NEIGHBORHOOD PLAN AMENDMENT REVIEW SHEET

NEIGHORHOOD PLAN: Central Austin Combined Neighborhood Plan

CASE#: NPA-2011-0019.02 (formerly case number NPA-2011-0021.01)

PC PUBLIC HEARING DATE: October 25, 2011

ADDRESS: 3208 Red River Street

AREA: Approx. 0.456 acres

APPLICANT/AGENT: Metcalfe Williams, L.L.P. (Michele Lynch Rogerson)

OWNER: River Holdings, L.T.D. (Gerald Kucera)

TYPE OF AMENDMENT:

Change in Future Land Use Designation

From: Mixed Use/Office **To:** Mixed Use

Base District Zoning Change

Related Zoning Case: C14-2010-0101

From: GO-MU-CO-NP **To:** GR-MU-CO-NP

PLAN ADOPTION DATE: August 2004

PLANNING COMMISSION RECOMMENDATION: On October 25, 2011, the motion to approve staff's recommendation for GR-MU-CO-NP district zoning, was approved on the consent agenda by Commissioner Saundra Kirk's motion, Commissioner Mandy Dealey seconded the motion on a vote of 6-0; Commissioners Dave Anderson, Jean Stevens and Richard Hatfield were absent.

STAFF RECOMMENDATION: Recommended

BASIS FOR RECOMMENDATION: The proposed plan amendment supports the following plan amendment Goals, Objectives, and Recommendations:

> Goal Three: Allow mixed-use development along the existing commercial corridors that is pedestrian oriented, neighborhood friendly, neighborhood scaled, and serves neighborhood needs
>
> **Medical Arts Street/Red River Street**

Objective 3.6: Allow mixed use development in the Eastwoods Neighborhood along Medical Arts Street, on the triangle of land between Medical Arts Street and Red River Street, and east of Red River Street.

Recommendation 16: Allow the neighborhood mixed-use building and mixed-use combining district on commercially zoned properties along Medical Arts

Street, on the triangular tract of land between Medical Arts Street and Red River Street, and on all tracts east of Red River Street and south of 30th Street.
Objective 3.7: The commercial node centered on the intersection of Red River and 32nd Streets should become more pedestrian oriented. Although there are taller buildings at the northwest corner of the intersection, neighborhood stakeholders prefer that future development be more modest in scale. They welcome businesses that will serve the neighborhood and will not exacerbate traffic and create an even more hostile intersection or lead to overflow parking on neighborhood streets.

Recommendation 18: Allow the neighborhood mixed use building and mixed use combining district on the commercial property at Red River and 32nd Streets.

Staff analysis: The proposed plan amendment to change the future land use map from Mixed Use/Office to Mixed Use reflects the changing character of Red River Street, which is becoming a more intense commercial corridor. In addition, the site is in close proximity to The University of Texas at Austin, St. David's Hospital, and the Mueller Development were research services are a logically extension of the uses to this area.

BACKGROUND: The plan amendment was filed out-of-cycle on August 12, 2011, with a letter from the Central Austin Combined Planning Contact supporting the out-of-cycle filing.

PUBLIC MEETINGS: The ordinance required plan amendment meeting was held on Wednesday, September 14, 2011. Three hundred thirty-six notices were mailed to property owners and renters within 500 feet of the property, in addition to neighborhood organizations registered on the community register. Eight stakeholders attended the meeting, in addition to one city staff member and two agents representing the property owner.

Michelle Rogerson Lynch, the owner's agent, gave a brief presentation explaining that the owner's are seeking a zoning change to allow a Research Services use where incubator start-ups can rent lab and office spaces. Ms. Lynch said there will be no flammable or hazardous materials used on the site and no animal testing; although there could be research mice. There will be no physical change to the property, only internal remodeling. All uses will be contained in the building with no waste products placed in the dumpster.

At the back of this report is the Conditional Overlay offered by the owner, in addition to the Public Restrictive Covenant.

After the presentation, the following questions were asked:

Q. Will the parking be under the building?

A. Yes.

Q. How many parking spaces are on the site?
A. I do not know, but will check.

Q.Will there be a Safety Officer on the property?

A. We can add this requirement to a private restrictive covenant, that each tenant would have their own safety officer.

Q. What would be the typical hours of operation?
A. It will not be a 24-hour facility, but will check if it will be an 8 a.m. to 5:00 p.m. operation.

Q. Even if there is a safety officer for each tenant, you really need one main officer who can be contacted in case of an emergency.
A. Yes, we can have this.

Q. Would the city conduct periodic safety inspections?
A. I don't know, but I will check how often the Austin Fire Department would inspect the facility.

Q. Private restrictive covenants are difficult for neighborhoods to enforce. In some instances property owners will provide a $50,000 bond for this reason.
A. Will ask the property owners about this.

Q. What other properties did the owners look at that did not have residential adjacency?
A. I don't know what other properties they looked at because they only hired us to research this property.

Q. Do the owners have a list of potential clients?
A. Will check with owner.

Dr. Richard Miller, Office of Technology and Commercialization at the University of Texas at Austin, attended the meeting and said that The University does not have any financial interest in the project other than the desire to help start-up companies locate to Austin. Typically there are four to five start-ups in these spaces, but the reality is usually two to three with one-year leases so they can expand as needed.

At the meeting (and provided with this report) are the comments received from a property owner who lives near the facility expressing concern that hazardous material could leak out into the neighborhood. These concerns were attempted to be addressed in the Private Restrictive Covenant in the back of the report.

The Hancock Neighborhood Association (a subarea of the Central Austin Combined Neighborhood Planning area) provided a letter of support for the plan amendment and zoning change applications).

CITY COUNCIL DATE:

November 10, 2011 **ACTION:** Approved on 1st Reading.

December 8, 2011 **ACTION:** Pending.

CASE MANAGER: Maureen Meredith, Senior Planner, 974-2695

EMAIL: maureen.meredith@austin.texas.gov

Letter of Support from the Hancock Neighborhood Association

Hancock Neighborhood Association
602 E. 42nd Street
Austin, TX. 78751

Greg Guernsey, Director
City of Austin
Planning and Development Review Department
P.O. Box 1088
Austin, Texas 78767

Re:
City of Austin Zoning Case No. C14-2011-0101
Neighborhood Plan Amendment Case No. NPA-2011-0021.01

Friday October 14th, 2011

Dear Mr. Guernsey,

I am writing you to inform you that the Hancock Neighborhood Association has voted to support the proposed zoning and neighborhood plan changes for the property located at 3208 Red River subject to the signing of the restrictive covenant negotiated with the prospective buyer.

During the process the association membership brought up several concerns with the proposal, primarily having to do with health and safety and the association's ability to ensure that tenants would adhere to the agreed rules and regulations. During the negotiations the prospective buyer addressed these concerns. The covenant now requires a safety officer for each tenant, as well as a building health and safety officer who will act as a single point of contact with the association. In addition the covenant provides for a remediation process and a security deposit. The covenant also limits non authorized uses.

