

BOARD OF ADJUSTMENT, PANEL A
TUESDAY, OCTOBER 18, 2011
AGENDA

BRIEFING	5/E/S	11:30 A.M.
LUNCH		
PUBLIC HEARING	COUNCIL CHAMBERS, 1500 MARILLA STREET	1:00 P.M.

David Cossum, Assistant Director
Steve Long, Board Administrator

MISCELLANEOUS ITEMS

Approval of the Tuesday, September 20, 2011 Board of Adjustment Public Hearing Minutes	M1
Consideration and approval of Panel A's 2012 Public Hearing Schedule	M2

UNCONTESTED CASE

BDA 101-092	9762 and 9770 Audubon Place REQUEST: Application of Jackson Walker LLP, represented by Susan Mead/Jonathan Vinson, for a special exception to the fence height regulations	1
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REGULAR CASES

BDA 101-095	3300 Knox Street REQUEST: Application of Elizabeth McDonald, represented by James Harris of Thompson & Knight, to appeal the decision of the administrative official	2
BDA 101-096	3300 Knox Street REQUEST: Application of Elizabeth McDonald, represented by James Harris of Thompson & Knight, for a variance to the off-street parking regulations	3

EXECUTIVE SESSION NOTICE

The Commission/Board may hold a closed executive session regarding any item on this agenda when:

1. seeking the advice of its attorney about pending or contemplated litigation, settlement offers, or any matter in which the duty of the attorney to the Commission/Board under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with the Texas Open Meetings Act. [Tex. Govt. Code §551.071]
2. deliberating the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.072]
3. deliberating a negotiated contract for a prospective gift or donation to the city if deliberation in an open meeting would have a detrimental effect on the position of the city in negotiations with a third person. [Tex. Govt. Code §551.073]
4. deliberating the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or to hear a complaint or charge against an officer or employee unless the officer or employee who is the subject of the deliberation or hearing requests a public hearing. [Tex. Govt. Code §551.074]
5. deliberating the deployment, or specific occasions for implementation, of security personnel or devices.. [Tex. Govt. Code §551.076]
6. discussing or deliberating commercial or financial information that the city has received from a business prospect that the city seeks to have locate, stay, or expand in or near the city and with which the city is conducting economic development negotiations; or deliberating the offer of a financial or other incentive to a business prospect. [Tex. Govt. Code §551.086]

(Rev. 6-24-02)

MISCELLANEOUS ITEM NO. 1

To approve the Board of Adjustment Panel A September 20, 2011 public hearing minutes.

MISCELLANEOUS ITEM NO. 2

Consideration and approval of Panel A's 2012 Public Hearing Schedule.



Register | Log in

Search:

Calendar for year 2012 (United States)

January							February							March						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7				1	2	3	4					1	2	3
8	9	10	11	12	13	14	5	6	7	8	9	10	11	4	5	6	7	8	9	10
15	16	17	18	19	20	21	12	13	14	15	16	17	18	11	12	13	14	15	16	17
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April							May							June							
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July							August							September						
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October							November							December						
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LEGEND
 ○ Panel C
 ○ Panel A
 ○ Panel B

Holidays and Observances:					
Jan 1	New Year's Day	May 28	Memorial Day	Nov 11	Veterans Day
Jan 2	'New Year's Day' observed	Jun 17	Father's Day	Nov 12	'Veterans Day' observed
Jan 16	Martin Luther King Day	Jul 4	Independence Day	Nov 22	Thanksgiving Day
Feb 14	Valentine's Day	Sep 3	Labor Day	Dec 24	Christmas Eve
Feb 20	Presidents' Day	Oct 8	Columbus Day (Most regions)	Dec 25	Christmas Day

FILE NUMBER: BDA 101-092

BUILDING OFFICIAL'S REPORT:

Application of Jackson Walker LLP, represented by Susan Mead/Jonathan Vinson, for a special exception to the fence height regulations at 9762 and 9770 Audubon Place. This property is more fully described as Lots 4 & 5 in City Block 14/5587 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct a 6 foot 6 inch high fence in a required front yard, which will require a special exception of 2 feet 6 inches.

LOCATION: 9762 and 9770 Audubon Place

APPLICANT: Jackson Walker LLP
Represented by Susan Mead/Jonathan Vinson

REQUEST:

- A special exception to the fence height regulations of 2' 6" is requested in conjunction with constructing and maintaining a 6' – 6' 3" high open iron picket fence and gate with 6' 6" high decorative metal columns/"pillars" in the site's 40' front yard setback on a lot developed with a single family home. (The proposed fence in this application would be a continuation of an existing fence on the southern half of the property/subject site – a fence that appears to have been a result of a special exception to the fence height regulations granted by the Board of Adjustment Panel A in October of 1997: BDA 967-313).

STAFF RECOMMENDATION:

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

GENERAL FACTS:

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.

The applicant has submitted site plan and an elevation indicating that the proposal in the required front yard setback reaches a maximum height of 6' 6".

- The following additional information was gleaned from the submitted site plan:
 - The proposal is approximately 215' in length parallel to the street.
 - The proposal is shown to be located at a range of 0' – 6' from the front property line or at a range of about 19 – 23' from the pavement line.
- One single family home has direct/indirect frontage to the proposal on the subject site, a property with a fence that appears higher than 4' in height in its front yard setback – an approximately 6.5' high open fence with 7.5' high columns that appears to be the result of a granted fence height special exception from March of 1996 – BDA 956-163.
- In addition to the fence mentioned above, the Board Administrator noted one other fence above four feet high in the immediate area (approximately 500 feet from the site along Audubon Place), which appeared to be located in the front yard setback: an approximately 8' high open metal fence with an approximately 10' high open metal gate. (There is no recorded BDA history found on this property).
- The applicant submitted additional information beyond what was submitted with the original application to be forwarded to the Board (see Attachment A).

BACKGROUND INFORMATION:

Zoning:

Site: R-1ac(A) (Single family district 1 acre)
North: R-1ac(A) (Single family district 1 acre)
South: R-1ac(A) (Single family district 1 acre)
East: R-1ac(A) (Single family district 1 acre)
West: R-1ac(A) (Single family district 1 acre)

Land Use:

The subject site is developed with a single family home. The areas to the north, east, south, and west are developed with single family uses.

Zoning/BDA History:

1. BDA 967-313, Property at 9762 Audubon Place (what was at the time only the southern side/half of the subject site) On October 28, 1997, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations of 5' 6" for a "6 foot, 6 "fence with 6 '10 "columns, and a 9 ' , 6 "entry gate columns" and imposed the submitted site/landscape/elevation plan as a condition to the request.

2. BDA 956-163, Property at 9769 Audubon Place (the property immediately west of the subject site) On March 26, 1996, the Board of Adjustment Panel A granted a request for a special exception to the fence height regulations to maintain a 6.5' high open metal fence with 7.5' high columns, and special exception to maintain an additional dwelling unit on the property, subject to deed restricting the property to prevent the use of the additional dwelling unit as rental accommodations.

Timeline:

July 22, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.

September 21, 2011: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel A. This assignment was made in order to comply with Section 9 (k) of the Board of Adjustment Working Rule of Procedure that states, "If a subsequent case is filed concerning the same request, that case must be returned to the panel hearing the previously filed case."

September 21, 2011: The Board Administrator emailed the applicant the following information:

- an attachment that provided the public hearing date and panel that will consider the application; the September 30th deadline to submit additional evidence for staff to factor into their analysis; and the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials;
- the criteria/standard that the board will use in their decision to approve or deny the request; and
- the Board of Adjustment Working Rules of Procedure pertaining to documentary evidence.

September 30, 2011: The applicant submitted additional information to staff beyond what was submitted with the original application.

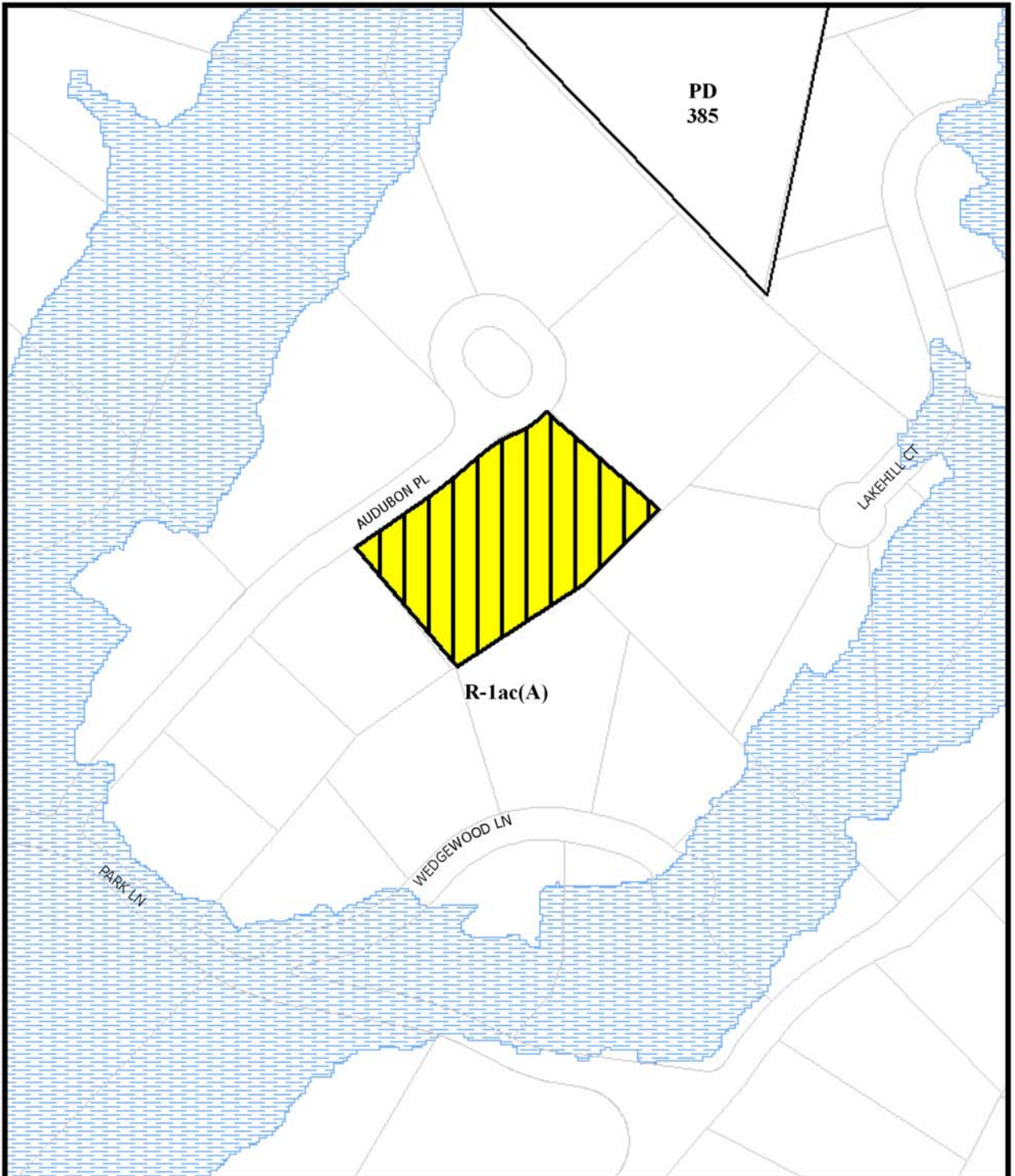
October 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

October 6, 2011: The Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked "Has no objections."

October 7, 2011: The applicant submitted additional information beyond what was submitted with the original application to be forwarded to the board (see Attachment A).

STAFF ANALYSIS:

- This request focuses on constructing and maintaining a 6' – 6' 3" high open iron picket fence and gate with 6' 6" high decorative metal columns/"pillars" in the site's 40' front yard setback on a lot developed with a single family home.
- The proposed fence in this application would be a continuation of an existing fence on the southern half of the property/subject site – a fence that appears to have been a result of a request for a fence height special exception granted by the Board of Adjustment Panel A in October of 1997: BDA 967-313.
- The submitted site plan and elevation documents the location, height, and materials of the proposal over 4' in height in the required front yard setback. The site plan indicates that the proposal is about 215' in length parallel to the street, approximately 0' – 6' from the site's front property line or about 19' – 23' from the pavement line. (The proposed gates are shown to be located approximately 11' from the front property line or about 25' from the pavement line).
- One single family home has direct/indirect frontage to the proposal on the subject site, a property with a fence that appears higher than 4' in height in its front yard setback – an approximately 6.5' high open fence with 7.5' high columns that appears to be appears to be the result of a granted fence height special exception from March of 1996 – BDA 956-163.
- In addition to the fence mentioned above, the Board Administrator noted one other fence above four (4) feet high in the immediate area (approximately 500 feet from the site along Audubon Place) which appeared to be located in the front yard setback: an approximately 8' high open metal fence with an approximately 10' high open metal gate. (There is no recorded BDA history found on this property).
- As of October 10, 2011, 4 letters had been submitted to staff in support of the request and no letters had been submitted in opposition.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 2' 6" will not adversely affect neighboring property.
- Granting this special exception of 2' 6' with a condition imposed that the applicant complies with the submitted site plan and elevation would require that the proposal exceeding 4' in height in the front yard setback to be constructed and maintained in the location and of the heights and materials as shown on these documents.



1:2,400

ZONING MAP

Map no: F-6
Case no: BDA101-092

DATE: September 29, 2011



1:2,400

AERIAL MAP

Map no: F-6

Case no: BDA101-092

DATE: September 29, 2011



Jonathan G. Vinson
 (214) 953-5941 (Direct Dial)
 (214) 661-6809 (Direct Fax)
 jvinson@jw.com

October 7, 2011

Via Scan/Email

Hon. Chair and Members
 Zoning Board of Adjustment, Panel A
 c/o Mr. Steve Long, Board Administrator
 Department of Sustainable Development and Construction
 City of Dallas
 1500 Marilla Street, Room 5BN
 Dallas, Texas 75201

Re: BDA 101-092; 9762/9770 Audubon Place

Dear Members of Panel A:

We represent Nancy and Randy Best, the property owners at 9762/9770 Audubon Place, on their application for a fence height special exception to construct a maximum 6 foot 6 inch open wrought iron fence on that portion of their property (9770 Audubon Place) which they have more recently acquired, and which is being platted together with 9762 Audubon Place.

The accompanying Site Plan and Fence Elevation show both the already existing fence at 9762 Audubon Place (which was approved for the previous owners under BDA 967-313 on October 28, 1997), as well as the proposed new fence, which will exactly match the existing fence in height (6 foot 6 inch maximum), materials (open wrought iron), and configuration. The new fence will be connected to, and indistinguishable from, the existing fence. The new fence is desired to provide a visually consistent and aesthetically pleasing look across the front of the property, as well as for enhanced security.

Considering the size of the lots in the area and the character of many of the already-existing fences and gates, this will be a relatively modest fence. The open wrought iron character of the fence (note that there is no solid element of the fence shown above grade), combined with retention of the mature trees in front of the fence, plus additional landscaping, will ensure that this fence will be visually pleasing and very unobtrusive when viewed from neighboring properties and from the street.

