

ZONING CHANGE REVIEW SHEET

CASE: C14-2024-0054 (8200 & 8300 North MoPac)

DISTRICT: 10

ADDRESS: 8200 & 8300 North MoPac Expressway

ZONING FROM: LO, LR

TO: GR-MU-V-DB90

SITE AREA: 12.26 acres

PROPERTY OWNER: OP 8200 MoPac Property, LLC & OP 8300 MoPac Property, LLC

AGENT: Drenner Group, PC (Amanda Swor)

CASE MANAGER: Sherri Sirwaitis (512-974-3057, sherri.sirwaitis@austintexas.gov)

STAFF RECOMMENDATION:

Staff recommends GR-MU-V-DB90, Community Commercial-Mixed Use-Vertical Mixed Use Building-Density Bonus 90 Combining District, zoning.

ZONING AND PLATTING COMMISSION ACTION / RECOMMENDATION:

July 2, 2024: Postponed to August 6, 2026 at the neighborhood's request by consent (9-0); L. Stern-1st, B. Greenberg-2nd.

August 6, 2026

CITY COUNCIL ACTION:

ORDINANCE NUMBER:

ISSUES:

In December of 2023, Ordinance No. 20220609-080, Ordinance No. 20221201-056 and Ordinance No. 20221201-055 were invalidated. On March 11, 2024, the City Council approved Ordinance No. 20240229-073 to create the “DB90” combining district, which amended City Land Development Code - Title 25 to create a new zoning district for a density bonus program that grants 30 feet in height above the base zoning district, to a maximum of 90 feet, and modifies site development regulations including compatibility standards. Subsequently, the applicant submitted this new rezoning application to request the -DB90 combining district.

CASE MANAGER COMMENTS:

The property in question is a 12.26 acre tract of land that is developed with an office complex that has LO zoning, with footprint areas of LR zoning. The lot to the south, across Steck Avenue, contains a vacant restaurant use (Luby’s) that is zoned MF-6. To the north, there are MF-2 and LO zoned lots that are developed with multifamily (Bent Tree Apartments) and office (The Woods II) uses. The land to the west is developed with residential condos (The Arbors) zoned LO. In this application, the property owner is requesting to rezone these lots to GR-MU-V-DB90 zoning to allow for a phased redevelopment of the existing surface parking and office uses. The applicant states that their intent is to support residential, office, and retail uses and allow for participation in the DB90 program. *(Please see Applicant’s Request Letter – Exhibit C).*

A development utilizing the “density bonus 90” incentives is permitted with a base GR district and must include an affordability component for residential use in order to obtain incentives, including height maximum of 90 feet in the GR district (60 feet maximum in the base district plus 30 feet incentive) and relaxation of development and compatibility standards, such as FAR, setbacks and building coverage. There are several methods of satisfying DB90 development affordability requirements. There are two options for projects including rental units:

- 1) a minimum of 12% of the rental units in a building are affordable for a 40-year period for households earning 60% or less than the Austin-Round Rock Metropolitan Statistical Area MFI; or
- 2) a minimum of 10% of the rental units are affordable for a 40-year period as described above for households earning 50% or less MFI.

There are two options of satisfying DB90 development affordability requirements which include ownership units:

- 1) a minimum of 12% of the rental units in a building are affordable for a 40-year period for households earning 80% or less than the Austin-Round Rock Metropolitan Statistical Area MFI; or
- 2) an in-lieu-fee payment to the Housing Trust Fund, equivalent to the required percentage of the total residential units, including the mix of bedrooms required, at the rate set in the fee schedule at the time of final site plan submission.

The staff recommends GR-MU-V-DB90, Community Commercial-Mixed Use-Vertical Mixed Use Building-Density Bonus 90 Combining District, zoning because this property is located at the northwest corner of the intersection of an arterial roadway, Steck Avenue, and a highway, North MoPac Expressway and is near 'Neighborhood Activity Center' as identified in the Image Austin Comprehensive Plan. The proposed GR-MU-V-DB90 zoning would be compatible and consistent with the surrounding uses because this property is adjacent to multifamily, office and commercial zoning. Commercial Mixed-Use zoning overlay will allow a mixture of uses and will permit future additional housing opportunities in this area of the city.

The applicant agrees with the staff's recommendation.

BASIS FOR RECOMMENDATION:

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

Community Commercial district is intended for office and commercial uses serving neighborhood and community needs, including both unified shopping centers and individually developed commercial sites, and typically requiring locations accessible from major traffic ways.

Mixed Use combining district is intended for combination with selected base districts, in order to permit any combination of office, retail, commercial, and residential uses within a single development.

Vertical Mixed Use Building (V) combining district may be applied in combination with any commercial base zoning district and allows for a combination of office, retail, commercial and residential uses within a vertical mixed use building.