Overall we believe the current plans for 3208 Red River benefits the neighborhood. We also appreciate that the prospective buyer reached out to the Hancock Neighborhood Association and was open and responsive to our concerns.

Sincerely,

G. Wouter Habraken
President
Hancock Neighborhood Association

Letter in Opposition from Property Owner

-----Original Message-----
From: Jacques Kagan [
Sent: Saturday, September 10, 2011 9:50 AM
To: Meredith, Maureen
Cc: Jacques Kagan; bart; Wouter Habraken (Hancock NA); James Rohlich
Subject: Zoning for 3208 Red River

Dear Ms Meredith,

I am about to leave town on a trip planned long ago. The matter of the zoning change requested for the property at 3208 Red River is of great concern to me.

The owners of the property wish to use it for research activities. I do not believe that they have sufficiently considered the protection of the neighborhood from unplanned catastrophic events. In particular, I am worried about their attitude that experienced workers will be in the labs and will best know how to manage them.

I have spent my professional life in university and industrial labs. All these organizations had dedicated safety officers with authority to enforce safety laws. Very often experienced lab workers were greatly inconvenienced and resentful but accidents were avoided.

Lax safety enforcement can lead to catastrophe. Well known examples are the fire in the Welch labs at UT, injuries and death at Texas Tech and UCLA and major loss of life suffered by BP in fires at their Texas City refinery and on the drilling platform on the Golf of Mexico.

I want to make sure that the neighborhood is protected by initial and subsequent unannounced regular Fire Department inspections and by regular health monitoring for proper handling of solvents, chemicals and biological organisms. Occupancy of the labs should not be granted without prior approval by the safety organizations.

Can these concerns be incorporated in the zoning changes (should they be approved)? How should this be done? Please help me reach the City officials who should be concerned.

Thank you

Jacques Kagan
3711 Greenway
Austin, TX 78705
512- 371-3963

From: Jacques Kagan
Sent: Wednesday, October 19, 2011 12:34 PM
To: Meredith, Maureen
Cc: Jacques Kagan
Subject: Re: Zoning for 3208 Red River

Dear Ms Meredith,

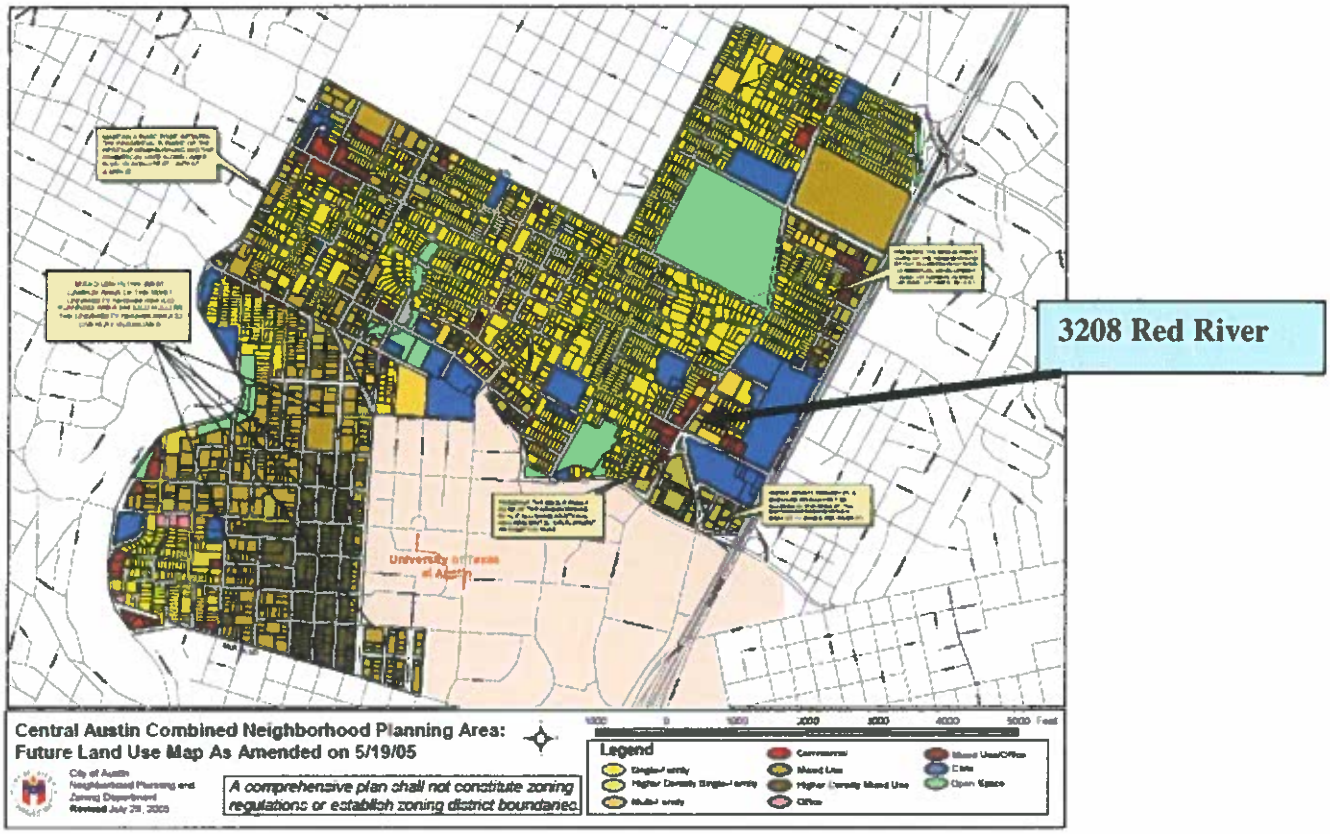
Thank you for asking whether I wanted my letter of September 10 to go to the planning commission and city council. YES, I DO.

