any lien imposed pursuant to any Environmental Laws.

ENVIRONMENTAL AUDIT. The Indemnitor shall provide such information and certifications that the Lender may reasonably request from time to time to ensure the Indemnitor's compliance with Borrower's obligations under all provisions of Sections 33 through 36 of this Security Instrument. To investigate the Indemnitor's compliance with Environmental Laws and with this Security Instrument, the Lender shall have the right, but no obligation, at any

time and from time to time to enter upon the Property, take samples, review books and records of the Indemnitor, interview the employees and officers of the Indemnitor, and conduct similar activities. The Indemnitor shall cooperate in the conduct of such an audit.

No inspection or failure to inspect the Property by Lender shall impose any liability upon Lender for the discovery, failure to discover, evaluation, or remediation of any Hazardous Material that may exist on or affecting the Property. Lender shall not be liable or responsible for any loss, damage, injury or liability to the Property or to any persons or property thereon arising from any entry or inspection by Lender pursuant to this Paragraph 34, except only for any loss, damage, injury or liability which is caused by the gross negligence or willful misconduct of Lender (which for purposes of this Security Instrument shall mean an action taken by Lender with reckless disregard of the consequences thereof), provided that in no event shall Lender be liable under any circumstances for any consequential damages suffered by Borrower or any other person or entity.

The Lender is entitled to rely upon the Indemnitor's representations and warranties contained herein despite any independent investigations by the Lender or its consultants. The Indemnitor shall take reasonable actions to determine for itself, and to remain aware of, the environmental condition of the Property and shall have no right to rely upon any environmental investigations or findings made by the Lender or its consultants.

35. REMEDIAL WORK. As soon as possible, but no later than sixty (60) days after receipt by Indemnitor of any Claim, Indemnitor shall perform or cause others qualified to do so to commence and/or perform any and all necessary Remedial Work in response to any Claim. Subject to the terms of any leases and applicable laws, in response to Indemnitor's knowledge of the presence of any Hazardous Material on or under the Property or real property immediately adjacent to the Property, Indemnitor shall immediately perform or cause tenants to immediately perform all Remedial Work. All Remedial Work shall be performed by contractors approved by Lender and in accordance with all applicable Environmental Laws and any other applicable laws, rules, regulations, or orders. All costs and expenses of any Remedial Work shall be paid by Indemnitor, it being understood that Lender shall incur no cost, expense or liability in connection with any Remedial Work. Lender shall have the right, but no obligation, to join and participate in, as a party if it so elects at Lender's cost, any legal proceedings or actions initiated in connection with any Hazardous Material Claims, provided, however, Indemnitor shall reimburse Lender for its attorneys' fees and costs incurred if such participation is deemed reasonably necessary by Lender to protect its security interest in the Property.

36. ENVIRONMENTAL INDEMNIFICATION. The term "**Lender's Environmental Liability**" shall mean any losses, liabilities, obligations, penalties, claims, litigation demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever (including reasonable attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against the Lender in connection with or arising from: (a) any Hazardous Material, on, in, under or affecting all or any portion of the Property, the groundwater, or any surrounding areas; (b) any material misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to herein; (c) any violation or claim of violation relating to or affecting the Property by the Indemnitor or any third party of any Environmental Laws; (d) the imposition of any lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Material; (e) any claim by the Indemnitor against the Lender under CERCLA

or any state equivalent, or any similar law now existing or hereafter enacted; or (f) any actions taken by Lender in connection with the Texas Water Code and/or the Texas Solid Waste Disposal Act.

INDEMNIFY AND DEFEND. The Indemnitor agrees to indemnify, defend (at trial and appellate levels and with counsel acceptable to the Lender and at the Indemnitor's sole cost) and hold the Lender free and harmless from and against the Lender's Environmental Liability.

It is expressly understood and agreed that to the extent that the Lender is strictly liable under any Environmental Laws, the Indemnitor's obligation to the Lender under this indemnity shall likewise be without regard to fault on the part of the Indemnitor with respect to the violation or condition which results in liability to the Lender.

Notwithstanding anything contained herein to the contrary, the foregoing indemnity shall not apply to (i) matters resulting solely from the sole negligence, or the gross negligence or willful misconduct of any indemnified party, or (ii) matters resulting from the actions of Indemnified Parties taken after such parties have taken title to, or exclusive possession of the Property, provided that, in both cases, such matters shall not arise from or be accumulated with any condition of the Property, which condition was not caused by an indemnified party.

SECURED OBLIGATIONS; SURVIVAL. Indemnitor's obligations hereunder shall be secured by this Security Instrument for so long as this Security Instrument shall remain a lien upon the Property, provided, however, that any termination of the lien of this Security Instrument shall not terminate or otherwise affect Indemnitor's obligations hereunder and Indemnitor's obligations hereunder shall survive (i) any foreclosure, deed in lieu of foreclosure or reconveyance of this Security Instrument, (ii) any sale or other transfer of the Property by either Indemnitor or Lender, and (iii) repayment of the Loan. The rights of Lender under the environmental provisions in this Security Instrument shall be in addition to any other rights and remedies of Lender against Indemnitor under any other document or instrument now or hereafter executed by Indemnitor, or at law or in equity (including, without limitation, any right of reimbursement or contribution pursuant to CERCLA), and shall not in any way be deemed a waiver of any of such rights. The obligations of Indemnitor hereunder shall be personal to each Indemnitor and their respective representatives, administrators, executors, successors and assigns, and shall not run, and shall not be deemed to run, with the land.

37. WAIVER OF JURY TRIAL. THE UNDERSIGNED AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THE UNDERSIGNED AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS DOCUMENT OR ANY OTHER RELATED DOCUMENT OR ANY RELATIONSHIP BETWEEN LENDER AND THE UNDERSIGNED. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER LOAN DOCUMENTS.

38. USURY. This Security Agreement shall be governed by and construed in accordance with applicable law. Since it is the intention of the parties hereto to strictly conform to the applicable usury laws, all agreements between Borrower and Lender, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no event, whether by reason of acceleration of maturity of the Note or otherwise, shall the amount paid or agreed to be paid to the Lender for the use, forbearance or detention of money hereunder or otherwise exceed the maximum amount permissible under applicable law. If the applicable law is

ever revised, repealed or judicially interpreted so as to render usurious any consideration called for, contracted for, charged, taken, reserved or received with respect to the Note, the security documents, the loan evidenced by the Note, or any other agreement between the parties or their affiliates, or if the fulfillment of any provision hereof or any note, deed of trust, loan agreement, or other document, evidencing or securing the indebtedness evidenced hereby, at the time of performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity; and if Lender shall ever receive anything of value deemed interest under applicable law which would exceed interest at the highest lawful rate, an amount equal to any excess of interest shall be applied to the reduction of the principal amount owing on the Note or amounts owed pursuant to other loan documents and not to the payment of interest, or if such excess of interest exceeds the unpaid balance of principal of the Note or amounts owed pursuant to other loan documents, such excess shall be refunded to the Borrower. All interest paid or agreed to be paid to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term (including any renewal or extension) of such indebtedness or until payment in full, whichever is longer, so that the amount of interest on account of such indebtedness does not exceed the maximum permitted by applicable law. The provision of this paragraph shall control all existing and future agreements between Borrower and Lender.

39. RIGHTS OF SET OFF. Upon the occurrence and during the continuance of any Event of Default, Lender is hereby authorized at any time and from time to time, without notice to Borrower (any such notice being expressly waived by Borrower), to set off and apply all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Lender to or for the credit or the account of Borrower against any and all of the obligations of Borrower now or hereafter existing pursuant to the Loan Documents, irrespective of whether or not the Lender agrees promptly to notify Borrower after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application or create any liability on the part of the Lender. The rights of the Lender under this section are in addition to other rights and remedies (including, without limitation, other rights of setoff) that the Lender may have.

40. PURPOSES. Borrower expressly represents that this Security Agreement and the Note hereby secured are given for the following purpose, to wit: the Note hereby secured represents and is given for the sum of **\$945,000.00**, advanced and paid in cash by **RANDOLPH-BROOKS FEDERAL CREDIT UNION**, to Borrower at its special instance and request. Borrower acknowledges and agrees that the final maturity date on the Note dated of even date herewith, in the original principal amount of **\$945,000.00**, executed by Borrower, payable to Lender, is **May 1, 2023**.

41. BORROWER AGREES THAT IN THE EVENT AN INDEPENDENT APPRAISAL IS REQUIRED BY ANY GOVERNMENTAL AGENCY OR BY A POLICY ADOPTED BY LENDER PURSUANT TO GOVERNMENTAL RULES, REGULATIONS OR GUIDELINES, BORROWER SHALL PAY THE COST.

42. INDEMNITY OF LENDER. Borrower shall indemnify and hold harmless Lender (for purposes of this subsection, the term “**Lender**” shall include the directors, officers, employees and agents of Lender and any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Lender) from and against, and reimburse them for, all claims, demands, liabilities, losses, damages, causes of action, judgments, penalties, costs and expenses (including, without limitation, reasonable attorney’s fees) which may be

imposed upon, asserted against or incurred or paid by them by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property or with any Loan Document. **WITHOUT LIMITATION, IT IS THE INTENTION OF BORROWER AND BORROWER AGREES THAT THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES) WHICH IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY OR ANY STRICT LIABILITY. HOWEVER, SUCH INDEMNITIES SHALL NOT APPLY TO ANY INDEMNIFIED PARTY TO THE EXTENT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PARTY.** The foregoing indemnities shall survive the termination of the Loan Agreement, the foreclosure of the Security Instrument or conveyance in lieu of foreclosure and the repayment of the Loan and the discharge and release of the Loan Documents.