Density Bonus 90 combining district, in exchange for providing affordable housing units and in combination with commercial base zoning districts, allows a mixture of office, retail, commercial, and residential uses with modifications of compatibility standards and site development regulations including increased building height.

2. Zoning should allow for reasonable use of the property.

The proposed GR-MU-V-DB90 zoning will permit the applicant to develop residential units on this site creating additional housing opportunities in this area of the city. There are transportation options in this area to support residential uses as there is a Capital Metro bus stop adjacent to this site on Steck Avenue.

3. Zoning should promote the policy of locating retail and more intensive zoning near the intersections of arterial roadways or at the intersections of arterials and major collectors.

Commercial Mixed-Use zoning is appropriate at this location. The property in question is located at the northwest corner of the intersection of an arterial roadway, Steck Avenue,

and a highway, North MoPac Expressway. The site is also located near, a ‘Neighborhood Activity Center’ (the Anderson Lane Neighborhood Center), as identified on the Imagine Austin’s Growth Concept Map, found in the Image Austin Comprehensive Plan.

4. *Zoning should promote clearly-identified community goals, such as creating employment opportunities or providing for affordable housing.*

This rezoning authorizes a property to participate in a voluntary density bonus or incentive program that provides modifications to development regulations or other regulatory-related benefits in exchange for community benefits. In exchange for increased development potential, the development is required to comply with affordable housing requirements.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	LO, LR	Office (Oak Point Park North)
<i>North</i>	MF-2, LO	Multifamily (Bent Tree Apartments), Office (The Woods II)
<i>South</i>	MF-6	Vacant Restaurant (Luby’s)
<i>East</i>	ROW	North MoPac Expressway
<i>West</i>	MF-2	Multifamily (The Arbors Condos)

AREA STUDY: N/A

WATERSHED: Shoal Creek

SCHOOLS: Austin I.S.D.

Hill Elementary School
Murchison Middle School
Anderson High School

NEIGHBORHOOD ORGANIZATIONS:

Austin Independent School District,
Austin Lost and Found Pets,
Austin Neighborhoods Council,
Friends of Austin Neighborhoods,
NW Austin Neighbors,
Neighborhood Empowerment Foundation,
Northwest Austin Civic Association,
SELTexas,
Shoal Creek Conservancy, Sierra Club,
Austin Regional Group,
TNR BCP - Travis County Natural Resources

AREA CASE HISTORIES:

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-2021-0100 (Luby's Site: 8176 North MoPac Expressway)	LR to MF-6	8/17/2021: Motion to approve staff's recommendation of MF-6 zoning (5-1, D. King-No and R. Woody-absent). Commissioner's J. Kiolbassa, A. Denkler, B. Greenberg and C. Thompson-abstained. Therefore, the case is forwarded to the City Council without a recommendation.	10/14/2021: Approved the staff's recommendation of MF-6 zoning by consent (11-0); P. Renteria-1st, P. Ellis-2nd. 11/04/2021: The public hearing was conducted and a motion to close the public hearing and approve the MF-6 district zoning was approved on Council Member Renteria's motion, Council Member Ellis' second on an 11-0 vote.
C14-2015-0056 (8240 N. Mopac Rezoning)	LO to LR	7/07/15: Approved staff's recommendation of LR zoning on consent (9-0, D. Breihaupt-1 st and S. Lavani-absent); L. Brinsmade-1 st , A. Denkler-2 nd .	8/13/15: Approved LR zoning on consent on all 3 readings (11-0); L. Pool-1 st , D. Zimmerman-2 nd .
C14-2012-0149 (8200 North MoPac Rezoning: 8200 North Mopac Expressway South Bound	LO to LR	1/15/13: Approved the staff's recommendation of LR zoning by consent (6-0, P. Seeger-absent); G. Rojas-1 st , S. Compton-2 nd .	2/14/13: Approved LR zoning on consent on all 3 readings (7-0); S. Cole-1 st , B. Spelman-2 nd .
C14-2010-0164 (8610 North Mopac Expressway South Bound)	LR-CO to GR	11/16/10: Approved GR-CO zoning on consent, with the following additional conditions offered by the applicant: No Pawn Shop Services use and a public restrictive covenant to state that business will be closed during the hours of 10:00 p.m. to 6:00 a.m. (6-0, Banks-absent); P. Seeger-1 st , D. Tiemann-2 nd .	12/09/10: Approved GR-CO zoning on consent on all 3 readings (7-0); Spelman-1 st , Martinez-2 nd .

