## ZONING CHANGE REVIEW SHEET

**CASE:** C14-2010-0025 EP Austin

**P. C. DATE:** 04-12-2011

**ADDRESS:** 5011 Burnett Road

**AREA:** 0.559 Acres

**APPLICANT:** EP Austin
(George C. Thorne, Jr.)

**AGENT:** Armbrust & Brown, L.L.P
(Richard Suttle)

**NEIGHBORHOOD PLAN AREA:** Brentwood

**CAPITOL VIEW:** No

**WATERSHED:** Shoal Creek

**T.I.A.:** No.

**HILL COUNTRY ROADWAY:** No

**DESIRED DEVELOPMENT ZONE:** Yes

**ZONING FROM:** SF-3-NP – Family Residence-Neighborhood Plan.

**ZONING TO:** GO-MU-NP - General Office - Mixed Use Building - Neighborhood Plan

**SUMMARY STAFF RECOMMENDATION:**

Staff recommends GO-MU-CO-NP – General Office – Mixed Use - Conditional Overlay - Neighborhood Plan. The Conditional Overlay would limit the uses to "Medical Office, over 5,000 s.f." in the General Office (GO) zoning district and all other Neighborhood Office (NO) uses, prohibit access to Woodrow Avenue and limit vehicle trips to 2,000 per day.

**PLANNING COMMISSION RECOMMENDATION:**

The motion to approve staff's recommendation for GO-MU-CO-NP district zoning was approved on the consent agenda by Commissioner Saundra Kirk's motion, Commissioner Dave Anderson second the motion on a vote of 9-0.

**DEPARTMENT COMMENTS:**

This case originally included the entirety of the four lots all the way to Woodrow Avenue. The applicant has met with the neighborhood to work out an agreement that would allow the existing business to expand as well as preserve the existing neighborhood character. The applicant has agreed to leave the existing Family Residence zoning, SF-3 and the single family homes that front on Woodrow Avenue. The applicant has also agreed to not take access to Woodrow Avenue and to remove the existing access to Woodrow Avenue. The applicant has also agreed to limit the uses of the property as well. The applicant has also entered into a restrictive covenant that addresses additional issues such as lighting, parking, signage fencing and landscaping (see attached). The Brentwood Neighborhood Planning Contact Team has voted to support the zone change request as well as the Neighborhood Plan Amendment. (see attached)

**BASIS FOR RECOMMENDATION:**

1. *Zoning changes should promote compatibility with adjacent and nearby uses and should not result in detrimental impacts to the neighborhood character.*

Granting the zoning will allow the current use to expand while maintaining a SF-3/residential buffer next to the existing neighborhood.

**EXISTING ZONING AND LAND USES:**

| | ZONING | LAND USES |
|---|---|---|
| **SITE** | SF-3-NP | Undeveloped |
| **NORTH** | SF-3-NP | Single Family Residential |
| **SOUTH** | GR-MUCO-NP | Strip Center Office/Retail Parking lot |
| **EAST** | SF-3 | Single Family Residential |
| **WEST** | CS-V | Retail |

**CASE HISTORIES:**

| CASE NUMBER | REQUEST | PLANNING COMMISSION | CITY COUNCIL |
|---|---|---|---|
| C14-93-0088 | From SF-3 to LO | Approved LO [Vote: 7-1-1] | Approved LO [Vote: 7-0] |

**NEIGHBORHOOD ORGANIZATION:**

- Homeless Neighborhood Assoc.
- Austin Neighborhoods Council
- League of Bicycling Voters
- North Austin Neighborhood Alliance
- Brentwood Neighborhood Assoc.
- Northfield Neighborhood Assoc.

**SCHOOLS:**

Brykerwoods Elementary School
OHenry Middle School
Austin High School

**SITE PLAN COMMENTS RECEIVED:**

SP 1. Site plans will be required for any new development other than single-family or duplex residential.

SP 2. A Unified Development Agreement will be required to unify all tracts within the site prior to site plan approval.

SP 3. 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.