43. NOTICES. The undersigned Borrower requests that a copy of any notices hereunder be mailed to it at its address set forth below:

- (a) If to Borrower, to:
Folkmade, LLC
3205 Perry Lane
Austin, Texas 78731
Attn: Managing Members
- (b) If to Lender, to:
Randolph-Brooks Federal Credit Union
11911 Burnet Road
Austin, Texas 78758
Attn: Damien Martinez

THIS WRITTEN DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENT OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing on the day in the year first above written.

BORROWER:

FOLKMADE, LLC,
a Texas limited liability company

By: _____
JOSEPH M. CUNNINGHAM, Managing Member

By: _____
LAUREN M. CUNNINGHAM, Managing Member

Acknowledgment

STATE OF TEXAS §
 § SS:
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of May, 2018, by **JOSEPH M. CUNNINGHAM**, in his capacity as Managing Member of **FOLKMADE, LLC**, a Texas limited liability company, on behalf of said company.

Notary Public, State of Texas

STATE OF TEXAS §
 § SS:
COUNTY OF _____ §

This instrument was acknowledged before me on the ____ day of May, 2018, by **LAUREN M. CUNNINGHAM**, in her capacity as Managing Member of **FOLKMADE, LLC**, a Texas limited liability company, on behalf of said company.

Notary Public, State of Texas

Prepared by:
Jonathan Starr, Esq.
Rosenthal Pauerstein Sandoloski Agather LLP
755 E. Mulberry Avenue, Suite 200
San Antonio, Texas 78212

**CITY OF AUSTIN
Board of Adjustment
Decision Sheet**

DATE: Monday May 14, 2018

CASE NUMBER: C15-2018-0019

| | |
|-------------------------------------|-----------------------------|
| <input type="checkbox"/> | Brooke Bailey (OUT) |
| <input checked="" type="checkbox"/> | William Burkhardt |
| <input checked="" type="checkbox"/> | Christopher Covo |
| <input type="checkbox"/> | Eric Golf (OUT) |
| <input checked="" type="checkbox"/> | Melissa Hawthorne |
| <input checked="" type="checkbox"/> | Bryan King |
| <input checked="" type="checkbox"/> | Don Leighton-Burwell |
| <input checked="" type="checkbox"/> | Rahm McDaniel |
| <input checked="" type="checkbox"/> | Martha Gonzalez (Alternate) |
| <input checked="" type="checkbox"/> | Veronica Rivera |
| <input checked="" type="checkbox"/> | James Valdez |
| <input type="checkbox"/> | Michael Von Ohlen (OUT) |
| <input checked="" type="checkbox"/> | Kelly Blume (Alternate) |
| <input checked="" type="checkbox"/> | Pim Mayo (Alternate) |

APPLICANT: Lauren & Joe Cunningham, Linda Sullivan-Clean Tag Permits

OWNER: Parker Estes

ADDRESS: 101 NORTH LOOP BLVD

VARIANCE REQUESTED: The applicant has requested variance(s) from Section 25-2-492 (D) (*Site Development Regulations*) to Section 25-6, Appendix A (*Tables of Off-Street parking and Loading Requirements*) to reduce the number of required parking spaces from 7 spaces (required) to 5 spaces (requested, existing including 1 handicapped) in order to remodel the interior of an existing structure and change the use from Administrative Office (1 space per 275 square feet, grandfathered non-conforming) to Art Workshop (1 space per 500 square feet) in a "CS-CO-NP" General Commercial Services – Conditional Overlay - Neighborhood Plan zoning district. (North Loop)

BOARD'S DECISION: May 14, 2018 The public hearing was closed on Board Member Bryan King motion to Postpone to June 11, 2018, Board Member Rahm McDaniel second on an 11-0 vote; POSTPONED TO June 11, 2018.

FINDING:

1. The Zoning regulations applicable to the property do not allow for a reasonable use because:
2. (a) The hardship for which the variance is requested is unique to the property in that:

**CITY OF AUSTIN BOARD OF ADJUSTMENTS
APPLICATION FOR PARKING VARIANCE
SUPPORTING EVIDENCE**

Dear Board of Adjustments,

At the May 2018 meeting you requested that we provide additional information and make some adjustments in order to consider our parking variance request. We have fulfilled these requests:

1) BUILDING HISTORY *Below are the facts as they were presented in the business directories at the AHC*

1949 Land purchased. First building construction began in the area of North Loop between Chesterfield and Ave. F

1952 101 North Loop is registered as Mrs. Johnson's Bakery

1975 The bakery moved

1976 - Present It has been vacant roughly equal time to being occupied; most recent business was "24-hour Lock"

Other businesses in the space have included:

- Hair Salon
- Locksmith
- Restaurant Supply

No business has occupied the space for more than 5 years since Mrs. Johnson's Bakery.

No square footage has been added to the building since initial construction was completed.

2) AMEND PARKING SPACES TO ACCOMMODATE VAN ACCESSIBLE SPACE

Parking spaces updated.

3) PARKING SPACE DEPTH

We found that our previous drawings were not quite accurate, and while the spaces do exceed the property line, they do not encroach the sidewalk.

4) PARKING SHARE AGREEMENT

We have amended this to reflect the requested verbiage that our neighbor's business hours will not be changing.