RELATED CASES:

C8S-82-083 – Subdivision Case

OTHER STAFF COMMENTS:Comprehensive Planning

Project Name and Proposed Use: 8200 N MOPAC EXPRESSWAY SB. C14-2024-0054. Project: 8200 & 8300 North Mopac. 12.26-acre tract from LO/LR to GR-MU-V-DB90. Existing: multistory office building. Proposed: 200 or more multifamily units intended to support residential, office and retail uses. Limited goods and services provided eastward along Steck Ave, with connectivity to further goods and services and health limited by 0.5-mile guideline southward along Shoal Creek Blvd. Proposal seeks Density Bonus 90 Combining District (Ordinance No. 20240229-073), which sets affordability minimums on ownership and rental units, and further allows for an increase of up to 30 ft in height above the base zone allowance, with a maximum limit of 90 feet in total height. DB90 additionally releases the site from some base zoning district development standards, including maximum floor area ratio.

Yes	Imagine Austin Decision Guidelines
Complete Community Measures *	
Y	Imagine Austin Growth Concept Map: Located within or adjacent to an Imagine Austin Activity Center, Imagine Austin Activity Corridor, or Imagine Austin Job Center as identified the Growth Concept Map. Names of Activity Centers/Activity Corridors/Job Centers *: <ul style="list-style-type: none"> • 0.16 miles north of Anderson Lane Station Neighborhood Station
Y	Mobility and Public Transit *: Located within 0.25 miles of public transit stop and/or light rail station. <ul style="list-style-type: none"> • Adjacent to bus stops on Steck Ave
Y	Mobility and Bike/Ped Access *: Adjoins a public sidewalk, shared path, and/or bike lane. <ul style="list-style-type: none"> • Sidewalk present to the east along N Mopac Expressway; unprotected bike lane present along Steck Ave
Y	Connectivity, Good and Services, Employment *: Provides or is located within 0.50 miles to goods and services, and/or employment center. <ul style="list-style-type: none"> • Limited goods and services provided eastward along Steck Ave
	Connectivity and Food Access *: Provides or is located within 0.50 miles of a grocery store/farmers market.
	Connectivity and Education *: Located within 0.50 miles from a public school or university.
	Connectivity and Healthy Living *: Provides or is located within 0.50 miles from a recreation area, park or walking trail.
Y	Connectivity and Health *: Provides or is located within 0.50 miles of health facility (ex: hospital, urgent care, doctor's office, drugstore clinic, and/or specialized outpatient care.) <ul style="list-style-type: none"> • Medical clinic located 0.3 miles north along Mopac Expressway
Y	Housing Choice *: Expands the number of units and housing choice that suits a variety of household sizes, incomes, and lifestyle needs of a diverse population (ex: apartments, triplex, granny flat, live/work units, cottage homes, and townhomes) in support of Imagine Austin and the Strategic Housing Blueprint.
Y	Housing Affordability *: Provides a minimum of 10% of units for workforce housing (80% MFI or less) and/or fee in lieu for affordable housing.
Y	Mixed use *: Provides a mix of residential and non-industrial uses.
	Culture and Creative Economy *: Provides or is located within 0.50 miles of a cultural resource (ex: library, theater, museum, cultural center).
	Culture and Historic Preservation: Preserves or enhances a historically and/or culturally significant site.

	Creative Economy: Expands Austin’s creative economy (ex: live music venue, art studio, film, digital, theater.)
	Workforce Development, the Economy and Education: Expands the economic base by creating permanent jobs, especially in industries that are currently not represented in a particular area or that promotes a new technology, and/or promotes educational opportunities and workforce development training.
	Industrial Land: Preserves or enhances industrial land.
	Not located over Edwards Aquifer Contributing Zone or Edwards Aquifer Recharge Zone
8	Number of “Yes’s”

Environmental

The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the Shoal Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.

Zoning district impervious cover limits apply in the Urban Watershed classification.

According to floodplain maps there is no floodplain within or adjacent to the project location.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

At this time, site specific information is unavailable regarding vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

This site is required to provide on-site water quality controls (or payment in lieu of) for all development and/or redevelopment when 8,000 sq. ft. cumulative is exceeded, and on-site control for the two-year storm.

At this time, no information has been provided as to whether this property has any preexisting approvals that preempt current water quality or Code requirements.

Fire

No comments.

Parks and Recreation

Parkland dedication will be required for the new applicable uses proposed by this development, multifamily GR-MU-V-DB90 zoning, at the time of subdivision or site plan, per City Code § 25-1-601. Whether the requirement shall be met with fees in-lieu or dedicated land will be determined using the criteria in City Code Title 25, Article 14, as amended. Should fees in-lieu be required, those fees shall be used toward park investments in

the form of land acquisition and/or park amenities within the surrounding area, per the Parkland Dedication Operating Procedures § 14.3.11 and City Code § 25-1-609, as amended.

If the applicant wishes to discuss parkland dedication requirements in advance of site plan or subdivision applications, please contact this reviewer: thomas.rowlinson@austintexas.gov. At the applicant's request, PARD can provide an early determination of whether fees in-lieu of land will be allowed.

