

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

DATE: Monday September 9, 2019

CASE NUMBER: C15-2019-0040

Y Brooke Bailey
 Y Jessica Cohen
 Y Ada Corral
 - Melissa Hawthorne (OUT)
 Y William Hodge
 Y Don Leighton-Burwell
 Y Rahm McDaniel
 Y Darryl Pruett
 Y Veronica Rivera
 Y Yasmine Smith
 - Michael Von Ohlen (OUT)
 - Kelly Blume (Alternate)
 Y Martha Gonzalez (Alternate)
 Y Denisse Hudock (Alternate)

APPLICANT: Leah Boho

OWNER: Artesia 2018 Investments, LLC

ADDRESS: 8300 IH 35 SVRD SB

VARIANCE REQUESTED: The applicant is requesting a variance(s) to decrease the minimum site area requirement of Subchapter E, Article 4, Mixed Use Combining District, Section 4.2.1 (D)(6)(c) (District Standards) from a minimum requirement of 210,800 square feet (required) to 130,680 square feet (requested) in order to construct a Multi-Family use in a "CS-MU-CO-NP", General Commercial Services –Mixed Use – Conditional Overlay –Neighborhood Plan zoning district. (Georgian Acres Neighborhood Plan). The Land Development Code requires that in an MU combining district that is combined with general office (GO), Community Commercial, (GR) General Commercial Services (CS), or Community Services – Liquor Sales (CS-1) base district, the minimum site area for each dwelling unit is: (i) 800 square feet, for an efficiency dwelling unit; (ii) 1,000 square feet, for a one bedroom dwelling unit; and (iii) 1,200 square feet, for a dwelling unit with two or more bedrooms.

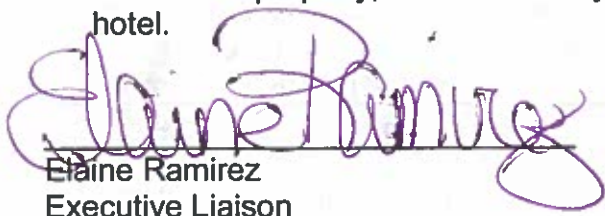
BOARD'S DECISION: July 8, 2019 **POSTPONED TO AUGUST 12, 2019 BY APPLICANT DUE TO SHORTAGE OF A BOARD MEMBER;** Aug 12, 2019 The public hearing was closed by Chair Don Leighton-Burwell, Board Member Melissa Hawthorne motion to postpone to September 9, 2019, Board Member Veronica Rivera second on an 11-0 vote; **POSTPONED TO SEPTEMBER 9, 2019;** Sept 9, 2019 The public hearing was closed by Chair Don Leighton-Burwell, Board Member Rahm McDaniel motions to Grant

with conditions as per Exhibit 3 -Restrictive Covenant and that the pool be retained with safety fencing, Board Member Denisse Hudock seconds on an 11-0 vote; GRANTED WITH CONDITIONS AS PER EXHIBIT 3-RESTRICTIVE COVENANT AND THAT THE POOL BE RETAINED WITH SAFETY FENCING.

EXPIRATION DATE: September 9, 2020

FINDING:

1. The Zoning regulations applicable to the property do not allow for a reasonable use because: the Mixed Use Zoning district standards do not allow for a reasonable use of existing building stock to provide multi-family use given the size of the lot space available.
2. (a) The hardship for which the variance is requested is unique to the property in that: conversion of the existing building stock into a multi-family use would require part of the building to be raised or entire estate to be destroyed and reconstructed with fewer units.
(b) The hardship is not general to the area in which the property is located because: conversion of an existing hotel building into affordable multi-family residences is not frequent in the area, existing building surroundings are not challenge by the site, size of building, size of the property they reside on.
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: the variance will not alter the character of the area because the building exists today and has existed since 1981, the adjacent property to the north, that wraps around the west of the property, is a multi-family residence and the property to the south is a hotel.


Elaine Ramirez
Executive Liaison


Don Leighton-Burwell
Chairman

Exhibit 3

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions (this "Declaration") is entered into by and among **Artesia 2018 Investments LLC**, a Texas limited liability corporation ("Owner"), and **HOME BASE TEXAS**, a Texas non-profit corporation ("HomeBase"), as of the ____ day of September, 2019.

RECITALS

WHEREAS, Owner owns the tract of land described in City of Austin Variance Case No. C15-2019-0040 more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property");

WHEREAS, Owner intends to utilize the existing improvements as multifamily (the "Project"), and, in order to do so, has made application for a variance to the site area requirements described in City Code Subchapter E, Article 4, Mixed Use Combining District, Section 4.2.1 (D)(6)(c) from a minimum requirements of 210,800 square feet (required) to 130,680 from the City of Austin ("City") in Variance Case No. C15-2019-0040 (the "Variance Case");

WHEREAS, Owner intends to redevelop the Property described as Lot 2, Dinerstein Addition No. 2, a subdivision in Travis County, Texas, according to the map or plat of record in Volume 80, Page 72, of the Plat Records of Travis County, Texas ("Artesia Property"), and, in connection therewith, has submitted a variance application to the City in Variance Case No. C15-2019-00404 (the "Artesia Variance Case");