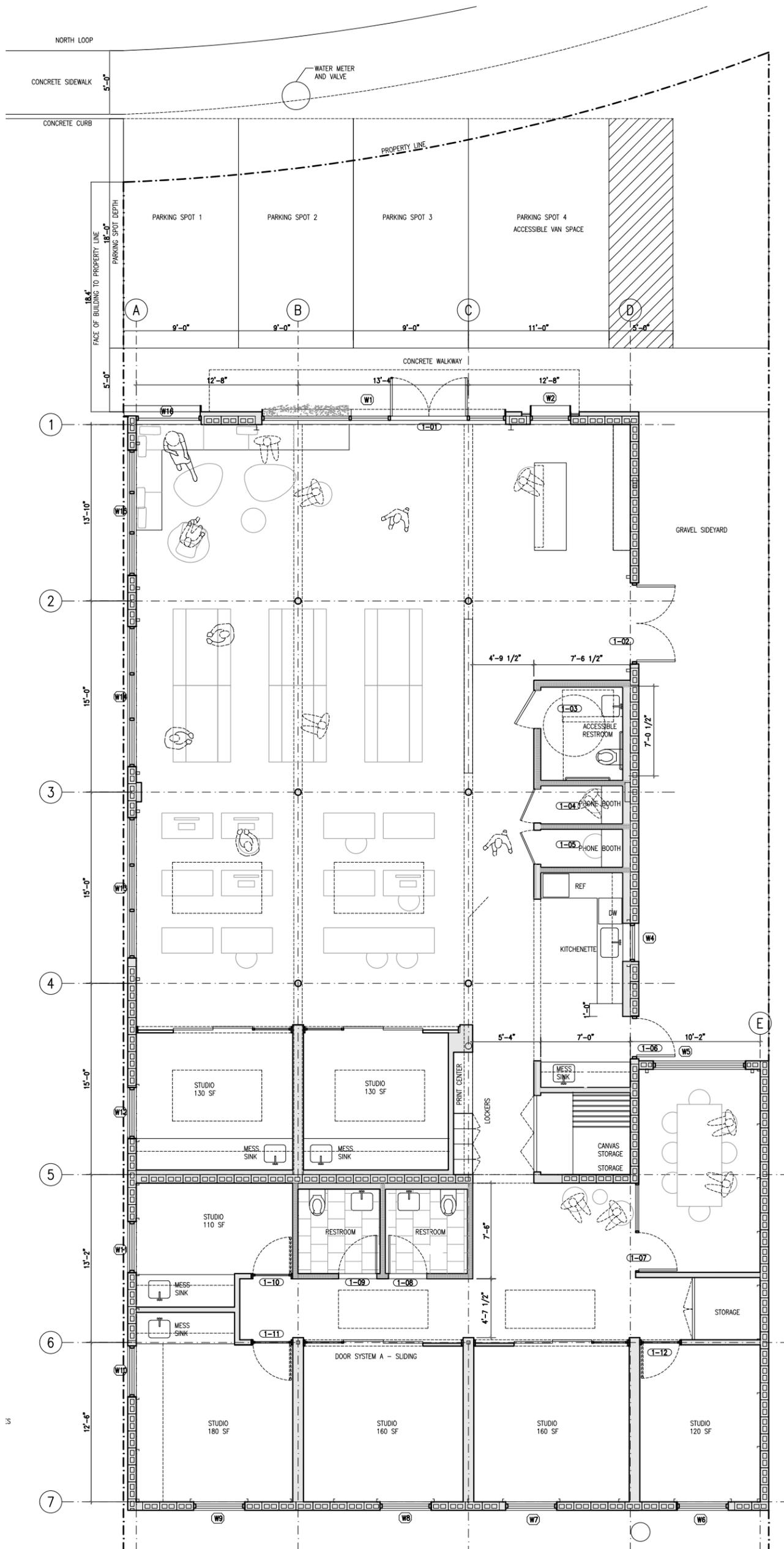


Lauren Cunningham

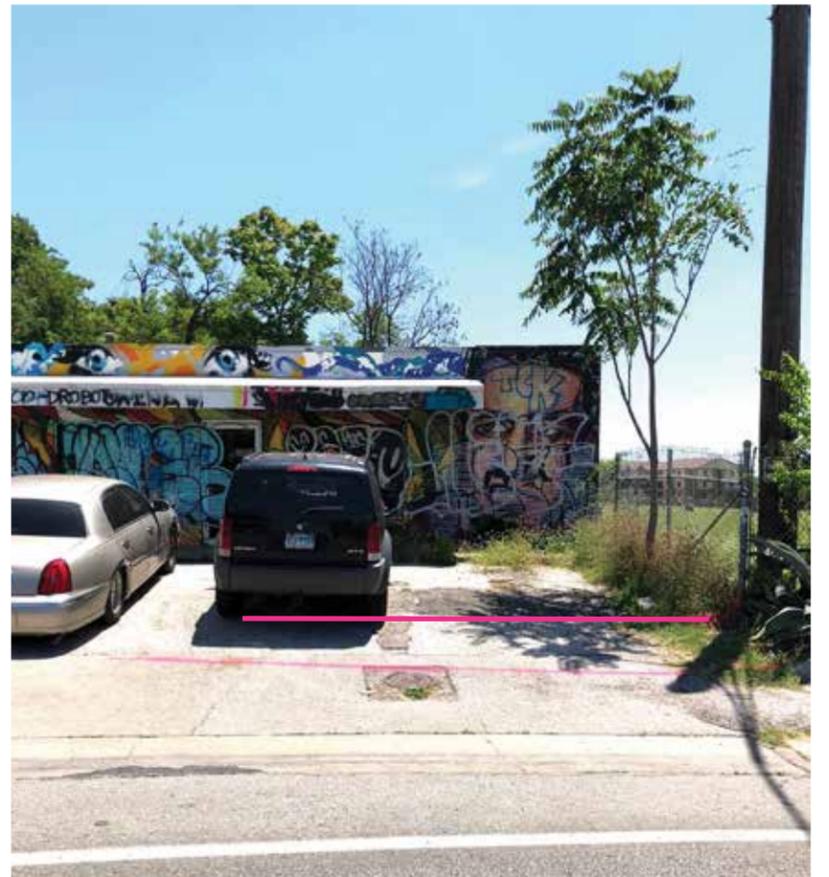
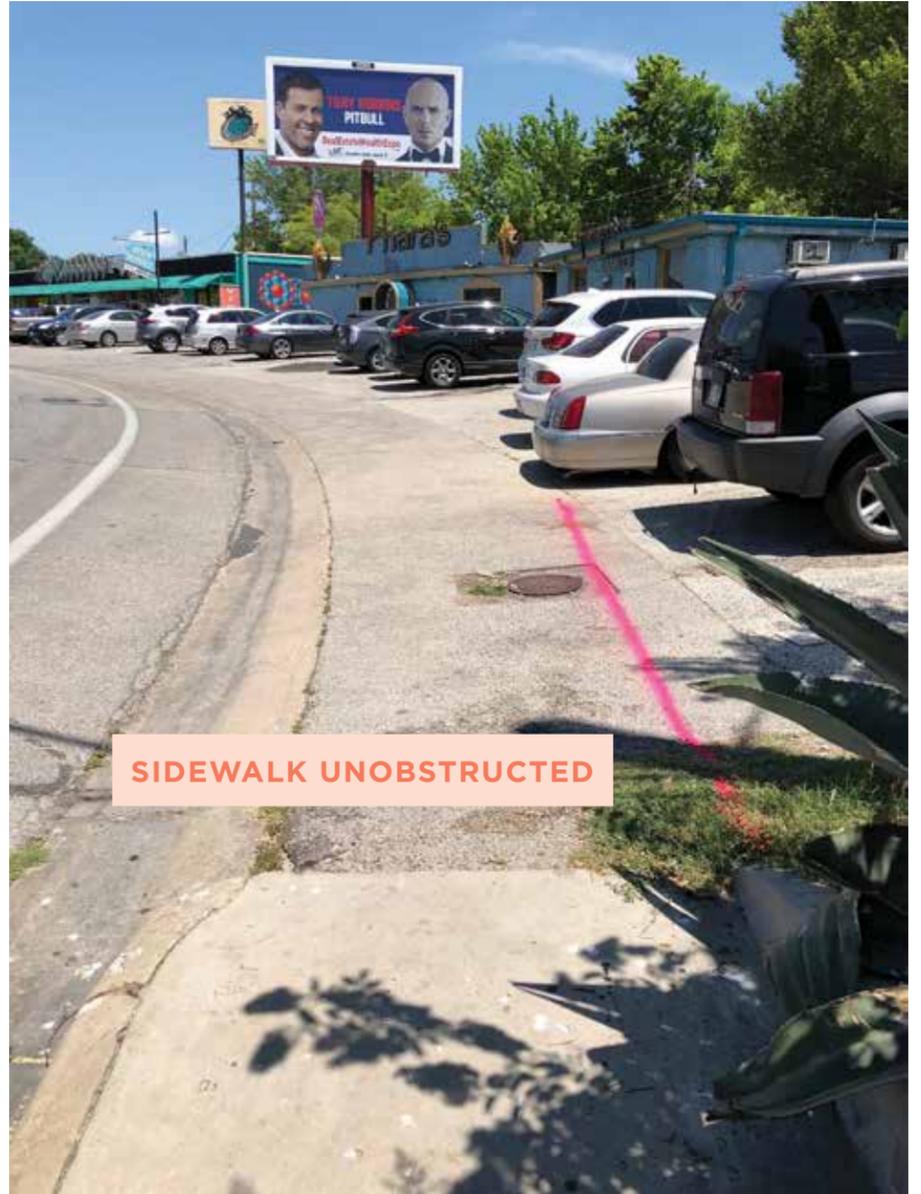


Joe Cunningham





The property line and 18' parking space depth are demonstrated below.



A parking share agreement has been established with the business immediately next door, Phara's Mediterranean Cuisine, 111 E North Loop Blvd. Our businesses have non-conflicting business hours. The Commune's hours will be 8am - 5pm and Phara's is open 6pm - midnight and closed on Mondays.

The Commune has 4 parking spaces and Phara's has 8 for a total of **12 usable spaces during The Commune's business hours.**

PARKING SHARE AGREEMENT

As owners of the property at 101 E North Loop Boulevard, Austin, Texas 78751 (The Commune), we hereby agree to a mutual parking share agreement with the neighboring business at 111 E North Loop Boulevard, Austin, Texas 78751 (Phara's Mediterranean Cuisine) commencing May 27, 2018.

The parties, with non-conflicting business hours, agree to share their parking spaces, as outlined below, for a total number of twelve (12) spaces:

The Commune: Four(4) spaces
Phara's: Eight (8) spaces

Phara's operating hours are Tuesday thru Sunday 6pm - midnight. These hours will not change.

Both parties agree to:

- Post no signage restricting parking by patrons, members or affiliates of the other party
- Tow no vehicles owned by patrons, members or affiliates of the other party unless left on property more than 48 hours
- Enter no additional parking share agreement which allows other parties to use their parking.

Enforcement of parking by patrons, members or affiliates of businesses outside of this agreement is the sole discretion of The Commune and Phara's.