Site Plan

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

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

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

This tract is already developed, and the proposed zoning change is a footprint within the existing development

FYI This site is part of the Scenic Roadways Overlay.

Transportation

The Austin Strategic Mobility Plan (ASMP) calls for 72 feet of right-of-way for Steck Ave. It is recommended that 36 feet of right-of-way from the existing centerline should be dedicated for Steck Ave according to the Transportation Plan with the first subdivision or site plan application. [LDC 25-6-51 and 25-6-55].

The Austin Strategic Mobility Plan (ASMP) calls for 58 feet of right-of-way for Bend Tree Rd. It is recommended that 29 feet of right-of-way from the existing centerline should be dedicated for Bend Tree Rd according to the Transportation Plan with the first subdivision or site plan application. [LDC 25-6-51 and 25-6-55].

FYI - Right of Way requirements to be coordinated with TXDOT for N. Mopac Frontage. Additional right-of-way may be required at the time of site plan.

The adjacent street characteristics table is provided below:

Name	ASMP Classification	ASMP Required ROW	Existing ROW	Existing Pavement	Sidewalks	Bicycle Route	Capital Metro (within ¼ mile)
N. Mopac	Level 4	TXDOT Roadway	TXDOT Roadway	Approx 43 feet	Yes	Yes	Yes
Steck Ave	Level 2	72 feet	Approx 82 feet	Approx 50 feet	No	Yes	Yes
Bend Tree Rd	Level 1	58 feet	Approx 71 feet	Approx 43 feet	No	No	Yes

Water Utility

No comments on zoning change.

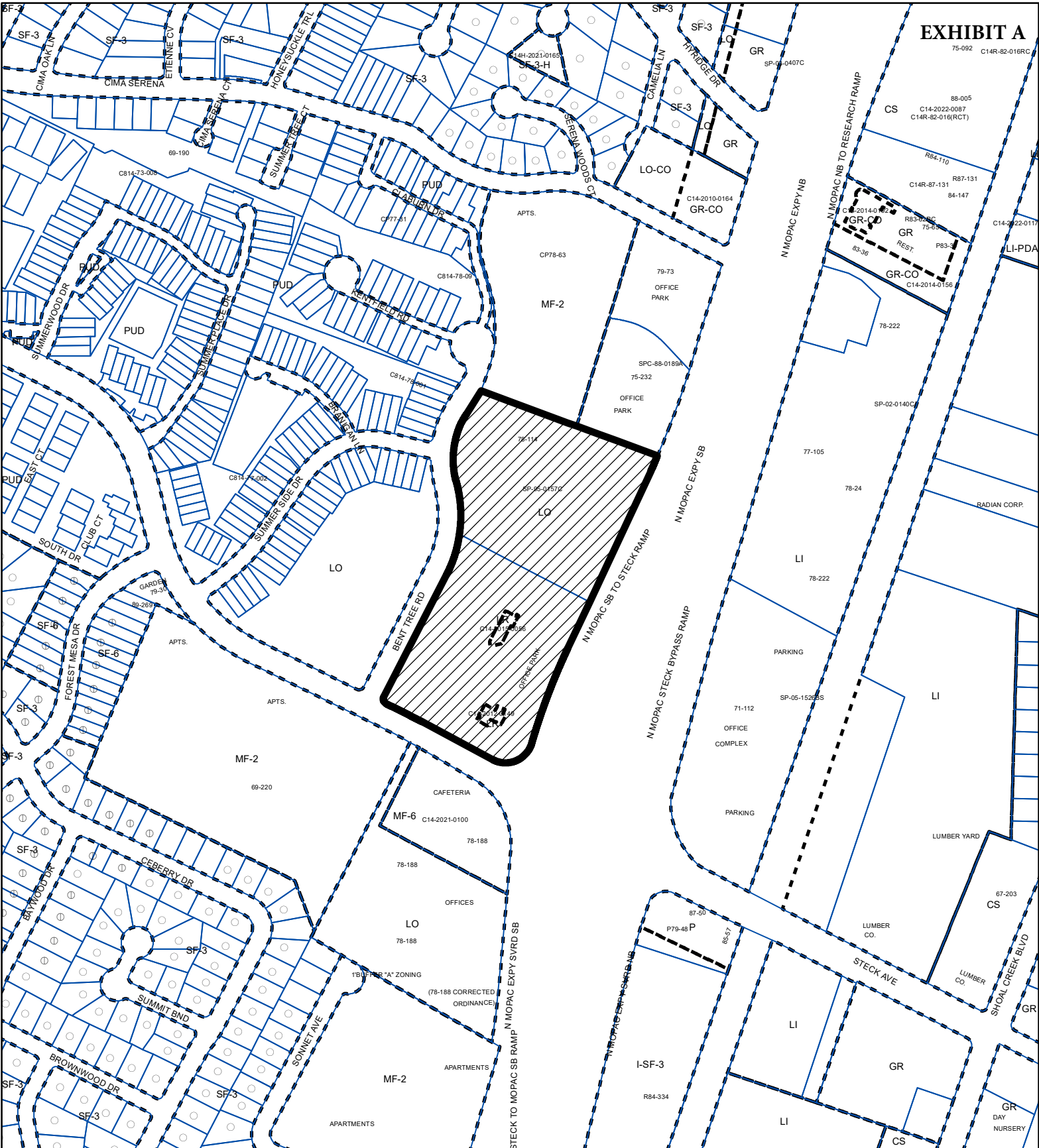
FYI: The landowner intends to serve the site with existing City of Austin water utilities.

