

ORDINANCE NO. _____

AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE PROPERTY COMMONLY KNOWN AS THE FAIRFIELD/HYATT PUD PROJECT LOCATED AT 208 BARTON SPRINGS ROAD IN THE BOULDIN CREEK NEIGHBORHOOD PLAN AREA FROM LAKE COMMERCIAL-NEIGHBORHOOD PLAN (L-NP) COMBINING DISTRICT AND COMMERCIAL-LIQUOR SALES-NEIGHBORHOOD PLAN (CS-1-NP) COMBINING DISTRICT TO PLANNED UNIT DEVELOPMENT-NEIGHBORHOOD PLAN (PUD-NP) COMBINING DISTRICT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The zoning map established by Section 25-2-191 of the City Code is amended to change the base zoning district from lake commercial-neighborhood plan (L-NP) combining district and commercial-liquor sales-neighborhood plan (CS-1-NP) combining district to planned unit development-neighborhood plan (PUD-NP) combining district on the property described in File C814-06-0106 on record at the Neighborhood Planning and Zoning Department, as approximately 9.567 acres of land, being more particularly described by metes and bounds in Exhibit A (*Description of Property*) incorporated into this ordinance (the "Property"), locally known as the property located at 208 Barton Springs Road, in the City of Austin, Travis County, Texas, and generally identified in the map attached as Exhibit B (*Zoning Map*).

PART 2. This ordinance, together with the attached Exhibits A through J, are the land use plan for the Fairfield/Hyatt planned unit development district (the "PUD") created by this ordinance. The PUD shall conform to the limitations and conditions set forth in this ordinance and in the Fairfield/Hyatt planned unit development land use plan (the "Land Use Plan"). If this ordinance and the attached exhibits conflict, the ordinance applies. If either the Land Use Plan attached as Exhibit C, or the Land Use Plan with Maximum Shoreline Reclamation attached as Exhibit I, conflicts with a requirement, prohibition or other provision of Exhibit D, E, or F, the requirement, prohibition, or other provision of Exhibit D, E, or F, applies. Except as otherwise specifically provided by this ordinance, all other rules, regulations and ordinances of the City, including Ordinance No. 020523-33, in effect on the effective date of this ordinance apply to the PUD.

PART 3. The Property is subject to Ordinance No. 020523-33 that established the Bouldin Creek neighborhood plan combining district.

PART 4. The attached exhibits are incorporated into this ordinance in their entirety as though set forth fully in the text of this ordinance. The exhibits are as follows:

Exhibit A:	Description of Property
Exhibit B:	Zoning Map
Exhibit C:	Land Use Plan
Exhibit D:	Phasing Plan
Exhibit E:	Permitted Uses Table
Exhibit F:	Site Development Regulations
Exhibit G:	Field Notes for former CS-1-NP Portion of South Parcel
Exhibit H:	Existing Conditions Plan
Exhibit I:	Land Use Plan with Maximum Shoreline Reclamation
Exhibit J:	Green Building Program

PART 5. Definitions.

A. In this ordinance:

1. **PARCEL.** The PUD is divided into three separate Parcels: the Hotel Parcel, the West Parcel and the South Parcel which shall be used and developed according to the Phasing Plan.
2. **HOTEL PARCEL** means the area shown on the Land Use Plan generally along Town Lake on the north where the existing hotel is located and on which certain uses and site development regulations apply.
3. **WEST PARCEL** means the area shown on the Land Use Plan generally along the South First Street on the west and on which certain uses and site development regulations apply.
4. **SOUTH PARCEL** means the area shown on the Land Use Plan generally located along the Barton Springs Road to the south and on which certain uses and site development regulations apply.
5. **PHASING PLAN** means the plan of development for the PUD as shown in Exhibit D. Any portion of any Parcel may be developed as a phase and any phase may be implemented at any time

B. All other terms have the meaning provided in the Code.

PART 6. Use Regulations.

A. The locations of the Parcels and land use areas within the PUD are shown on Exhibit C (*Land Use Plan*).

B. Permitted, conditional and prohibited uses applicable to each Parcel land use area are shown in Exhibit E (*Permitted Uses Table*).

PART 7. In accordance with Section 25-2-411(A) (*Planned Unit Development District Regulations*) of the City Code, the site development regulations as shown on Exhibit F (*Site Development Regulations*) apply to the PUD instead of otherwise applicable City regulations.

PART 8. This ordinance takes effect on _____, 2007.

PASSED AND APPROVED

§
§
§

2007

Will Wynn
Mayor

APPROVED:

David Allan Smith
City Attorney

ATTEST:

Shirley A. Gentry
City Clerk

9.567 Acres
Fairfield Town Lake/Zilker LP.
Travis County, Texas

FN 4121(EMD)
March 03, 2006
SAM, Inc. Job No 25184-01

9.567 ACRES

DESCRIPTION OF A 9.567 (416,730 SQ. FT.) ACRE TRACT OF LAND, BEING ALL OF THAT CALLED TRACT 1 AND TRACT 2, AS DESCRIBED IN THE DEED TO FAIRFIELD TOWN LAKE/ZILKER LP., AS RECORDED IN DOCUMENT NO. 2005191745, OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 9.567 (416,739 SQ. FT.) TRACT, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½-inch iron rod found in the north right-of-way line of Barton Springs Road (100' Right-of-Way), same being the southwest corner of a called 0.575 acre tract of land, described in deed to Bathhaus Ltd. as recorded in Document No. 2001174688 of the Official Public Records of Travis County, Texas, for the most southerly southeast corner of said Tract 1, and the tract described herein;

THENCE, with the north right-of-way line of Barton Springs Road, S 76°21'17" W, a distance of 266.27 feet to an "X" cut in the concrete at the most southerly southwest corner of said Tract 1, and the southeast corner of that called Lot 5B of the Resubdivision of T.L. Subdivision No. 1 as per plat duly recorded in Document No. 200200297, of the Official Plat Records of Travis County, Texas, same being the southeast corner of a 30' Access Easement recorded in Volume 68, Page 52 of the Plat Records of Travis County, Texas;

THENCE with the common line of said Tract 1, and said Lot 5B and the east line of said 30' Access Easement, N 12°44'42" E, a distance of 11.11 feet to a cotton spindle found;

THENCE continuing with said common line, N 13°40'38" W, a distance of 244.01 feet to a cotton spindle found;

THENCE continuing with said common line, N 26°12'00" E, a distance of 228.38 feet to a cotton spindle found;

THENCE, with the common line of said Tract 1 and a called Lot 5A, of said Resubdivision, the following four (4) courses and distances:

1. N 63°46'01" W, a distance of 327.55 feet to a ½-inch iron rod found;
2. S 62°04'24" W, a distance of 22.51 feet to a concrete nail found at a point of non-tangent curve from which a pk nail with washer stamped "UDG" bears N 12°05'20" E, a distance of 1.44 feet,
3. with a non-tangent curve to the right a distance of 28.01 feet, through a central angle of 53°29'14" having a radius of 30.00 feet, and whose chord bears N 89°43'07" W, a distance of 27.00 feet to a concrete nail found from which a pk nail with washer stamped "UDG" bears N 22°19'24" E, a distance of 1.35 feet, and
4. N 63°48'50" W, a distance of 45.28 feet to a ½-inch iron rod found for the southwest corner of said Tract 1 and the northwest corner of said Lot 5A same being in the east right-of-way line of the frontage road of South First Street (variable width);

THENCE, with the common line of the frontage road of South First Street and said Tract 1, N 30°54'58" E, a distance of 150.66 feet to a ½-inch iron rod found for the common west corner of said Tract 1 and said Tract 2;

THENCE leaving said common corner, with said east right-of-way line, same being the west line of said Tract 2, the following five (5) courses and distances:

1. N 30°55'24" E a distance of 90.79 feet to a ½-inch iron rod found,
2. N 18°03'56" E, a distance of 44.36 feet to a 1-inch iron pipe found at a point of non-tangent curve,