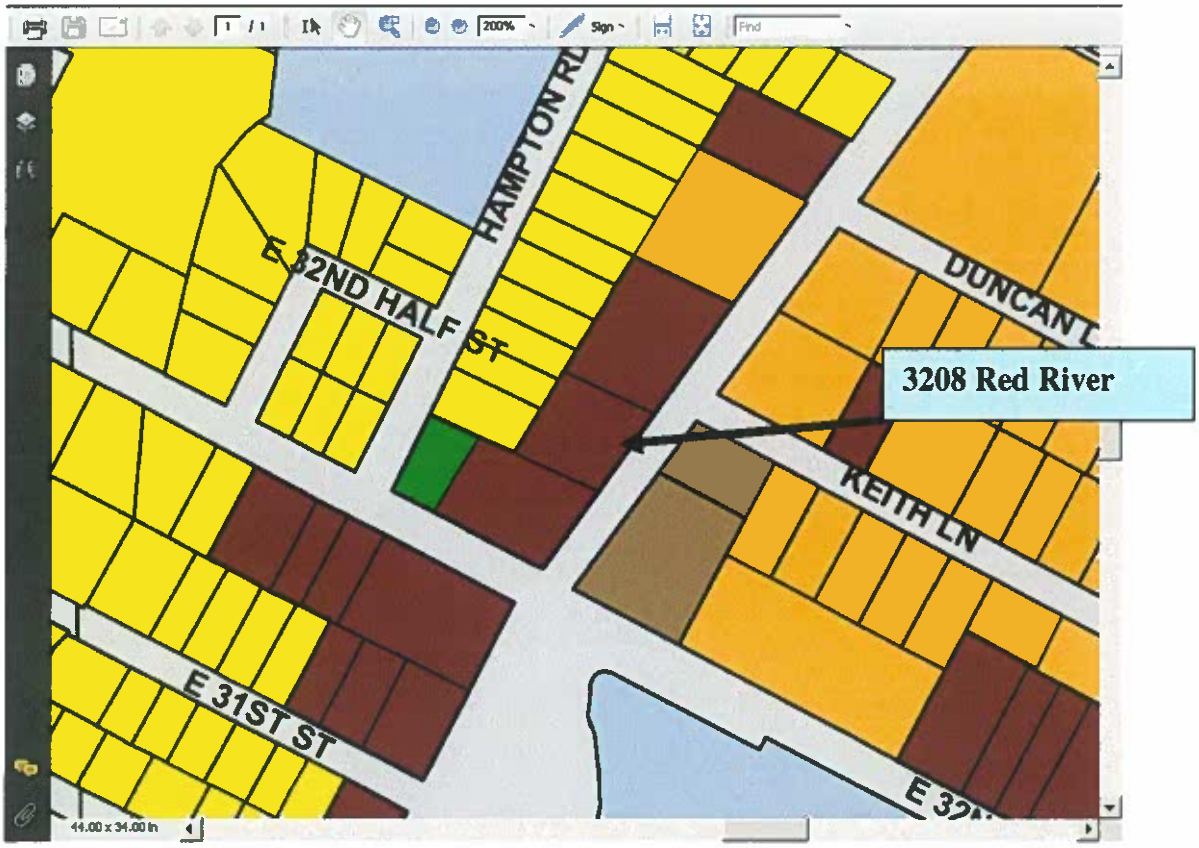
My concerns about the lack of oversight for the research activities at 3208 Red River have not decreased. If anything, the huge October 3 Magnablend fire in Waxahachie reinforced my opinion that safety issues should not be left in the hands of users, as opposed to professionals.

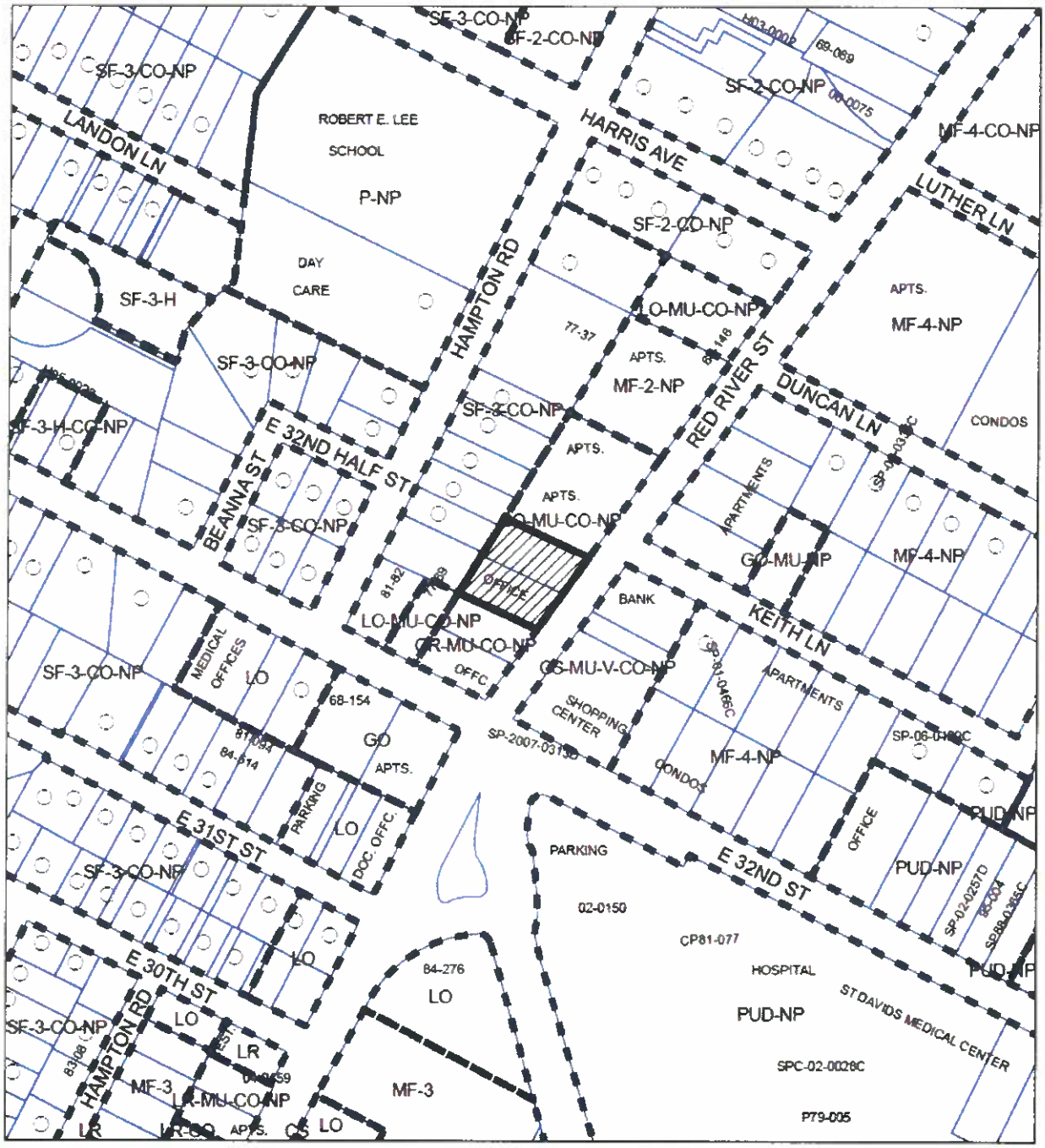
Please note also that even when potential fire issues are not at the forefront, chemical and biochemical operations often involve foul smelling reagents. The neighbors will not appreciate noticing them and guidelines for odor control should also be in place.

Thanks

Jacques Kagan


3208 Red River
Central Austin Combined Neighborhood Planning Area:
Future Land Use Map As Amended on 5/19/05
Legend
A comprehensive plan shall not constitute zoning regulations or establish zoning district boundaries.