**Compatibility Standards**

a. The site is subject to compatibility standards. Along the North & East property lines, the following standards apply:
b. No structure may be built within 25 feet of the property line.
c. No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
d. No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
e. No parking or driveways are allowed within 25 feet of the property line.

f. A landscape area at least 25 feet wide is required along the property line. In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.
g. for a structure more than 100 feet but not more than 300 feet from property zoned SF-5 or more restrictive, 40 feet plus one foot for each 10 feet of distance in excess of 100 feet from the property zoned SF-5 or more restrictive.
h. An intensive recreational use, including a swimming pool, tennis court, ball court, or playground, may not be constructed 50 feet or less from adjoining SF-3 property.
i. Additional design regulations will be enforced at the time a site plan is submitted.

SP 4. This site is subject to Commercial Design Standards, however, will not be eligible for Vertical Mixed Use sections without the "V" zoning.

**ENVIRONMENTAL COMMENTS RECEIVED:**

1. 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.

2. Impervious cover is not limited in this watershed class; therefore the zoning district impervious cover limits will apply.

3. This site is required to provide on-site structural water quality controls (or payment in lieu of) for all development and/or redevelopment when 5,000 s.f. cumulative is exceeded, and detention for the two-year storm. At this time, no information has been provided as to whether this property has any pre-existing approvals which would preempt current water quality or Code requirements.

4. According to flood plain maps, there is no flood plain within the project area.

5. Trees will likely be impacted with a proposed development associated with this rezoning case. Please be aware that an approved rezoning status does not eliminate a proposed development's requirements to meet the intent of the tree ordinances. If further explanation or specificity is needed, please contact the City Arborist at 974-1876. At this time, site specific information is unavailable regarding other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

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

**TRANSPORTATION COMMENTS RECEIVED:**

TR1. A traffic impact analysis was waived for this case because the applicant agreed to limit the intensity and uses for this development. If the zoning is granted, development should be limited through a conditional overlay to less than 2,000 vehicle trips per day. [LDC, 25-6-117]

| Name | ROW | Pavement | Classification | ADT |
|---|---|---|---|---|
| Burnet Road | 60' | Varies | Major Arterial | 17,452 |