9.567 Acres
Fairfield Town Lake/Zilker LP
Travis County, Texas

FN 4121(EMD)
March 03, 2006
SAM, Inc. Job No 25184-01

3. with a non-tangent curve to the left a distance of 32.39 feet, through a central angle of 03°55'54" having a radius of 471.96 feet, and whose chord bears N 17°57'38" E, a distance of 32.38 feet to a 1-inch iron pipe found,
4. with a non-tangent curve to the left a distance of 23.25 feet, through a central angle of 07°36'20" having a radius of 175 17 feet, and whose chord bears N 10°52'46" E, a distance of 23.24 feet to a ½-inch iron rod with a "SAM, Inc " plastic cap set, and
5. N 30°54'48" E, a distance of 91 48 feet to a ½-inch iron rod found, for the northwest corner of said Tract 2 and the tract described herein;

THENCE with the north line of said Tract 1 and said Tract 2, S 63° 49' 09" E, a distance of 739.28 feet to a point, submerged in Town Lake for the northeast corner of said Tract 1 and the northwest corner of said 0.575 acre tract, same being the northeast corner of the tract described herein;

THENCE leaving the south line of Town Lake and with the common line of said Tract 1 and said 0.575 acre tract, the following three (3) courses and distances:

1. S 18°59'21" W, passing at a distance of 17.65 feet a ½" iron rod found and continuing a total distance of 254.16 feet to a ½-inch iron rod found,
2. S 70°56'01" W, a distance of 58 30 feet to a punch hole in concrete for the most westerly northwest corner of said 0.575 acre tract same being an inside ell corner, and

S 19°00'21" W, a distance of 400.15 feet to the **POINT OF BEGINNING**, and containing 9.567 (416,730 sq. ft.) acres of land, more or less

Bearing Basis:

Cotton Spindles at an inside ell corner of said 9.567 acre tract and being the common line with said Lot 5A and Lot 5B. Called bearing and distance between these Cotton Spindles is N 26°12' E - 228.39 feet. Held called bearing of N 26°12'00" E and found actual distance to be 228.38 feet.

STATE OF TEXAS

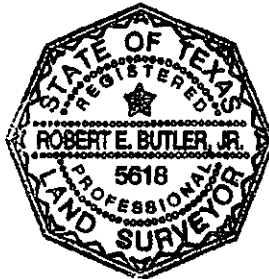
KNOW ALL MEN BY THESE PRESENTS:


COUNTY OF TRAVIS

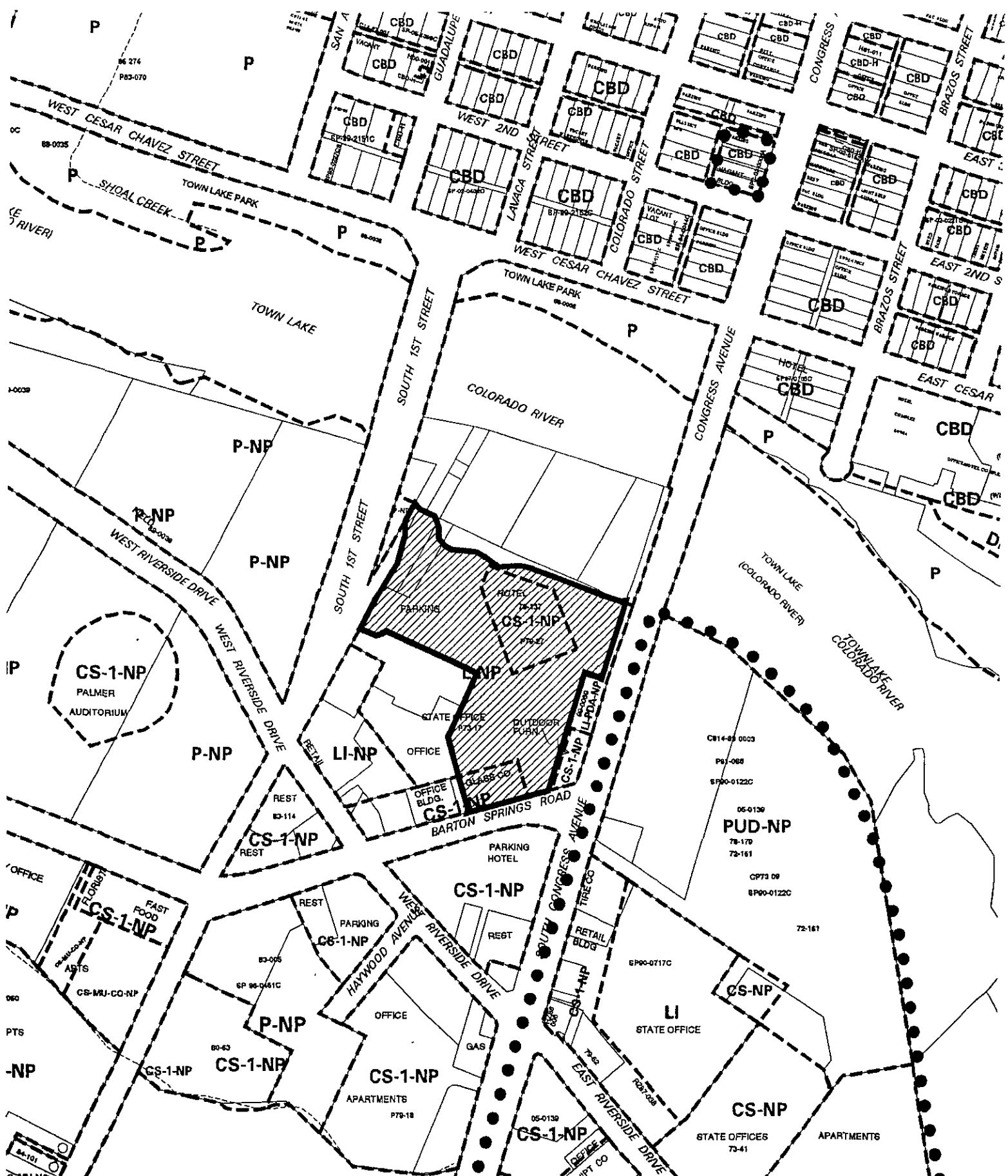
That I, Robert E. Butler, Jr., a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground during July, 2005 under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 3rd day of March, 2006 A.D.

SURVEYING AND MAPPING, Inc
5508 West Highway 290, Building B
Austin, Texas 78735




Robert E. Butler, Jr.
Registered Professional Land Surveyor
No. 5618 - State of Texas



 1" = 400'	SUBJECT TRACT 	PLANNED UNIT DEVELOPMENT CASE #: C814-06-0106 ADDRESS: 208 BARTON SPRINGS RD SUBJECT AREA (acres). N/A		CITY GRID REFERENCE NUMBER J21
	PENDING CASE 			
	ZONING BOUNDARY 	DATE: 06-05		
	CASE MGR: J. ROUSSELIN	INTLS: SM		