The applicants have also been discussing the application with their neighbors, showing them the relevant plans, and answering their questions. Four of the closest neighbors have provided written expressions of support (*see attached letter and emails; support also indicated by green dots on the aerial photo showing Audubon Place*). Further, although I know no other case sets a precedent, there are several other tall fences,

Mr. Steve Long
October 7, 2011
Page 2

and even taller gates, on this block, at least some of which were approved by Board action (*see color site photos with captions*).

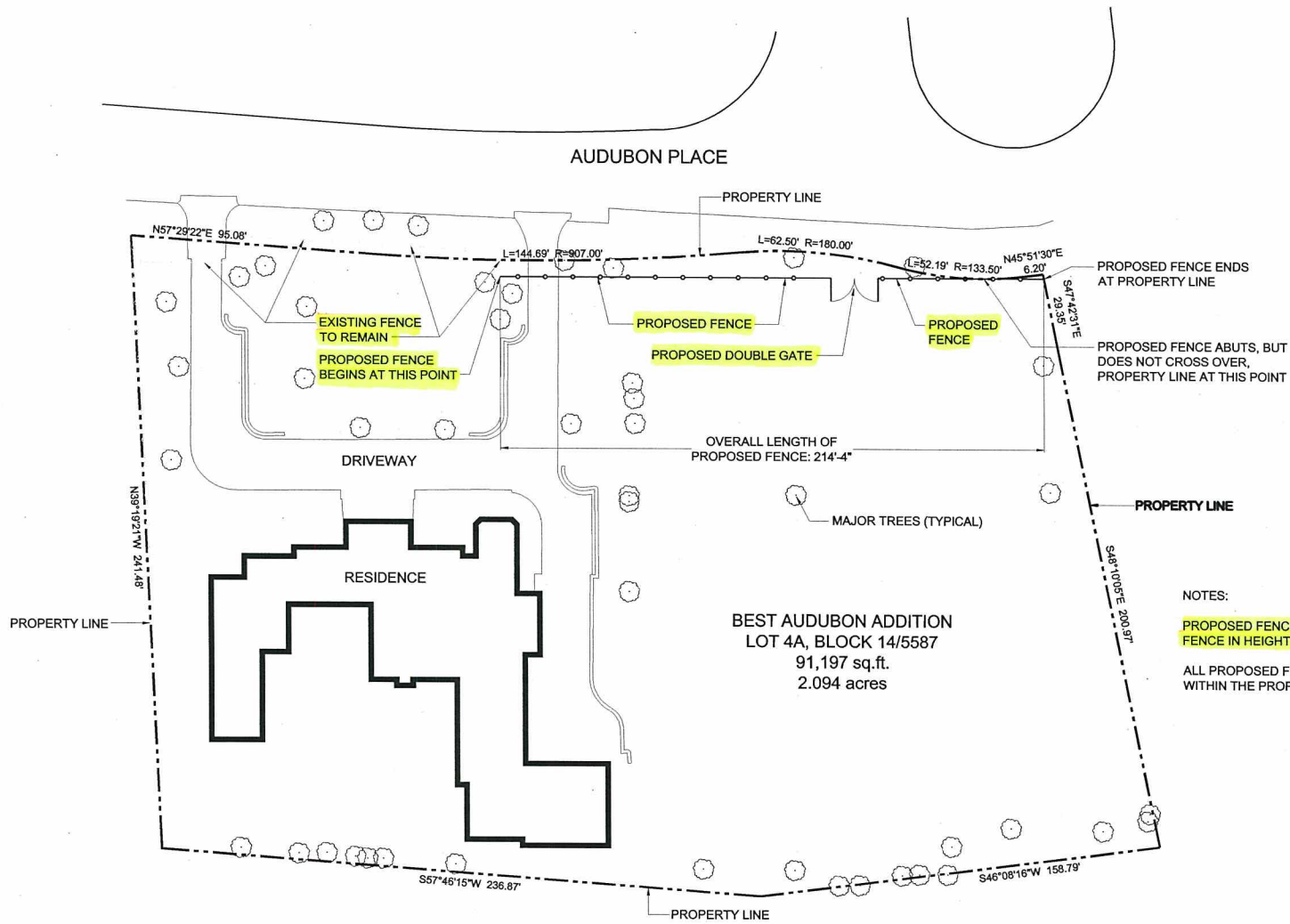
As you know, the standard for the granting of a special exception to the fence height regulations is whether, “...*in the opinion of the Board, the special exception will not adversely affect neighboring property*”. That is certainly the case here, and those of the applicants’ neighbors who have expressed their views agree with that position.

We look forward to appearing before you at our hearing on October 18, where we will be happy to answer any questions you might have, and at which time we will respectfully request your approval of our application. Thank you very much.

Very truly yours,

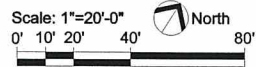

Jonathan G. Vinson

cc: Nancy Best
Holly Hall
Susan Mead



NOTES:
 PROPOSED FENCE SHALL MATCH EXISTING FENCE IN HEIGHT, MATERIAL AND APPEARANCE.
 ALL PROPOSED FENCE SHALL BE CONSTRUCTED WITHIN THE PROPERTY BOUNDARIES.

PLAN VIEW



hpd architecture

LAMBERT GARDEN DESIGN
 LANDSCAPE ARCHITECTURE AND SITE CONSTRUCTION MANAGEMENT

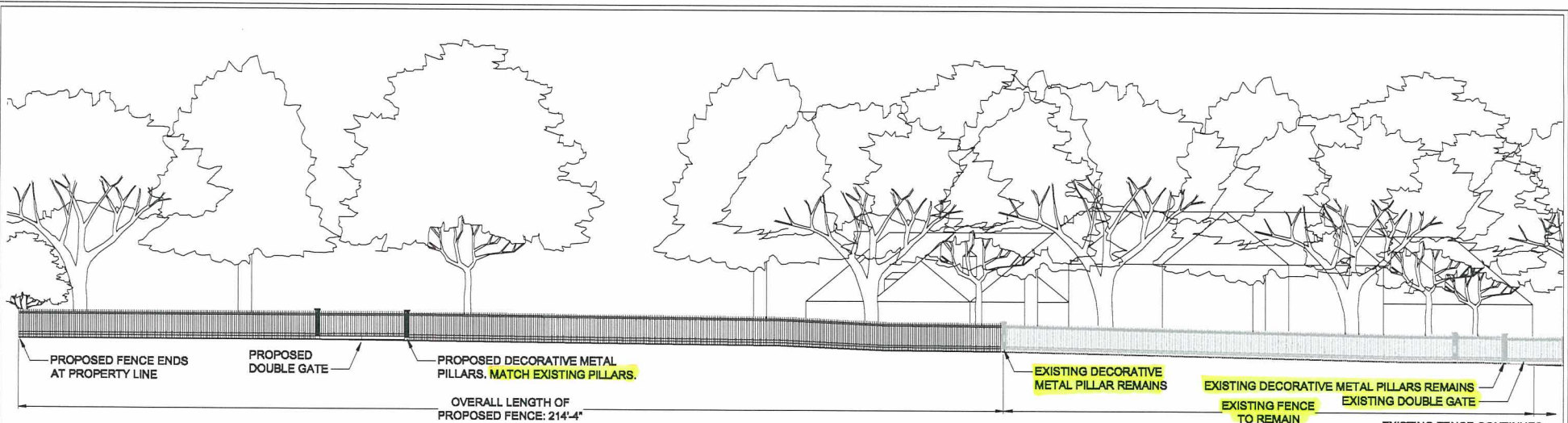
T 214-630-8800 | 8333 Overton Drive
 944 Oak Lane | #214-387-6000 | #100-742-886070
 Dallas, TX 75207 | www.lambertgarden.com | Dallas, TX 75228
 T 214-751-2200
 F 214-751-2208

Fence Variance

July 15, 2024

BEST RESIDENCE
 9762 Audubon Pl
 Dallas, TX 75248

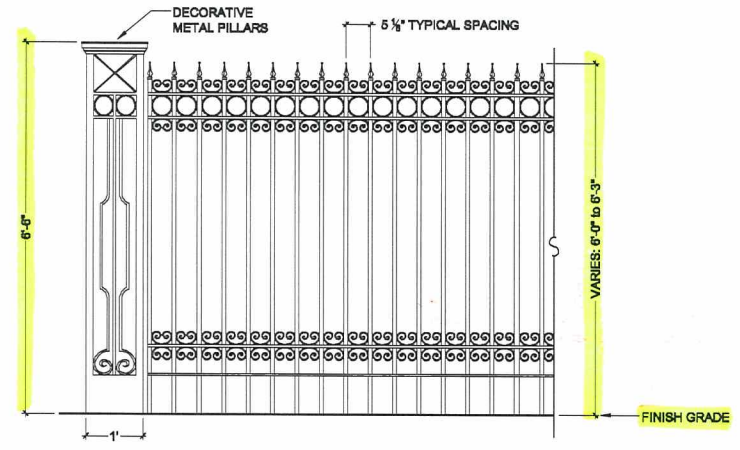
Sheet 1 of 1



OVERALL FENCE ELEVATION



NOTE: PROPOSED FENCE SHALL MATCH EXISTING FENCE IN ALL ASPECTS INCLUDING HEIGHT, MATERIAL, DIMENSIONS, COLOR AND DECORATIVE DETAILS. HEIGHT OF EXISTING FENCE VARIES FROM APPROXIMATELY 8'-0" TO 6'-3" (MEASURED FROM GROUND TO TOP OF PICKETS). DECORATIVE METAL PILLARS ARE APPROXIMATELY 8'-6" IN HEIGHT.



TYPICAL FENCE & DECORATIVE PILLAR



Fence Varlan
 July 15,
BEST RESIDENT
 9762 Audubon Pl
 Dallas, TX 75245
 Sheet 2

hpd architecture
 LAMBERT GARDEN DESIGN
 LANDSCAPE ARCHITECTURE AND SITE CONSTRUCTION MANAGEMENT
 7814 J. WILSON | 972.354.1111 | 800.543.0100
 7814 J. WILSON | 972.354.1111 | 800.543.0100
 7814 J. WILSON | 972.354.1111 | 800.543.0100



City of Dallas
1500 Marilla Street
Dallas, Texas 75201
(214)-670-4513

City of Dallas

DISCLAIMER

This data has been compiled for The City of Dallas. Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data.




Lee Roy and Tandy Mitchell
9769 Audubon Place
Dallas, TX 75220
(214) 654-0140

September 23, 2011

To Whom It May Concern:

We support the Best's desire to build the proposed 6'6" fence to match their existing fence. They are requesting a special exemption of 2'6" in height above the allowable 4' in the front yard.

Thank you.



Lee Roy and Tandy Mitchell

From: John Dayton <johndayton@mac.com>
Date: September 28, 2011 8:20:40 AM CDT
To: "Nancy@nkbestmail.com" <Nancy@nkbestmail.com>
Subject: 9770 Audubon Place Fence Variance

To Whom It May Concern:

We support the Best's desire to build the proposed 6'6" fence to match their existing fence. They are requesting a special exemption of 2'6" in height above the allowable 4' in the front yard. Accept this email as evidence of our support for their pending fence variance at 9770 Audubon Place.

Sincerely,

John and Arlene Dayton
9779 Audubon Place, Dallas, Texas 75220
214-350-1650

From: Holly Hughes <hoh@spindletopexp.com>
Date: October 4, 2011 11:14:13 AM EDT
To: "Nancy@nkbestmail.com" <Nancy@nkbestmail.com>
Subject: RE: Fence

Nancy,

We have no objections to the continuation of your existing 6' fence across the front of your extended property. Thank you for your assurances that we will work together to make sure the juncture of your extended fence and our existing fence will be made visually pleasing for both of our properties.

As we discussed, we are especially sensitive since that corner juts in front of our house and thus becomes the "front door view" to and from our property. We appreciate your willingness to work with us, not only on the fence but also on potential locations of equipment and landscaping due to the high prominence of the juncture relative to the siting and drive-up of our home.

We wish you continued good progress on your project.

Joseph V. and Holly O. Hughes
9784 Audubon Place
Dallas, Texas 75220
214.904.8358

From: Regen Fearon <RegenF@swbell.net>
Date: September 27, 2011 5:09:18 PM CDT
To: "Nancy@nkbestmail.com" <Nancy@nkbestmail.com>
Subject: Fence variance

Nancy,

Jeff and I are in support of your request for an exception above the 4 feet for your new fence at 9770 Audubon. Matching your existing fence height (6'6") would be far more esthetically pleasing than having differing heights!

Let me know if you need anything else from me.

Regen Fearon
9785 Audubon Place
Dallas, TX 75220



1. View north of Audubon Place from Park Lane – very low traffic street. leads to cul-de-sac.



2. Gate and columns at 9769 Audubon Place.



**3. Fence and columns at 9769
Audubon Place.**



**4. Gate and columns also at 9769
Audubon Place.**



**5. Fence and gate at 9784
Audubon Place.**



**6. Gate (in background) at 9784
Audubon Place.**



**7. Closer view of gate at 9784
Audubon Place.**



**8. Existing gate at 9762 Audubon
Place.**



9. Existing gate at 9762 Audubon Place.



10. Property at 9770 Audubon Place.



City of Dallas

APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 101-092

Date: 7-22-11

Data Relative to Subject Property:

Location address: 9762 Audubon Place Zoning District: R-1ac (A)

Lot No.: 44 Block No.: 14/5587 Acreage: 2.1371 Census Tract: 74

Street Frontage (in Feet): 1) 360.66 2) _____ 3) _____ 4) _____ 5) _____

NE2A

To the Honorable Board of Adjustment :

Owner of Property/or Principal: Randy Best & Nancy Best

Applicant: Jackson Walker L.L.P., Susan Mead/Jonathan Vinson Telephone: (214) 953-5941

Mailing Address: 901 Main Street, Suite 6000, Dallas, Texas Zip Code: 75202

Represented by: Jackson Walker L.L.P., Susan Mead/Jonathan Vinson Telephone: (214) 953-5941

Mailing Address: 901 Main Street, Suite 6000, Dallas, Texas Zip Code: 75202

I affirm that a request has been made for a Variance __, or Special Exception , of to the applicable fence height regulations to permit an increase in maximum fence height from four (4) feet to six (6) feet (6) inches, for a special exception of two (2) feet, six (6) inches.

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason: The special exception should be granted because it will not adversely affect neighboring property, which will be documented and elaborated upon further by the applicant in additional items to be submitted to the City Staff.

Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period.