Based on current public infrastructure configurations, it appears that service extension requests (SER) will be required to provide service to this lot. For more information pertaining to the Service Extension Request process and submittal requirements contact the Austin Water SER team at ser@austintexas.gov.

INDEX OF EXHIBITS TO FOLLOW

- A: Zoning Map
- B. Aerial Map
- C. Applicant's Request Letter
- D. Comments Received




EXHIBIT A



ZONING

ZONING CASE#: C14-2024-0054



-  SUBJECT TRACT
-  PENDING CASE
-  ZONING BOUNDARY

1" = 400'

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 the Planning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



Created: 4/8/2024

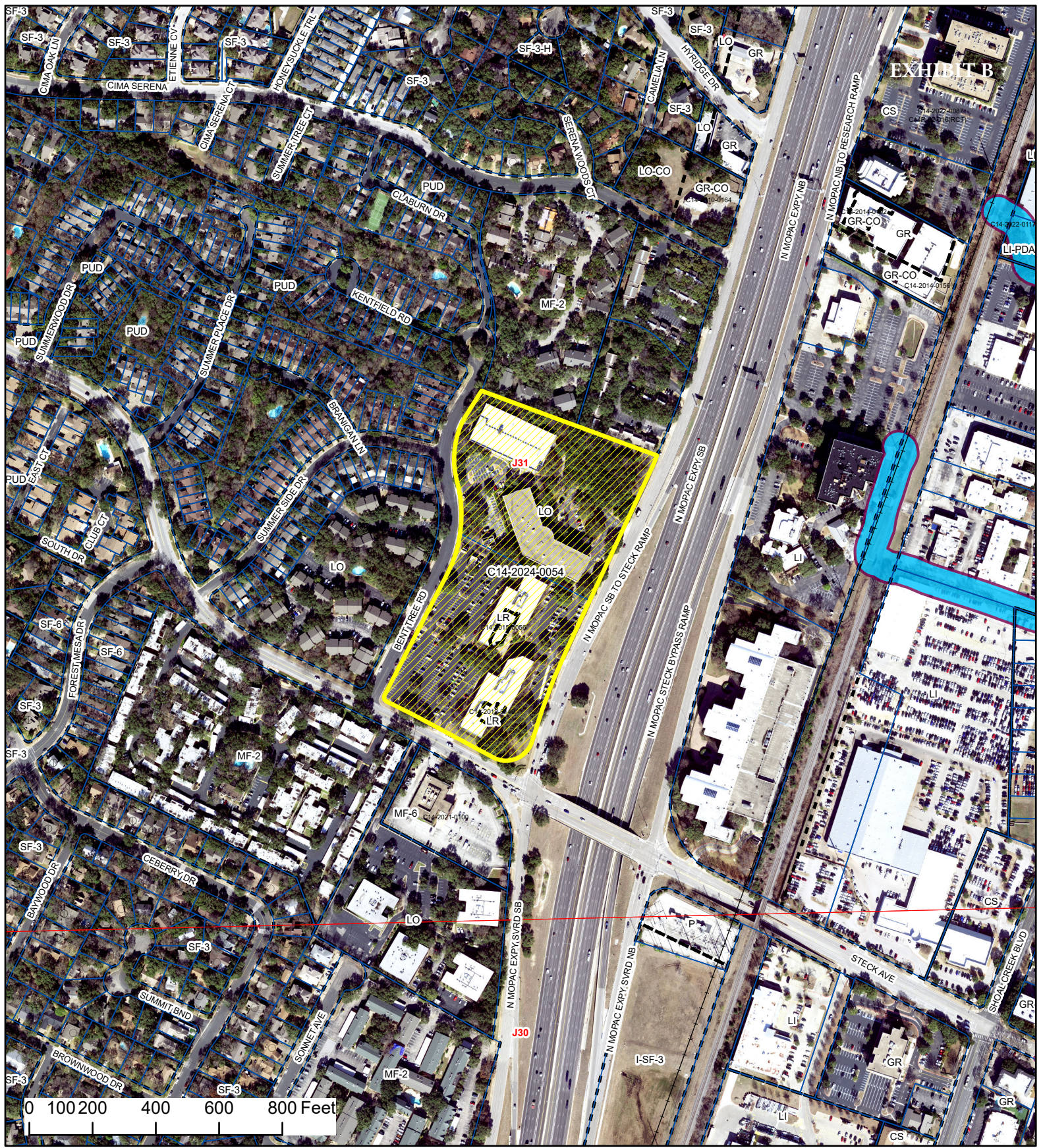






EXHIBIT B

8200 & 8300 North Mopac



-  SUBJECT TRACT
-  ZONING BOUNDARY
-  PENDING CASE
-  CREEK BUFFER

CASE#: C14-2024-0054
 LOCATION: 8200 and 8300 N Mopac Expy SB
 SUBJECT AREA: 12.26 Acres
 GRID: J31
 MANAGER: Sherri Sirwaitis



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

Created: 5/15/2024

DRENNER GROUP

Amanda Swor
direct dial: (512) 807-2904
aswor@drennergroupp.com

March 27, 2024

Ms. Lauren Middleton-Pratt, Director
Planning Department, City of Austin
6310 Wilhelmina Delco Drive
Austin, Texas 78752

Via Electronic Delivery

Re: 8200 & 8300 North MoPac – Rezoning application for the 12.26-acre piece of property located at 8200 & 8300 North MoPac Expressway in Austin, Travis County, Texas (the “Property”)

Dear Ms. Middleton-Pratt:

As representatives of the owner of the Property, we respectfully submit the enclosed rezoning application package. The project is titled *8200 & 8300 North MoPac*, consists of 12.26 acres, and is located on the west side of North MoPac Expressway frontage, northwest of the intersection of North MoPac Expressway frontage and Steck Avenue. The Property is currently developed as a multi-story office building.

The site is currently zoned LO – Limited Office and LR – Neighborhood Commercial. The requested rezoning is from LO and LR to GR-MU-V-DB90 (Community Commercial-Mixed-Use-Vertical Mixed Use-Density Bonus 90) zoning district. This request is consistent with surrounding uses.

The purpose of this proposed rezoning application is to allow for a phased development of the existing surface parking and office uses. The intent is to support residential, office, and retail uses, and allow for participation in the DB90 program.