208 BARTON SPRINGS ROAD
DETAILED LAND USE PLAN

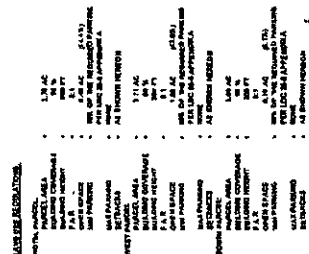
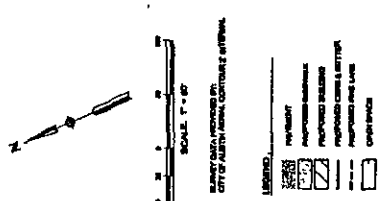
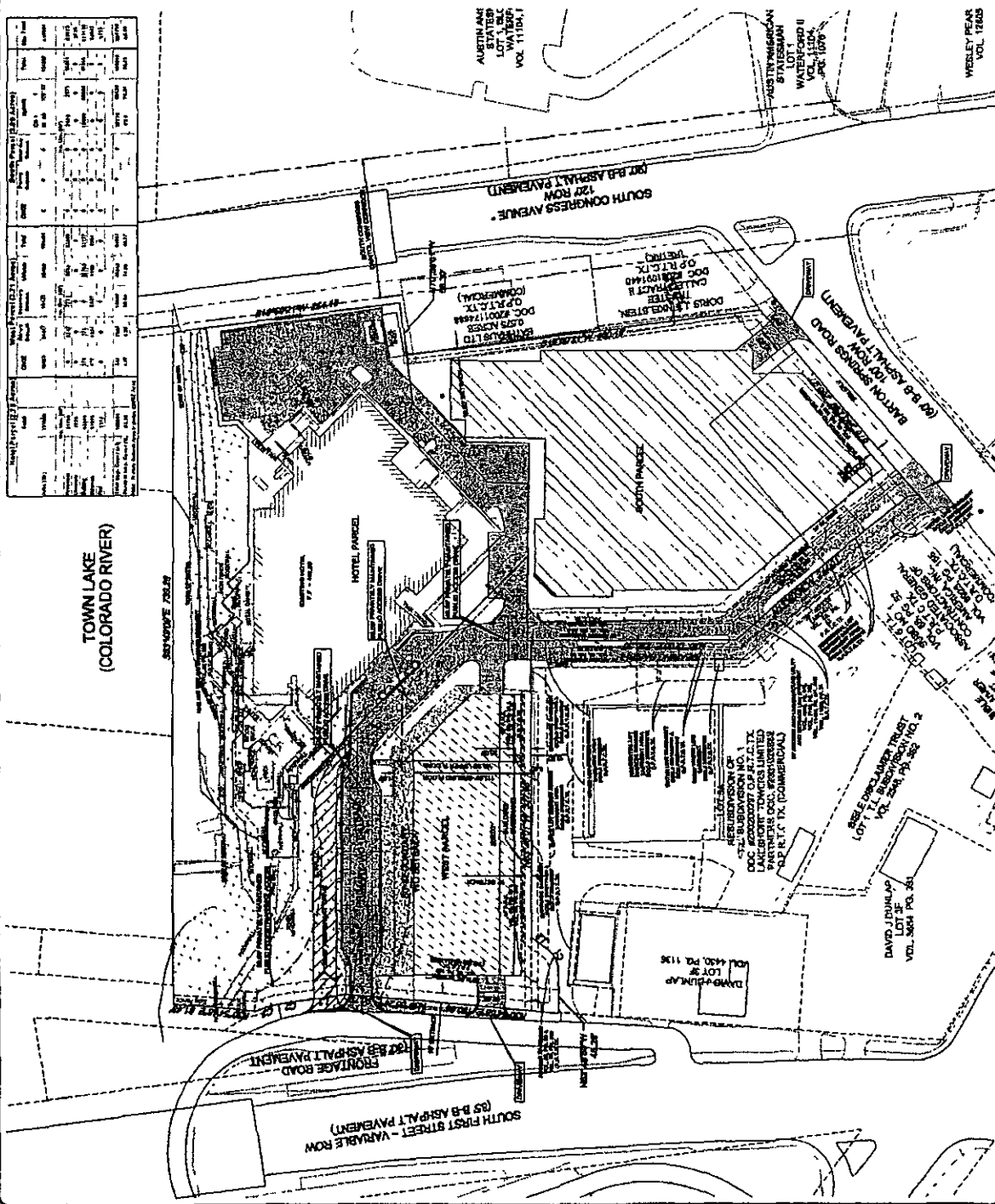
[illegible][illegible]

EXHIBIT D

PHASING PLAN

A. The PUD is divided into three separate parcels identified on the Land Use Plan as the Hotel Parcel, the West Parcel and the South Parcel. The PUD shall be developed in phases to accommodate the redevelopment of the existing parking improvements and to meet market demand. The existing hotel on the Hotel Parcel shall continue to be used and operated during the construction of any and all of the phases of the redevelopment of the PUD. Any portion of any parcel may be included in a phase and more than one parcel may be involved in a phase.

B. Impervious cover, building coverage, floor to area ratio, parking, landscaping and required open space are reflected on the Land Use Plan and are calculated on the cumulative gross site area of the PUD. The portions of the property included in any phase and the site plan of each phase are not required to satisfy those requirements on a stand alone basis and shall be approved if consistent with the Land Use Plan for such phase.

C. During construction of any phase a minimum 250 parking spaces on-site and off-site shall be provided for use of the Hotel Parcel.

D. The West Parcel may be developed in two phases. The first phase will be construction of the lower portion of a building that will contain enclosed parking spaces and pedestrian-oriented uses. The second phase will be the completion of the remainder of the building, containing residential, multifamily or condominium units.

E. Following development of the West Parcel, the South Parcel will be developed and include enclosed parking spaces for the Hotel Parcel. Upon completion of either the West Parcel or South Parcel, the required parking for hotel use shall be provided on a cumulative basis on the entire PUD property. After completion of the first phase of the West Parcel, it is currently contemplated that the South Parcel would be developed to provide, among other things, permanent enclosed parking for the Hotel Parcel. The foregoing sequence is what is currently contemplated, however, the number and location of the phases and the sequence of the development shall be as the owner shall determine. As a result of the loss of the existing surface parking satisfying the required parking for the use of the Hotel Parcel during the construction of the improvements on the West Parcel and the South Parcel, it is intended that the continued use of the Hotel Parcel shall be permitted during the construction of a phase on the West Parcel or the South parcel, so long as upon completion of such phase the required parking for the use of the hotel is provided on a cumulative basis on all of the PUD property.

F. During construction of any phase of the PUD, the requirements under Section 25-2-721 (*Waterfront Overlay Combining Regulations*) are modified to allow the following:

- 1 Construction staging areas, including laydown area for building materials, temporary construction office, storage of building construction equipment and vehicles, and daytime parking of personal vehicles, shall be permitted on existing paved surfaces shown as paved surfaces on the Existing Conditions Plan (Exhibit H) within the waterfront overlay district primary and secondary setback areas within the West Parcel. Landscaping shall be installed on the Town Lake side of the construction staging areas to screen the staging areas from Town Lake.
2. Construction and temporary security fencing around the limits of construction and the construction staging areas shall be permitted on existing paved surfaces shown as paved surfaces on the Existing Conditions Plan (Exhibit H) in the waterfront overlay district primary and secondary setback areas with the West Parcel
- 3 A temporary access road, including a temporary curb cut, to South First Street as shown on the Land Use Plan shall be permitted in the waterfront overlay district primary and secondary setback areas within the West Parcel until the permanent internal circulation drive is installed in the West Parcel upon completion of the final phase of the building and related improvements in the West Parcel

G. During construction of any phase of the PUD, the requirements under Section 25-2-691 (C) (*Pedestrian Oriented Uses*) are modified to allow the following

To accommodate the construction of subsequent phases of the buildings to be constructed on the West Parcel and the South Parcel, until the earlier of a) the completion of the final phase of such building, or b) the number of years after the issuance of a Certificate of Occupancy for the first phase of such building as indicated below

1. Permanent landscaping and related improvements are not required to be installed until two years after the issuance of a Certificate of Occupancy for the first phase of such building.
2. Occupancy and use of the first floor of the first phase of a building for pedestrian oriented uses are not required until three years and six months after the issuance of a Certificate of Occupancy for the first phase of such building
- 3 The façade of the lower floors of the first phase of a building including enclosed parking shall be permitted to remain with concrete finish, until three years and six months after the issuance of a Certificate of Occupancy for the first phase of such building

H. During construction of a subsequent phase of a building, a construction office and a sales and leasing office may be located in the retail or garage portions of the first phase of such building.

I In the event the Fairfield/Hyatt PUD project, or any portion of the project, is not completed, the City shall require that the original number of parking spaces on the Property be reestablished.

J At no time shall construction, or staging of materials or equipment, obstruct, intrude upon, or require detour of existing Town Lake Hike and Bike Trail through the property as shown in the *Existing Conditions Plan (Exhibit H)*, unless authorized or permitted by the City, or unless such construction or staging of materials or equipment is for the sole purpose of improving the Town Lake Hike and Bike Trail, or unless the south Town Lake shore is filled and extended north from its present location, as shown in the *Land Use Plan with Maximum Shoreline Reclamation (Exhibit I)* and set forth in more detail in the *Site Development Regulations (Exhibit F, Subsection IV.A)*

EXHIBIT E

PERMITTED USES TABLE

I. Hotel Parcel.

- A. All uses in effect on the date of this ordinance specified as permitted uses, conditional uses, or pedestrian-oriented uses in the lake commercial (L) district, the waterfront overlay (WO) district, and South Shore Central waterfront overlay (WO) subdistrict, as provided in Section 25-2-491 (*Permitted, Conditional, and Prohibited Uses*), Section 25-2-691 (*Waterfront Overlay (WO) District Uses*), and Section 25-2-692(F) (*Waterfront Overlay (WO) Subdistrict Uses*), of the City Code, except as set forth in Subsection A. 2 and Subsections B and C.