**CITY COUNCIL DATE:** April 28th, 2011

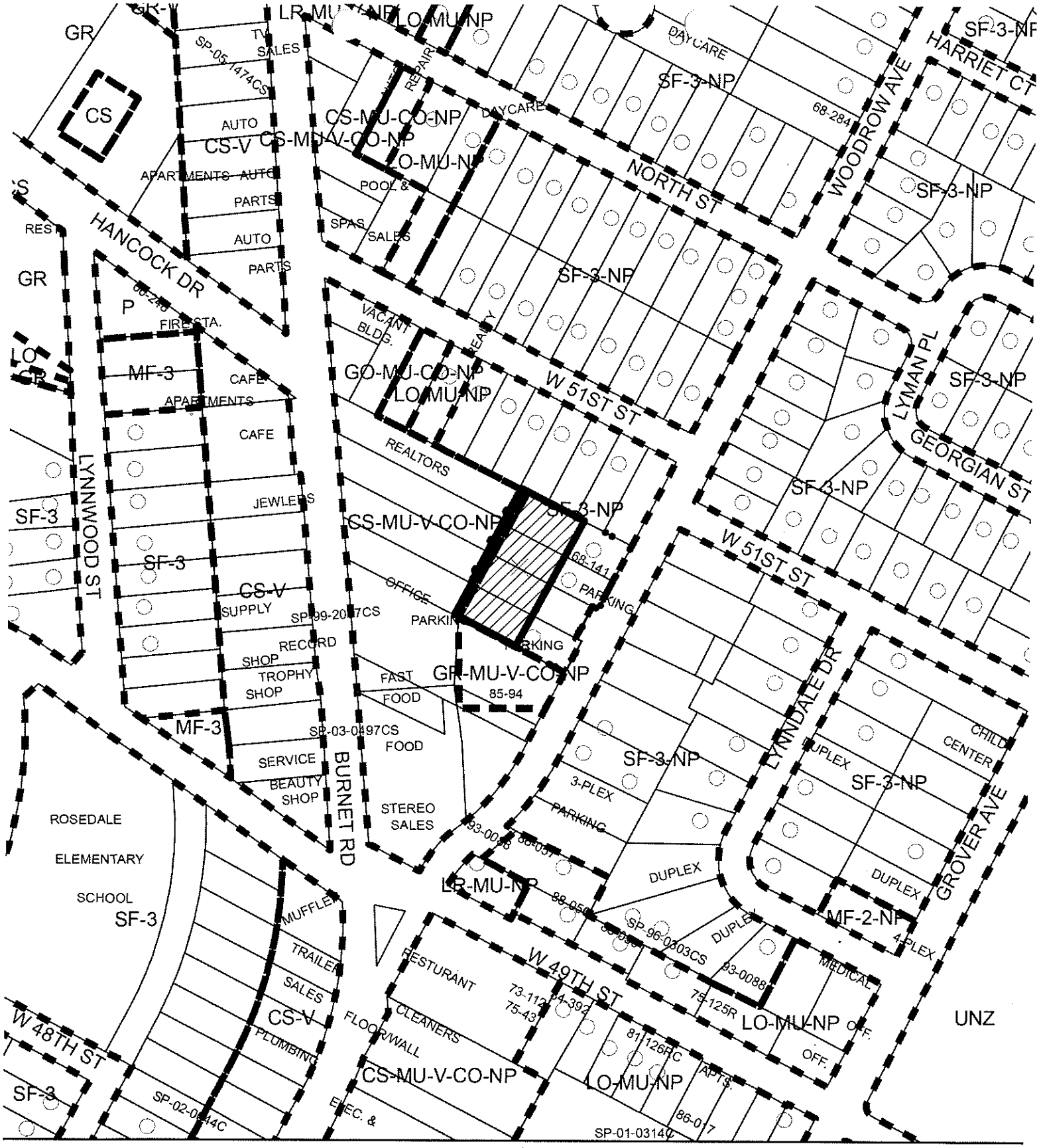
**ACTION:**

**ORDINANCE READINGS:** 1ST 2ND 3RD

**ORDINANCE NUMBER:**

**CASE MANAGER:** Clark