The Property is not located within a Neighborhood Planning Area, therefore a Neighborhood Plan Amendment will not be required with this rezoning request.

A Traffic Impact Analysis (“TIA”) Determination Form has been submitted in tandem with this zoning application. We anticipate the TIA will either be waived, or that a Zoning Transportation Analysis will be required. We understand that land use and intensity will be finalized and reviewed with the site development permit application.

Please let me know if you or your team members require additional information or have any questions. Thank you for your time and attention to this project.

Very truly yours,

A handwritten signature in blue ink that reads "Amanda Swor". The signature is written in a cursive, flowing style.

Amanda Swor

cc: Joi Harden, Planning and Zoning Review Department (*via electronic delivery*)

From: Sarah Silvas
To: Sirwaitis, Sherri
Subject: Case #C-14-2024-0054
Date: Monday, July 1, 2024 1:10:24 PM

External Email - Exercise Caution

Sherri,
I was unable to use the pilot program to send online comments because our case number was not listed in the drop down choices. Please accept this photographed form in lieu of that.
Thank you,
Sarah Silvas
8242 Summer Side Drive
Austin, Texas 78759

CAUTION: This is an EXTERNAL email. Please use caution when clicking links or opening attachments. If you believe this to be a malicious or phishing email, please report it using the "Report Message" button in Outlook.
For any additional questions or concerns, contact CSIRT at "cybersecurity@austintexas.gov".

PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to participate in a public hearing, you are not required to participate. This meeting will be conducted both online and in-person at which you will have the opportunity to speak FOR or AGAINST the proposed development or change. Contact the case manager for further information on how to participate in the public hearings. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

Staff is conducting a pilot program to receive case-related comments online which can be accessed through this link or QR code: <https://bit.ly/ATXZoningComment>

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website: www.austintexas.gov/planning.

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before the public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice. Correspondence and information submitted to the City of Austin are subject to the Texas Public Information Act (Chapter 552) and will be published online.