1. The following uses are additional permitted uses:

Hotel-motel

Hotel-motel accessory uses (meeting room rental, food sales, beverage sales including the sale of alcoholic beverages for on-premise consumption only; cocktail lounge not to exceed 20,000 square feet gross floor area, fitness center, business center, bike rentals, guest laundry, concierge services, secretarial services, swimming pool, and spa) or other uses as determined by the City of Austin.

2. The following uses are prohibited uses:

Automotive rentals (not including taxicab parking and dispatching)	Automotive repair services
Automotive sales	Automotive washing (of any type)
Local utility services	Service station
Telecommunication tower	Outdoor entertainment
Adult oriented businesses	Communication service facilities
	Group residential

- B. All uses specified as conditional uses in the commercial-liquor sales (CS-1) district which are not specified as permitted uses in Subsection A, are conditional uses, except the following uses set forth below are prohibited uses:

Automotive rentals (not including taxicab parking and dispatching)	Automotive repair services
Automotive sales	Automotive washing (of any type)
Local utility services	Service station
Telecommunication tower	Outdoor entertainment
Adult oriented businesses	Communication service facilities
	Group residential

- C. The following uses are additional pedestrian-oriented uses for purposes of Section 25-2-691 (C) (*Waterfront Overlay (WO) District Uses*) and Section 25-2-692 (F) (*Waterfront Overlay (WO) Subdistrict Uses*) of the City Code:

A privately owned health club, gymnasium, spa, health or physical fitness studio or similar personal improvement services that has memberships available to the guests of the hotel and to the general public (not to exceed a total of 12,000 square feet of gross floor area)

Residential sales and leasing office (not to exceed a total of 2,000 square feet of gross floor area)

II. West Parcel.

- A. All uses specified as permitted uses or as pedestrian-oriented uses in the lake commercial (L) district, the waterfront overlay (WO) district, and South Shore Central waterfront overlay (WO) subdistrict, as provided in Section 25-2-491 (*Permitted, Conditional, and Prohibited Uses*), Section 25-2-691 (*Waterfront Overlay (WO) District Uses*), and Section 25-2-692(F) (*Waterfront Overlay (WO) Subdistrict Uses*), of the City Code, and any other uses that are permitted in said districts or subdistrict by subsequent amendments applicable to said districts or subdistrict are permitted uses in the West Parcel, except as set forth in Subsection A. 2 and Subsections B and C.

1. In addition, a residential use that is permitted in a multifamily base district is also a permitted use
2. The following uses are prohibited uses:

Automotive rentals (not including taxicab parking and dispatching)	Automotive repair services
Automotive sales	Automotive washing (of any type)
Local utility services	Service station
Telecommunication tower	Outdoor entertainment
Adult oriented businesses	Communication service facilities
	Group residential

- B. All uses specified as conditional uses in the lake commercial (L) district are conditional uses, except the following uses are prohibited uses:

Automotive rentals (not including taxicab parking and dispatching)	Automotive repair services
Automotive sales	Automotive washing (of any type)
Local utility services	Service station
Telecommunication tower	Outdoor entertainment
	Communication service facilities
	Group residential

Adult oriented businesses

- C. The following uses are additional pedestrian-oriented uses for purposes of Section 25-2-691 (C) (*Waterfront Overlay (WO) District Uses*) and Section 25-2-692 (F) (*Waterfront Overlay (WO) Subdistrict Uses*) of the City Code:

A privately owned health club, gymnasium, spa, health or physical fitness studio or similar personal improvement services that has memberships available to the guests of the hotel and to the general public (not to exceed a total of 12,000 square feet of gross floor area)

Residential sales and leasing office (not to exceed a total of 2,000 square feet of gross floor area)

III. South Parcel.

- A. All uses specified as permitted uses or as pedestrian-oriented uses in the lake commercial (L) district, the waterfront overlay (WO) district, and South Shore Central waterfront overlay (WO) subdistrict, as provided in Section 25-2-491 (*Permitted, Conditional, and Prohibited Uses*), Section 25-2-691 (*Waterfront Overlay (WO) District Uses*), and Section 25-2-692(F) (*Waterfront Overlay (WO) Subdistrict Uses*), of the City Code, and any other uses that are permitted in said districts or subdistrict by subsequent amendments applicable to said districts or subdistrict are permitted uses in the West Parcel, except as set forth in Subsection A. 2 and Subsections B and C.

1. In addition, a residential use that is permitted in a multifamily base district is also a permitted use
2. In addition, only the following hotel accessory uses are permitted meeting room rental, food sales, beverage sales including the sale of alcoholic beverages for on-premises consumption only, fitness center, business center, bike rentals, guest laundry, secretarial services, pool, spa and indoor entertainment, provided that parking on all accessory uses shall be determined as though each use is a principal use as opposed to an accessory use.

3. The following uses are prohibited uses:

Automotive rentals (not including taxicab parking and dispatching)	Automotive repair services
Automotive sales	Automotive washing (of any type)
Local utility services	Service station
Telecommunication tower	Outdoor entertainment
Adult oriented businesses	Communication service facilities
	Group residential

- B. All uses specified as conditional uses in the lake commercial (L) district are conditional uses, except the following uses are prohibited uses:

Automotive rentals (not including taxicab parking and dispatching)	Automotive repair services
Automotive sales	Automotive washing (of any type)
Local utility services	Service station
Telecommunication tower	Outdoor entertainment
Adult oriented businesses	Communication service facilities
	Group residential

- C. The following uses are additional pedestrian-oriented uses for purposes of Section 25-2-691 (C) (*Waterfront Overlay (WO) District Uses*) and Section 25-2-692 (F) (*Waterfront Overlay (WO) Subdistrict Uses*) of the City Code:

A privately owned health club, gymnasium, spa, health or physical fitness studio or similar personal improvement services that has memberships available to the guests of the hotel and to the general public (not to exceed a total of 12,000 square feet of gross floor area)

Residential sales and leasing office (not to exceed a total of 2,000 square feet of gross floor area)

EXHIBIT F

SITE DEVELOPMENT REGULATIONS TABLE

Except as otherwise provided in this ordinance and the attached Exhibits, development of the Hotel Parcel, the West Parcel and the South Parcel of the Property shall comply with the site development regulations for the lake commercial (L) district.

I. Hotel Parcel.

- A. Except as otherwise provided in the PUD, the footprint and height of a building, structure, or improvement on the Hotel Parcel as shown on the Land Use Plan (Exhibit C) and Existing Conditions Plan (Exhibit H), may not be increased, enlarged, remodeled, expanded, relocated, reconstructed, changed, or improved over what is legal and permitted according to the rules, regulations, codes and ordinances of the City of Austin applicable to the Hotel Parcel in effect as of November 14, 2006.
- B. An existing building, structure, parking area, loading area and other improvement located in the Hotel Parcel may be maintained, repaired, restored, modified, altered, renovated, improved, replaced and upgraded under the following conditions.
 - 1. Within a building envelope for that portion of the existing hotel as shown on the Existing Conditions Plan (Exhibit H) that is less than 60 feet in height, the alteration, modification, replacement, addition, and other improvements:
 - a) may not enlarge the existing hotel building footprint greater than 25 linear feet,
 - b) may not exceed 30 feet in height where currently there is no building;
 - c) may not exceed 60 feet in height to a building existing as of the date of this ordinance; and
 - d) may not be within the primary or secondary setbacks of the South Shore Central waterfront overlay subdistrict.
 - 2. For an accessory building, pool, deck, patio, parking area, and loading area, the alteration, modification, replacements, addition and other improvements:
 - a) may not increase the existing amount of impervious cover in the Hotel Parcel;

- b) may not exceed their respective heights existing as of the effective date of this ordinance; and
 - c) may not extend closer to Town Lake than the existing deck, patio, and other improvements.
- 3. In the event the existing structures on the Hotel Parcel (the "Hotel Structures") are destroyed or damaged by a natural catastrophe, fire, acts of terrorism, or other casualty, the following applies:
 - a) The size of the restored building is limited to the size of the destroyed or damage building, including height, footprint and floor-to area ratio.
 - b) The interior portions of the existing Hotel Structures may be remodeled, renovated, maintained, repaired, restored, modified, altered and upgraded.
 - c) For purposes of this Exhibit F (Site Development Regulations Table), a structure, building, footprint or other improvement shall be deemed existing, if a building permit, or certificate of occupancy was issued for such structure, building footprint, or other improvement as of the effective date of this ordinance, or if such structure, building, footprint, or other improvement is shown on the Existing Conditions Plan (Exhibit H).
- 4 If a structure on the Hotel Parcel is intentionally demolished or destroyed by the owner, then it may only be rebuilt according to the City Code in effect at the time of such rebuilding
- C. Section 25-2-492 (*Site Development Regulations*), Section 25-2-721 (*Waterfront Overlay (WO) Combining District Regulations*), Section 25-2-742 (*South Shore Central Subdistrict Regulations*), and Section 25-8-261 (*Critical Water Quality Zone Development*) are modified to allow improvements, repairs, additions, and replacements along and adjacent to the hike and bike trail and drainage easements along Town Lake, including existing landscaping and associated irrigation systems, existing slope stabilization structures, existing retaining walls and similar improvements, and existing screening of the existing parking and loading areas shown on the Existing Conditions Plan (Exhibit H).
- D. Parallel parking and sidewalks along any portion of the internal circulation are permitted.