Patterson
Clark.patterson@ci.austin.tx.us

**PHONE:** 974-7691




## ZONING

N

SUBJECT TRACT

PENDING CASE

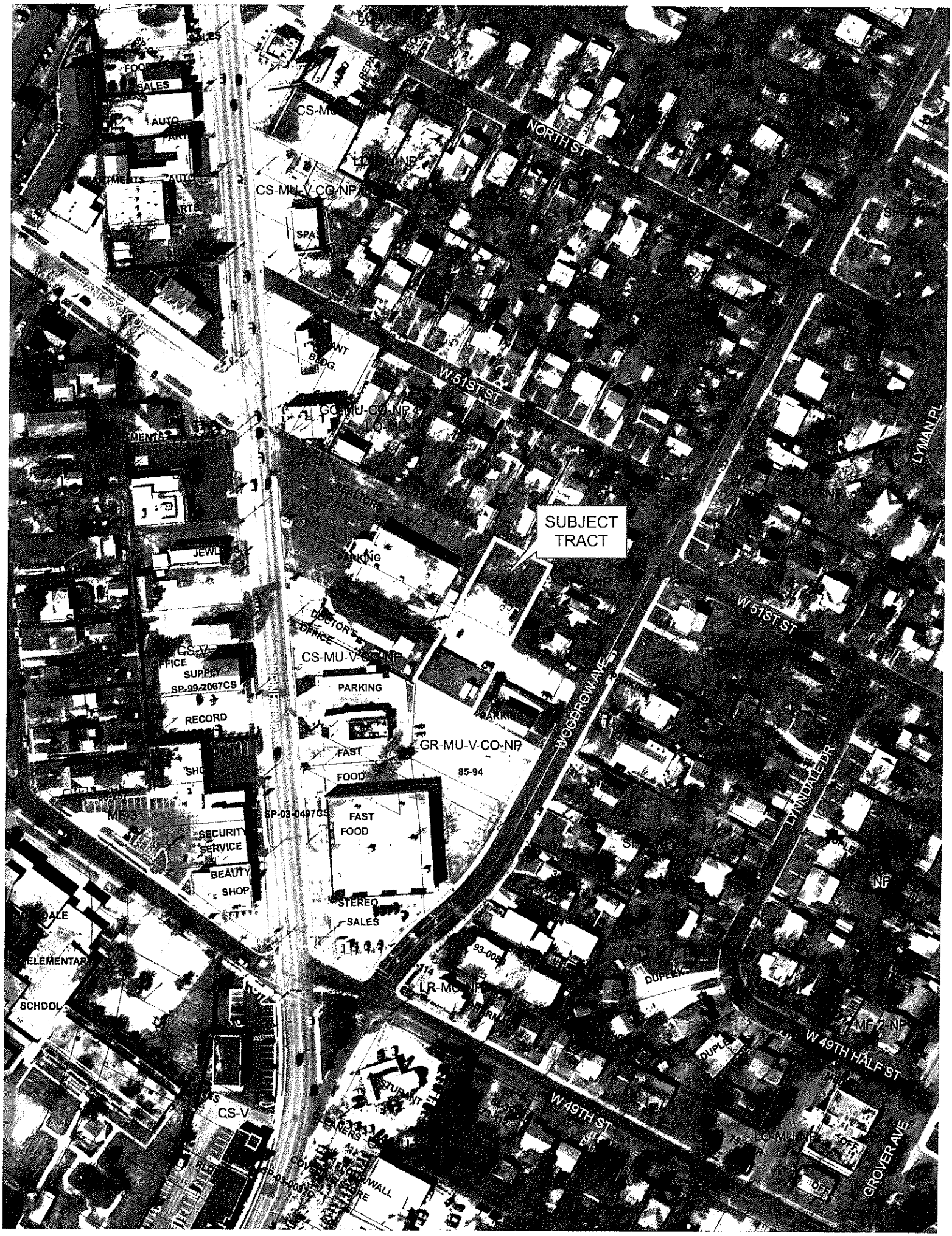
ZONING BOUNDARY

1" = 200'