Lauren Cunningham

5/27/18

Date



Joe Cunningham

5/27/18

Date



Jeannette Friedman

5/27/2018

Date

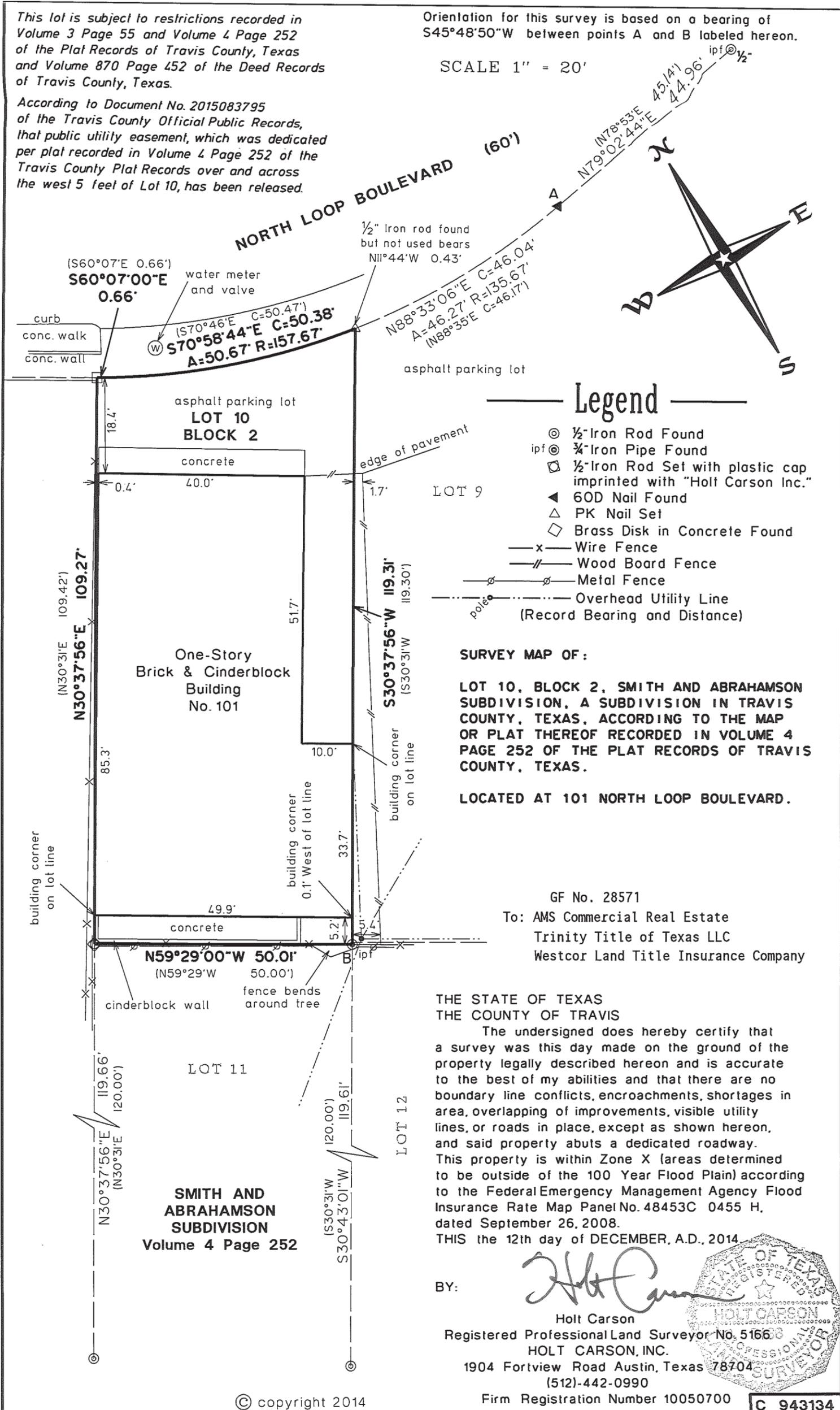


This lot is subject to restrictions recorded in Volume 3 Page 55 and Volume 4 Page 252 of the Plat Records of Travis County, Texas and Volume 870 Page 452 of the Deed Records of Travis County, Texas.

Orientation for this survey is based on a bearing of S45°48'50"W between points A and B labeled hereon.

SCALE 1" = 20'

According to Document No. 2015083795 of the Travis County Official Public Records, that public utility easement, which was dedicated per plat recorded in Volume 4 Page 252 of the Travis County Plat Records over and across the west 5 feet of Lot 10, has been released.



Legend

- ⊙ 1/2" Iron Rod Found
- ipf ⊙ 3/4" Iron Pipe Found
- ⊠ 1/2" Iron Rod Set with plastic cap imprinted with "Holt Carson Inc."
- ▲ 60D Nail Found
- △ PK Nail Set
- ◇ Brass Disk in Concrete Found
- x— Wire Fence
- //— Wood Board Fence
- o— Metal Fence
- o— Overhead Utility Line (Record Bearing and Distance)

SURVEY MAP OF:

LOT 10, BLOCK 2, SMITH AND ABRAHAMSON SUBDIVISION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 4 PAGE 252 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.

LOCATED AT 101 NORTH LOOP BOULEVARD.

GF No. 28571
To: AMS Commercial Real Estate
Trinity Title of Texas LLC
Westcor Land Title Insurance Company

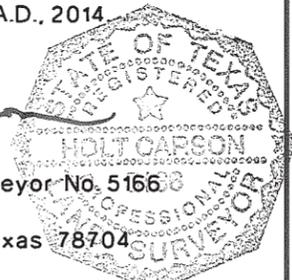
THE STATE OF TEXAS
THE COUNTY OF TRAVIS

The undersigned does hereby certify that a survey was this day made on the ground of the property legally described hereon and is accurate to the best of my abilities and that there are no boundary line conflicts, encroachments, shortages in area, overlapping of improvements, visible utility lines, or roads in place, except as shown hereon, and said property abuts a dedicated roadway. This property is within Zone X (areas determined to be outside of the 100 Year Flood Plain) according to the Federal Emergency Management Agency Flood Insurance Rate Map Panel No. 48453C 0455 H, dated September 26, 2008.
THIS the 12th day of DECEMBER, A.D., 2014

BY:

Holt Carson

Holt Carson
Registered Professional Land Surveyor No. 5166
HOLT CARSON, INC.
1904 Fortview Road Austin, Texas 78704
(512)-442-0990



Firm Registration Number 10050700

C 943134

005/42



NOTIFICATIONS

CASE#: C15-2018-0019
LOCATION: 101 E. North Loop



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY



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.

1" = 163'



Board of Adjustment General/Parking Variance Application

WARNING: Filing of this appeal stops all affected construction activity.

This application is a fillable PDF that can be completed electronically. To ensure your information is saved, [click here to Save](#) the form to your computer, then open your copy and continue.

The Tab key may be used to navigate to each field; Shift + Tab moves to the previous field. The Enter key activates links, emails, and buttons. Use the Up & Down Arrow keys to scroll through drop-down lists and check boxes, and hit Enter to make a selection.

The application must be complete and accurate prior to submittal. **If more space is required, please complete Section 6 as needed.** All information is required (if applicable).

For Office Use Only

| | | |
|--------------|-------------|-------------|
| Case # _____ | ROW # _____ | Tax # _____ |
|--------------|-------------|-------------|

Section 1: Applicant Statement

Street Address: _____

Subdivision Legal Description:

Lot(s): _____ Block(s): _____

Outlot: _____ Division: _____

Zoning District: _____

I/We _____ on behalf of myself/ourselves as
authorized agent for _____ affirm that on

Month _____, Day _____, Year _____, hereby apply for a hearing before the

Board of Adjustment for consideration to (select appropriate option below):

Erect Attach Complete Remodel Maintain Other: _____

Type of Structure: _____

Portion of the City of Austin Land Development Code applicant is seeking a variance from.

Four horizontal blue lines for text entry.

Section 2: Variance Findings

The Board must determine the existence of, sufficiency of, and weight of evidence supporting the findings described below. Therefore, you must complete each of the applicable Findings Statements as part of your application. Failure to do so may result in your application being rejected as incomplete. Please attach any additional supporting documents.

NOTE: The Board cannot grant a variance that would provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

I contend that my entitlement to the requested variance is based on the following findings:

Reasonable Use

The zoning regulations applicable to the property do not allow for a reasonable use because:

Seven horizontal blue lines for text entry.

Hardship

a) The hardship for which the variance is requested is unique to the property in that:

Five horizontal blue lines for text entry.

b) The hardship is not general to the area in which the property is located because:

Five horizontal blue lines for text entry.

Area Character

The variance will not alter the character of the area adjacent to the property, will not impair the use of adjacent conforming property, and will not impair the purpose of the regulations of the zoning district in which the property is located because:

Parking (additional criteria for parking variances only)

Request for a parking variance requires the Board to make additional findings. The Board may grant a variance to a regulation prescribed in the City of Austin Land Development Code Chapter 25-6, Appendix A with respect to the number of off-street parking spaces or loading facilities required if it makes findings of fact that the following additional circumstances also apply:

1. Neither present nor anticipated future traffic volumes generated by the use of the site or the uses of sites in the vicinity reasonably require strict or literal interpretation and enforcement of the specific regulation because:

2. The granting of this variance will not result in the parking or loading of vehicles on public streets in such a manner as to interfere with the free flow of traffic of the streets because:

3. The granting of this variance will not create a safety hazard or any other condition inconsistent with the objectives of this Ordinance because:

4. The variance will run with the use or uses to which it pertains and shall not run with the site because:

Section 3: Applicant Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Applicant Signature: *Jme Joe C* Date: 03/23/2018

Applicant Name (typed or printed): Lauren and Joe Cunningham

Applicant Mailing Address: 3205 Perry Lane

City: Austin State: Texas Zip: 78731

Phone (will be public information): 512 905 5182

Email (optional – will be public information): _____

Section 4: Owner Certificate

I affirm that my statements contained in the complete application are true and correct to the best of my knowledge and belief.

Owner Signature: *Parker Estes* Date: 3-28-18

Owner Name (typed or printed): PARKER ESTES

Owner Mailing Address: 2201 NORTH LAMAR

City: AUSTIN State: TX Zip: 78705

Phone (will be public information): 806 -654 -1147 AIT (512) 826 -564

Email (optional – will be public information): [REDACTED]

Section 5: Agent Information

Agent Name: CleanTag Permits

Agent Mailing Address: 4804 Manchaca Rd.

City: Austin State: TX Zip: 78745

Phone (will be public information): 512-826-4209

Email (optional – will be public information): [REDACTED]

Section 6: Additional Space (if applicable)

Please use the space below to provide additional information as needed. To ensure the information is referenced to the proper item, include the Section and Field names as well (continued on next page).