Case Number: C14-2024-0054
Contact: Sherri Sirwaitis, 512-974-3057
Public Hearing: July 2, 2024, Zoning and Platting Commission

Sarah Silvas
Your Name (please print) Austin, Tx
8242 Summer Side Drive 78759
Your address(es) affected by this application (optional)
Sarah Silvas
Signature Date 6/27/24
Daytime Telephone (Optional): 512-705-3245

I am in favor
 I object

Comments: Residential Rezoning is NOT needed; our neighborhood is already densely populated, with 5 townhome communities and 2 apartment complexes, just between Mopac and Green slope! Traffic on Steele is already backed up to Green slope at times, making it impossible to exit the area. Rezoning would worsen these existing problems. Rezoning would likely raise property taxes while lowering desirability. My family has already been gentrified once - just two years ago. Please don't do this to native Austinites! If you use this form to comment, it may be returned to: I've lived here since 1963!

City of Austin, Planning Department
Sherri Sirwaitis
P. O. Box 1088, Austin, TX 78767
Or email to: sherri.sirwaitis@austintexas.gov

Sent from my iPhone

From: [Ben Luckens](#)
To: [Sirwaitis, Sherri](#); [Thompson, Carrie - BC](#); [Markman, Melisa](#)
Cc: [Joyce Statz](#); [Charlie Galvin](#); [Amanda Swor](#)
Subject: Northwest Austin Civic Association re C14-2024-0054
Date: Wednesday, July 31, 2024 7:14:18 PM
Attachments: [Restrictive Covenant v2.pdf](#)

External Email - Exercise Caution

I want to update you regarding the Northwest Austin Civic Association's (NWACA) position re Zoning Case C14-2024-0054. NWACA supports the proposed rezoning subject to the Restrictive Covenant conditions set out in the attached RC between NWACA and the applicant.

You'll note that the elevations in Sec 1.2.5 have yet to be established. Apparently, it takes more than an iPhone to do this. I expect we'll have those numbers tomorrow but I'll be traveling tomorrow and I want to update you before packet goes out on Friday. You'll also note that the RC isn't signed. We haven't had time to get the RC out to the Board for their approval but they approved this general approach at their last meeting so we'll have a signed RC soon but not in time for Tuesday.

Feel free to phone me or e-mail if you have any questions. I'll be at the ZAP meeting on Tuesday to answer any questions the Commission may have.

Ben Luckens, AICP
707-616-0608

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For any additional questions or concerns, contact CSIRT at "cybersecurity@austintexas.gov".

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions (this "Declaration") is entered into by and between **OP 8200 MOPAC PROPERTY LLC**, a _____ limited liability company, its successors or assigns (collectively, "Owner"), and **NORTHWEST AUSTIN CIVIC ASSOCIATION** ("NWACA"), as of the ____ day of _____, 2024.

RECITALS

WHEREAS, Owner owns the tracts of land described in City of Austin Zoning Case No. C14-2024-0054, more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property");

WHEREAS, Owner intends to redevelop the Property as a vertical mixed use development (the "Project"), and, in order to do so, has made application to rezone the Property to Community Commercial Services-Mixed Use-Mixed Use-Vertical Mixed Use Building-Density Bonus (GR-MU-V-DB90) Combining District Zoning from the City of Austin ("City") in Zoning Case No. C14-2024-0054 (the "Zoning Case"). The current zoning, Limited Office (LO) and Neighborhood Commercial (LR) allows commercial uses, but does not allow for residential uses or a vertical mixed use development as may be permitted by approval of the Zoning Case;

WHEREAS, Owner and NWACA have agreed that if the Zoning Case is approved and signed into ordinance by the City and is no longer appealable ("Zoning Approval"), the Property shall be restricted by these covenants that are important to NWACA and its members, 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 NWACA and its members through this Declaration;

WHEREAS, upon the effective date of the Zoning Approval of the Zoning 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

WHEREAS, the Owner may, subsequent to the date of this Restrictive Covenant, abandon the proposed project, sell, or re-develop the Property.

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 shall 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 Zoning Entitlements. Owner may only utilize the entitlements made applicable to the Property by the Zoning 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 Additional Prohibited Uses. The following uses shall be additional prohibited uses on the Property: Community Recreation – Private, Community Recreation – Public, Hospital Services – General, Hospital Services – Limited, Alternative Financial Services, Automotive Rentals, Automotive Repair Services, Automotive Sales, Automotive Washing of any Type, Bail Bond Services, Commercial Off Street Parking, Off-Site Accessory Parking, Outdoor Entertainment, Outdoor Sports and Recreation, Pawn Shop Services, Pedicab Storage and Dispatch, Plant Nursery, Service Station, and Custom Manufacturing.
 - 1.2.2 Pedestrian-Oriented Commercial Space. Should the Property redevelop utilizing either the V or the DB90 designations, the Property shall be subject to City Code Section 25-2, Subchapter E, 4.3.3.C with regard to ground floor dimensional requirements and pedestrian oriented space percentage requirements.
 - 1.2.3 Bent Tree Road Setback. The Project shall provide a seventy-five (75) foot building setback from the existing residential property lines across Bent Tree Road. Such building setback shall be measured from the Property line to the north and extend perpendicular towards the Property. No Buildings shall be allowed in the setback area except as otherwise required by the building placement requirements of City Code.
 - 1.2.4 Vehicular Access to Bent Tree Road. Vehicular access onto Bent Tree Road shall be limited to the number of access points existing on the effective day of the Declaration. Owner shall not seek additional access points unless required by the City of Austin.