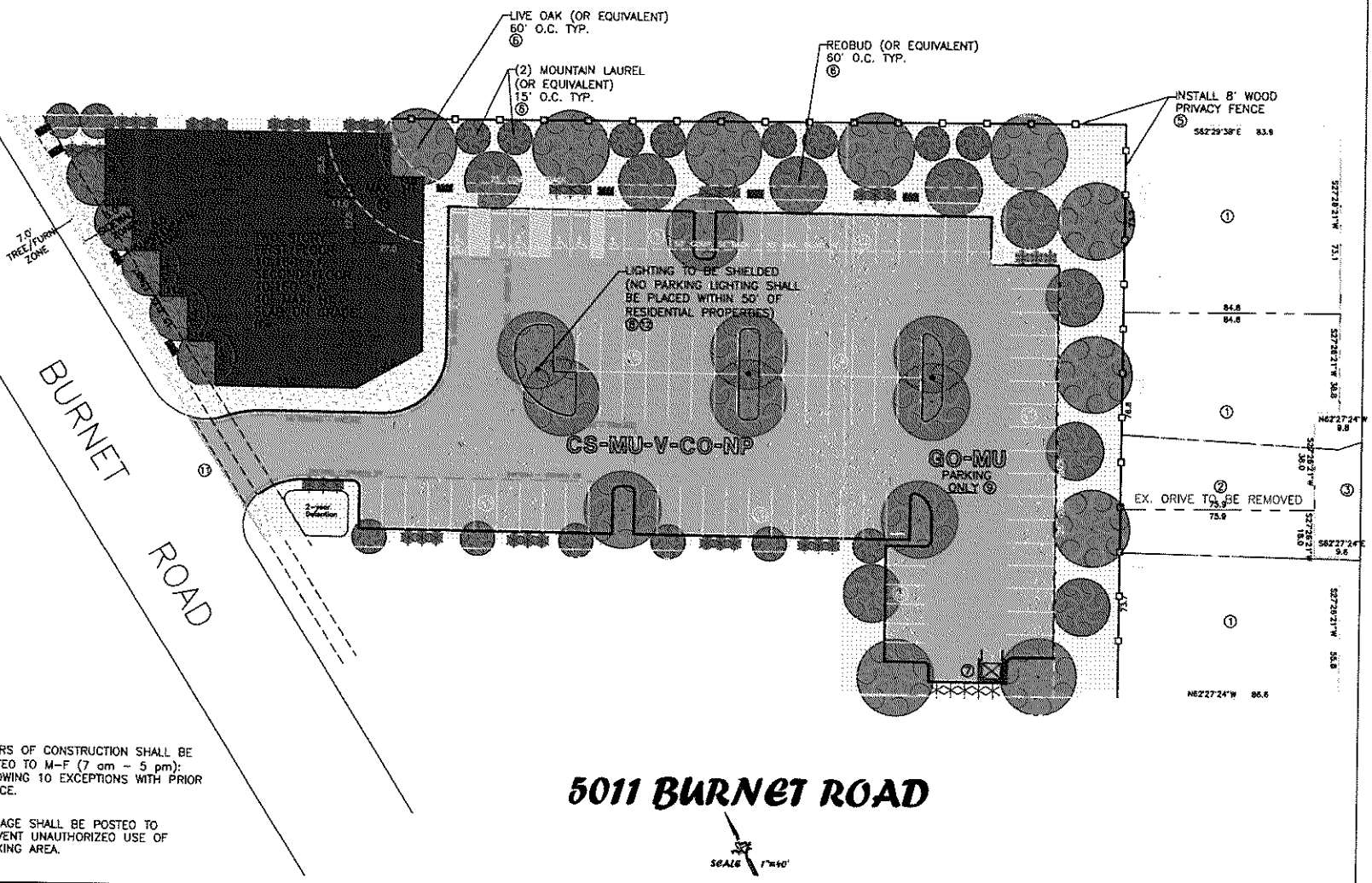
ZONING CASE#: C14-2010-0025
LOCATION: 5011 BURNET RD
SUBJECT AREA: 0.559 AC.
GRID: J27
MANAGER: C. PATTERSON

CITY OF AUSTIN · FOUNDED 1839

This map has been produced by the Communications Technology Management Dept. on behalf of the Planning Development Review Dept. for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.


SUBJECT TRACT
NORTH ST
W 51ST ST
WOODROW AVE
LYNDALE DR
W 49TH HALF ST
W 49TH ST
GROVER AVE
LYMAN PL
CS-MU-V-CO-NP
GO-MU-CO-NP
GR-MU-V-CO-NP
LR-MU-NP
MF-2-NP
CS-V
SP-99-2067CS
SP-03-0497CS
SP-03-0087
93-0088
85-94
FAST FOOD
SECURITY SERVICE
BEAUTY SHOP
STEREO SALES
DOCTOR'S OFFICE
PARKING
REALTORS
SCHOOL

# CONCEPTUAL PLAN




④ HOURS OF CONSTRUCTION SHALL BE LIMITED TO M-F (7 am - 5 pm); ALLOWING 10 EXCEPTIONS WITH PRIOR NOTICE.

⑪ SIGNAGE SHALL BE POSTED TO PREVENT UNAUTHORIZED USE OF PARKING AREA.