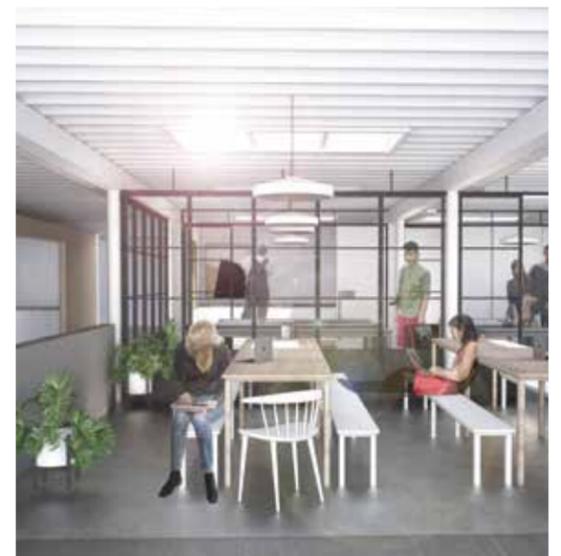
THE COMMUNE

101 E NORTH LOOP BOULEVARD
AUSTIN, TEXAS 78751

OWNERS LAUREN + JOE CUNNINGHAM,
FOLKMADE LLC

ARCHITECT NICK HUNT,
HUNT ARCHITECTURE

**CITY OF AUSTIN BOARD OF ADJUSTMENTS
APPLICATION FOR PARKING VARIANCE
SUPPORTING EVIDENCE**



Dear Board of Adjustments,

It is our understanding, from information given by the seller and the North Loop Neighborhood Association, that countless individuals and businesses have attempted to lease or purchase this building over the years, but none has been successful because:

- a) Current parking requirements make it very difficult to operate a business here
- b) The current state of the building requires too much effort and capital

Vacant and in disrepair for approximately 10 years, this building is an eyesore for the neighborhood and often houses homeless individuals. A broken down sedan has been parked on the property for months, and its owner sleeps in the vehicle at night.

We are determined to rehabilitate this property and turn it into something that will serve the community for years to come. As longtime members of the community ourselves, we seek to preserve the integrity of the neighborhood while greatly improving it.

Lauren Cunningham

Joe Cunningham



Toti Larson
President, North Loop Neighborhood Association
Austin, TX, 78751.

April 20, 2018

Dear City of Austin Board of Adjustments,

I am writing letter on behalf of the North Loop Neighborhood Association in regards to the proposal by Lauren and Joe Cunningham (Folkmade LLC) to purchase a business property within the North Loop Neighborhood at 101 E North Loop Blvd.

Joe and Lauren described their concept to the neighborhood association board and their plan was met with overwhelming support. This type of small business that provides workspaces for a range of professionals is exactly what our neighborhood would like to see and the North Loop Neighborhood Association unanimously supports their proposal. Their concept to turn this long abandoned property into a creative co-working space will be an asset to our neighborhood and business district.

The North Loop Neighborhood Association gives our full endorsement to this project and we ask that you grant them the parking variance they have applied for.

Sincerely,



Toti Larson
President, North Loop Neighborhood Association
Northloopatx.president@gmail.com

A parking share agreement has been established with the business immediately next door, Phara's Mediterranean Cuisine, 111 E North Loop Blvd. Our businesses have non-conflicting business hours. The Commune's hours will be 8am - 5pm and Phara's is open 6pm - midnight and closed on Mondays.

The Commune has 5 parking spaces and Phara's has 8 for a total of **13 usable spaces during The Commune's business hours.**

PARKING SHARE AGREEMENT

As owners of the property at 101 E North Loop Boulevard, Austin, Texas 78751 (The Commune), we hereby agree to a mutual parking share agreement with the neighboring business at 111 E North Loop Boulevard, Austin, Texas 78751 (Phara's Mediterranean Cuisine).

This agreement will commence once ownership of 101 E North Loop Boulevard, Austin, Texas 78751 legally transfers to Joe and Lauren Cunningham (Folkmade LLC) on or around May 1, 2018.

The parties, with non-conflicting business hours, agree to share their parking spaces, as outlined below, for a total number of thirteen (13) spaces:

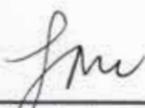
The Commune: Five (5) spaces

Phara's: Eight (8) spaces

Both parties agree to:

- Post no signage restricting parking by patrons, members or affiliates of the other party
- Tow no vehicles owned by patrons, members or affiliates of the other party unless left on property more than 48 hours
- Enter no additional parking share agreement which allows other parties to use their parking.

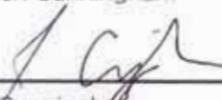
Enforcement of parking by patrons, members or affiliates of businesses outside of this agreement is the sole discretion of The Commune and Phara's.



Lauren Cunningham

4/1/18

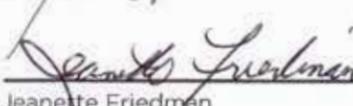
Date



Joe Cunningham

4/3/18

Date

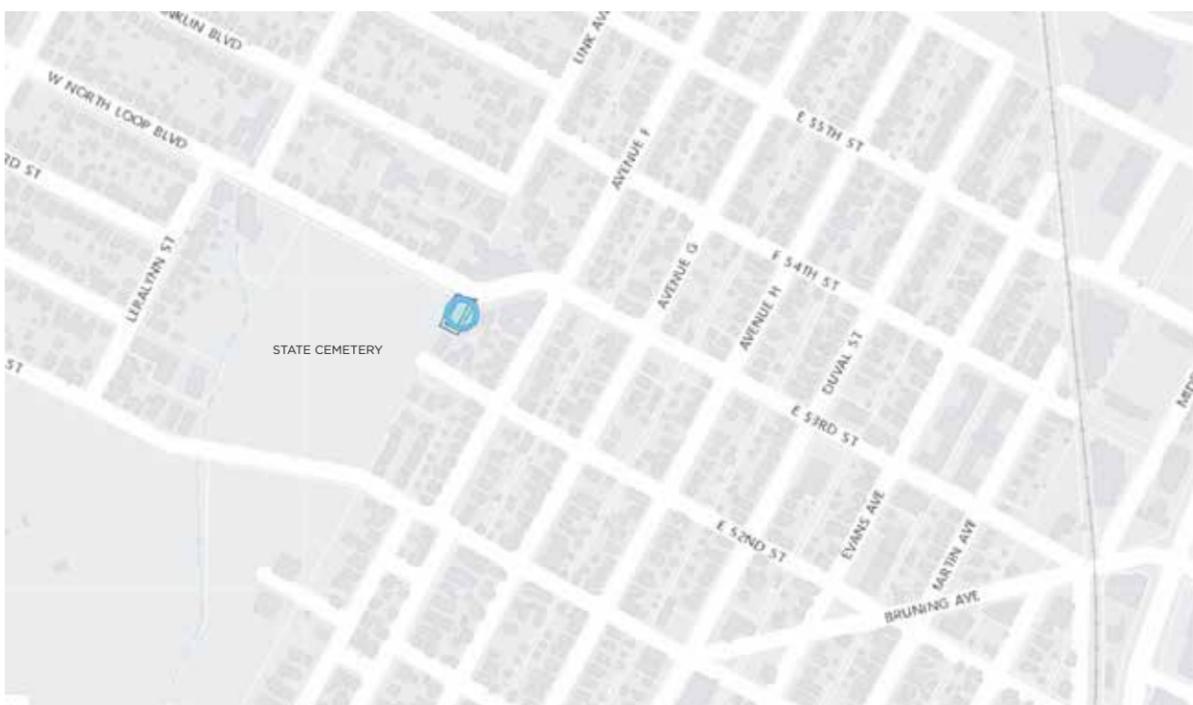
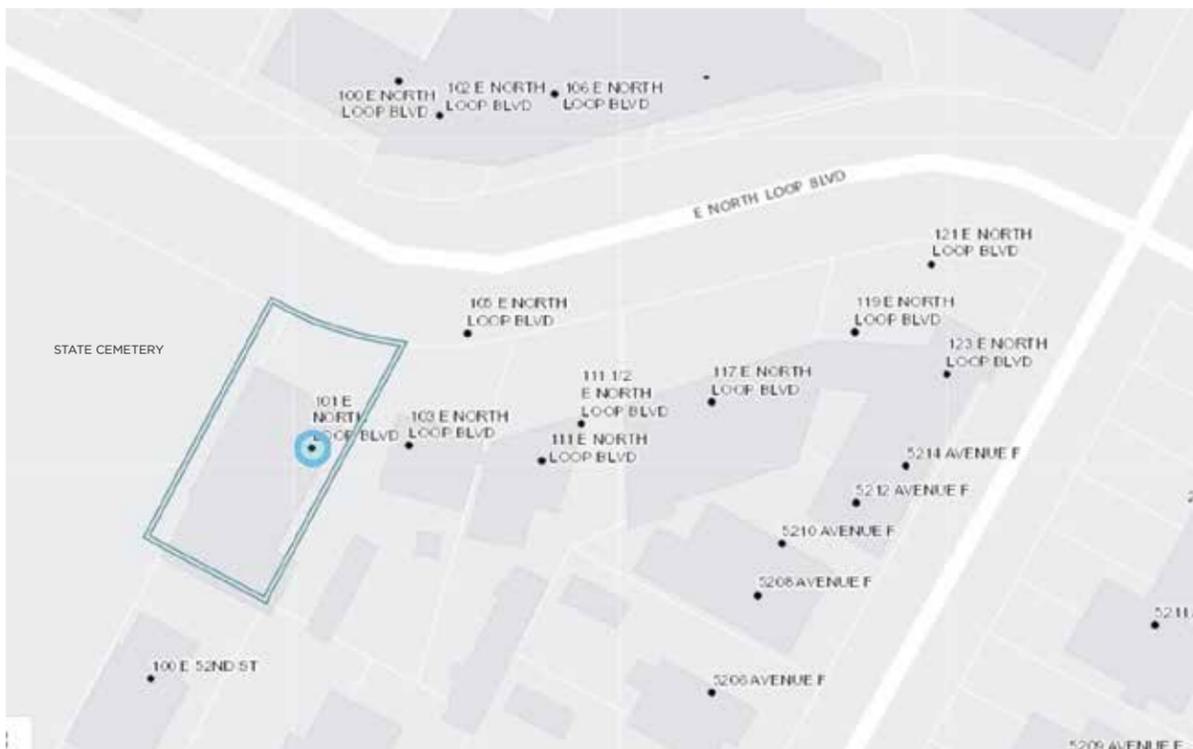