Respectfully submitted: Jonathan G. Vinson Applicant's name printed Jonathan G. Vinson Applicant's signature

Affidavit

Before me the undersigned on this day personally appeared Jonathan G. Vinson who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Jonathan G. Vinson
Affiant (Applicant's signature)

Subscribed and sworn to before me this _____ day of July 2011



[Signature]
Notary Public in and for Dallas County, Texas

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

Building Official's Report

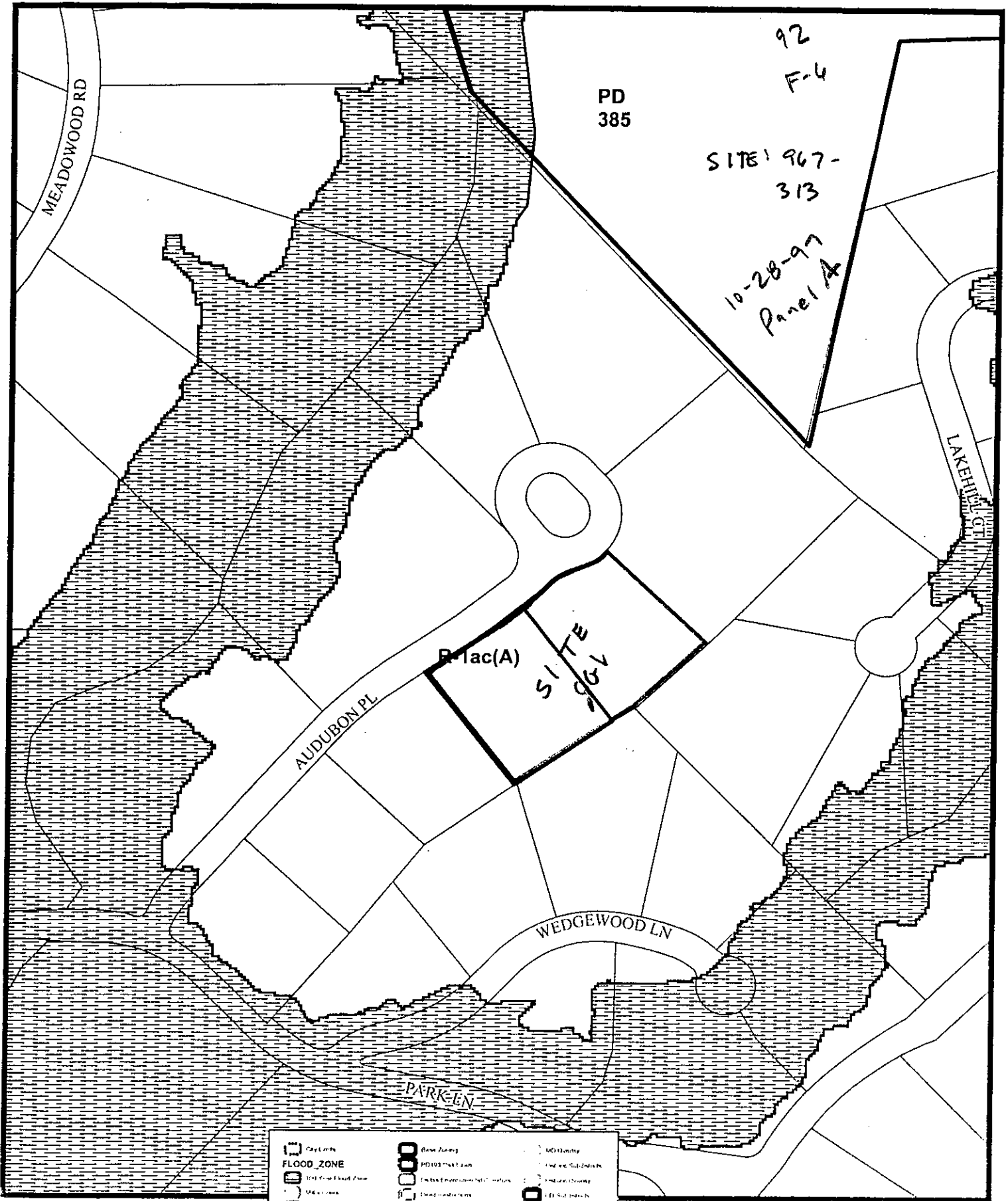
I hereby certify that Jonathan Vinson

did submit a request for a special exception to the fence height regulations
at 9762 Audobon Place

BDA101-092. Application of Jonathan Vinson for a special exception to the fence height regulations at 9762 Audubon Place. This property is more fully described as lot 4A in city block 14/5587 and is zoned R-1ac(A), which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 6 foot 6 inch high fence in a required front yard, which will require a 2 foot 6 inch special exception to the fence regulation.

Sincerely,

Batsheba Antebi
Batsheba Antebi, Building Official



92
F-4
SITE 967-313
10-28-97
Panel A

R-1ac(A)

SITE
967-313

AUDUBON PL

WEDGEWOOD LN

PARK LN

LAKEHILL CT



1:2,400

FLOOD_ZONE		

Case ID:
Printed: 7/21/2011

5543

SUNNYBROOK 5586

LANE

BACHMANS

AUDUBON

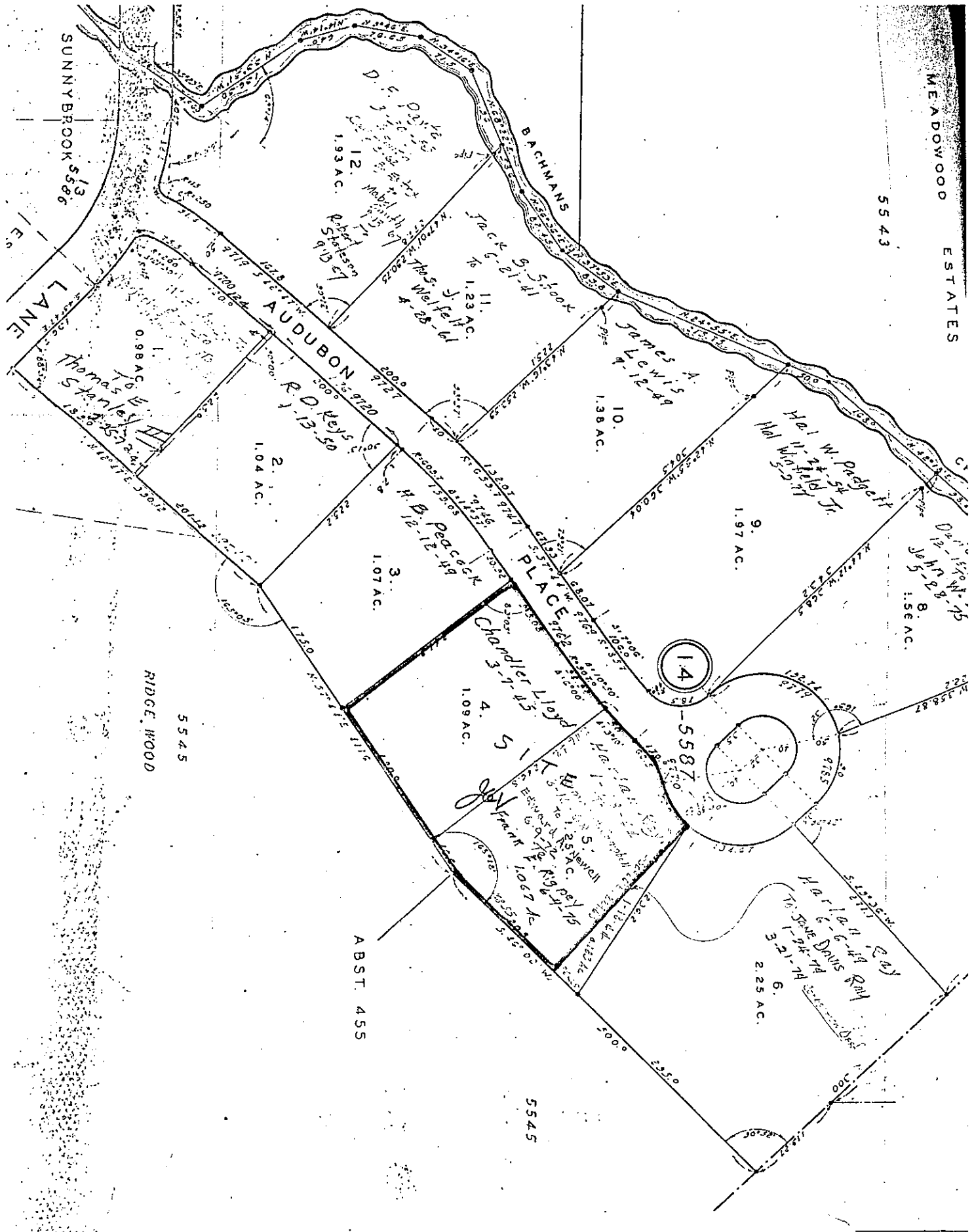
Thomas E. Stanley
1850-1857

RIDGEWOOD

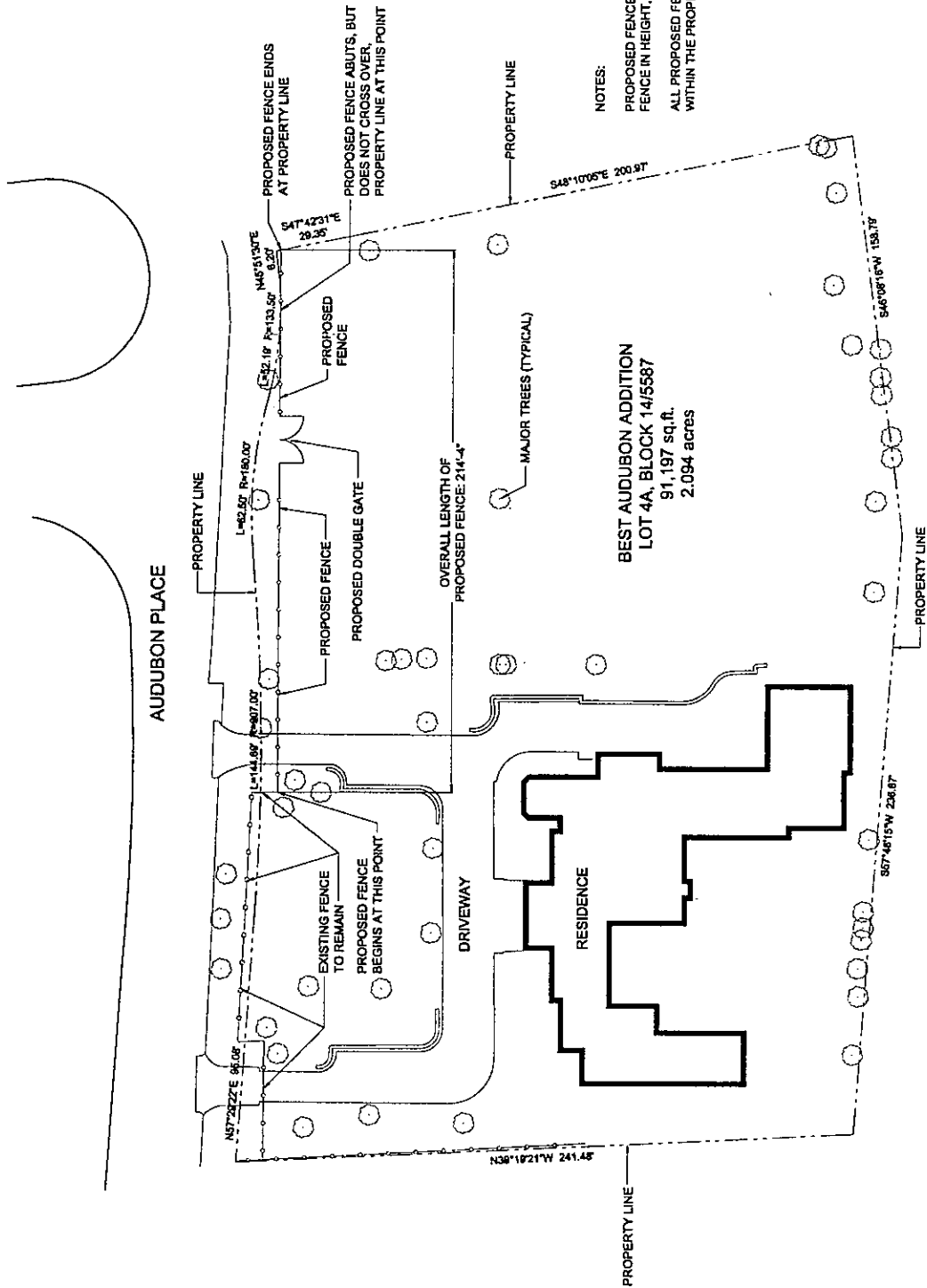
5545

ABST. 455

5545

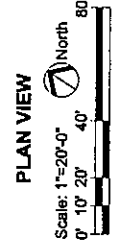


Fence Variance
 July 15, 2011
BEST RESIDENCE
 9762 Audubon Place
 Dallas, TX 75220
 Sheet 1 of 2



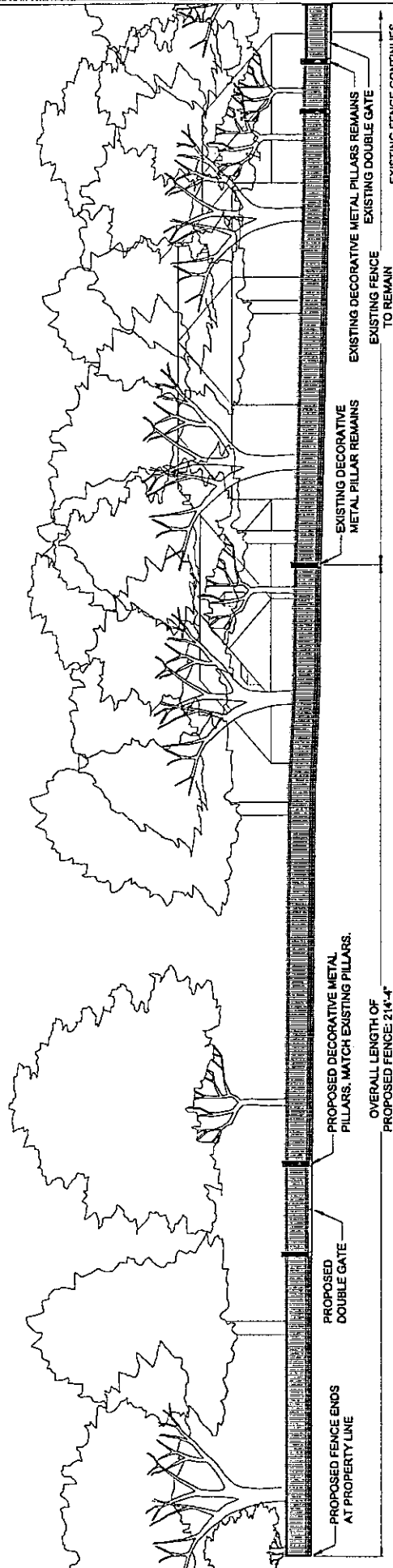
NOTES:
 PROPOSED FENCE SHALL MATCH EXISTING FENCE IN HEIGHT, MATERIAL AND APPEARANCE.
 ALL PROPOSED FENCE SHALL BE CONSTRUCTED WITHIN THE PROPERTY BOUNDARIES.