- E Prior to the issuance of a final Certificate of Occupancy for a building on the South Parcel or the West Parcel, a vegetative screen that complies with the provisions of the Environmental Criteria Manual of the City of Austin shall be provided along the northern property line of the Hotel Parcel adjacent to the surface parking lot on the east side of the Hotel Parcel.
- F. The height of a new structure, expansions and renovations constructed after November 14, 2006 shall be measured as the vertical distance from the average of the highest natural grade and lowest natural grade adjacent to the building:
1. for a flat roof, to the highest point of the coping;
 2. for a mansard roof, to the deck line,
 3. for a pitched or hip roof, to the mid-point of the highest gable; and
 4. for other roof styles, to the highest point of the roof

Natural grade shall mean the grade of a parcel as the parcel existed on November 14, 2006 as shown on the Existing Conditions Plan (Exhibit H), before modified by moving earth, adding or removing fill, or installing a berm, retaining wall, or architectural landscape feature.

- G. Green Building. All residential development shall comply with Austin Energy Green Building Program (GBP) in effect August 9, 2006 to achieve a minimum two-star rating (See Exhibit J)

II West Parcel

- A. Except as otherwise provided in the PUD ordinance and attached exhibits, the provisions of Section 25-2-721 (*Waterfront Overlay (WO) Combining District Regulations*), Section 25-2-742 (*South Shore Central Subdistrict Regulations*) apply to development of the West Parcel.
1. Within the 150 foot primary setback as defined in Section 25-2-712 (*Definitions*):
 - a) The existing improvements and impervious cover, including specifically, but without limitation, the existing boat docks and facilities as shown on the Land Use Plan (Exhibit C), are permitted. These improvements may be upgraded, improved, and, if and only if the shoreline is reconstructed in accordance with Section IV. A of this exhibit, may be relocated within the boundaries of the West Parcel, as long as they do not encroach further into any setback.

- b) The internal circulation drive and impervious cover are permitted and may be upgraded, improved and relocated within the boundaries of the West Parcel
 - c) Sidewalks along the internal circulation drive are permitted
 - d) No structures, pavement, or buildings not existing as of the effective date of this ordinance are permitted except as shown on the Land Use Plan (Exhibit C)
 - e) Temporary construction areas and construction offices are permitted on existing pavement as shown on the Existing Conditions Plan (Exhibit H).
- 2. Within the 50 foot secondary setback as defined in Section 25-2-712 (*Definitions*):
 - a) The internal circulation drive and impervious cover as shown on the Land Use Plan (Exhibit C) are permitted and may be upgraded, improved and relocated within the boundaries of the West Parcel
 - b) Sidewalks along the internal circulation drive are permitted
 - c) No structures, pavement, or buildings not existing as of the effective date of this ordinance are permitted, except as shown on the Land Use Plan (Exhibit C).
 - d) Temporary construction areas and construction offices are permitted on existing pavement shown on the Existing Conditions Plan (Exhibit H).
- 3. Parallel parking along the internal circulation drive is permitted.
- 4. Entries to parking garages as generally shown on the Land Use Plan (Exhibit C) are permitted
- B. Except as otherwise provided in the PUD, the provisions of Section 25-8-261 (*Critical Water Quality Zone Development*) apply to development of the West Parcel.
 - 1. Improvements, repairs, additions, and replacements that consist only of landscaping and associated irrigation systems, slope stabilization and retaining walls, and screening of the existing parking and loading area, including associated retaining walls, are

permitted along and adjacent to the hike and bike trail and drainage easement along Town Lake

- 2 Existing boat docks and associated facilities as shown on the Land Use Plan (Exhibit C) are permitted

C. Green Building All residential development shall comply with Austin Energy Green Building Program (GBP) in effect August 9, 2006 to achieve a minimum two-star rating. (See Exhibit J)

D Prior to the issuance of a final Certificate of Occupancy for a pedestrian-oriented use or a residential dwelling unit constructed on the West Parcel, an access easement shall be provided to the City that allows i) public access to the internal drive as shown on the Land Use Plan, ii) public access from the internal drive to the Town Lake hike and bike trail as shown on the Land Use Plan; and iii) a dedicated bike lane no less than five feet in width for each of two directions of travel either on the internal drive shown on the Land Use Plan or elsewhere on the Property following the alignment of the internal drive.

E Prior to the issuance of a final Certificate of Occupancy for a pedestrian-oriented use or a residential dwelling unit constructed on the West Parcel, at least ten bicycle parking mechanisms shall be provided within the portion of the public access easement area from the internal drive to the Town Lake hike and bike trail as shown on the Land Use Plan, at such location(s) as may be determined by the owner of the West Parcel at the time Bicycle parking requirements and standards shall be City of Austin, Class III Style Bicycle Parking as set forth under Standard No 710S-1 of the Transportation Criteria Manual, adopted on February 17, 2000.

F. Prior to the issuance of a final Certificate of Occupancy for a pedestrian-oriented use or a residential dwelling unit constructed on the West Parcel, a dedicated bike lane shall be constructed, differentiated by a different surface color from that of the internal circulation drive and sidewalk as shown on the Land Use Plan. The bike lane shall be no less than five feet in width for each of two directions of travel either on the internal drive shown on the PUD Land Use Plan or elsewhere on the Property following the alignment of the internal drive. Bike lane improvements are permitted uses within the primary and secondary setback and shall be constructed of pervious material such as crushed granite.

G The height of a structure shall be measured as the vertical distance from the average of the highest finished grade and lowest finished grade adjacent to the building:

1. for a flat roof, to the highest point of the coping,

2. for a mansard roof, to the deck line;
3. for a pitched or hip roof, to the mid-point of the highest gable; and
4. for other roof styles, to the highest point of the roof.

Finished grade for purposes of measuring height on all portions of the West Parcel within the one hundred-year floodplain shall be no higher than either i) three feet above the one hundred-year flood elevation, or ii) the minimum number of feet above the one hundred-year flood elevation required for compliance by applicable law, whichever is lower.

Finished grade for purposes of measuring height on all portions of the West Parcel outside the one hundred-year floodplain shall be no higher than two feet above natural grade

Natural grade shall mean the grade of a parcel as the parcel existed on November 14, 2006, as shown on the Existing Conditions Plan (Exhibit H), before modified by moving earth, adding or removing fill, or installing a berm, retaining wall, or architectural landscape feature.

III South Parcel.

- A The South Parcel is not within any primary or secondary setback of the South Central Subdistrict waterfront overlay district
- B Green Building. All residential development shall comply with Austin Energy Green Building Program (GBP) in effect August 9, 2006, to achieve a minimum two-star rating. (See Exhibit J)
- C. The height of a structure shall be measured as the vertical distance from the average of the highest finished grade and lowest finished grade adjacent to the building:
 1. for a flat roof, to the highest point of the coping;
 2. for a mansard roof, to the deck line;
 3. for a pitched or hip roof, to the mid-point of the highest gable; and
 4. for other roof styles, to the highest point of the roof.

Finished grade for purposes of measuring height on all portions of the West Parcel within the one hundred-year floodplain shall be no higher than either i) three feet above the one hundred-year flood elevation, or ii) the minimum number of feet above the one hundred-year flood elevation required for compliance by applicable law, whichever is lower

Finished grade for purposes of measuring height on all portions of the West Parcel outside the one hundred-year floodplain shall be no higher than 454 feet mean sea level.