Jeanette Friedman

4/3/2018

Date





BUS ROUTES

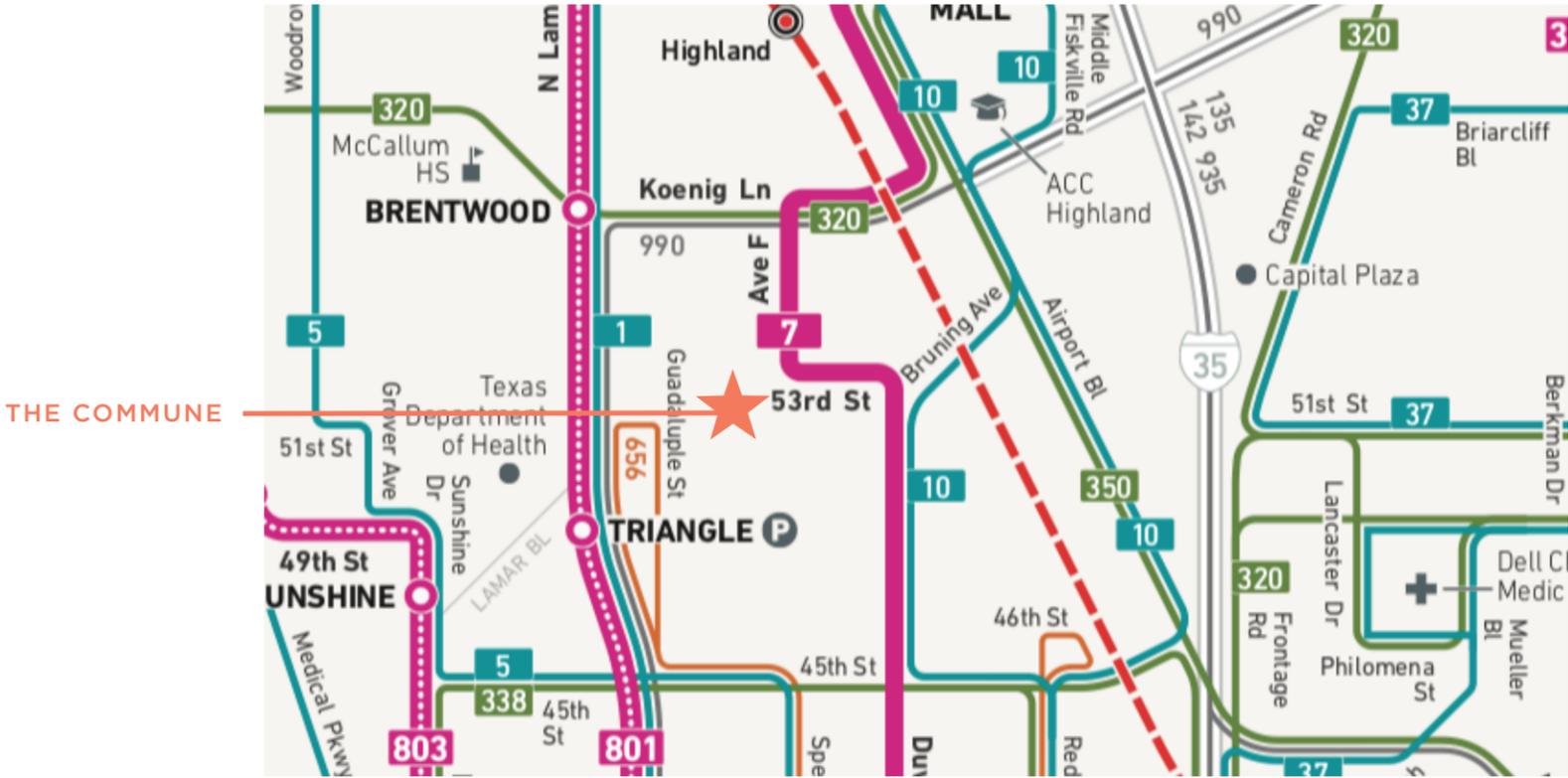
This address is served by the following routes:

- MetroBus 1, 7, 10, 801
- UT Shuttle 656

ALTERNATIVE TRANSPORTATION

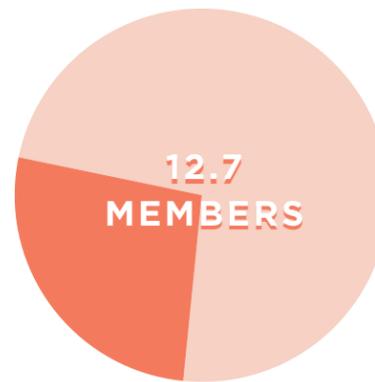
We will be offering a 10% discount to anyone living within a 2 mile radius of our address in order to encourage the following transportation methods and reduce the number of cars being parked at our business:

- Walking
- Bicycles/Scooters
- Public Transportation
- Rideshares (Uber, etc.)





FULL MEMBERSHIP CAPACITY



AVERAGE EXPECTED OCCUPANCY*

= 21% OF MEMBERSHIP CAPACITY
+ FULL STUDIO CAPACITY
(1 person per 7 studios)

At full capacity we expect our membership (dedicated desk and basic memberships), including studios, to be around 34 people. However, we expect the number of people physically occupying the space at any given time to be a fraction of that number.

Many of our members will work in industries which require them to move around a lot, and therefore, very few will be at The Commune all day, and many won't be there daily. These are people who travel for work, do site visits, meet clients in their homes, etc. These members may include:

- Architects
- Interior Designers
- Photographers
- Artists
- Graphic Designers
- Bloggers/Social Media Influencers
- Entrepreneurs

Small business owners and freelancers without their own place of business are drawn to co-working spaces for their many professional perks and often keep a membership for these perks regardless of frequency of usage. The Commune's perks will include:

- Business mailing address
- Mail delivery
- Conference space for meetings
- Photo studio access
- Printer and scanner access

* **COMPARABLE BUSINESS ANALYSIS**

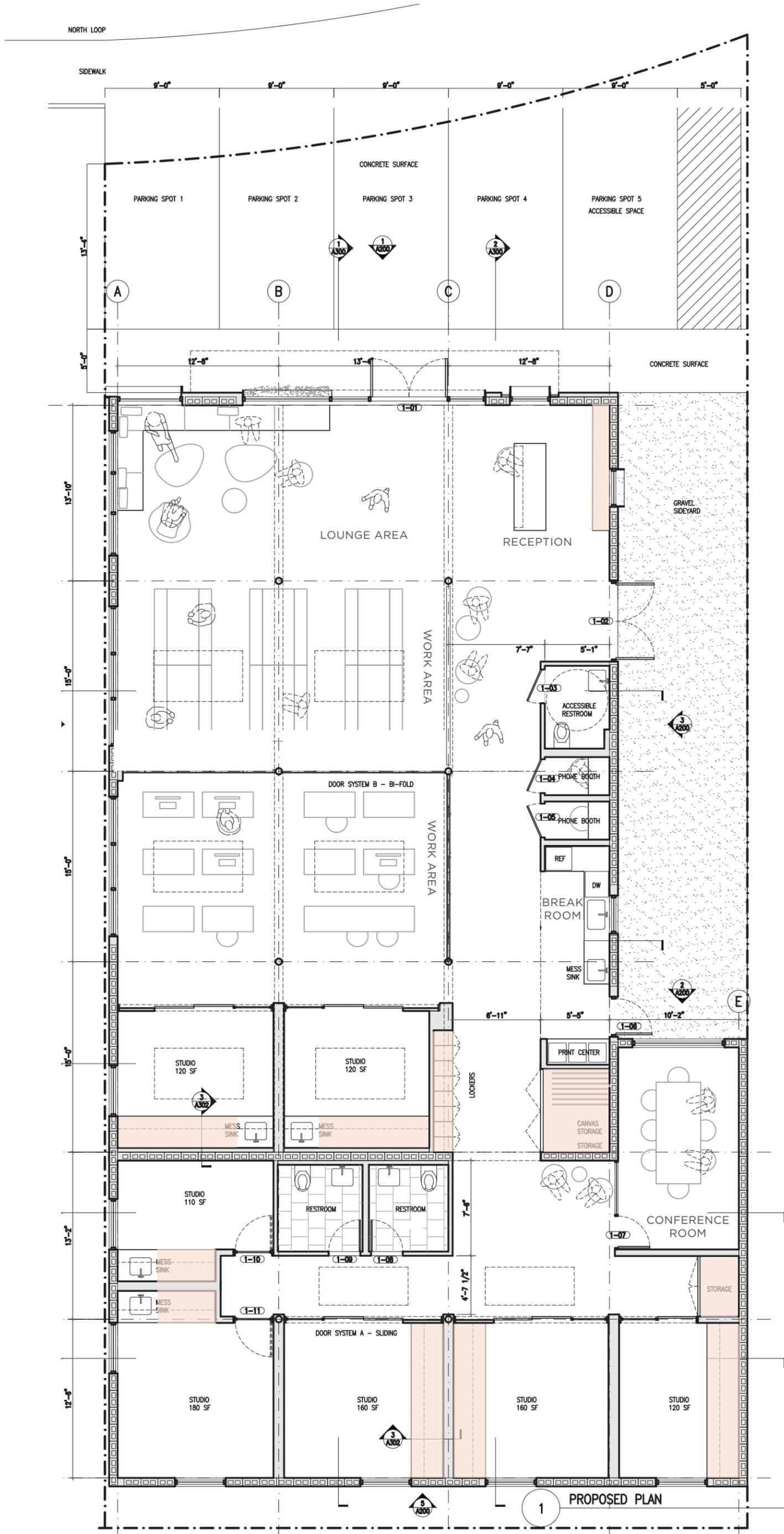
Owner Lauren Cunningham currently works at a creative co-working space in downtown Austin called The Refinery. This business model and its clientele are very similar to that of The Commune.