## 5011 BURNET ROAD

SCALE 1"=40'



# Brentwood Neighborhood Planning Contact Team

*Serving Our Neighborhood from 45th St. to Justin Lane and North Lamar to Burnet Road*

April 5, 2011

**To:** Maureen Meredith, Neighborhood Planner

**Subject:** Proposed Brentwood Neighborhood Plan Amendment Plan Amendment Case Number: NPA-2010-0018.03, Zoning Case Number: C14-2010-0025

On March 9, 2011 the Brentwood Neighborhood Planning Contact Team (BNPCT) held a public meeting in accordance with our bylaws to consider a plan amendment plan and zoning change proposal for property located @ 4914-5004 Woodrow Avenue. In attendance were 8 members of the BNPCT, Brentwood residents who live near the subject property, the applicant's agents Lynn Ann Carley & Bill Lawson, and City of Austin Neighborhood Planner Maureen Meredith. The applicants presented their case for the proposed plan amendment and zoning case. After which, the applicants fielded questions about the proposal from the attendees. The applicant's presentation, resident input, and the goals of the Brentwood Neighborhood Plan were all carefully considered before making the following recommendation:

The Brentwood Neighborhood Planning Contact Team voted to support the applicant's plan amendment and zoning change request for the following reasons:

- The request creates a **GO** zoned "buffer" between **CS** properties along Burnet Road and the remaining **SF-3** properties along Woodrow.
- The request preserves a residential edge along Woodrow by leaving three legal **SF-3** lots.

**BNPCT support is contingent on the following:**

- If there is a Conditional Overlay on the **GO** zoned portion of the property that excludes all use/s but those absolutely necessary to satisfy the applicant's need for surface parking.
- If a Restrictive Covenant is in place between the applicant, nearest neighbors, and the Contact Team.
- If the residents withdraw their valid petition in opposition of a zoning change request.

Sincerely,

Richard Brock
BNPCT Chair
512) 458-3677
richbrock@grandecom.net

## DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant (the "**Restrictive Covenant**"), is executed by EP Austin Properties, LP, a Texas limited partnership, Robert L. Rock, and George C. Thorne Jr. ("**Owner**") and is as follows:

### RECITALS:

**OWNER:** EP Austin Properties, LP, a Texas limited partnership; Robert L. Rock; and George C. Thorne Jr.

**CONSIDERATION:** Ten and No/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged.

**PROPERTY:** A portion of Block 27, Walling Place Subdivision, a subdivision in Travis County, Texas, according to the map plat thereof recorded in Volume 3, Page 14A, of the Plat Records of Travis County, Texas, as more fully described on **Exhibit A** attached hereto.

A. **Definitions.**

1. Owner. The term "**Owner**" means the Owner and all future owners of the fee interest of any portion of the Property and their successors and assigns. EP Austin Properties, LP is the Owner of all of the Property, save and except the following parts: George C Thorne Jr. is the Owner of that part of the Property commonly known as 4914 Woodrow Avenue, Austin, Texas; and Robert L. Rock is the Owner of that part of the Property commonly known as 5002 Woodrow Avenue, Austin, Texas.

2. Association. The term "**Association**" means the Brentwood Neighborhood Plan Contact Team, a group of individuals created to assist with the City of Austin's neighborhood planning process for the Brentwood Neighborhood.

3. Benefited Property. The term "**Benefited Property**" means all property zoned as single family residential property within 200 feet of the Rezoning Parcel.

4. Benefited Property Owners. The term "**Benefited Property Owners**" means the owners of any portion of the Benefited Property, and their respective successors, heirs and assigns as owners of portions of the Benefited Property.

B. **General Recitals.**

1. Owner owns the Property.

2. The Property is presently zoned under the Code of the City of Austin ("**Code**") with single-family residence-neighborhood plan (SF-3-NP) combining district

designation and general commercial services-mixed use combining district-vertical mixed use overlay-conditional overlay-neighborhood plan (CS-MU-V-CO-NP) combining district designation.

3. Owner is currently processing an Application ("**Rezoning Application**") with the City of Austin ("**City**") for the purpose of rezoning a portion of the SF-3-NP zoned property ("**Rezoning Parcel**"), as more fully described on **Exhibit B** attached hereto, to general office-mixed use-conditional overlay-neighborhood plan (GO-MU-CO-NP) combining district designation.