- 1.2.5 Building Height. Building height on the property shall not exceed 890 ft Mean Sea Level (“MSL”). For the purposes of measuring height on the Property the Owner and NWACA agree that the high point of the Property is XXX MSL and the low point of the property is XXX MSL, therefore the median measuring point for purposes of this subsection is XXX MSL. The provisions of 25-2-531 – Height Limit Exceptions are not subject to this subsection and may exceed the height limitation.
- 1.2.6 Welcome Monument Signage. Upon redevelopment of the property, and prior to issuance of the first certificate of occupancy for a vertical mixed use building, Owner shall erect a welcome to Northwest Hills/Westover Hills monument sign along Steck Avenue.
- 1.2.7 Bird Friendly Materials. Owner shall utilize best practices and comply with all City adopted measures to ensure a bird friendly design of the project. At the time of site development permit Owner shall meet with NWACA to determine current adopted regulations and best practices for implementation into Project.
- 1.2.8 Open Space. At the time of Site Development Permit Owner shall aim for preservation of the wooded area on the north side of the Property for preservation or onsite parkland. The location and size of the proposed open space shall be determined at the time of Site Development Permit and is subject to acceptance by the City of Austin.
- 1.2.9 Traffic. At the time of Site Development Permit for each phase of the Project, Owner shall incorporate back ground traffic of previous phases to ensure that vehicle trips are not lost in the development process and that Transportation Demand Management practices can be accomplished in whole as each new phase develops.
- 1.3 Terms of Support. All items listed in Section 1.2 above are enforceable by NWACA only under the condition that NWACA positively supports the Zoning Case during the Austin City Council meetings in which votes for the Zoning Case take place. This support may be in the form of a letter to the Mayor of Austin and the Austin City Council Members or by a public statement by an authorized representative of NWACA during such Land Use Commission and/or City Council meetings. To the extent that any action is taken or statement is made contrary to this paragraph by an authorized representative of SCCNPCT prior to the City granting the Zoning Approval, this Declaration shall be deemed null and void.

II. DEFAULT AND REMEDIES

2.1 Remedies. Following the occurrence of a breach of (i) Owner's obligations under Section 1.2 of this Declaration or (ii) NWACA's obligations under Section 1.3 of this Declaration, only Owner, including its successors and assigns, and NWACA or its board members shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. If Owner or NWACA party to this Declaration (a "Defaulting Party") 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 Defaulting Party shall fail to commence to cure the same within such period or shall fail to use reasonable diligence in curing such default thereafter) from a person or entity with the right hereunder to seek relief for such breach (a "Non-Defaulting Party") to the Defaulting Party of such failure, the Non-Defaulting Party 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 and NWACA 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 NWACA's address for notice is as follows:

Owner:

OP 8200 MOPAC PROPERTY LLC

Attn: _____

With a copy to:

Drenner Group, P.C.
2705 Bee Cave Road, Suite 100
Austin, Texas 78746
Attn: Stephen O. Drenner

NWACA: Northwest Austin Civic Association

c/o _____

- 3.4 Attorneys' 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. Either Owner or NWACA (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 zoning ordinance issued by the City of Austin in connection with the Zoning 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 (i.e., third reading) of the Zoning Case by the City of Austin City Council, with no subsequent appeal, and in a form and on terms and conditions acceptable to Owner in its sole discretion. If the Zoning 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,

or (ii) NWACA fails to give its support in accordance with Section 1.3 hereof, 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, NWACA 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 Zoning Case by the City of Austin in a form acceptable to Owner. If the Zoning 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:

OP 8200 MOPAC PROPERTY LLC,
a _____ limited liability company

By:

By: _____

Name: _____

Title: _____

STATE OF _____ §

COUNTY OF _____ §

This instrument was acknowledged before me this _____ day of _____, 2024, by _____, the _____ of OP 8200 MOPAC PROPERTY LLC, a _____ limited liability company, on behalf of the limited liability company.

Notary Public, State of _____

NWACA:

**NORTHWEST AUSTIN CIVIC
ASSOCIATION**

By: _____

Name: _____

Title: _____

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of _____, 2024 by _____, the _____ of NORTHWEST AUSTIN CIVIC ASSOCIATION a Texas non-profit corporation, on behalf of the non-profit corporation.

Notary Public, State of Texas

Exhibit A
Property