BEST AUDUBON ADDITION
 LOT 4A, BLOCK 14/5587
 91,197 sq.ft.
 2.094 acres



hpd
 HUNTER PROPERTY DESIGN
 2200 W. CAMPBELL
 FORT WORTH, TX 76102
 (817) 336-1111

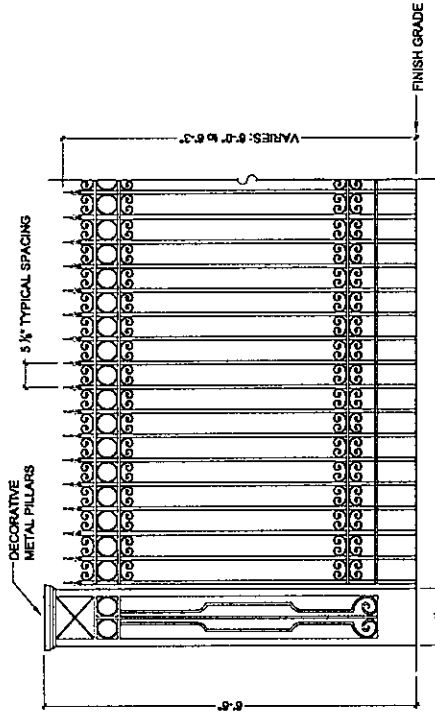
LAMBERT GARDEN DESIGN
 LANDSCAPE ARCHITECTURE AND SITE CONSTRUCTION MANAGEMENT
 2200 W. CAMPBELL
 FORT WORTH, TX 76102
 (817) 336-1111



OVERALL FENCE ELEVATION

Scale: 1"=10'-0"
0' 5' 10' 20' 40'

OVERALL LENGTH OF PROPOSED FENCE: 214'-4"



TYPICAL FENCE & DECORATIVE PILLAR

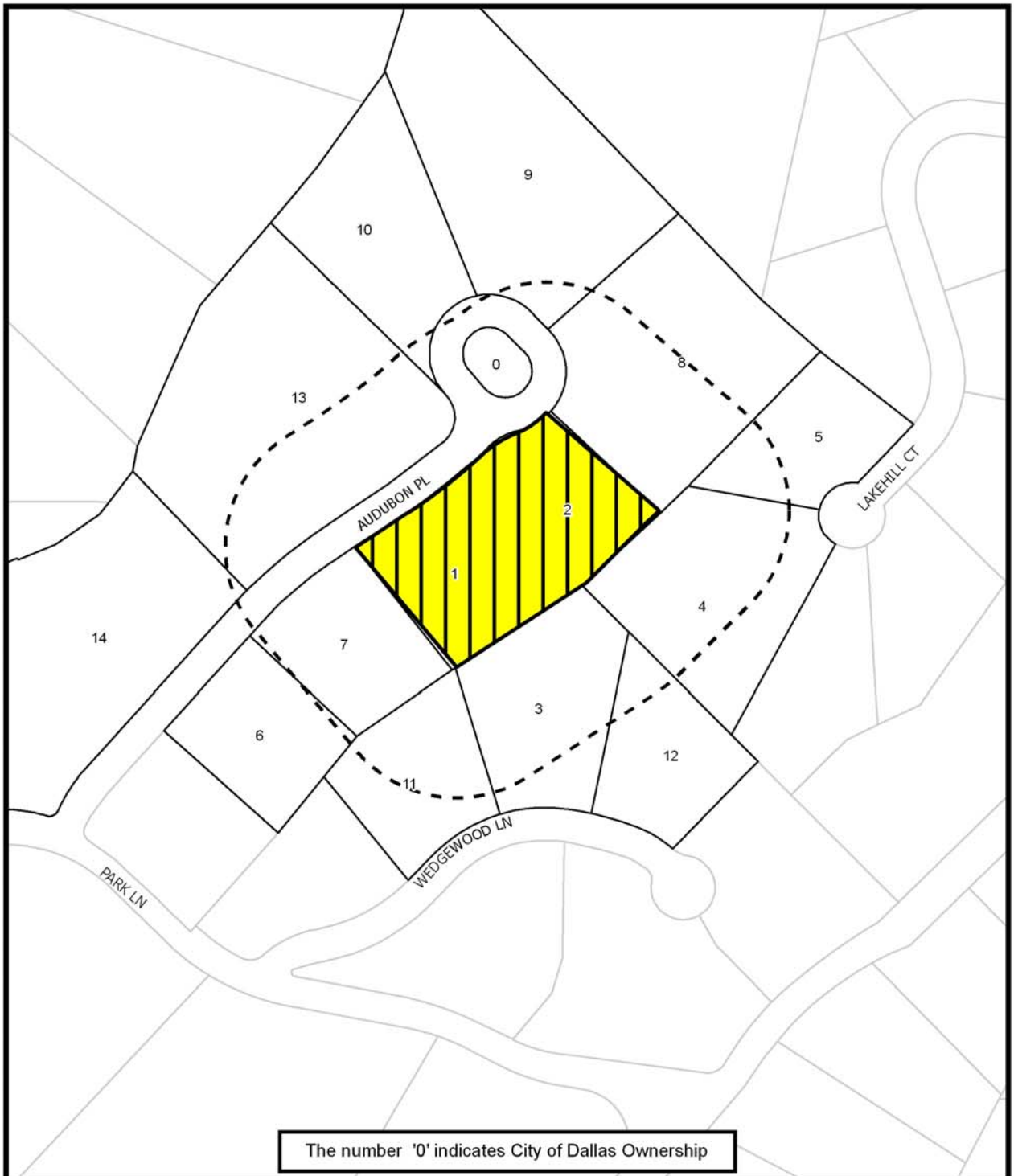
Scale: 1"=1'-0"
0' 8" 1' 2' 4'

NOTE: PROPOSED FENCE SHALL MATCH EXISTING FENCE IN ALL ASPECTS INCLUDING HEIGHT, MATERIAL, DIMENSIONS, COLOR AND DECORATIVE DETAILS. HEIGHT OF EXISTING FENCE VARIES FROM APPROXIMATELY 6'-0" TO 6'-3" (MEASURED FROM GROUND TO TOP OF PICKETS). DECORATIVE METAL PILLARS ARE APPROXIMATELY 8'-8" IN HEIGHT.

Fence Variance
July 15, 2011
BEST RESIDENCE
9762 Audubon Place
Dallas, TX 75220
Sheet 2 of 2

hpd
HARDY PERKINS DESIGN
200 W. RIVERSIDE
DALLAS, TX 75201
TEL: 214.742.1111
WWW.HPDARCHITECTS.COM

LAMBERT GARDEN DESIGN
LANDSCAPE ARCHITECTURAL AND SITE CONSTRUCTION MANAGEMENT
2200 W. RIVERSIDE
DALLAS, TX 75201
TEL: 214.742.1111
WWW.LGDESIGN.COM



The number '0' indicates City of Dallas Ownership

 1:2,400	<h2>NOTIFICATION</h2> <table border="1"> <tr> <td>200'</td> <td>AREA OF NOTIFICATION</td> </tr> <tr> <td>14</td> <td>NUMBER OF PROPERTY OWNERS NOTIFIED</td> </tr> </table>	200'	AREA OF NOTIFICATION	14	NUMBER OF PROPERTY OWNERS NOTIFIED	Map no: <u> F-6 </u> Case no: <u> BDA101-092 </u>
200'	AREA OF NOTIFICATION					
14	NUMBER OF PROPERTY OWNERS NOTIFIED					

DATE: September 29, 2011

Notification List of Property Owners

BDA101-092

14 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	9762 AUDUBON	BEST RANDY & NANCY K
2	9770 AUDUBON	SCHLIEM THOM & JANICE R
3	4945 WEDGEWOOD	MOON THOMAS R & LINDA H
4	5025 LAKEHILL	BRINKMANN J BAXTER
5	5035 LAKEHILL	FITTS JOHN STUART
6	9720 AUDUBON	ROSE MAURICE & LYDIA
7	9746 AUDUBON	PEACOCK ROBERT B TR ET AL
8	9784 AUDUBON	HUGHES JOSEPH V JR & HOLLY O HUGHES
9	9785 AUDUBON	FEARON JEFFREY ARCHER & REGEN HORCHOW
10	9779 AUDUBON	DAYTON JOHN W
11	4931 WEDGEWOOD	ZICARELLI AMY A & THOMAS MICHAEL
12	4955 WEDGEWOOD	BUTZBERGER PAUL T & DONNA M
13	9769 AUDUBON	MITCHELL LEE ROY & TANDY
14	9727 AUDUBON	TANNER TRUST THE ELIZABETH M SCHURIG TRU

FILE NUMBER: BDA 101-095

BUILDING OFFICIAL'S REPORT:

Application of Elizabeth McDonald, represented by James Harris of Thompson & Knight, to appeal the decision of the administrative official at 3300 Knox Street. This property is more fully described as Lots 3 & 4 in City Block S/1538 and is zoned PD-193 (LC) which requires parking to be provided for the issuance of a Certificate of Occupancy. The applicant proposes to appeal the decision of an administrative official in the denial of a Certificate of Occupancy.

LOCATION: 3300 Knox Street

APPLICANT: Elizabeth McDonald
Represented by James Harris of Thompson & Knight

REQUEST:

- An appeal has been made requesting that the Board of Adjustment reverse/overturn the Building Official's July 27th decision to deny an application for a Certificate of Occupancy (CO) on the subject site – specifically Certificate of Occupancy application #11071191052 for “retail use” on the property at 3300 Knox Street. The applicant alleges that the Building Official's decision to deny this CO application was in error and should be overturned.

BASIS FOR APPEAL FROM DECISION OF AN ADMINISTRATIVE OFFICIAL:

Section 51A-3.102(d)(1) of the Dallas Development Code states that the Board of Adjustment has the power and duty to hear and decide appeals from decisions of Administrative Officials made in the enforcement of the Dallas Development Code.

GENERAL FACTS:

- Building Inspection Application No. 1107191052 made by Peter Kavanaugh for a “retail” use for property at 3300 Knox Street was stamped “denied” on 7-27-11 by “T. Duerksen” with the stated reason being: “does not meet code.”
- A July 27th letter regarding “Certificate of Occupancy Application – 1107191052 at 3300 Knox Street” written by Building Inspection Senior Plans Examiner Todd Duerksen to the person making the Building Inspection Application for a Certificate of Occupancy No. 1107191052 for “retail use” (Peter Kavanaugh) states the following:
 - “This letter is to advise you that Building Inspection has received your recent application for a certificate of occupancy at the referenced address and has reviewed your request. However we regret to inform you that we are unable to approved your request at this time due to the site does not comply with the

- parking requirements of the Dallas Development Code. Please see your zoning plans examiner if you have questions concerning this matter.”
- A document submitted with this application states the following:
 - Request is made to appeal the decision of the City of Dallas Administrative Official in his/her interpretation of the Dallas Development Code.
 - Appeal the decision of the Administrative Official in his interpretation of the Delta Theory (Section 51A-4.704(b)(4)(B) Dallas Development Code).
 - The Delta Theory provides nonconforming rights as to parking. Section 51A-4.704(b)(4)(C) provides for reduction of nonconforming rights. There is only one way to reduce nonconforming rights (“Delta Credits”). A change in use of the property to a different use that has a lesser parking requirement than the previous use results in permanent loss of Delta Credits for the property. There is no other action that causes a reduction in Delta Credits.
 - The Administrative Official has ruled that providing off-site parking for a use is cause to reduce Delta Credits. That decision has no basis in the Dallas Development Code.
 - Request is made to appeal the decision of the Administrative Official. Provision of off-site temporary parking or shared parking is not cause to reduce Delta Credits for a property.
 - Property that has Delta Credits can lose those credits only by changing the use of the property. Providing access to more parking than is required is not cause to reduce Delta Credits.
 - Section 51(A)- 4.704(b)(4) Nonconformity as to parking or loading provides the following:
 - Increased requirements. A person shall not change a use that is nonconforming as to parking or loading to another use requiring more off-street parking or loading unless the additional required off-street parking or loading spaces are provided.
 - Delta Theory. In calculating required off-street parking or loading, the number of nonconforming parking or loading spaces for a use may be carried forward when the use is converted or expanded. Nonconforming rights as to parking or loading are defined in the following manner:
 - Required parking or loading for existing use.
 - Number of existing parking or loading spaces for existing use
 - Nonconforming rights as to parking or loading.
 - Decreased requirements. When a use is converted to a new use having a lesser parking or loading requirement, the rights to any portion of the nonconforming parking or loading that are not needed to meet the new requirements are lost.
 - On September 30, 2011, the applicant’s representative forwarded additional information to the Board Administrator regarding this appeal and his related application at the same address BDA 101-096 beyond what was submitted with the original applications (see Attachment A).
 - On October 4, 2011, the applicant’s representative forwarded additional information to the Board Administrator regarding his other related appeal at the same address (BDA 101-096) beyond what was submitted with that original application (see Attachment B).
 - On October 7, 2011, the applicant’s representative forwarded additional information to the Board Administrator regarding this appeal and his related application at the

same address BDA 101-096 beyond what was submitted with the original applications (see Attachment C).

BACKGROUND INFORMATION:

Zoning:

Site: PD No. 193 (LC) (Planned Development, Light Commercial)
North: PD No. 193 (LC) (Planned Development, Light Commercial)
South: PD No. 193 (LC) (Planned Development, Light Commercial)
East: PD No. 193 (LC) (Planned Development, Light Commercial)
West: PD No. 193 (LC) (Planned Development, Light Commercial)

Land Use:

The subject site is developed with commercial/retail structure, part of which is leased, part of which is vacant. The area to the north is developed with residential use; and the areas to the east, south, and west are developed with retail uses.

Zoning/BDA History:

1. BDA 101-096, Property at 3300 Knox Street (the subject site)

Depending on whether Board of Adjustment Panel A grants the applicant's request in this application made on the subject site (BDA 101-095) on October 18, 2011, overturning/reversing the Building Official's July 27, 2011 decision to deny an application for a Certificate of Occupancy (CO) on the subject site – specifically Certificate of Occupancy application #11071191052 for "retail use" on the property, will be whether the Board of Adjustment Panel A will consider the applicant's other request on the subject site: BDA 101-096- an application for a variance to off-street parking regulations of 11 spaces.

If the board grants the applicant's request in BDA 101-095 reversing/overturning the Building Official's decision, the applicant is aware that the board will not be required to consider the applicant's other request on the subject site (BDA 101-096) - an application for a variance to the off-street parking regulations.

If the board denies the applicant's request in BDA 101-095 and affirms the Building Official's decision, the applicant is aware that the board will then be required to consider

his other request made on the subject site (BDA 101-096): an application for a variance to the off-street parking regulations of 11 spaces.