Natural grade shall mean the grade of a parcel as the parcel existed on November 14, 2006, as shown on the Existing Conditions Plan (Exhibit H), before modified by moving earth, adding or removing fill, or installing a berm, retaining wall, or architectural landscape feature.

The maximum height is 90 feet for a building or structure existing on the portion of the South Parcel zoned CS-1-NP as of November 14, 2006. (See Exhibit G-field notes)

IV General Regulations Applicable to all Parcels.

- A If the Town Lake shoreline is reclaimed as shown on the Land Use Plan with Maximum Shoreline Reclamation (Exhibit I) in accordance with all applicable local, state, federal and other governmental regulations, the primary setback is 150 feet and the secondary setback is 200 feet from the reconstructed shoreline. In no event shall the reclaimed shoreline be relocated more than 15 feet to the north of its current location as shown on Exhibit I. The Land Use Plan may be administratively amended to show the new shoreline.
- B A payment instead of structural controls under Section 25-8-214 (*Optional Payment Instead of Structural Controls in Urban Watersheds*) of the City Code shall be permitted and is approved for each Parcel. The amount of such payment for each Parcel shall be calculated and paid at the time the first site development permit ("SDP") for each Parcel is released.
- C The following transportation related standards apply:
 - 1 The internal circulation drive as depicted on the Land Use Plan is permitted. Access to South First Street in the locations as depicted on the Land Use Plan is permitted and shall be included in the applicable SDP.
 - 2. A minimum of one loading area and a minimum of one loading space shall be provided:
 - a) within or adjacent to a proposed building as shown on the Land Use Plan (Exhibit C) constructed on the West Parcel, and
 - b) within or adjacent to a proposed building as shown on the Land Use Plan (Exhibit C) constructed on the South Parcel.
 - 3. Except as set forth in Section 3 of the Phasing Plan (Exhibit D) of this ordinance the following applies:

- a) The minimum number of required off-street parking spaces shall be 80 percent of the number otherwise required under Appendix A (*Tables of Off-Street Parking and Loading Requirements*) of Chapter 25-6 (*Transportation*) of the City Code. A maximum number of off-street parking spaces are not required. Surface, structured and underground parking facilities are permitted; and
 - b) During construction activities of the PUD property, the minimum number of off-street parking spaces is not required and off-site parking is permitted at the option of the owner
- D. A voluntary donation made by the owner of the property to the City of Austin for park purposes shall be applied toward any parkland dedication requirements that may be required for the development.
- E. Pole signage is prohibited.
- F. Except as otherwise provided in this ordinance the provisions of Section 25-8-281 (*Critical Environmental Features*) apply to the PUD. The provisions of Section 25-8-282 (*Wetland Protection*) does not apply to the PUD
- G. The 50-foot wetlands setback located along Town Lake in the northwest portion of the Property does not apply to i) the hike and bike trail located on the Property, or ii) any portion of the Property to the south of the hike and bike trail.
- H. The following drainage related standards shall apply
 - 1. Fill dirt required by federal, state, or local regulations for the purpose of raising the area required for the construction and lateral support of buildings, drives, sidewalks, parking, pedestrian improvements, patio areas and other improvements shown on the Land Use Plan (Exhibit C) and located within the 100-year base flood elevation is permitted but may not exceed three feet above the 100-year base flood elevation.
 - 2. Fill dirt required to raise the area required for the construction and lateral support of buildings, drives, sidewalks, parking, pedestrian improvements, patio areas and other improvements shown on the Land Use Plan (Exhibit C) and located outside the 100-year base flood elevation is permitted but may not exceed four feet above the natural grade as it exists on the date of this ordinance as shown on the Existing Conditions Plan (Exhibit H).

3. The requirements of Section 25-7-93 (*General Exceptions*) of the City Code apply to improvements including buildings and boat docks as shown on the Land Use Plan (Exhibit C). The existing floodplain within the PUD may be modified in connection with and at the time of approval of each SDP.
4. The requirements of Section 25-7-94 (*Exceptions in Central Business Area*) do not apply to any SDP for any portion of the Property.
5. The requirements of Section 25-7-31 (*Director Authorized to Require Drainage Studies*) and Section 25-7-61 (*Criteria for Approval of Plats, Construction Plans and Site Plans*) do not apply to any SDP.
6. A request for modification of the FEMA floodplain submitted by the owner that reflects the modifications to the existing floodplain as shown in Subsection H (1) shall be promptly processed by the Director of the Watershed Protection and Development Review Department, or its successor department, according to applicable FEMA regulations.

- I. All construction staging area and construction offices on the Property shall be screened from view outside the boundaries of the Property by an opaque screen eight feet in height, and any and all construction staging areas, trailers, offices, and other facilities shall be removed from the Property within 30 days following the granting of a final Certificate of Occupancy for the structure with which the staging areas, trailers, offices, or other facilities are associated. In the event that construction associated with a staging area, trailer, office, or other facility ceases for a period of 120 days or more, all such construction staging areas, trailers, offices, and facilities shall be removed immediately. With regard to the West Parcel, upon removal of the construction staging areas, trailers, offices, and other facilities, the then owner of the West Parcel shall immediately remove all pavement or other improvements not shown on and in compliance with the Land Use Plan (Exhibit C). Notwithstanding anything to the contrary, with regard to all parcels included in this ordinance, no construction staging areas, trailers, offices, or facilities may remain i) in the primary setback of the waterfront overlay district for a period longer than one year, or ii) in the secondary setback of the waterfront overlay district for a period longer than two and one-half years, from the date said staging areas, trailers, offices, or facilities are placed within the waterfront overlay district.

- J. All rooftop mechanical equipment and machinery on new construction shall be screened from view of adjacent property by screening up to the height of such machinery and equipment, and the noise level of all mechanical equipment and machinery may not exceed 70 decibels at the property line.

EXHIBIT "A"

0.491 acre (21,375 sq. ft.)
SAM, Inc. Job No. 26267-04

FN4352(ALG)
November 8, 2006

DESCRIPTION OF A 0.491 ACRE (21,375 SQ. FT.) TRACT OF LAND BEING A PORTION OF THAT CALLED LOT A OF THE T.L. SUBDIVISION 3A AS PER PLAT DULY RECORDED IN VOLUME 82, PAGE 380, OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, AND FURTHER DESCRIBED AS TRACT 1, IN THE DEED TO FAIRFIELD TOWN LAKE/ZILKER LP, AS RECORDED IN DOCUMENT NO. 2005191745, OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 0.491 ACRE (21,375 SQ. FT.) TRACT OF LAND AS SHOWN ON THE ACCOMPANYING SKETCH AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING at a 1/2-inch iron rod found in the north right-of-way line of Barton Springs Road, a 100-foot wide right-of-way, same being the south common corner of said Lot A, and a called 0.575 acre tract of land described in the deed to Bathhaus Ltd., as recorded in Document No. 2001174688, of the Official Public Records of Travis County, Texas, from which a punch-hole in concrete found for the northwest corner of said 0.575 acre tract, also being an interior ell corner of said Lot A, bears N 19° 00' 21" E, a distance of 400.15 feet;

THENCE with said north right-of-way line, S 76° 21' 17" W, a distance of 60.33 feet to calculated point, for the southeast corner and the **POINT OF BEGINNING** of the tract described herein;

THENCE continuing with said north right-of-way line, S 76° 21' 17" W, a distance of 171.00 feet to a calculated point, for the southwest corner of the tract described herein, from which an "X" cut in concrete found in said north right-of-way line, same being a south common corner of said Lot A and a tract of land (Tract 3), described in the deed to Fairfield Town Lake/Zilker LP, as recorded in Document No. 2005191745, of the Official Public Records of Travis County, Texas, bears S 76° 21' 17" W, a distance of 34.94 feet;

THENCE leaving said north right-of-way line, crossing through the interior of said Lot A, the following three (3) courses and distances:

1. N 13° 40' 38" W, a distance of 125.00 feet to a calculated point,
2. N 76° 21' 17" E, a distance of 171.00 feet to a calculated point, and

EXHIBIT "A"

0.491 acre (21,375 sq. ft.)
SAM, Inc. Job No. 26267-04

FN4352(ALG)
November 8, 2006

3. S 13° 40' 38" E, a distance of 125.00 feet to the **POINT OF BEGINNING** and containing 0.491 acre (21,375 sq. ft.) of land more or less.