HAMPTON RD
E 32ND HALF ST
DUNCAN L
3208 Red River
KEITH LN
E 31ST ST
E 32
44.00 x 34.00 in



N

SUBJECT TRACT

PENDING CASE

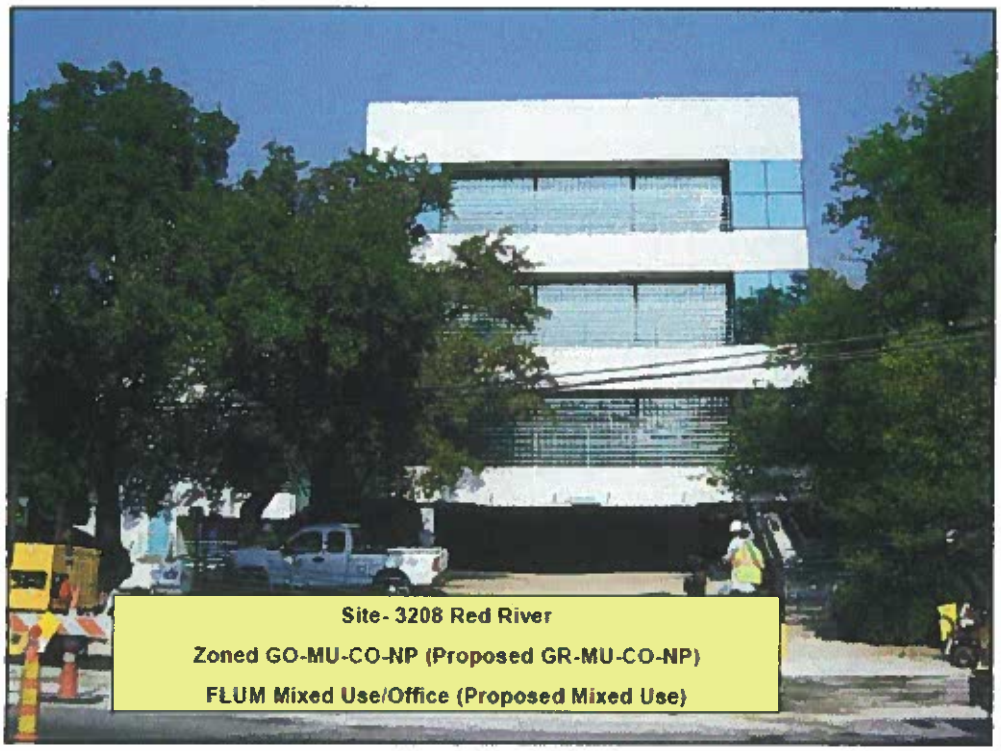
ZONING BOUNDARY

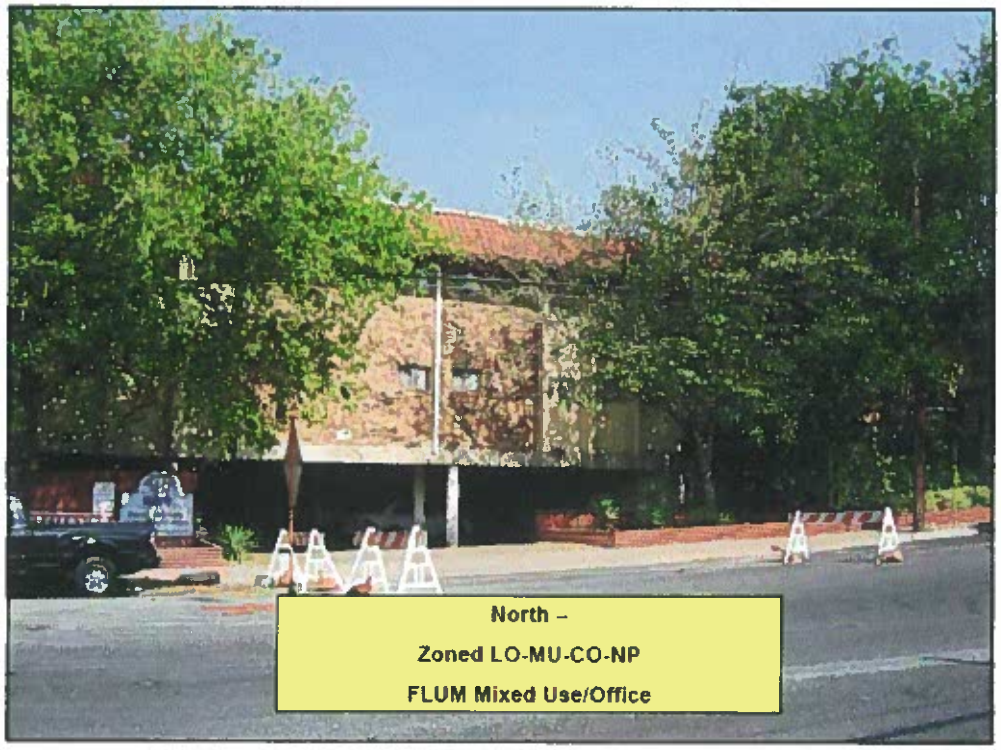
NEIGHBORHOOD PLAN AMENDMENT

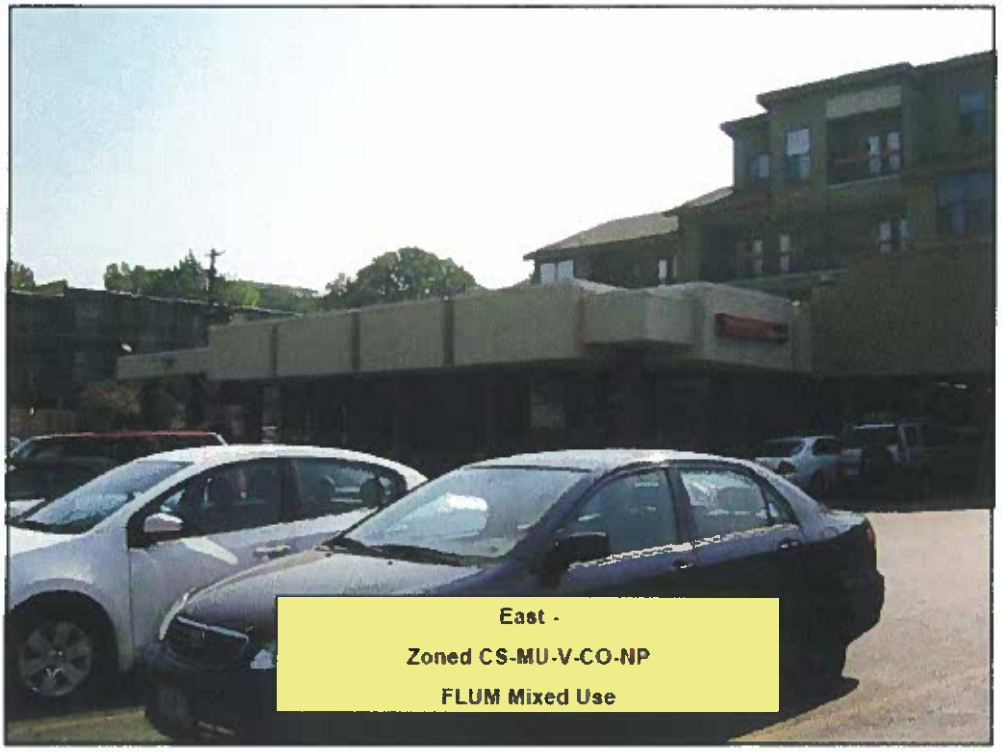
NPA CASE#: NPA-2011-0021.01
LOCATION: 3208 RED RIVER ST
SUBJECT AREA: 0.456 ACRES
GRID: K24
MANAGER: CLARK PATTERSON