Timeline:

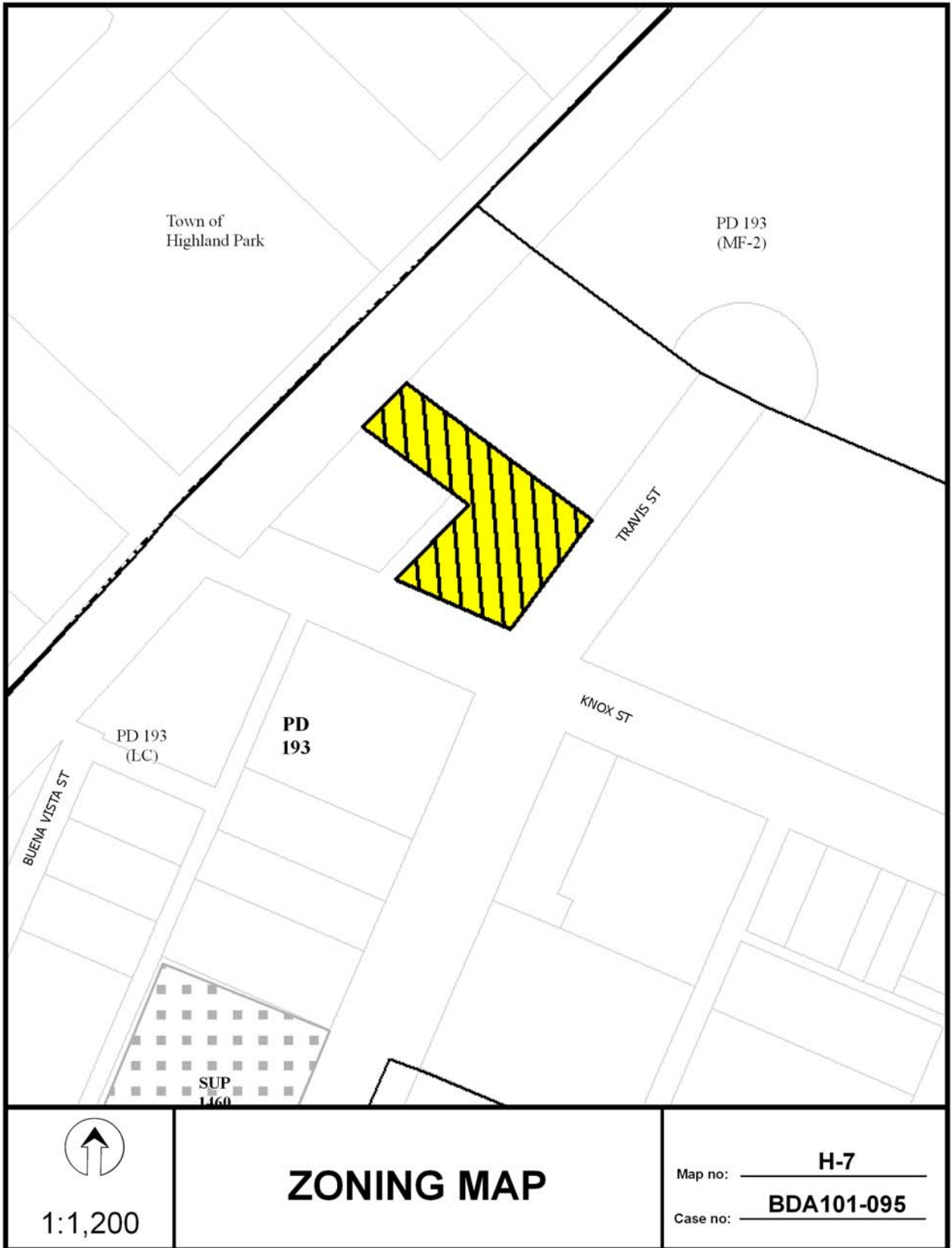
- June 10, 2011: The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- September 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- September 21, 2011: The Board Administrator emailed the applicant’s representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the September 30th deadline to submit additional evidence for staff to factor into their analysis; and the October 7th deadline to submit additional evidence to be incorporated into the Board’s docket materials;
 - the outline of procedure for appeals from decisions of the building official to the board of adjustment; and
 - the Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence.”
- September 30, 2011: The applicant’s representative submitted additional information to staff beyond what was submitted with both of his applications at this address – BDA 101-095 and 096 (see Attachment A).
- October 4, 2011: The applicant’s representative submitted additional information regarding his other related appeal (BDA 101-096) beyond what was submitted with the original application (see Attachment B).
- October 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

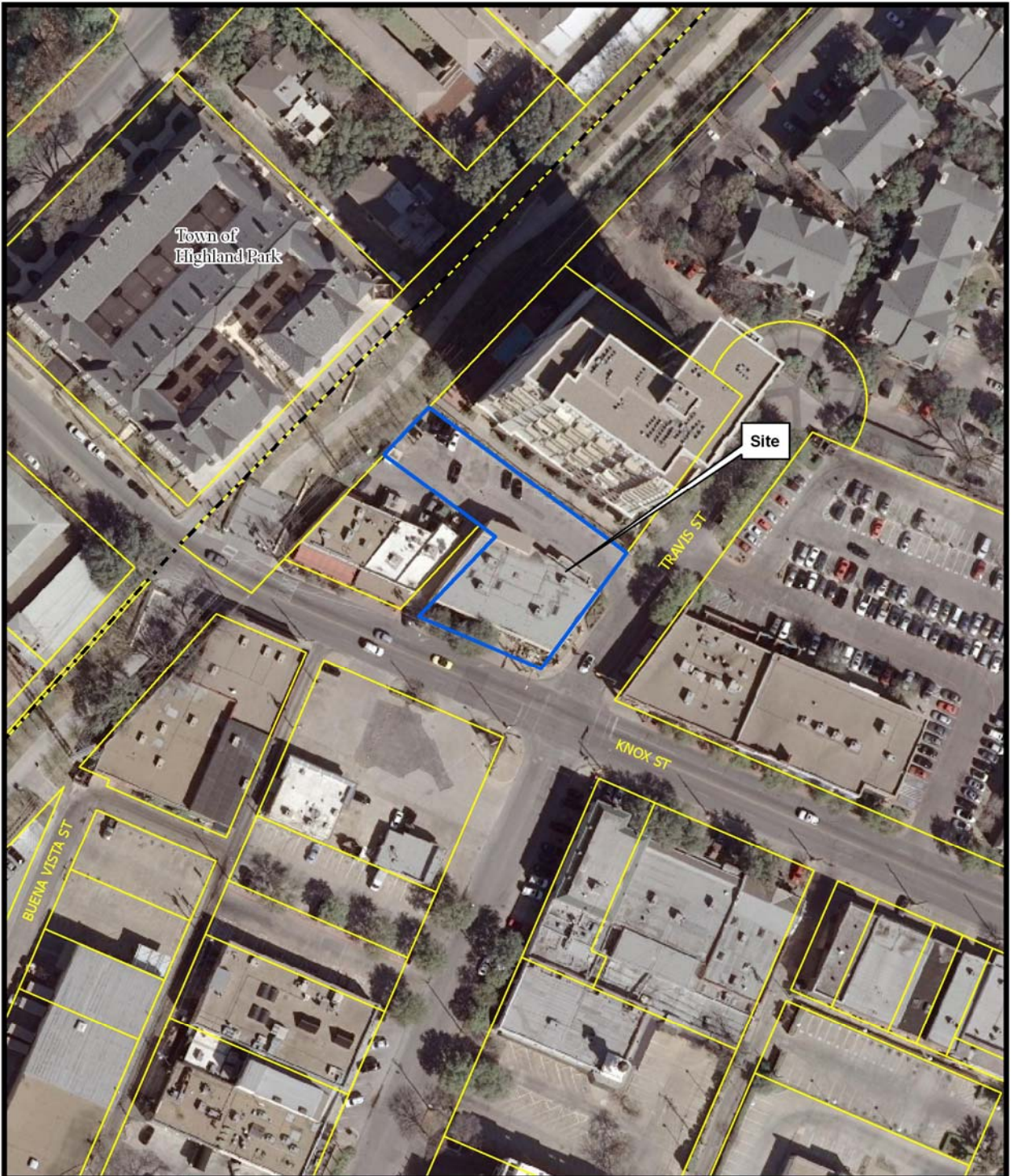
October 7, 2011: The applicant's representative submitted additional information to staff beyond what was submitted with both of his applications at this address – BDA 101-095 and 096 (see Attachment C).

STAFF ANALYSIS:

- The applicant is requesting the Board of Adjustment to overturn or reverse the Building Official's July 27th decision to deny an application for a Certificate of Occupancy (CO) on the subject site – specifically Certificate of Occupancy application #11071191052 for "retail use" on the property at 3300 Knox Street.
- If the Board of Adjustment denies the applicant's request and upholds the Building Official's July 27th decision, Certificate of Occupancy application #11071191052 for "retail use" on the property at 3300 Knox Street will remain denied. If this action occurs, the Board of Adjustment Panel A will consider the applicant's other request on the subject site that being a request for a variance to the off-street parking regulations of 11 spaces: BDA 101-096.
- If the Board of Adjustment grants the applicant's request and overturns/reverses the Building Official's July 27th decision, Certificate of Occupancy application #11071191052 for "retail use" on the property at 3300 Knox Street will be approved. If this action occurs, the applicant will not need approval from the Board of Adjustment Panel A on his other request on the subject site that being a request for a variance to the off-street parking regulations of 11 spaces: BDA 101-096.



DATE: September 29, 2011



1:1,200

AERIAL MAP

Map no: H-7
Case no: BDA101-095

DATE: September 29, 2011

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

JAMES B. HARRIS
DIRECT DIAL: (214) 969-1102
EMAIL: James.Harris@tklaw.com

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(214) 969-1700
FAX (214) 969-1751
www.tklaw.com

BDA 101-095 & 096
Attach A
Pg 1

AUSTIN
DALLAS
DETROIT
FORT WORTH
HOUSTON
NEW YORK

ALGIERS
LONDON
MEXICO CITY
MONTERREY
PARIS

September 30, 2011

Via Hand Delivery

Steve Long
Board of Adjustment Administrator
Sustainable Development and Construction
City of Dallas
1500 Marilla Street, Room 5BN
Dallas, TX 75201

Re: BDA 101-095 and 096, Property at 3300 Knox Street

Dear Mr. Long:

I write on behalf of the Mary Victoria Keating Trust, the owner of property at 3300 Knox Street, which is the Applicant in the above-referenced Board of Adjustment matters. The purpose of this letter is to share background information that the city staff might consider in making a recommendation with respect to each matter.

The first matter involves an appeal of the building official's determination that the property owned by the Keating Trust has no Delta Credits. The second matter, which would only be reached if the Board of Adjustment agrees that the property has no Delta Credits, is a request for a variance from parking requirements because the parking demand associated with a current use of the property is significantly less than what the development code requires. I will address each matter in turn.

1. The property has sufficient Delta Credits to satisfy Development Code requirements.

The property in question consists of Lots 3 and 4 of the Cockrells Farmland Addition. The lots form an L-shape at the northwest corner of Knox and Travis Streets. Enclosed as Exhibit A is a diagram outlining the lots in question.

Lot 3 and a very small portion of Lot 4 are covered by a building that is believed to have been built in the 1930's, slightly expanded in the 1980's, and remodeled many times. The city has not identified a consistent square footage for the building over the last forty years. Square footage has ranged from 6,264 square feet to 7,397 square feet. At the current time, the owner and the city are in agreement that the square footage is 7,397 square feet.

During the 1970's there were three retail operations located in the building - - Flower a Day, Mary's Beauty and a TV store. At that time, required parking for retail uses was one space for each 200 square feet. Therefore, these uses should have required 31 to 37 parking spaces, depending on the square footage that actually existed. Because Lot 3 was covered by a building, the only area where off-street parking could have been provided was on Lot 4. Until mid-1980, however, Lot 4 was not used for off-street parking. Instead, eleven angled spaces on the north side of Knox in front of the building, and three parallel spaces along Travis on the east side of the building all in the public right of way was the only parking provided. Because no required parking was provided, the Delta Credits in the 1970's would have been 31 to 37 spaces, again depending on the actual square footage of the building.

In mid-1980, the city issued a Certificate of Occupancy for a restaurant to be operated in the building. A copy of the site plan associated with that Certificate of Occupancy is attached as Exhibit B. The site plan identifies the building area as 4,731 square feet. That number is obviously incorrect and appears to represent that portion of the building devoted to restaurant use. Again, depending upon what square footage is assigned to the entire building, the area marked as "office" contained either 2,666 square feet or 1,533 square feet. Therefore, the actual required parking, which had to be the sum of the restaurant use and the office use, was either 55 (47 for the restaurant, plus 8 for the office (for 2,666 square feet at one space for every 333 square feet as required in 1980)) or 52 (47 for the restaurant, plus 5 for the office (for 1,533 square feet)). The site plan provides for 33 spaces, of which 9 exist only because of a parking agreement approved by the city that allowed the portions of Lots 1 and 2 that did not contain buildings and Lot 4 to provide parking for the uses on Lot 3. Presumably, in order to issue the certificate of occupancy, the city recognized anywhere from 19 to 22 Delta Credit spaces that existed in connection with the retail uses occurring in the building in the 1970's.

In 1986, the city issued a new certificate of occupancy for a different restaurant, On the Border. This restaurant made use of the entire building and the site plan associated with that certificate of occupancy, a copy of which is attached as Exhibit C, suggests that at that point in time the building size was 7,397 square feet, all of which was used for a restaurant. Required parking then would have been 74 spaces, yet the site plan provided the total on-site parking, which included the spaces that existed because of the parking agreement, was 33, suggesting a Delta Credit of 41 spaces.

In 1995, the city issued a new certificate of occupancy for yet a different use, a retail operation, namely a Smith & Hawken store. By 1995, the property was part of the Oak Lawn PD and the parking requirement for a retail use was one for every 220 square feet of space. Applying that requirement to the building's square footage of 7,397 square feet means the store was required to have 34 spaces. It would have been necessary to use Delta Credits to satisfy that parking demand because the parking agreement entered into in 1980, a copy of which is attached as Exhibit D, was not effective for retail use. By its terms, that parking agreement was only applicable to a restaurant use. Therefore, the only area available for Smith & Hawken to provide required parking was on Lot 4, and according to a 2010 survey, a copy of which is attached as

Exhibit E, and which describes the parking provided on Lot 4 during Smith & Hawken tenure, 18 spaces were provided. The 16 additional required spaces must have been supplied through Delta Credits.

The section of the development code providing Delta Credits explicitly allows credits to be carried forward when a new use requires less parking than the previous use, if those credits are needed to satisfy required parking. The Delta Credits for Lots 3 and 4 were either 31 or 34 in the 1970's, 19 or 22 when the building was used as a Mariano's restaurant, and 44 when the building was used as an On the Border restaurant. Regardless of which Delta Credits apply, they all exceeded the 16 Delta Credits needed for Smith & Hawken's use of the building.

Smith & Hawken vacated the building in 2009. Recently, the owner was able to lease 3,389 square feet for a new retail use. The required parking for that use is 15 spaces. The owner is in negotiations to lease the remaining 4,008 square feet to another retail use that will require 18 parking spaces. Because only 18 spaces are currently available on Lot 4, use of 15 of the available Delta Credits would satisfy required parking needs for the entire building and allow the issuance of a certificate of occupancy for a retail use in the rest of the building.

Alternatively, if the city is of the view that the 1980 parking agreement applies to other than restaurant uses, then just as it was available to Smith & Hawken in 1995, it is available currently for a different retail use. There has been some suggestion that the 1980 parking agreement is no longer in effect because reciprocal cross easements referenced in that document no longer exist. In fact, regardless of the status of the reciprocal cross easements the parking agreement continues to be a binding covenant running with the land, requiring the owners of Lots 1 and 2 to make their property available for parking. This conclusion is supported by a February 23, 1988, memo signed by Claude Forte, a copy of which is attached as Exhibit F, which does not suggest that the reciprocal easements mentioned in the parking agreement in any way affect the continued existence of the covenant running with the land established by the 1980 parking agreement. Additionally, the city has never released the covenant. If the city considers the parking agreement to still be applicable, then as described in the site plan for the On the Border restaurant, 33 spaces can be provided to satisfy the current required parking for retail operations in the building.

In short, the building official should not withhold a Certificate of Occupancy to use the remaining portion of the building for retail purposes, either because sufficient Delta Credits are currently available to satisfy required parking demand or an existing parking agreement provides sufficient parking to meet required parking needs.

2. If required parking is not met by Delta Credits or the parking agreement, then a parking variance would be appropriate.