BEARING BASIS: Cotton spindles at an inside ell corner of Lot A and a point of intersection in a west line of Lot A of T L Subdivision 3A, a subdivision of record in Volume 82, Page 380, of the Plat Records of Travis County, Texas. Called bearing and distance between these cotton spindles is N26°12'E - 228.39 feet. Held called bearing of N26°12'00"E and found actual distance to be 228.38 feet.

This description is accompanied by a separate plat; see "Sketch to Accompany Field Note No. 4352", attached hereto and made a part hereof.

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

That I, C. M. Solomon., a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 8th day of November A.D.

SURVEYING AND MAPPING, Inc.
5508 West Highway 290, Building B
Austin, Texas 78735



C. M. Solomon
Registered Professional Land Surveyor
No. 5734 - State of Texas



LEGEND

- △ CALCULATED POINT
- ⊗ PUNCH IN CONCRETE
- 1/2" IRON ROD FOUND UNLESS NOTED
- * "X" CUT IN CONCRETE
- O.P.R.T.C.TX. OFFICIAL PUBLIC RECORDS TRAVIS COUNTY, TEXAS
- D.R.T.C.TX. DEED RECORDS OF TRAVIS COUNTY, TEXAS
- P.R.T.C.TX. PLAT RECORDS OF TRAVIS COUNTY, TEXAS
- P.O.B. POINT-OF-BEGINNING
- P.O.C. POINT-OF-COMMENCEMENT

100 50 0 100



GRAPHIC SCALE
SCALE: 1" = 100'
NOVEMBER 2008
TRAVIS COUNTY, TEXAS



FAIRFIELD TOWN LAKE/ZILKER LP (TRACT 1)

DOC. NO. 2005191745
O.P.R.T.C.TX.

**LOT A
T.L. SUBDIVISION 3A
VOL. 82, PG. 380
P.R.T.C.TX.**

LOT 5A
RESUBDIVISION OF
T.L. SUBDIVISION NO. 1
DOC. #200200297
O.P.R.T.C.TX.
LAKESHORE TOWERS LIMITED PARTNERSHIP
DOC. #2001028832
O.P.R.T.C.TX.
(COMMERCIAL)

LOT 5B
RESUBDIVISION OF
T.L. SUBDIVISION NO. 1
DOC. #200200297
O.P.R.T.C.TX.
LRC LAKEVIEW PROPERTIES, LTD
DOC. #2003222211
O.P.R.T.C.TX.
(COMMERCIAL)

FAIRFIELD TOWN LAKE/ZILKER LP
(TRACT 3)
30' ACCESS EASEMENT
DOC. NO. 2005191745
O.P.R.T.C.TX.

LOT 6
T.L. SUBDIVISION NO. 1
VOL. 68, PG. 52
P.R.T.C.TX.
ASSOCIATED GENERAL
CONTRACTORS OF AMERICA, INC.
VOL. 6923, PG. 155
D.R.T.C.TX.
(COMMERCIAL)

BATHAUS LTD.
CALLED 0.575 ACRES
DOC. #200117468
O.P.R.T.C.TX.
(COMMERCIAL)

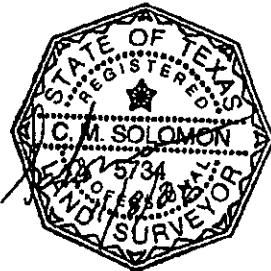
DORIS J. FINKELSTEIN, TRUSTEE
CALLED TRACT II
DOC. #2001091140
O.P.R.T.C.TX.
(RETAIL)

SOUTH CONGRESS AVENUE
(120' WIDE RIGHT-OF-WAY)

N76°21'17"E 171.00'
S76°21'17"W 171.00'
S76°21'17"W 171.00'
N76°21'17"E 171.00'
S76°21'17"W 171.00'
N76°21'17"E 171.00'
S76°21'17"W 171.00'
N76°21'17"E 171.00'
S76°21'17"W 171.00'
N76°21'17"E 171.00'
S76°21'17"W 171.00'
N76°21'17"E 171.00'
S76°21'17"W 171.00'

0.491 ACRE
(21,375 SQ. FT.)

BARTON SPRINGS ROAD
(100' WIDE RIGHT-OF-WAY)



LINE TABLE

LINE	BEARING	LENGTH
L1	S76°21'17"W	60.33'
L2	S76°21'17"W	34.94'

BEARING BASIS:

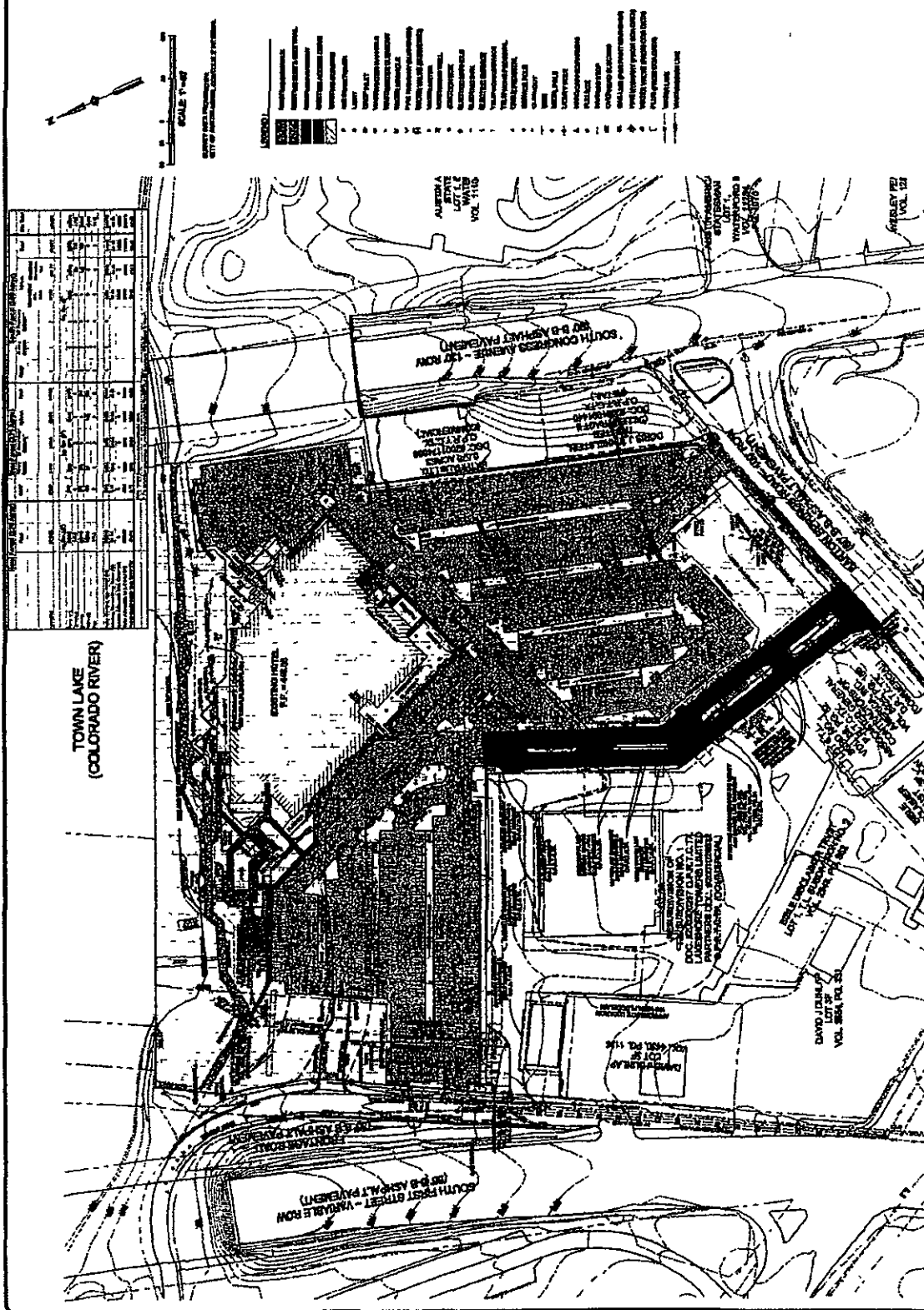
COTTON SPINDLES AT AN INSIDE ELL CORNER OF LOT A AND A POINT OF INTERSECTION IN A WEST LINE OF LOT A OF T. L. SUBDIVISION 3A, A SUBDIVISION OF RECORD IN VOLUME 82, PAGE 380 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS. CALLED BEARING AND DISTANCE BETWEEN THESE COTTON SPINDLES IS N26°12'E - 228.39 FEET. HELD CALLED BEARING OF N26°12'00"E AND FOUND ACTUAL DISTANCE TO BE 228.38 FEET.