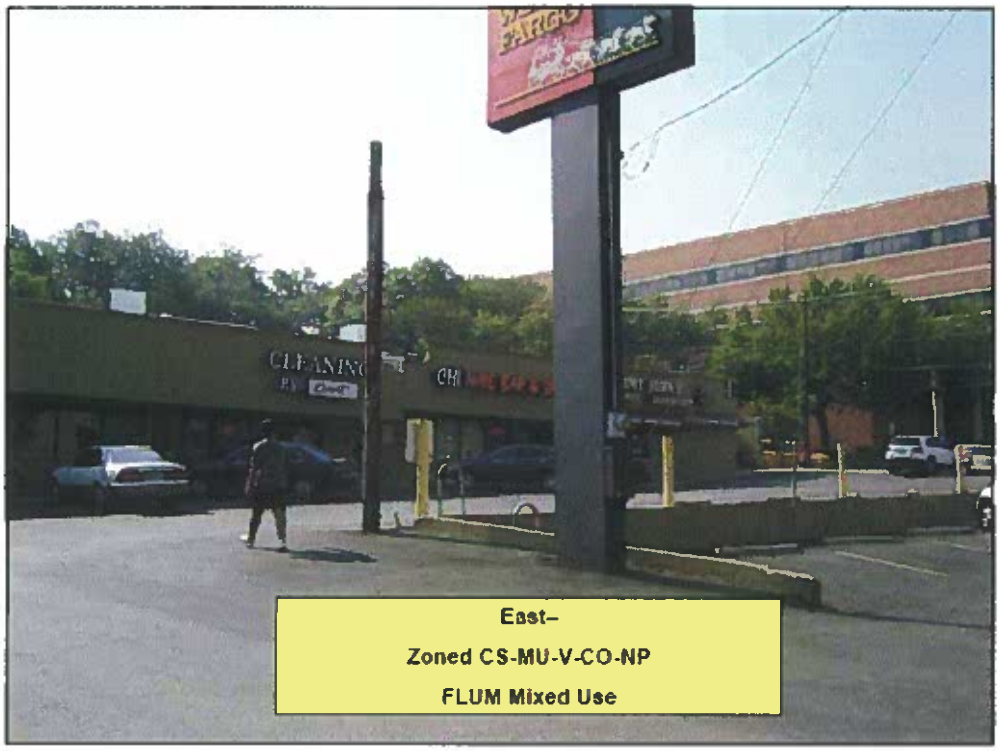
This map has been produced by the Communications Technology Management Dept. on behalf of the Planning Development Review Dept. for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

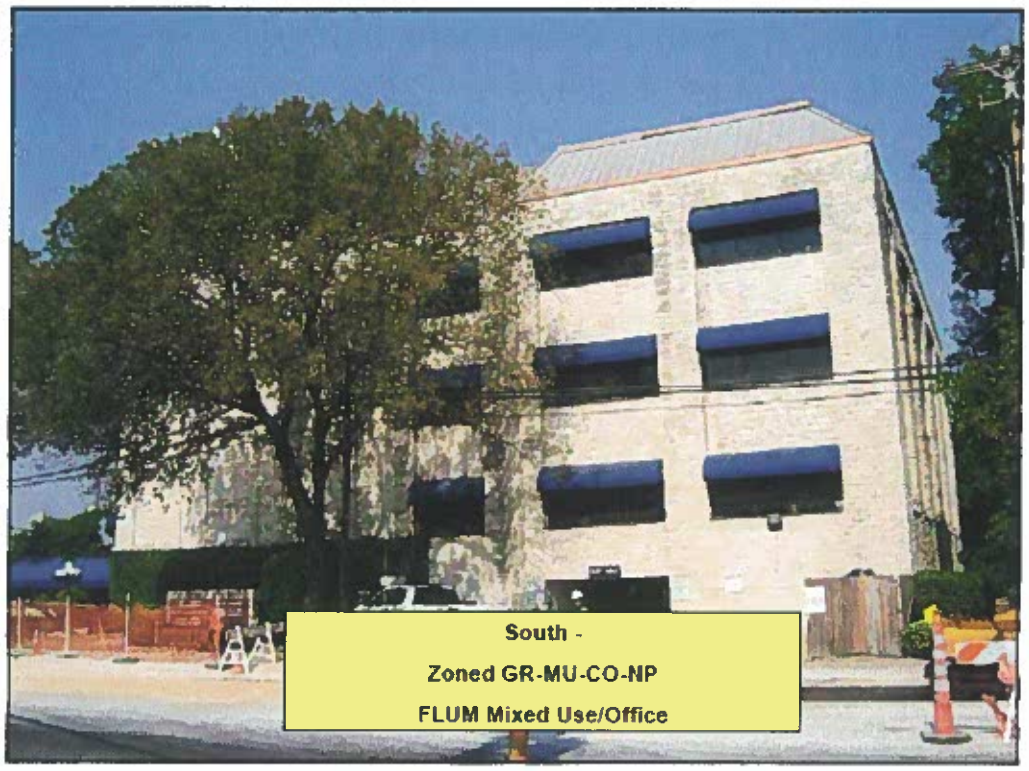
DEVELOPMENT WEB MAP
3208 RED RIVER ST
GO
Map Tools
Map Layers
ESRI