Of the 7,397 square feet of space available to lease since Smith & Hawken left in 2009, only 3,389 square feet has been re-leased. In January of this year, the owner entered into a lease for a retail outlet for Acme Brick that operates under the name Patina. That store opened for

business in mid-August. On display at the store are samples of flooring, tile, and brick for sale. The sales people are also interior designers. The target customer is someone who is seeking help in choosing and buying materials used in remodeling. Customers visit with one of the designers to discuss what type of materials might best meet their needs. The customer then selects from available samples and makes a purchase.

Given the nature of the retail operation, it was expected that the amount of car traffic generated by this store would be limited. The store is not by itself a destination, like a big box retailer. Its retail operations seem to complement other retail stores in the area, such as Weirs, Crate and Barrel, Pottery Barn, and Restoration Hardware. A recent parking survey conducted during the hours the store was opened from Friday, September 23, 2011, through Wednesday, September 28, 2011, supports this conclusion. During those six days, the average hourly parking demand was 3 cars (and that includes employees) and the hourly parking demand ranged from 1 car to 6 cars.

The store has also determined that a number of its customers are walk-ins in the sense that they have parked at another location to visit a restaurant or another store in the area, leave their car parked and walked to this store. For instance, over a four day period 74 customers visited the store, but only 20 cars parked behind the store during the same period and that total included employees. Given the proximity of the store to the Park Cities, as well as to local condominiums and townhomes, the adjacent Katy Trail, and retail stores it compliments, it is not surprising that a number of customers walk to the store from their homes or after first visiting other stores.

Included in the application is a parking layout that would allow, consistent with city requirements for size, configuration, and use of compact spaces, the 18 current spaces to be increased to 23 spaces. Using the average hourly parking demand of three spaces determined by the survey means that 20 spaces would be available for a retail use in the remaining 4,008 square feet of the building. Those 20 spaces exceed the required parking for such a retail use.

Reconfiguring the parking to provide 23 spaces would also provide more parking than was available during the 14 years that Smith & Hawken was located at the building. During that time, Smith & Hawken was unable to use any of the area on Lots 1 and 2 for parking and, therefore, had at most 18 spaces for its customers. During those 14 years, there were no complaints to the city of Dallas about a lack of parking associated with the Smith & Hawken store.

If the parking variance were to be granted, it would provide more parking than was available for a 14 year period without complaint. It would also insure that required parking is provided for half the building, recognizing that the use in the other half has demonstrated a parking demand significantly less than the required parking set forth in the Development Code.

Without this variance, it may not be possible to lease the other half of the building. The owner has talked with surrounding property owners, none of whom have exhibited any interest in

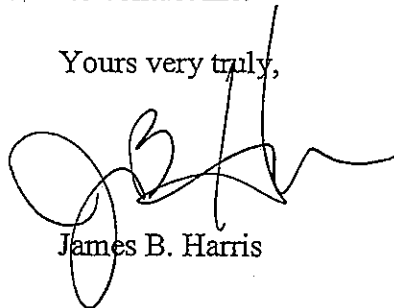
Steve Long, Administrator
September 30, 2011
Page 5

BDA 101-095 & 096
Attach A
Pg 5

making space available at any price for parking that could be included in a parking agreement. If the other half of the building cannot be leased, the value of the building will necessarily drop, meaning a loss of property tax and without any retail operation no sales tax will be generated and new jobs will not be generated.

I hope the foregoing has been helpful. If you should have any questions or need any additional information, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in black ink, appearing to read 'JBH', with a long horizontal flourish extending to the right.

James B. Harris

JBH/tkh
Enclosures

cc: Peter Kavanagh
Elizabeth McDonald

DEED RECORD

PARKING AGREEMENT

STATE OF TEXAS	\$	5310	16.00 DEED
COUNTY OF DALLAS	\$		1 06/27/80

WHEREAS, Mariano's Restaurants, Inc., hereinafter referred to as "Applicant", has filed an application with the building official of the City of Dallas, Texas, for a building permit and certificate of occupancy in order to refurbish and renovate an existing building to be used for restaurant purposes; and

WHEREAS, Applicant desires to implement said use in the eastern portion of that building located on Lot 3 in City Block S/1538, Cockrell Fairland Addition, which is located in the City of Dallas, Dallas County, Texas, and is hereinafter referred to as "Tract A"; and

WHEREAS, Article XX, CHAPTER 51, "COMPREHENSIVE GENERAL ZONING ORDINANCE", of the Dallas City Code, as amended, requires a specific number of off-street parking spaces to be provided for the above described use on Tract A; and

WHEREAS, the Estate of Mary Victor Keating, hereinafter referred to as "Keating", owns Lot 4 in City Block S/1538, in the Cockrell Fairland Addition, which is located in the City of Dallas, Dallas County, Texas, and is hereinafter referred to as "Tract B"; and

WHEREAS, the I. Jalonick Estate, hereinafter referred to as "Jalonick", owns that property which is described on Exhibit A, which is attached hereto and made a part hereof for all purposes, which is located in the City of Dallas, Dallas County, Texas, and is hereinafter referred to as "Tract C"; and

WHEREAS, Applicant desires to use Tracts B and C in order to satisfy, in whole or in part, the above described parking requirements for Tract A; and

-1-

80127 1992

Exhibit D

14 1108 v

WHEREAS, Keating and Jalonick have entered into a Grant of Reciprocal Easement Agreement to provide parking on Tracts B and C for the benefit of Tract A, such grant being for a period of twenty-one years beginning on March 24, 1980 and terminating on March 23, 2001, now therefore,

Handwritten initials

~~WHEREAS, Applicant, Keating and Jalonick have entered into a Lease Agreement whereby Applicant has agreed to lease Tracts B and C beginning on March 24, 1980 and terminating on March 23, 2001, now therefore,~~

Handwritten initials

KNOW ALL MEN BY THESE PRESENTS:

That Applicant, Keating and Jalonick, for and in consideration of the City of Dallas granting to Applicant a building permit and certificate of occupancy in order that Tract A may be used for the above described use as defined in Article XX, CHAPTER 51,

"COMPREHENSIVE GENERAL ZONING ORDINANCE", of the Dallas City Code, as amended, do hereby agree to the following:

- (1) Tracts B and C will only be used for parking in connection with the above described use of Tract A;
- (2) Tracts B and C shall not be used for any other purpose other than parking;
- (3) This instrument is a covenant running with the land as to Tracts B and C;
- (4) The City of Dallas may revoke Applicant's Certificate of Occupancy regarding the above described use of Tract A if:
 - (a) the above described lease of Tracts B and C is terminated or rescinded for any reason; and
 - (b) Applicant does not provide other off-street parking spaces in accordance with Article XX of the Comprehensive General Zoning Ordinance of the City of Dallas;
- (5) This instrument shall cease to be effective only upon the filing in the Deed Records of Dallas County, Texas, of an instrument signed by the Building Official of the City of Dallas, Texas, or his designee, releasing the aforementioned covenants;
- (6) This instrument shall be filed in the Deed Records of Dallas County, Texas, by and at the expense of Applicant; and
- (7) The covenants recited herein shall bind the successors, heirs, employees and assigns of Applicant, Keating and Jalonick.

80127 1993

EXECUTED this the 1st day of MAY, 1980.

MARIANO'S, INC.

by: Mariano Martinez
Its President

ESTATE OF MARY VICTOR KEATING

by: W. J. C. ...
Senior Vice President and Trust Officer

I. JALONICK ESTATE

by: Hugh E. Peathee, Jr.

STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Mariano Martinez, President of Mariano's, Inc., known to me to be the person whose name is subscribed to the above and foregoing instrument, who, having been by me duly sworn, stated on his oath that he is the President of Mariano's, Inc., is authorized to make this affidavit, and that he signed the above and foregoing instrument for the purposes and consideration and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 1 day of May, 1980.

John ...
Notary Public
Dallas County, Texas

My Commission Expires:
6-8-80

STATE OF TEXAS District §
COUNTY OF DALLAS Columbia §

BEFORE ME, the undersigned authority, on this day personally appeared Andrew C. ... of the Estate of Mary Victor Keating, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said ESTATE OF MARY VICTOR KEATING, and that he executed the same as the act of such Estate for the purposes and consideration therein expressed and in the capacity therein stated.

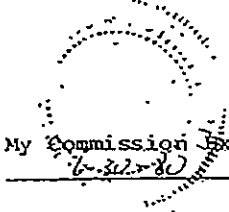
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 2 day of June, 1980.

Robert E. ...
Notary Public
Dallas County, Texas
80127 1394

STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Hugh E. Prothro, Jr., Executor of the I. JALONICK ESTATE, known to me to be the person and ~~owner~~ whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said I. JALONICK ESTATE, and that he executed the same as the act of such I. JALONICK ESTATE for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE: this the 5 day of May, 1980.



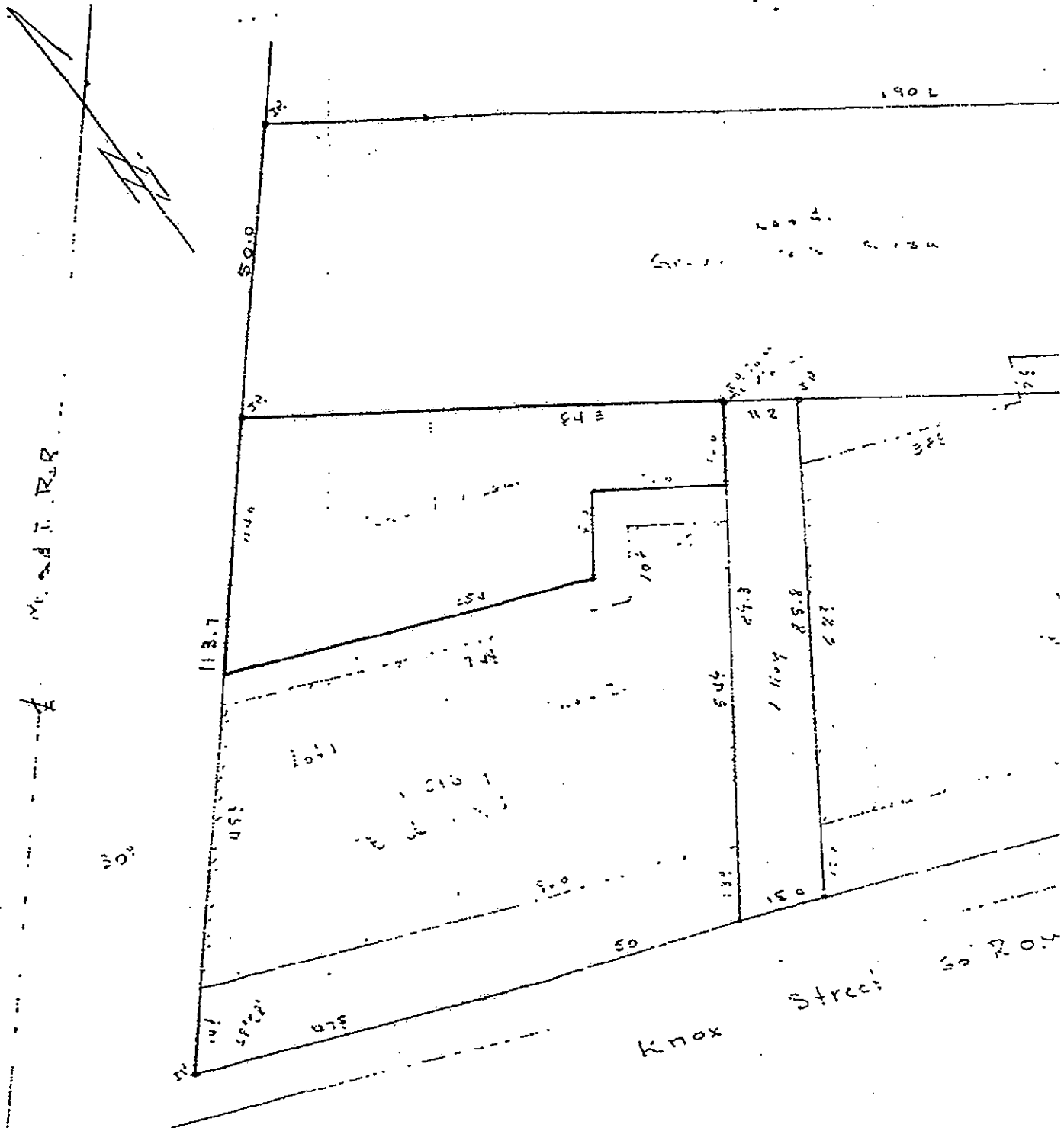
Stanley Knight
Notary Public
Dallas County, Texas

My Commission Expires:
6-30-80

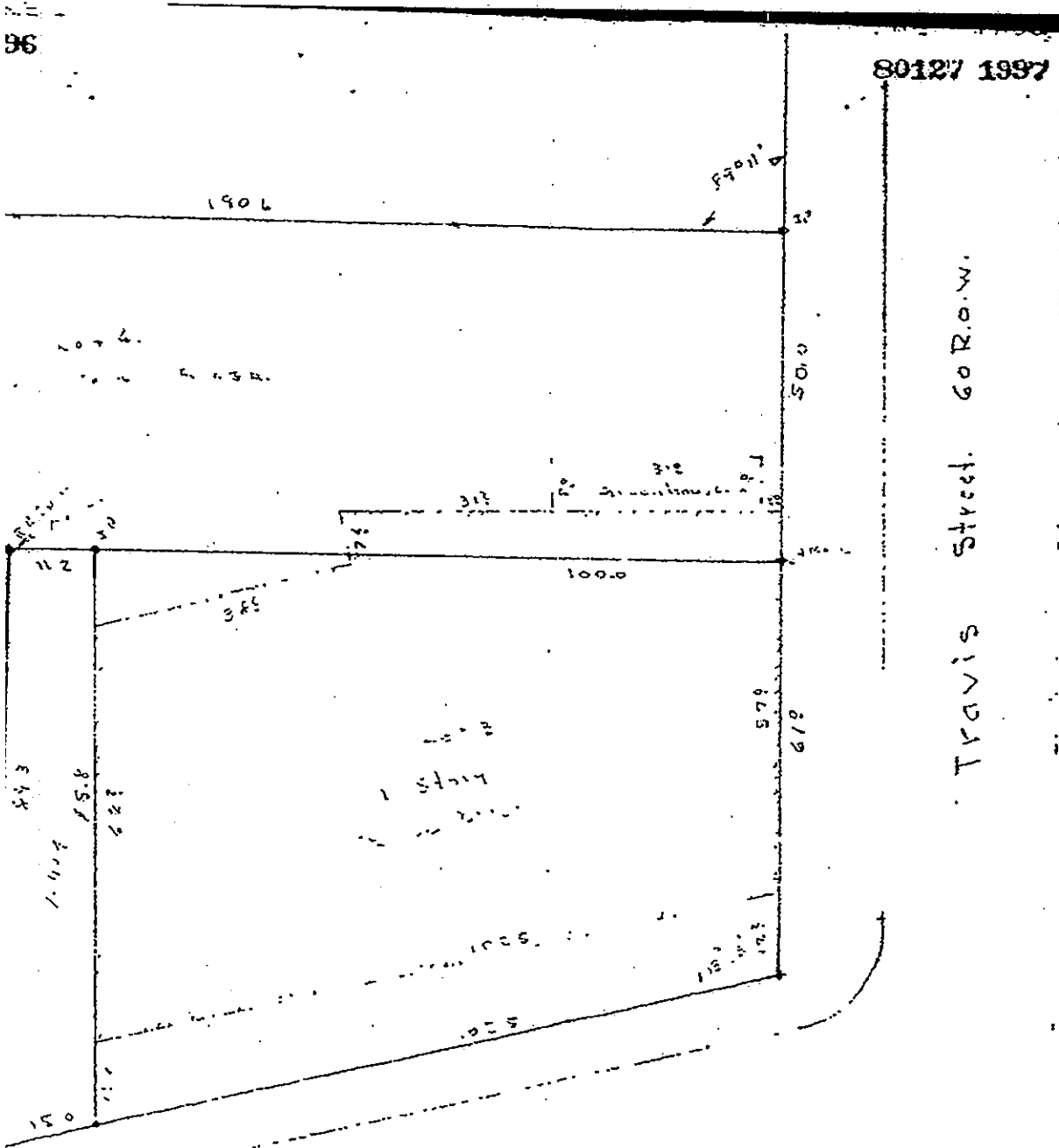
City Attorney
Barry R. Knight
Assistant City Attorney

80127 1995

80127 1996



96



Being
 Fairland Ad
 Block & Add.
 Records o
 Being desc
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 Thence
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 Thence
 of lot 1 & 1
 point being
 Thence
 line of the
 corner of
 Thence
 feet to p

Street 60 R.O.W.