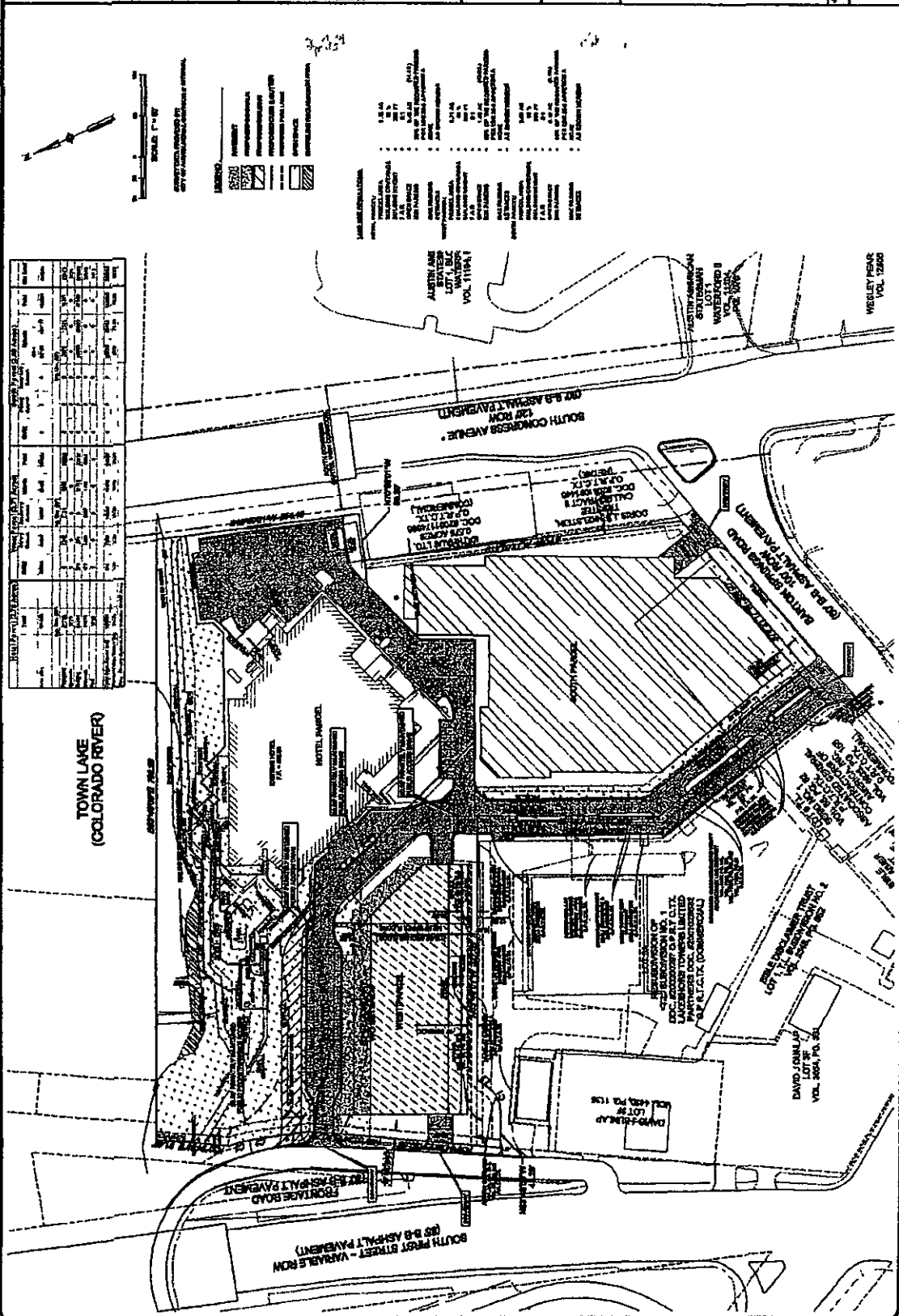
PROJECT: HYATT REGENCY
JOB NUMBER: 26297-04
DATE: NOVEMBER 8, 2006
SURVEYOR: CMS
PARTY CHIEF: NA
FIELDBOOK: NA
FIELDNOTE: F14432(ALL)DOC
TECHNICIAN: ALD
DRAWING: F14432.DWG
SCALE: 1" = 100'



5506 WEST HIGHWAY 290
BUILDING B
AUSTIN TEXAS, 78735
(512) 647-0578
FAX: (512) 326-3029
EMAIL: SAM@SAMINCAUS.COM

**SKETCH TO ACCOMPANY
FIELD NOTE No. 4352
PAGE 3 OF 3**



[illegible]

RESTRICTIVE COVENANT

OWNER: Fairfield Town Lake/Zilker LP, a Delaware limited partnership

ADDRESS: 2045 North Highway 360, Suite 250, Grand Prairie, Texas 75050

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: A 9.567 acre (416,730 square feet) tract of land, more or less, in the City of Austin, Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "A" attached and incorporated into this covenant.

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property specified in that certain Traffic Impact Analysis (the "TIA") prepared by Scott Feldman of Alliance Transportation Group, dated February 2006, or as amended and approved by the Director of the Watershed Protection and Development Review Department, or its successor department, of the City of Austin. All development on the Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Watershed Protection and Development Review Department, dated August 16, 2006. The TIA shall be kept on file at the Watershed Protection and Development Review Department, or its successor department, of the City of Austin.
2. At the time an application for approval of the site plan for the first phase of the development of the Property is submitted to the Watershed Protection and Development Review Department, or its successor, for development of the Property, or any portion of the Property, an Integrated Pest Management Plan (the "IPM Plan") shall be submitted to the Watershed Protection and Development Review Department, or its successor department, for review and approval. The IPM Plan shall comply with the guidelines in Section 1.6.9.2 (D) and (F) of the Environmental Criteria Manual that are in effect on the date of this restrictive covenant.

- 3 At the time an application for approval of the site plan is submitted to the Watershed Protection and Development Review Department, or its successor department, for development of any portion of the Property adjacent to Barton Springs Road, the Owner shall design streetscape improvements in full compliance with the City of Austin Great Streets design criteria as the criteria existed on the date of this restrictive covenant within the public right-of-way of Barton Springs Road immediately adjacent to the portion of the Property for which such site plan application is submitted. Design, permitting and construction of streetscape improvements will be at Owner's expense. The Owner shall coordinate the design of the streetscape improvements with the Urban Design Section of the Neighborhood Planning and Zoning Department, or its successor department, of the City of Austin. The streetscape improvements shall be constructed and completed prior to the issuance of the final certificate of occupancy for the building to be constructed on the portion of the Property for which a site plan is approved and released by the City of Austin. The Urban Design Section, or its successor, shall inspect and approve the streetscape improvements prior to issuance of such certificate of occupancy.
4. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
5. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect
- 6 If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
7. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination

EXECUTED this the _____ day of _____, 2007

OWNER:

FAIRFIELD TOWN LAKE/ZILKER LP
a Delaware limited partnership

By: FF Town Lake/Zilker LLC,
a Delaware limited liability company,
General Partner

By: FF Properties, Inc.,
a Delaware corporation,
Manager

By: _____
Paul R. Johnston,
Authorized Representative

APPROVED AS TO FORM.

Assistant City Attorney
City of Austin

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the ____ day of _____, 2007, by Paul R. Johnston, as authorized representative of FF Properties, Inc., a Delaware corporation, General Partner of Fairfield Town Lake/Zilker LP, a Delaware limited partnership, on behalf of the corporation and the limited partnership.

Notary Public, State of Texas

After Recording, Please Return to:
City of Austin
Department of Law
P. O. Box 1088
Austin, Texas 78767
Attention: Diana Minter, Paralegal