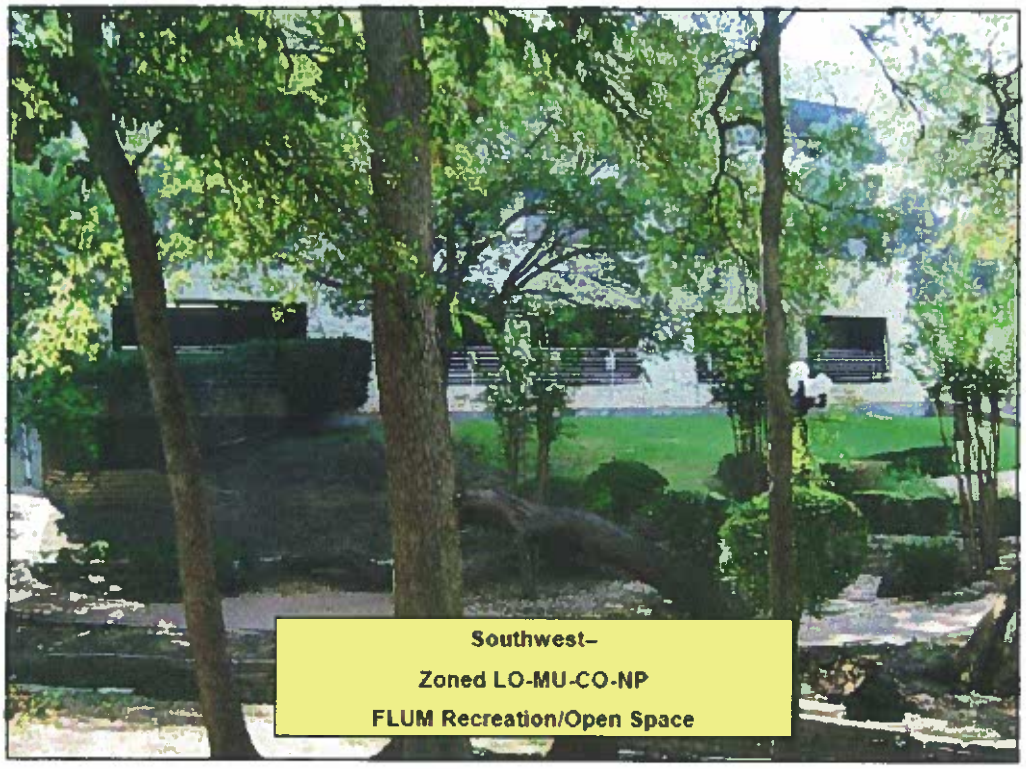

Site- 3208 Red River
Zoned GO-MU-CO-NP (Proposed GR-MU-CO-NP)
FLUM Mixed Use/Office (Proposed Mixed Use)