4. Owner is currently processing a Neighborhood Plan Amendment ("**Neighborhood Plan Amendment**") with the City for the purpose of changing the Future Land Use Map within the Brentwood/Highland Neighborhood Plan from single family to mixed use on the Rezoning Parcel.

5. The Association and the Benefited Property Owners have agreed to support the Rezoning Application and Neighborhood Plan Amendment for the Rezoning Parcel on the condition that Owner adopt and impose this Restrictive Covenant on the Property.

6. Owner and the Association, acting on its behalf and on behalf of the Brentwood Neighborhood Association and the Benefited Property Owners, desire to evidence their agreement in the form of this Restrictive Covenant.

C. **Declaration.**

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 the following covenants, conditions and restrictions, regardless of whether or not they are set out in full or by reference in the deed or conveyance. Owner declares that the Property is subject to the following covenants, conditions and restrictions, which 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.

D. **Agreements.**

1. Property Use, Construction Standards and Restrictions. The following Property Uses and Restrictions will apply to the commercially zoned portions of the Property ("**Commercial Property**") in connection with the construction of a new building, parking lot and related improvements (collectively, the "**Improvements**") thereon:

a. Vehicular Access on Woodrow Avenue. The curb cut which currently exists from Woodrow Avenue into the commercially zoned portions of the Commercial Property will be permanently closed prior to commencement of construction of the Improvements at the Property.

b. Dumpsters. Following the commencement of occupancy and use of the Improvements, trash collection dumpsters and medical waste collection dumpsters

will be located, subject to City requirements, along the farthest southwestern corner of the Commercial Property as reasonably possible.

c. Lighting. Following the commencement of occupancy and use of the Improvements, exterior lighting installed on the Commercial Property within fifty feet (50') of single family zoned lots located immediately adjacent to the boundary lines of the Property ("**Residential Boundary Lines**") will be turned off between the hours of 10:00 PM and 6:00 AM.

d. Parking Signage. Following the commencement of occupancy and use of the Improvements, signage consistent with requirements of the Code will be installed on the Commercial Property to discourage unauthorized parking on and use of the parking area located on the Commercial Property.

e. Security. Exterior lighting on the Commercial Property further than fifty feet (50') from the Residential Boundary Lines shall remain on at night.

f. Hours of Construction. Demolition of existing improvements and construction of new Improvements on the Commercial Property will be limited to the hours of 7:00 AM to 5:00 PM, Monday through Friday, excluding national holidays. Owner may have ten (10) exceptions to this requirement, provided that notice of each such exception is provided to the Association pursuant to Section 2F hereof, at least seven (7) days prior to the proposed exception date. Exceptions over ten (10) are subject to the prior consent, either written or oral, of the Association, not to be unreasonably withheld, delayed or conditioned.

g. Construction Access. No construction or related commercial traffic will be permitted to enter or exit the Commercial Property from Woodrow Avenue.

h. Fencing. On or before the final completion of construction of the Improvements on the Commercial Property, Owner will install an eight foot (8') privacy fence ("**Fence**") along all Residential Boundary Lines. The fence will be constructed of (i) outdoor rated manufactured or natural wood and/or (ii) masonry. No chain link or corrugated metal fencing is allowed. Owner will be responsible for maintenance of the Fence.

i. Landscaping. On or before the final completion of construction of the Improvements, Owner will establish a landscaped greenbelt buffer ("**Greenbelt Buffer**") twenty-five feet (25') wide along the interior of the boundary lines of the Commercial Property which abut the Residential Boundary Lines. Owner will plant trees ("**Trees**") within the Greenbelt Buffer which will be of species that are intended to (i) maintain foliage throughout most of the year; and (ii) grow to a height of at least twenty-five feet (25') with a trunk diameter of at least eighteen inches (18") at full maturity. At planting, the Trees will have a minimum trunk diameter of three inches (3"). The Trees will be spaced in the Greenbelt Buffer in a manner that will accommodate mature canopies and not allow any major canopy gaps between the mature Trees. Owner may plant smaller trees and shrubbery within the Greenbelt Buffer to the extent compatible with the Trees.

j. Building Height. Improvements on the Commercial Property will be limited to a maximum height of forty feet (40') with no more than three stories.

k. Use. Notwithstanding that the Rezoning Parcel is intended to be rezoned to GO-MU-CO-NP, the Rezoning Parcel may only be used for an at-grade parking lot. No parking structure or improvements, not specifically identified or provided herein or typically used in connection with surface parking lots, may be constructed on or placed within the Rezoning Parcel of the Property.