Survey of
 Lots 1, 2, 3, 4 Block 5/1538
 Cockrells Fairland Addition
 As Revised in Vol. 142 P 382.
 Deed Records, Dallas County.

Scale 1"=20'

The plat hereon is a true, correct and
 the lines and dimensions of said prop
 buildings and improvements are as s
 back from property lines the distance
 road, is as shown on said plat.

THERE ARE NO ENCROACHMENTS.

Scale 1" = 20'
 Date 4/29/80

1997

80127 1998

Being Lots 3 & 4 of Block S/1538 of Cockrells Fairland Addition, and a part of Lots 1 & 2 of said Block & Addition, as revised in Vol. 142 page 382, Deed. Records of Dallas County, Texas. The part of Lots 1 & 2 Being described as follows

Beginning at the Southeast corner of Lot 2.

Thence Westerly, along the South Line of Lot 2 and the North Line of an Alley 15.0 feet to point for corner,

Thence Northerly, parallel with the East Line of Lot 2, 23.0 feet to point for corner,

Thence Northwestly, 65.4 feet to point on the North Line of Lot 1 & the south R.O.W. line of the M.K.&T. R.R. Row, said point being 4.0 feet from the Northeast corner of Lot 1.

Thence Easterly, along the North Line of Lot 1 & the South Line of the M.K.&T. R.R. R.O.W. 44.0 feet to the Northeast corner of Lot 1.

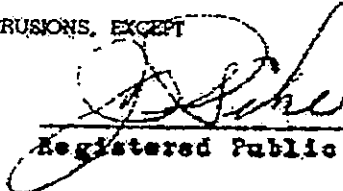
Thence Southerly, along the East Lines of Lots 1 & 2, 84.3 feet to place of beginning

The plat hereon is a true, correct, and accurate representation of the property as determined by survey, the lines and dimensions of said property being as indicated by the plat; the size, location, and type of buildings and improvements are as shown, all improvements being within the boundaries of the property set back from property lines the distances indicated, and that the distance from the nearest intersecting street or road, is as shown on said plat.

THERE ARE NO ENCROACHMENTS, CONFLICTS, OR PROTRUSIONS, EXCEPT

Scale 1" = 20'

Date 4/29/00


Registered Public Surveyor



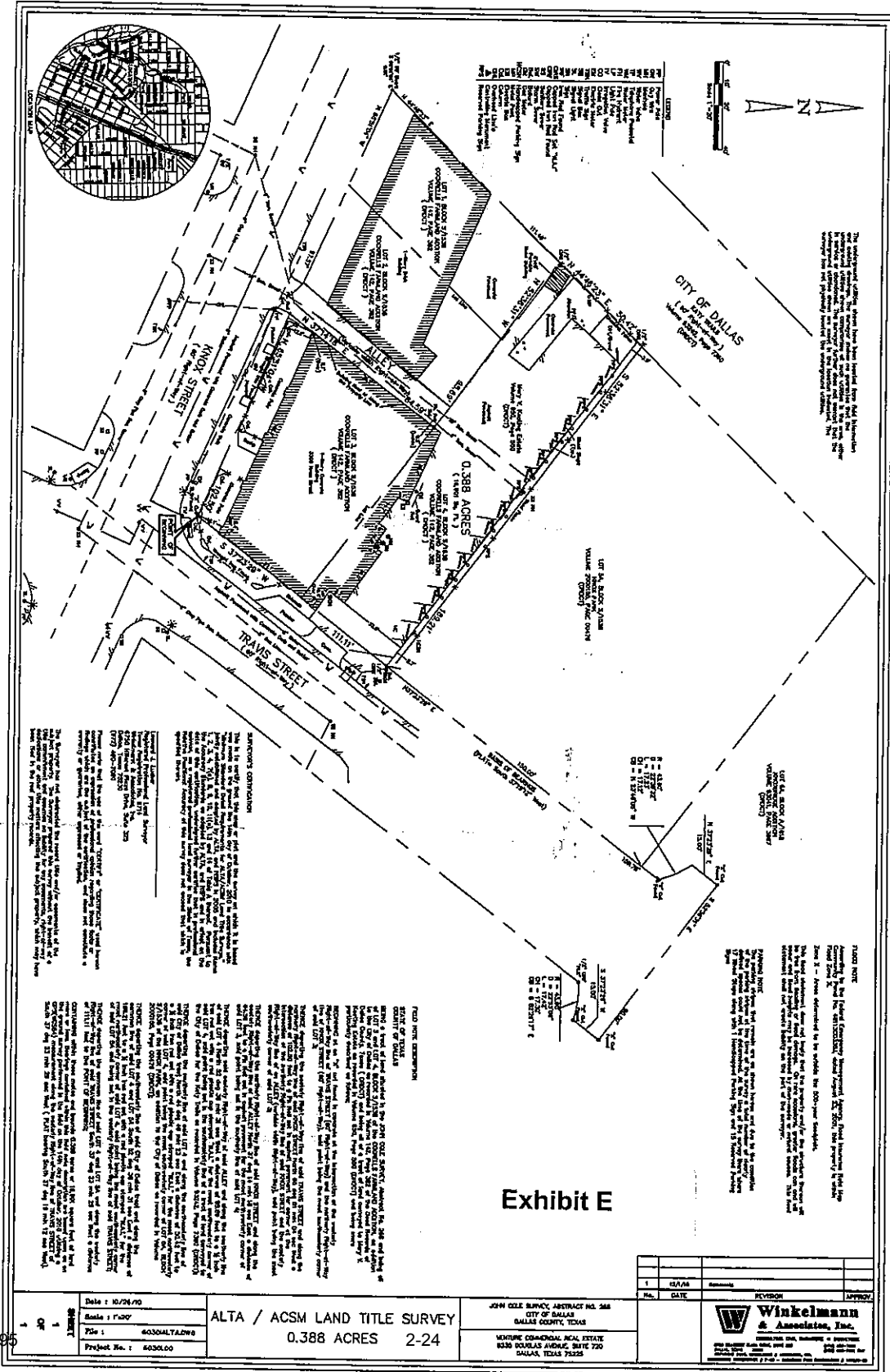
Return to:
William Teitelbaum
2731 Lemmon Avenue East - 200
Dallas, Tx. 75204

CLERK OF DISTRICT COURT, DALLAS COUNTY, TEXAS
W. E. M... ..
JUN 27 1980
MAIL ROOM
COUNTY OF DALLAS
DALLAS, TEXAS
I hereby certify that the foregoing was
sent to the County Clerk, Dallas County, Texas,
at the City of Dallas, Texas, on the 27th day of
June, 1980, and that the same was received by the
County Clerk, Dallas County, Texas, at Dallas,
Texas, on the 27th day of June, 1980.

80 JUN 26 PM 3:04

W. E. M... ..

80127 1980



MULLINAX, WELLS, BAAB & CLOUTMAN, P.C.

ATTORNEYS AT LAW

330 ELM STREET DALLAS, TEXAS 75226
PHONE (214) 939-9222 IN FT. WORTH, CALL 263-1527

February 23, 1988

ROGER ALBRIGHT

Mr. Claude Forte
 Chief Development Code
 Administration
 City of Dallas
 Building Inspection Division
 Department of Public Works
 320 E. Jefferson Bldg.
 Dallas, Texas 75203

RE: 3300-3308 Knox Street

Dear Claude:

Thank you for taking the time to meet with me on Monday, February 22, 1988 to review the off-street parking requirements of the uses located in the 3300 block of Knox and the parking agreement which exists between the owners of the two (2) tracts of property located along that block. As you suggested, I have drafted a memorandum which summarizes the information contained in the file so that any current or prospective tenant will be aware of precisely what parking is available. If this memo is acceptable, I would appreciate you signing the enclosed copies, placing one in the file and returning the other to me in the enclosed pre-addressed envelope.

If you have any questions, please give me a call.

Sincerely,

MULLINAX, WELLS, BAAB
& CLOUTMAN, P.C.By: 

Roger Albright

RA/klp
 Encl.

Exhibit F

MEMORANDUM

DATE: February 23, 1988

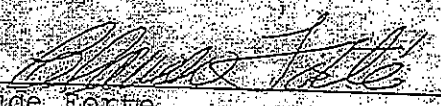
RE: Parking Agreement for 3300 Block of
Knox; On the Border Restaurant

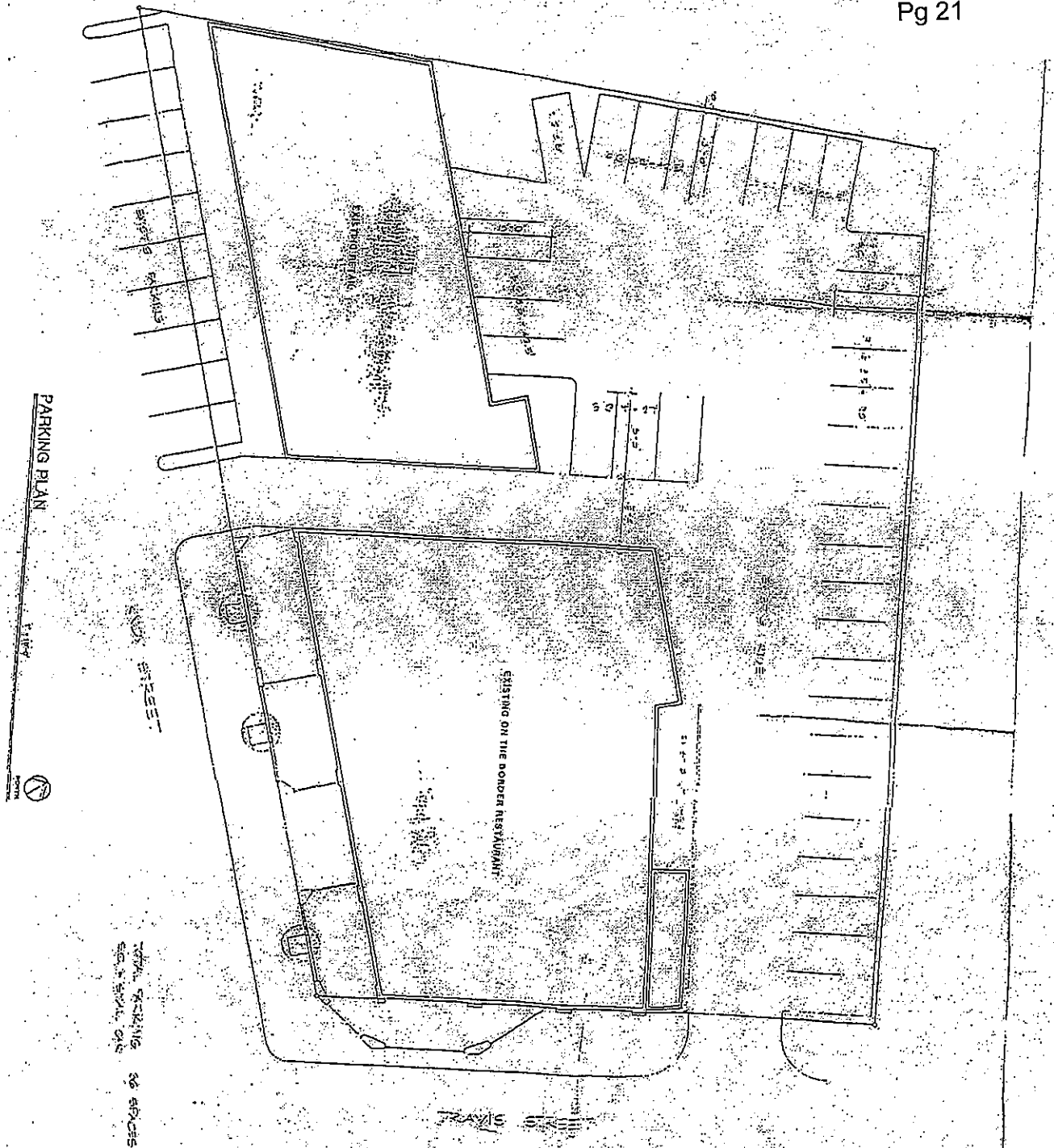
Questions as to the use of off-street parking located behind the structures on the north side of Knox in the 3300 block have been raised and the Department of Housing and Neighborhood Services has been requested to issue a Notice of Violation based on the alleged failure of On the Border Restaurant to "follow agreed parking stipulations in deed". The purpose of this memorandum is to set forth the underlying facts and documentation contained in the City of Dallas file.

On the Border Restaurant is located at 3300-3308 Knox. This property, (Lot 3, Block S/1538) as well as Lot 4 located behind this property are owned by the Keating Estate. The retail uses located at 3310, 3312, 3314 and 3316 Knox are located on the front portions of Lots 1 and 2 which are owned by the Jalonick estate. The rear portion of Lots 1 and 2 as well as Lot 4 are paved and used for off-street parking. On May 1, 1980, the owners of the Keating and Jalonick properties entered into a parking agreement whereby the off-street parking spaces located on the rear of Lots 1 and 2 and Lot 4 (labeled Tracts B & C) could only be used for parking for the building located on Lot 3 (labeled Tract A) which was to be refurbished and renovated for restaurant purposes. This parking agreement was approved by the City and duly filed in the Deed Records. Based on that agreement, the restaurant met the off-street parking requirements of the Dallas Development Code and a certificate of occupancy was issued for the restaurant located at 3300-3308 Knox. Maps showing the areas that are restricted to restaurant parking by this parking agreement (Tracts B and C) as well as the parking plan are attached.


Based on this agreement, On the Border has the sole right to use any of the parking spaces located behind any of the structures in the 3300 block of Knox. The only parking available for the retail uses located at 3310-3316 Knox are the on-street parking spaces located directly in front of those retail uses. Even though those retail uses do not provide any off-street parking, they are legal non-conforming uses although, none could be converted to a more intensive use without meeting the requirements of the Development Code

with regard to off-street parking. Based on the information in the files of the City of Dallas, there is no basis for the issuance of a notice of violation for the failure of any use presently located in the 3300 block of Knox to provide required off-street parking or the failure to follow the parking stipulations contained in the parking agreement.