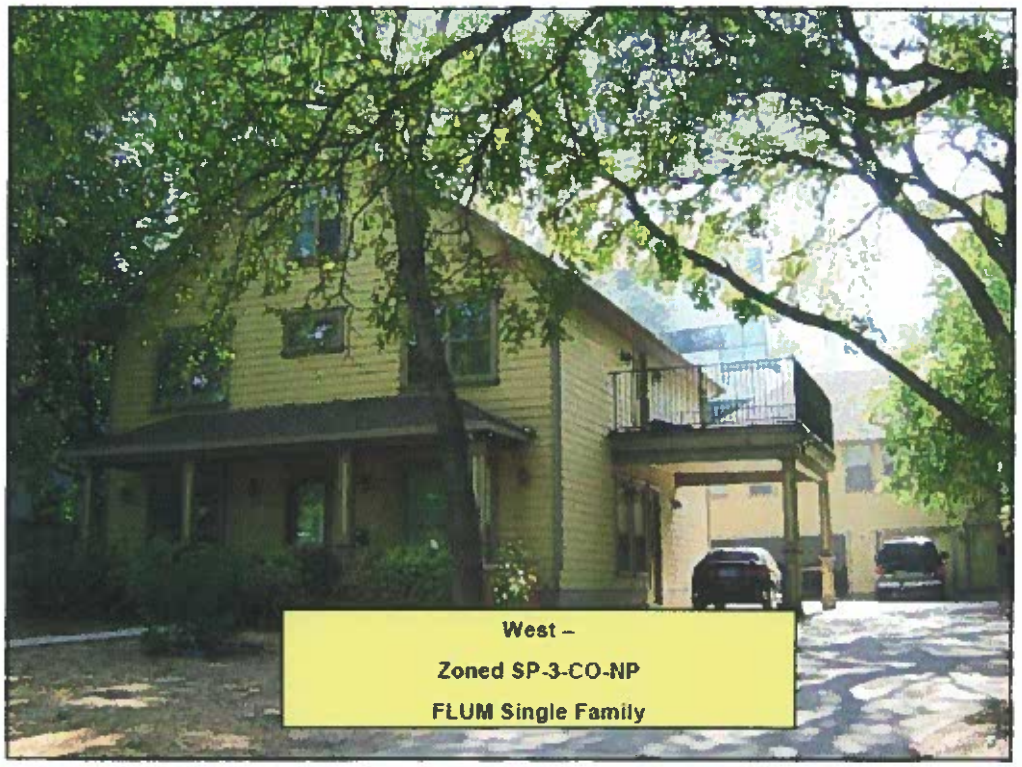

North –
Zoned LO-MU-CO-NP
FLUM Mixed Use/Office


East -
Zoned CS-MU-V-CO-NP
FLUM Mixed Use

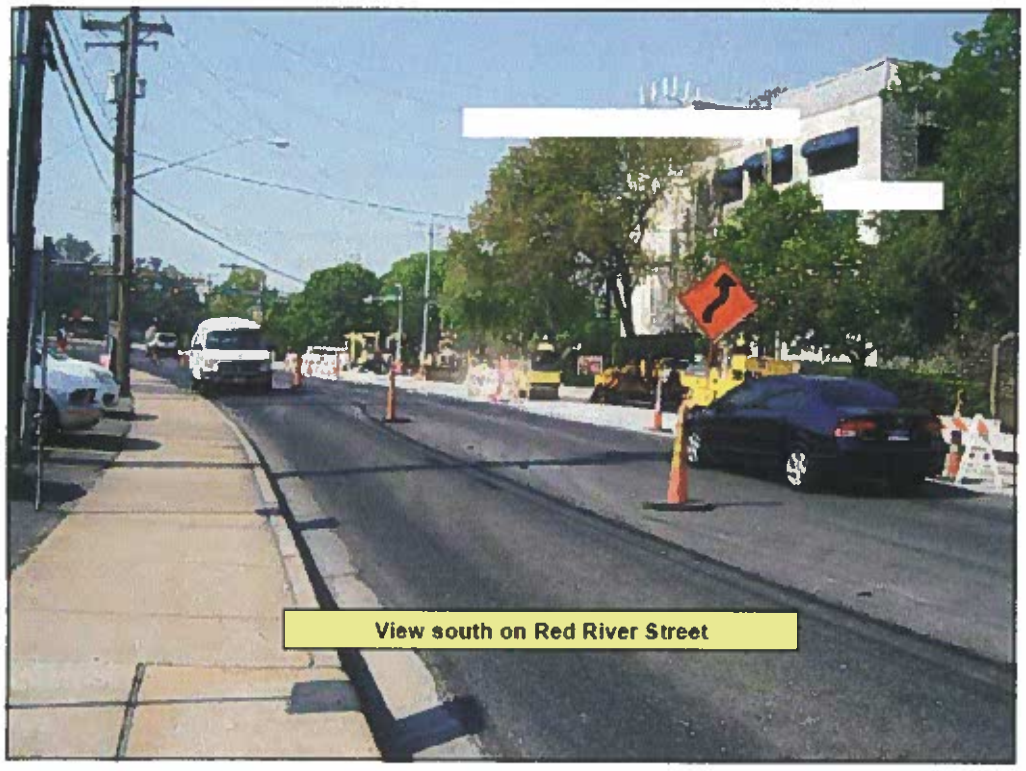

East–
Zoned CS-MU-V-CO-NP
FLUM Mixed Use

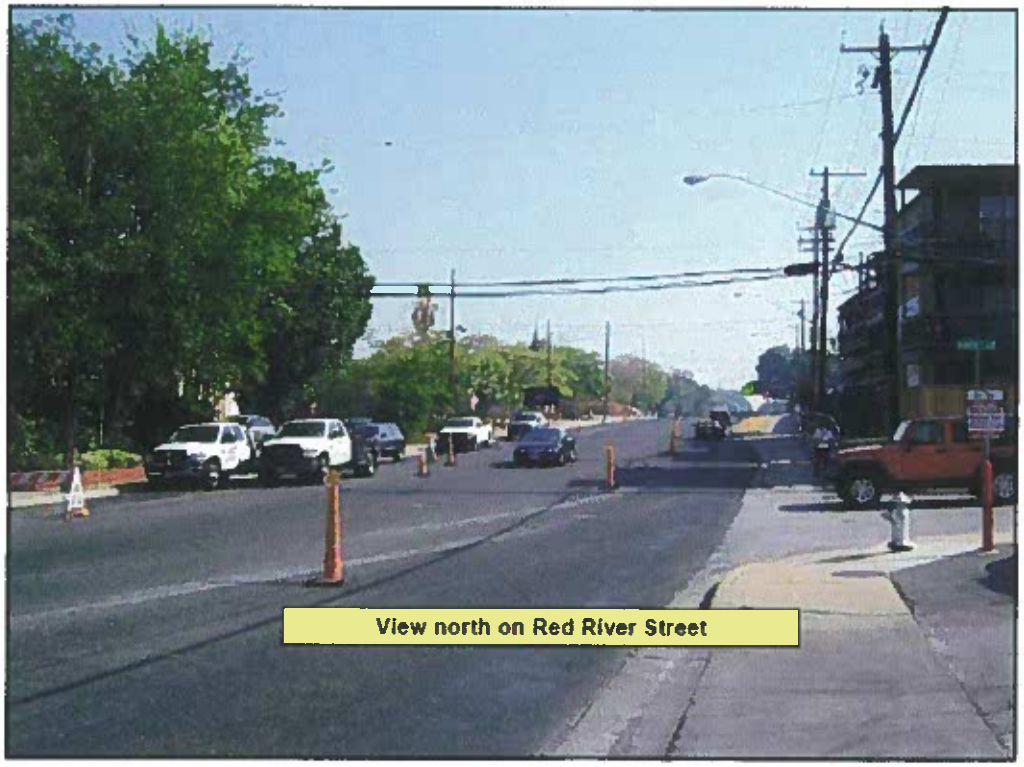

South -
Zoned GR-MU-CO-NP
FLUM Mixed Use/Office


Southwest–
Zoned LO-MU-CO-NP
FLUM Recreation/Open Space


West –
Zoned SP-3-CO-NP
FLUM Single Family

West –
Zoned SP-3-CO-NP
FLUM Single Family


View south on Red River Street


View north on Red River Street

3208 Red River – Proposed Conditions and Restrictions

Zoning Conditional Overlay of GR-CO:

- Prohibit all new GR (commercial) uses except for Research Services use:

Automotive Rentals	Automotive Repair Services
Automotive Washing (any type)	Bail Bond Services
Commercial Off-Street Parking	Consumer Convenience Services
Consumer Repair Services	Drop Off Recycling Collection Facility
Exterminating Services	Financial Services
Food Preparation	Food Sales
Funeral Services	General Retail Sales (General) General
Retail Sales (Convenience)	Hotel-Motel
Indoor Entertainment	Indoor Sports and Recreation
Outdoor Entertainment	Outdoor Sports and Recreation Pawn
Shop Services	Personal Improvement Services
Pet Services	Plant Nursery
Restaurant (General)	Theater

- Prohibit undesirable uses under existing GO (office) zoning:

Club or Lodge	Congregate Living
Counseling Services	Hospital Services (Limited)
Hospital Services (General)	Group Residential

- Limit to GO site development standards
- Prohibit activities requiring an H-Occupancy permit
- Research Services use limited to existing building footprint
- Neighborhood Mixed Use Building infill option retained

Private Restrictive Covenant with Hancock Neighborhood:

- Prohibit activities requiring an H-Occupancy permit
- Prohibit animal testing (other than occasional testing on mice)
- Prohibit testing on humans
- Operation during business office hours
- Designation of a safety officer for each tenant
- Conditions on lab activities:
  - Potential biohazardous materials will be autoclaved
  - Solvents and chemicals will be stored in receptacles
- Prohibit the use of live, known infectious and pathogenic organisms
- Provide a Health & Safety Officer for a Research Services use to coordinate safety plans for all tenants
- Limit the number of Research Services use tenants in the building to a maximum of 6
- Provide a security bond for restrictive covenant violations

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

This Declaration of Covenants, Conditions, and Restrictions (this "Declaration") is made as of the _____ day of _____, 2011, by DRAWBRIDGE PARNERS, LLC (a Delaware limited liability company) ("Declarant").

RECITALS

WHEREAS, Declarant owns land comprising approximately 0.456 acres located at 3208 Red River, Austin, Texas, and more particularly described on Exhibit "A" attached hereto (the "Property");

WHEREAS, the Property is currently zoned GO-MU-CO-NP (General Office-Mixed Use-Conditional Overlay-Neighborhood Plan);

WHEREAS, Declarant currently intends to remodel the existing office building for a Research Services use (the "Project") thereon, and is seeking (i) GR-MU-CO-NP zoning (Community Commercial-Mixed Use-Conditional Overlay – Neighborhood Plan) from the City of Austin for such development pursuant to City of Austin Zoning Case No. C14-2011-0101 (the "Zoning Case") and (ii) an amendment to the Future Land Use Map (FLUM) pursuant to City Case File Number NPA-0021.01 to allow the Project (the "FLUM Amendment"); and

WHEREAS, in consideration of support for the Zoning Case and the FLUM Amendment by the Hancock Neighborhood ("Hancock"), Declarant has agreed to establish certain restrictive covenants, which are described herein, in connection with the Property.

NOW, THEREFORE, for and in consideration of Hancock's support before the City of Austin Planning Commission and City Council of the Zoning Case and the FLUM Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees to hold, sell and convey the Property subject to the following covenants, conditions, and restrictions, which are impressed upon the Property by this Declaration.

DECLARATION

I. Covenants, Conditions, and Restrictions

1.1 H-Occupany. All activities or uses requiring an H-Occupany permit as defined by the City of Austin are prohibited on the Property.

1.2 Testing. All activities or uses requiring the testing on animals (other than occasional testing on mice) or humans is prohibited on the Property.

1.3 Hours. Hours for a Research Services Use (as defined by City of Austin Code) are limited to typical business office hours. After hours activity for a Research Services use is allowed, so long as such use is infrequent and limited as to the number of people involved.