WHEREAS, Owner has agreed upon approval of the Variance Case ("Variance Approval"), the Property shall be restricted by these covenants, and that these conditions shall be filed of record with the Official Public Records of Travis County, Texas, and shall henceforth bind the Owner and its successors and assigns, and restrict the use of the Property as described herein, and such restrictions shall be made enforceable by HomeBase through this Declaration;

WHEREAS, upon the effective date of the Variance Approval of the Variance Case, and subject to all of the terms and conditions of this Declaration, Owner has voluntarily agreed to henceforth restrict the Property with certain restrictive covenants, which are described herein; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to all of the terms and conditions of this Declaration, the undersigned agrees to hold, sell and convey the Property subject to the following covenants, conditions and restrictions, which are impressed upon the Property by this

Declaration.

I. DECLARATIONS AND AGREEMENTS

- 1.1 Utilization of Variance Entitlements. Owner may only utilize the entitlements made applicable to the Property by the Variance Case if the Project contains the conditions expressed in this covenant.
- 1.2 Covenants, Conditions and Restrictions upon Property. Owner declares that the Property is subject to the following covenants, conditions and restrictions, which shall run with the Property and bind all parties having right, title, or interest in or to the Property or any part, their respective heirs, successors, and assigns. Each deed or conveyance of any kind conveying all or a portion of the Property will conclusively be held to have been executed, delivered, and accepted subject to these covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in the deed or conveyance.
 - 1.2.1 Affordability Requirements. Commencing on the date the City of Austin issues a certificate of occupancy for the project developed on the Property (the "Project") that utilizes entitlements granted by the variance and continuing for a period of forty (40) years thereafter (the "Affordability Period"), fifty percent (50%) of the residential units within the Project shall be reserved as affordable for rental by households earning no more than sixty percent (60%) of the annual median family income in the Austin statistical metropolitan area, as determined by the director of the City of Austin's Neighborhood Housing and Community Development Office (the foregoing restriction and covenant being referred to herein as the "Affordability Restriction").

II. DEFAULT AND REMEDIES

- 2.1 Remedies. Following the occurrence of a breach of Owner's obligations under Section 1.2 of this Declaration, only HomeBase, including its successors and assigns, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. If Owner shall fail to comply with any term, provision or covenant of this Declaration and shall not cure such failure within thirty (30) days after receipt of written notice (or if the default is of such character as to require more than thirty (30) days to cure and the Owner shall fail to commence to cure the same within such period or shall fail to use reasonable diligence in curing such default thereafter) from HomeBase to the Owner of such failure, HomeBase shall have the option of pursuing any remedy it may have at law or in equity, including, without limitation, specific performance or injunctive

relief from a court of competent jurisdiction.

III. GENERAL PROVISIONS

- 3.1 No Third-Party Beneficiary. The provisions of this Declaration are for the exclusive benefit of the parties hereto, and their successors and assigns, and not for the benefit of any third person, including without limitation, the City of Austin, nor shall this Declaration be deemed to have conferred any rights, express or implied, upon any third person or the public.
- 3.2 No Dedication. No provision of this Declaration shall ever be construed to grant or create any rights whatsoever in or to any portion of the Property other than the covenants, conditions and restrictions specifically set forth herein. Nothing in this Declaration shall ever constitute or be construed as a dedication of any interest herein described to the public or give any member of the public any right whatsoever.
- 3.3 Notice. All notices required or permitted to be given hereunder, or given in regard to this Declaration, shall be in writing and the same shall be given and be deemed to have been served, given and received (a) one (1) business day after being placed in a prepaid package with a national, reputable overnight courier addressed to the other party at the address hereinafter specified; or (b) if mailed, three (3) business days following the date placed in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address hereinafter specified. Owner may change their respective addresses for notices by giving five (5) business days' advance written notice to the other in the manner provided for herein. Until changed in the manner provided herein, Owner and Homebase's address for notice is as follows:

Owner:

Artesia 2018 Investments LLC
1000 E. Cesar Chavez Street, Suite 200
Austin, Texas 78702
Attn: Colin Brothers

With a copy to:

Drenner Group, P.C.
200 Lee Barton Drive, Suite 100
Austin, Texas 78704
Attn.: Stephen O. Drenner