Lauren documented for one week (March 26 - 30, 2018) the number of members present each hour for 5 hours during normal business hours. Of 25 members who rent dedicated desks, an average of 5.2 people (21%) were present at any given time. We expect to have similar occupancy rates.

Hayley Swindell, owner of The Refinery, reviewed Lauren's analysis and agreed that this is representative of the general occupancy rates for The Refinery.

Hayley Swindell, Owner

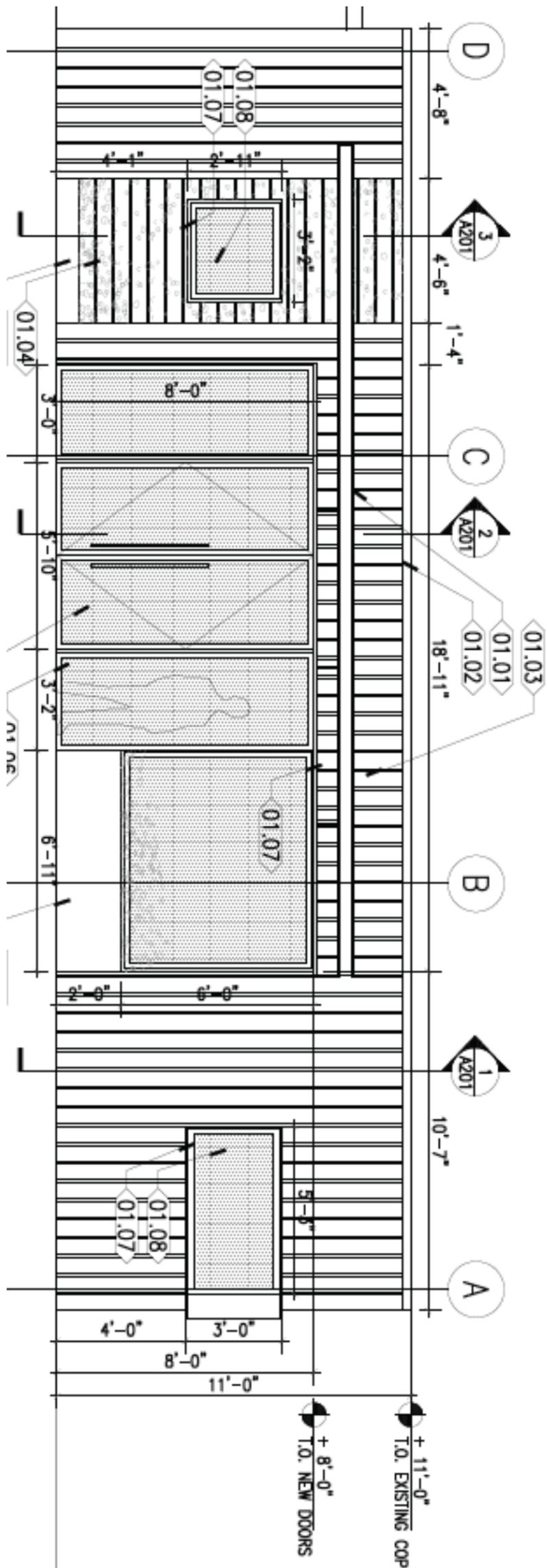
The Refinery
612 Brazos St
Austin, Texas 78701
512 671 0035