1.4 Waste Disposal. All waste chemicals and solvents used for a Research Services Use (as defined by City of Austin Code) are required to be collected in appropriate receptacles as required by City of Austin requirements and disposed of on a regular basis. All biohazardous materials used for a Research Services Use (as defined by City of Austin Code) are required to be autoclaved prior to disposal and collected in appropriate receptacles as required by City of Austin requirements and disposed of on a regular basis. Waste chemicals, solvents and biohazardous materials are prohibited from being discarded in regular waste receptacles or dumped in drains.

1.5 Health and Safety Officer. Each tenant designated as a Research Services Use shall be required to designate a safety officer. The safety officer will have a technical background or expertise and will be responsible for implementing safety procedures and operations and ensuring each work place is operating safely and in compliance with this Declaration. Additionally, a health and safety officer with an appropriate technical background or expertise will be designated as a single point of contact to coordinate with all tenants on implementing safety procedures and operations and ensuring the building is operating safety and in compliance with this Declaration. The health and safety officer for the building will also act as the single point of contact for communications with the Hancock Neighborhood Association and surrounding property owners.

1.6 Pathogenic Organisms. The use of live, known infectious and pathogenic organisms is prohibited.

1.7 Tenant Maximum. The number of tenants within the building operating as a Research Services use is limited to a maximum of 6.

II. Conditions on Effect

2.1 Zoning Case. Notwithstanding any other provision of this Declaration to the contrary, the agreements of Declarant reflected herein are conditioned upon (a) final approval (i.e., third reading) of the Zoning Case by the City of Austin City Council (and no subsequent appeal) in a form acceptable to Declarant, and (b) final approval of the FLUM Amendment.

III. General Provisions

3.1 Enforcement of Declaration. If Declarant shall violate this Declaration, it shall be lawful for the Executive Committee of Hancock (the "Executive Committee") as its sole and exclusive remedy, to enforce this Declaration through a claim for injunctive relief against the Declarant. Notwithstanding the foregoing, the Executive Committee may not enforce its remedies until after it has delivered a written notice to the Declarant, informing them of the alleged violations of this Declaration. Within thirty (30) days after receiving such a notice of violation, the Declarant shall send a written response to the Executive Committee informing them of what actions, if any, it plans to take in order to remedy the alleged violation(s). If the Declarant notifies the Executive Committee that it intends to cure the alleged violation, then the Declarant shall have a reasonable period of time, not to exceed ninety (90) days from the date of notice (or if such violation can not be cured within ninety (90) days despite the Declarant's commercially reasonable efforts, then as long as reasonably necessary) in which to cure the alleged violation, during which period, if the Declarant timely commences the cure and is using commercially reasonable efforts to cure the violation, then the Executive Committee shall not enforce any remedy. If the Declarant fails to cure the default within the 90-day or extended period, as applicable, then the Executive Committee may enforce its remedies as provided herein. The prevailing party in any litigation hereunder shall be entitled to reasonable attorney's fees actually incurred in the enforcement or defense of this Declaration. Except for Declarant and the Executive Committee and their respective successors and assigns, this Declaration shall not be enforceable by any other person or entity.

3.2 Security Deposit. As security for the performance of its obligations under this Declaration, Declarant, on the effective date of this Declaration, has placed a $20,000.00 Letter of Credit (the "Security Deposit") in an escrow account held by _____, attention _____, Commercial Escrow Assistant, Phone: _____ (the "Escrow Agent"). If, on or before the date that is eighteen (18) months after the Notification Date, as the result of a breach by Declarant hereunder, subject to applicable notice and cure periods, Hancock institutes legal proceedings to enforce its claim that Declarant is in breach hereunder and provides the Escrow Agent written notice thereof, then Hancock may draw on the Security Deposit from time to time thereafter to pay invoices for the actual out-of-pocket expenses it has incurred (but not required to be paid) as a direct result of instituting and pursuing such legal proceedings, including reasonable attorneys' and other consultants' fees and court costs by submitting a written request for reimbursement to the Escrow Agent along with copies of such invoices for such expenses (the amounts paid by the Escrow Agent to Hancock hereunder, the "Paid Costs"); provided, however, that if Hancock's claim that Declarant is in breach hereunder is not successful in such legal proceedings, then Hancock must immediately upon demand reimburse Declarant for fifty percent (50%) of the amount of the Paid Costs plus statutory interest calculated from the date or dates such Paid Costs were paid to Hancock by the Escrow Agent. If Hancock has not instituted legal proceedings and given the Escrow Agent written notice thereof on or before the date that is eighteen (18) months after the Notification Date, then the provisions of this Section 3.2 shall automatically lapse and terminate, and the Security Deposit shall be returned to Declarant by the Escrow Agent. As used herein, the term "Notification Date"

shall mean the date the Declarant notifies the Executive Committee that it has received the first certificate of occupancy for a Research Services use.

3.3 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent by either facsimile, with verification that the facsimile has been received, or mailed by certified or registered mail, postage prepaid, overnight delivery by a national delivery company, or express mail, addressed as follows:

If to Declarant: Drawbridge Partners, LLC
Attn: _____
_____
_____

If to Hancock: Hancock Neighborhood Association
c/o Current Chair of the Executive Committee
_____
Austin, Texas 78705

3.4 Binding Effect. It is intended that the provisions of this Declaration shall run with the land and be binding upon Declarant's successors and assigns.

3.5 Modification. This Declaration may be modified, amended, or terminated only by joint action of both (a) the Executive Committee of Hancock, or its successors and assigns, and (b) by the fee simple owner(s) of at least seventy-five percent (75%) of the gross land area of the Property at the time of such modification, amendment or termination.

3.6 Partial Invalidity. If any part of this Declaration is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Declaration, and such remaining portion of this Declaration shall remain in full effect.

3.7 Controlling Law. This Declaration has been made and entered into under the laws of the State of Texas, and said laws shall control the interpretation thereof.

3.8 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, nor shall this Declaration be deemed to have conferred any rights, express or implied, upon any third person or the public.

DECLARANT:

DRAWBRIDGE PARTNERS, LLC
(a Delaware limited liability company)

By:_____
Name: _____
Title: _____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me this ____ day of _____, 2011, by _____, _____ of Drawbridge Partners, LLC, (a Delaware limited liability company) on behalf of said limited liability company.

_____
Notary Public, State of Texas

Exhibit "A" Description of the Property

AGREED TO AND ACCEPTED:

Recommendation 1 HANCOCK NEIGHBORHOOD ASSOCIATION

By:_____
Name:_____
Title:_____
Date: _____

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the _____ day of _____, 2011, by _____, as _____ of the Hancock Neighborhood Association a Texas nonprofit corporation, on behalf of said corporation.

_____
Notary Public, State of Texas

EXHIBIT A

A 0.456 acre tract (19,851 square feet) of land in the City of Austin, Texas, and being out of the south 140 feet of Lot 28, Beau Site, in the City of Austin, according to the map or plat thereof, recorded in Volume 2, Page 184, Plat Records of Travis County, Texas, and being more particularly described by metes and bounds on Exhibit "A-1" attached hereto and made a part hereof.