2. Residential Edge along Woodrow Avenue. Three single-family residential lots, as defined by the Code of the City of Austin, shall be provided along Woodrow Avenue. Each lot shall have a minimum lot size of 5,750 square feet each.

3. General Provisions.

a. Permits and Approvals. As consideration for Owner's execution of this Restrictive Covenant, the Association agrees to support any and all applications, permits and/or approvals sought for the development and use of the Property that are consistent with this Restrictive Covenant, and will evidence its support as reasonably requested by Owner. The Association agrees and understands that Owner would not have entered into this Restrictive Covenant but for the agreement by the Association to this provision. This Restrictive Covenant shall automatically terminate and be of no further effect if the Austin City Council fails to approve a rezoning and neighborhood plan amendment of the Rezoning Parcel prior to May 31, 2011.

b. Enforcement. If any person or entity violates or attempts to violate this Restrictive Covenant, it will be lawful for any of the Benefited Property Owners or Owner to bring an action for specific performance against the person or entity violating or attempting to violate such covenant and to prevent the person or entity from violating or attempting to violate such covenant. No other person or entity will be entitled to enforce this Restrictive Covenant. No action or claim for damages will be permitted. Upon request by Owner, from time to time, the Association will confirm, in writing, within twenty one (21) days following receipt of written request, that the Owner and Property are in compliance with this Restrictive Covenant. If the Association declares that the Owner and Property are not in compliance, the Association will provide a detailed written description of each area of non-compliance within twenty one (21) days of the request by Owner. If no response is given within twenty one (21) days following the request by the Owner, it will be deemed that the Owner and Property are in compliance with this Restrictive Covenant.

c. Modification and Amendment. This Restrictive Covenant may only be modified, amended or terminated upon the filing of a modification, amendment or termination in the Official Public Records of Travis County, Texas, executed, acknowledged and approved by (a) fifty percent (50%) of the Benefited Property Owners; (b) the Owner of the Property; and (c) any mortgagees holding first lien security interests on any portion of the Property. Such joint action only becomes

effective after it is reduced to writing, signed by Owner and its respective mortgagees, if any, and fifty percent (50%) of the Benefited Property Owners and filed in the Official Public Records of Travis County, Texas.

d. Duration. This Restrictive Covenant will be effective in perpetuity, unless modified, amended, or terminated in accordance with Paragraph 3(C).

e. Governing Law; Place of Performance. This Restrictive Covenant and all rights and obligations will be governed by the laws of the State of Texas. This Restrictive Covenant is performable in Travis County, Texas.

f. Notices. Any Notice to the Owner or the Association must be in writing and given by delivering the same to such party in person, by expedited, private carrier services (such as Federal Express) or by sending the same by certified mail, return receipt requested, with postage prepaid to the intended recipient's last known mailing address. All notices under this Restrictive Covenant will be deemed given, received, made or communicated on the date personal delivery is received or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. Any change in ownership or address requires notice to all Owners and the Association.

**Owner:**

EP Austin Properties, LP
Attn: Teri Deabler
5011 Burnet Road
Austin, Texas 78756

**Association:**

Brentwood Neighborhood Plan Contact Team
c/o Richard Brock
1904 Ullrich Avenue
Austin, Texas 78756

or

Brentwood Neighborhood Plan Contact Team
c/o Don Leighton-Burwell
1417 Palo Duro
Austin, Texas 78757

g. Negation of Partnership. None of the terms or provisions of this Restrictive Covenant will be deemed to create a partnership between or among the Owner or the Association in their respective businesses or otherwise, nor will it cause them to be considered joint venturers or members of any joint enterprise.