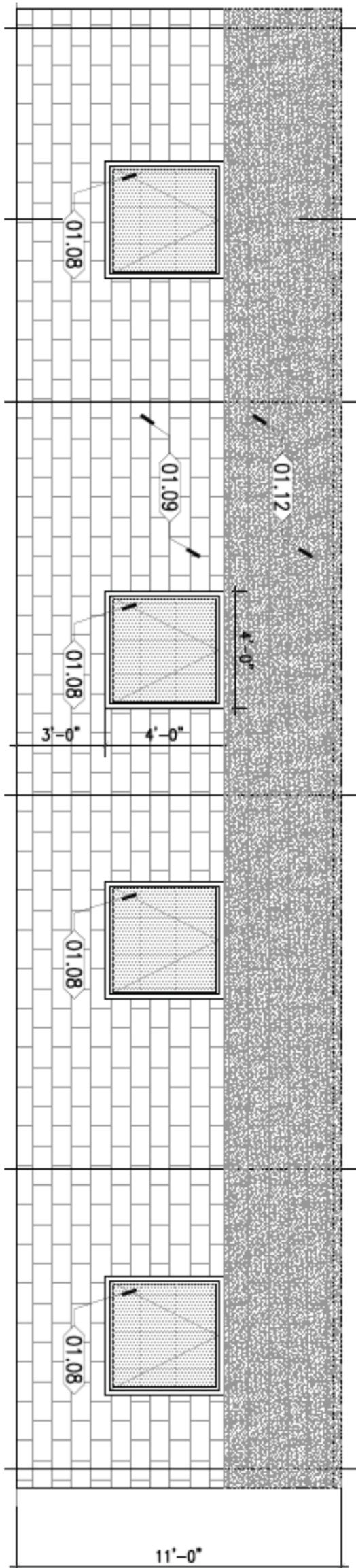
STORAGE
AREAS
HAVE BEEN
HIGHLIGHTED

1 PROPOSED PLAN

NORTH ELEVATION



SOUTH ELEVATION

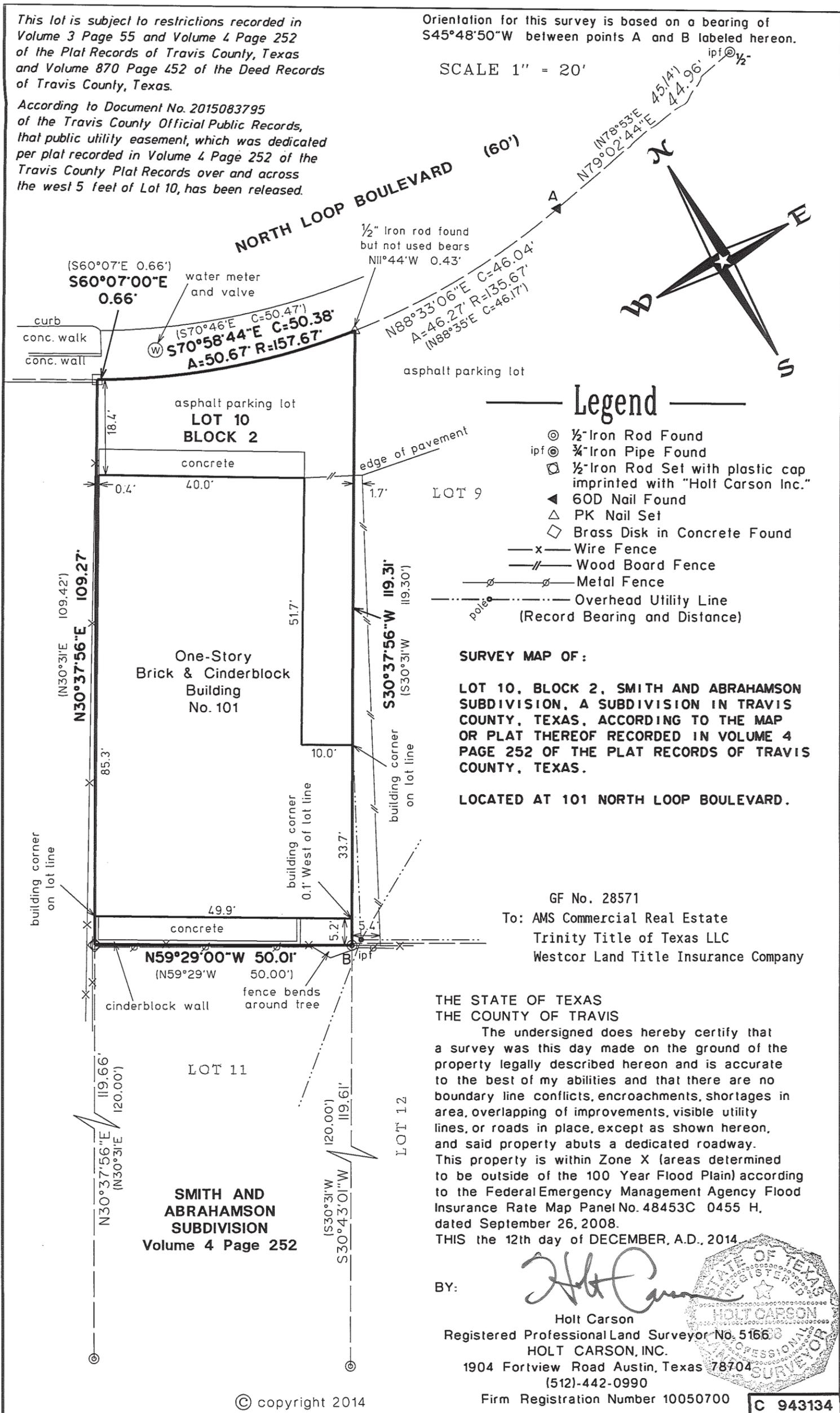


This lot is subject to restrictions recorded in Volume 3 Page 55 and Volume 4 Page 252 of the Plat Records of Travis County, Texas and Volume 870 Page 452 of the Deed Records of Travis County, Texas.

Orientation for this survey is based on a bearing of S45°48'50"W between points A and B labeled hereon.

SCALE 1" = 20'

According to Document No. 2015083795 of the Travis County Official Public Records, that public utility easement, which was dedicated per plat recorded in Volume 4 Page 252 of the Travis County Plat Records over and across the west 5 feet of Lot 10, has been released.



Legend

- ⊙ 1/2" Iron Rod Found
- ipf ⊙ 3/4" Iron Pipe Found
- ⊠ 1/2" Iron Rod Set with plastic cap imprinted with "Holt Carson Inc."
- ▲ 60D Nail Found
- △ PK Nail Set
- ◊ Brass Disk in Concrete Found
- x— Wire Fence
- //— Wood Board Fence
- o— Metal Fence
- o— Overhead Utility Line (Record Bearing and Distance)

SURVEY MAP OF:

LOT 10, BLOCK 2, SMITH AND ABRAHAMSON SUBDIVISION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 4 PAGE 252 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS.

LOCATED AT 101 NORTH LOOP BOULEVARD.

GF No. 28571
To: AMS Commercial Real Estate
Trinity Title of Texas LLC
Westcor Land Title Insurance Company

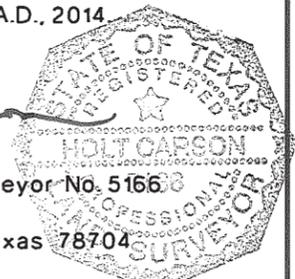
THE STATE OF TEXAS
THE COUNTY OF TRAVIS

The undersigned does hereby certify that a survey was this day made on the ground of the property legally described hereon and is accurate to the best of my abilities and that there are no boundary line conflicts, encroachments, shortages in area, overlapping of improvements, visible utility lines, or roads in place, except as shown hereon, and said property abuts a dedicated roadway. This property is within Zone X (areas determined to be outside of the 100 Year Flood Plain) according to the Federal Emergency Management Agency Flood Insurance Rate Map Panel No. 48453C 0455 H, dated September 26, 2008.
THIS the 12th day of DECEMBER, A.D., 2014.

BY:

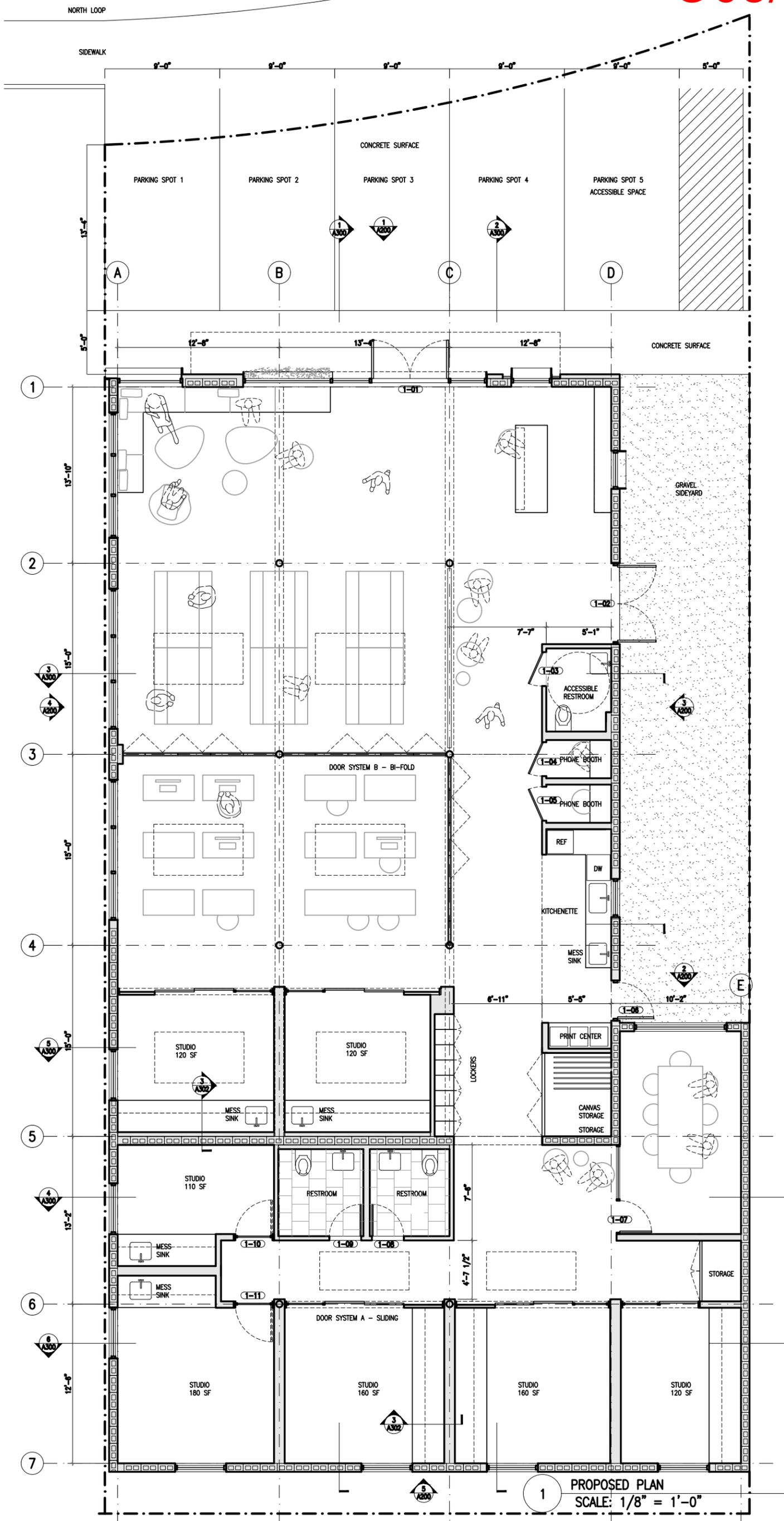
Holt Carson

Holt Carson
Registered Professional Land Surveyor No. 51668
HOLT CARSON, INC.
1904 Fortview Road Austin, Texas 78704
(512)-442-0990



Firm Registration Number 10050700

C 943134



Written comments must be submitted to the contact person listed on the notice before or at a public hearing. Your comments should include the name of the board or commission, or Council; the scheduled date of the public hearing; the Case Number; and the contact person listed on the notice. **All comments received will become part of the public record of this case.**

Case Number: C15-2018-0019, 101 E. North Loop
Contact: Leane Heldenfels, 512-974-2202, leane.heldenfels@austintexas.gov
Public Hearing: Board of Adjustment, May 14, 2018

Monique Lee
Your Name (please print)

I am in favor
 I object

5110 Ave. G 78751
Your address(es) affected by this application

Monique Lee
Signature Date 5-7-18

Daytime Telephone: 512. 471 4123

Comments:

Comments must be returned by 10 am the day of the hearing to be seen by the Board at this hearing. They may be sent via:

Mail: City of Austin-Development Services Department/ 1st Floor
Leane Heldenfels
P. O. Box 1088
Austin, TX 78767-1088
(Note: mailed comments must be postmarked by the Wed prior to the hearing to be seen by the Board at this hearing)
Fax: (512) 974-6305
Email: leane.heldenfels@austintexas.gov

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Public Hearing: Board of Adjustment, May 14, 2018

ROXAN LEE
Your Name (please print)

I am in favor
 I object

5110 AVENUE G 78751
Your address(es) affected by this application

Roxan Lee May 7, 2018
Signature Date

Daytime Telephone: 512 482 0061

Comments: _____

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P. O. Box 1088
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