HomeBase

HomeBase Texas

Attn: Phyllis Snodgrass

500 West Ben White Blvd., Suite 100

Austin, Texas 78704

- 3.4 Attorney's Fees. The unsuccessful party in any non-appealable and final action brought to enforce this Declaration shall pay to the prevailing party a reasonable sum for costs incurred by the prevailing party in enforcing this Declaration, including reasonable attorneys' fees and court costs.
- 3.5 Entire Declaration. This Declaration constitutes the entire agreement between the parties hereto regarding the matters set forth herein. The parties do not rely upon any statement, promise or representation with respect to the matters set forth herein that is not herein expressed, and, except in accordance with Section 3.11 below, this Declaration once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.
- 3.6 Severability. If any provision of this Declaration shall be declared invalid, illegal or unenforceable in any respect under any applicable law by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. It is the further intention of the parties that in lieu of each covenant, provision or agreement of this Declaration that is held invalid, illegal or unenforceable, that be added as a part hereof a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may possible and be legal, valid and enforceable.
- 3.7 Rights of Successors; Interpretation of Terms. The restrictions, benefits and obligations hereunder shall create benefits and servitudes running with the land. Subject to the other provisions hereto, this Declaration shall bind and inure to the benefit of the parties and their respective successors and assigns. Reference to "Owner" includes the future owners of their respective portions of the Property, including any portions of the Property that may in the future be created as separate tracts pursuant to a resubdivision of any portion of the Property. The singular number includes the plural and the masculine gender includes the feminine and neuter.
- 3.8 Estoppel Certificates. Owner (or any mortgagee holding a first lien security interest in any portion of the Property) may, at any time and from time to time, in connection with

the leasing, sale or transfer of its tract, or in connection with the financing or refinancing of its tract by any bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver a written notice to the other party requesting that such party execute a certificate, in a form reasonably acceptable to such party, certifying that, to such party's then current actual (not constructive) knowledge, (a) the other party is not in default in the performance of its obligations to or affecting such party under this Declaration, or, if in default, describing the nature and amount or degree of such default, and (b) such other information regarding the status of the obligations under this Declaration as may be reasonably requested. A party shall execute and return such certificate within twenty (20) days following its receipt of a request therefor.

- 3.9 Counterparts; Multiple Originals. This Declaration may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- 3.10 Conflict with Ordinance. To the extent that any of the covenants, conditions and restrictions contained within this Declaration conflict with terms or conditions addressed in the variance issued by the City of Austin in connection with the Variance Case, or any supporting materials, for purposes of this Declaration the terms and conditions of this Declaration shall control.
- 3.11 Approval of the City Applications. Notwithstanding any other provision of this Declaration to the contrary, the agreements of Owner reflected herein are conditioned upon final approval of the Variance Case by the City of Austin Board of Adjustment, with no subsequent appeal, and in a form and on terms and conditions acceptable to Owner in its sole discretion. If the Variance Approval is not granted in a form acceptable to Owner, the covenants, conditions and restrictions contained within this Declaration shall not be applicable and shall be terminated. To the extent that (i) this Declaration is not deemed applicable and terminated pursuant to the immediately preceding sentence, (ii) at any time following the expiration of the Affordability Period, (iii), or on any day following the date the Project ceases to exist as a result of a redevelopment that does not include residential multifamily housing, this Declaration shall be deemed of no further force and effect and shall terminate and an affidavit executed by Owner and recorded in the Official Public Records of Travis County, Texas, certifying the facts supporting and evidencing the termination of this Declaration (a "Termination Affidavit") shall be deemed sufficient to release this Declaration from the Official Public Records of Travis County, Texas, such that this Declaration shall no longer encumber the Property. Third parties shall have the right to rely on such Termination Affidavit, provided, however, at Owner's request and expense, HomeBase shall execute and acknowledge a counterpart to such Termination Affidavit.

3.12 Effective Date. This Declaration shall become effective upon the final effective date of the Variance Case by the City of Austin in a form acceptable to Owner. If the Variance Case is not approved in a form acceptable to Owner, then, consistent with Section 3.11 above, this Declaration shall be void and of no effect.

[The Remainder of This Page Is Intentionally Left Blank. Signature Pages Follow.]

EXECUTED, effective as of the Effective Date as provided herein above.

OWNER:

Artesia 2018 Investments LLC,
a Texas limited partnership

By: ARE Ventures LLC,
a Texas limited liability company,
its Manager

By: _____
Colin Brothers, Manager

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of September, 2019, by Colin Brothers, Manager of ARE Ventures LLC, a Texas limited liability company, the Manager of Artesia 2018 Investments LLC, a Texas limited liability company, on behalf of said entities.

Notary Public, State of Texas

HomeBase is executing this Declaration solely for the purpose of having the ability to enforce the Affordability Restriction pursuant to the express terms of this Declaration.

HOMEBASE:

HOMEBASE TEXAS, a Texas non-profit corporation

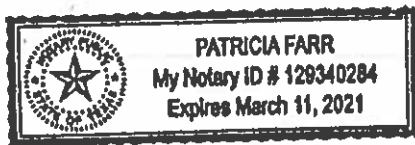
By: Phyllis Snodgrass

Name: Phyllis Snodgrass

Title: Authorized Person

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 9 day of Sept., 2019, by Phyllis Snodgrass, the Authorized Person of TEXAS HOMEBASE, a Texas non-profit corporation, on behalf of the non-profit corporation.



Patricia Farr
Notary Public, State of Texas

Exhibit A

Property

Lot 2, Dinerstein Addition, according to the map or plat thereof recorded in Volume 80,
Page 72, Plat Records of Travis County, Texas.