Claude Forte
Chief, Development Code
Administrator
City of Dallas
Building Inspection Division
Department of Public Works



TOWNSCAPE ARCHITECTS
1000 BROADWAY, SUITE 2000, DALLAS, TEXAS 75202, (214) 760-0000



ARCHITECTURAL PLAN
ON THE BORDER
DATE: 10/1/10

BDA 101-095 & 096

Attach B

Long, Steve

Pg 1

From: Harris, James B. [James.Harris@tklaw.com]
Sent: Tuesday, October 04, 2011 11:27 AM
To: Long, Steve
Subject: RE: Draft news ad for BDA 101-096, Property at 3300 Knox Street

Steve, looks fine.

From: Long, Steve [mailto:steve.long@dallascityhall.com]
Sent: Tuesday, October 04, 2011 10:51 AM
To: Harris, James B.
Cc: Duerksen, Todd; Palomino, Tammy
Subject: FW: Draft news ad for BDA 101-096, Property at 3300 Knox Street

Dear Mr. Harris,

I have attached a draft news ad regarding BDA 101-096 for your review. As you can see, this draft news ad incorporates some of your comments/suggestions below into a standard form that the City typically does for news ads pertaining to parking reduction requests.

Please note that I have intentionally not included the parking ratio that you mentioned below in this draft since this information to my recollection has historically never been conveyed in the news ad or property owner notice. (Details such as parking ratios are however conveyed in the docket that is part of the public record on this type of parking reduction application).

Please take a look at this draft and let me know if you have any concerns with the information that is conveyed.

Thanks,

Steve

From: Harris, James B. [mailto:James.Harris@tklaw.com]
Sent: Tuesday, October 04, 2011 10:22 AM
To: Long, Steve
Subject: RE:

Steve, I understand as a result of a conversation between Todd Duerkson and Peter Kavanaugh (who is working with me on the variance request) there has been some confusion about the type of uses that would be covered by the variance request and the size of the variance being requested. To be clear we are not proposing to construct and maintain a building but intend to maintain an existing building that was originally constructed in the 1930's. We intend to use the building for retail and professional, personal service and custom craft uses requiring one parking space for each 220 square feet or more of floor area. Additionally, by our calculations the number of required spaces for those uses, as the building is currently configured, is 33 not 34.

At any rate, in light of this background you may want to consider changing the building official's report to delete in fourth line the word "construct." You may also want to delete the phrase "general merchandise or food store less than 3500 square feet and personal service uses" in the fifth and sixth lines and replace it with "retail and professional, personal service and custom crafts uses."

I think the 220 or more issue and the number of required spaces can be addressed at the hearing.

BDA101-095 & 096

Call me if this email is unclear or we need to discuss further.

Jim Harris

Attach B
Pg 2

From: Long, Steve [mailto:steve.long@dallascityhall.com]
Sent: Tuesday, October 04, 2011 7:54 AM
To: Harris, James B.
Cc: Duerksen, Todd
Subject: FW:

Dear Mr. Harris,

Would you please give me a call on this today before noon? I need to touch base with you on this since this document could effect your application BDA 101-096.

Thanks,

Steve

From: Long, Steve
Sent: Monday, October 03, 2011 2:39 PM
To: 'james.harris@tklaw.com'
Subject:

Mr. Harris,

Would you give me a call on the attachment, please? 214/670-4666.

Thanks,

Steve

**PUBLIC NOTICE
BOARD OF ADJUSTMENT OF THE CITY OF DALLAS (PANEL A)**

NOTICE IS HEREBY GIVEN that the **BOARD OF ADJUSTMENT OF THE CITY OF DALLAS (PANEL A)** will hold a hearing as follows:

- DATE:** TUESDAY, OCTOBER 18, 2011
- BRIEFING:** 11:00 A.M. in 5ES, Dallas City Hall, 1500 Marilla Street
- PUBLIC HEARING:** 1:00 P.M. in Council Chambers, Dallas City Hall, 1500 Marilla Street

The purpose of the hearing is to consider the following applications now pending before the Board of Adjustment:

-
1. **BDA101-096** - Application of Elizabeth McDonald, represented by James Harris of Thompson & Knight, for a variance to the off-street parking regulations at **3300 Knox Street**. This property is more fully described as lots 3 & 4 in City Block S/1538 and is zoned PD-193 (LC) which requires off-street parking to be provided. The applicant proposes to maintain a structure with certain retail and professional, personal service, and custom crafts uses, and provide 23 of the required 34 parking spaces which will require a variance of 11 spaces.

Please contact Steve Long, Board Administrator at (214) 670-4666, or Trena Law, Board Secretary at (214) 670-4206 if you have any further questions or need any additional information.

BDA101-096
595 # 096
ATTEN
B

MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____


Chairman

Building Official's Report

I hereby certify that Elizabeth McDonald
represented by Thompson & Knight
did submit a request for a variance to the parking regulations
at 3300 Knox Street

BDA101-096. Application of Elizabeth McDonald represented by James Harris of Thompson & Knight for a variance to the parking regulations at 3300 Knox Street. This property is more fully described as lots 3 & 4 in city block S/1538 and is zoned PD-193 (LC), which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential structure for general merchandise or food store less than 3500 square feet and personal service uses and provide 23 of the required 34 parking spaces, which will require an 11 space variance to the parking regulation.

Sincerely,


Lloyd Denmam, Building Official

JAMES B. HARRIS
DIRECT DIAL: (214) 969-1102
EMAIL: James.Harris@tklaw.com

ONE ARTS PLAZA
1722 ROUTH STREET • SUITE 1500
DALLAS, TEXAS 75201-2533
(214) 969-1700
FAX (214) 969-1751
www.tklaw.com

HOUSTON
NEW YORK
ALGIERS
LONDON
MEXICO CITY
MONTERREY
PARIS

October 7, 2011

Via Hand Delivery

Steve Long
Board of Adjustment Administrator
Sustainable Development and Construction
City of Dallas
1500 Marilla Street, Room 5BN
Dallas, TX 75201

Re: BDA 101-095 and 096, Property at 3300 Knox Street

Dear Mr. Long:

I would appreciate your including this letter and its attachments in the materials shared with the Board of Adjustment (the "Board") in connection with the above-referenced cases set to be heard on Tuesday, October 18, 2011. The above-referenced cases involve two discreet issues. The first is whether the building official erred in denying a request for a building permit to renovate one-half of a building at 3300 Knox Street. The second case, which will only be heard if the building official's decision is upheld, seeks a parking variance for the building at 3300 Knox Street. I have already submitted one background letter to you for consideration by city staff in connection with these cases and I attach that letter as Exhibit 1 so that it will also be before the Board of Adjustment. I will address in turn each of the issues the Board will consider on October 18, 2011.

1. Denial of Building Permit.

The building has been vacant since 2009, when Smith & Hawken discontinued retail operations nationwide. Since then the owner has been looking for suitable replacement tenants. Since mid-August of this year, approximately one-half of the building, consisting of 3,389 square feet, has been occupied by Patina, a store that provides remodeling services and materials. The building official was willing to issue a building permit and certificate of occupancy for the Patina store because it required 15 spaces, which were available on property controlled by the owner. The building official has been unwilling to issue a building permit to remodel the remainder of the building containing about 4,000 square feet, because the building official believes an additional 19 spaces are required for a retail, professional, personal service, or customs crafts uses to be located there. For the reasons set forth in the letter previously provided for staff review, we believe that the building official should have reached a different conclusion.

In discussions with Phil Sikes of the Building Inspection Division, the owners' representatives were advised that the reason the no building permit would be issued for the

remainder of the building was because it had no Delta Credits. According to Mr. Sikes, in 1995 when Smith & Hawken occupied the entire building there existed a parking agreement that resulted in either 33 or 34 spaces being available for that retail use. In recent conversations with the City Attorney's Office, I have been advised that the parking agreement referred to by Mr. Sikes did not provide required parking for a retail use. Instead, it only provided required parking for a restaurant use.

In the absence of a parking agreement, the number of parking spaces that could be provided for Smith & Hawken's retail store, as demonstrated from a survey in 2010, was 18. Nevertheless, issuance of a certificate of occupancy for Smith & Hawken in 1995 was proper because at that point in time there existed somewhere between 31 and 41 Delta Credits. Under the Dallas Development Code, Delta Credits are measured by looking at the number of spaces required for an existing use and subtracting out the number of spaces provided. In 1995, just before Smith & Hawken occupied the building, it was being used as an On the Border restaurant. The square footage of that restaurant was somewhere between 6,400 and 7,400 square feet. The parking requirement was 1 per 100 square feet. Therefore, the required parking was either 64 or 74. The approved site plan for On the Border only identified 33 parking spaces. Therefore, at that time, the Delta Credits were 31 to 41 spaces depending on the actual square footage occupied by On the Border.

Under the Dallas Development Code if a new use requires less parking, it is still entitled to the number of Delta Credits necessary to satisfy required parking. When Smith & Hawken moved in, it only could provide 18 parking spaces (because the parking agreement was no longer applicable) meaning that it needed to use 16 of the Delta Credits that existed with respect to the On the Border restaurant.

The required parking for the Smith & Hawken's use was one space per 220 square feet. That is the same requirement that exists for Patina's use and for the proposed uses for the remainder of the building. Given that Delta Credits were available for Smith & Hawken, they should also be available for similar uses that would replace Smith & Hawken.

Overruling the building official's decision in this case simply insures fairness and consistency allowing new uses that have the same parking demand as a previous use to operate with the same amount of parking. If it was appropriate for Smith & Hawken to operate for 14 years with 16 Delta Credits then similar uses with the same parking demand should be entitled to make use of the same Delta Credits to satisfy required parking.

2. Even if the Building Official was Right, this Case Presents Appropriate Facts for the Granting of a Parking Variance.

If the property owner can show an unnecessary hardship that is not self-created, but results from special conditions, then a variance from required parking is appropriate so long as doing so would be in the public interest. The history and the size and shape of the property in question demonstrate why these conditions have been met.

The property in question involves Lots 3 and 4 of the Cockrell Fair Land addition to the City of Dallas that was filed in 1891. A copy of that plat is attached as Exhibit 2. Lots 3 and 4 are currently owned by a testamentary trust that traces its ownership of Lots 3 and 4 to a 1915 deed in which H.S. Keating acquired Lots 3 and 4. See Exhibit 3. Mr. Keating passed away in 1921 and in 1932 his widow, Mary Victoria Keating, conveyed to the testamentary trust, which still owns the property, Lots 3 and 4. A copy of that transfer is attached as Exhibit 4. That exhibit reflects that in 1932 Lots 3 and 4 were improved by a one-story brick building about 80 feet long and 60 feet in depth. That is the same structure, with only slight additions, that is currently found on the property.

Attached as Exhibits 5, 6 & 7 are aerial photographs of the property with an outline of the area covered by Lots 3 and 4. As is evident from these aerial photographs the building occupies all of Lot 3 and part of Lot 4, leaving only the remainder of Lot 4 to provide parking. This situation has existed since prior to 1932. In fact, prior to 1980 no parking was provided on Lot 4. Attached as Exhibit 8, is an aerial photograph from 1979 that establishes Lot 4 was unimproved. The use of Lot 4 was changed in 1980 when a restaurant, Mariano's, was located in the building and has now continued to be used for parking through the present. Obviously prior to 1980 no off-site parking was provided in connection with the building. And since 1980, Lots 3 and 4 have never satisfied required parking under the Dallas Development Code.

Attached as Exhibit 9 is a photo of the building as it looked when Smith & Hawken was present and a second photograph attached as Exhibit 10 that shows the building after Smith & Hawken vacated the space. Attached as Exhibits 11, 12, 13, and 14 are photos showing how the building currently looks.

The unnecessary hardship presented by this case is an inability to lease one-half of the building because of the shape and limited area presented by the configuration and size of Lots 3 and 4. Without demolishing a significant portion of a building that has been present since before 1932, additional parking cannot be provided. The size and shape of Lot 4 does not allow below-ground or a parking garage type structure. Moreover, such parking is not provided anywhere else in the vicinity.

These special conditions were not self-created. At the time the property was platted, in 1891, none of the current zoning requirements were in place. Moreover at the time the building was constructed, parking requirements were not in place. In short, a purchase in 1915 and the construction of buildings prior to 1932 that were entirely legal have now turned out to be a hardship because of changes over time in the development code. Moreover, it was not until the city's change in position this year regarding the application to the property of Delta Credits that sufficient parking became an issue. In short, there is nothing that the owner of the property has done to create this hardship other than to have purchased many years ago two small lots with an unusual configuration and hold on to them.

Granting a parking variance here would also be in the public interest. During the time Smith & Hawken occupied the building it generated approximately \$2.4 million a year in retail sales. The city's share of sales tax from those sales have been lost since 2009. Additionally, the

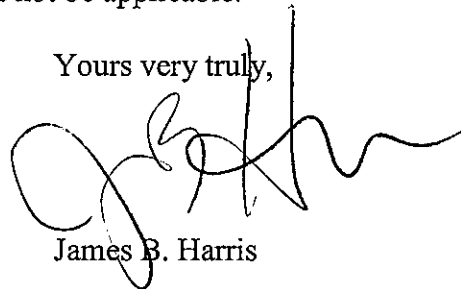
value of the building for property tax purposes has dropped more than \$500,000 since 2009. If the remainder of the building cannot be leased out, only a portion of the \$2.4 million in annual sales will be recouped and there will be a further deterioration in the value of the building for property tax purposes meaning less tax revenue to the City of Dallas. An inability to lease the rest of the building also means fewer jobs generated at that location.

Granting the variance will not create a parking problem. The number of spaces being proposed are actually an increase over what was available when Smith & Hawken occupied the building, an increase from 18 to 23 spaces. Secondly, the parking study undertaken on behalf of the tenant demonstrates that the average hourly parking demand for the current tenant, Patina, was 3, and that in any one hour the number of cars present because of that tenant range from 1 to 6. Attached as Exhibit 15 is a copy of the daily parking reports. Also attached as Exhibits 16, 17, and 18, are photographs taken during that parking study showing the current parking configuration, which will be modified if the variance is granted.

The fact that the current tenant is generating less parking demand than the development code would predict is not surprising. Attached as Exhibits 19 is a copy of charts showing the number of customers at Patina between Friday, September 23, 2011, and Monday, September 26, 2011. There were many more customers than there were cars. The difference results from walk-ins, that is people who have not driven to get to the shopping center or who have parked in another spot in the area and visited Patina after shopping at other stores.

Under these circumstances, the granting of a parking variance would be appropriate. In that regard one point needs to be clarified. The request for a parking variance is only for those retail, professional, personal service, and custom crafts uses that require one space per 220 square feet or more. This variance would not apply to restaurant uses and would not apply to any retail, professional, personal service or custom crafts use if the parking requirement was one space for 219 square feet or less. In other words, if a retail use required one space for each 150 square feet, the requested variance would not be applicable.

Yours very truly,

A handwritten signature in black ink, appearing to read 'James B. Harris', is written over the typed name below.

James B. Harris

JBH/tkh
Enclosures

cc: Peter Kavanagh
Elizabeth McDonald

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

JAMES B. HARRIS
DIRECT DIAL: (214) 969-1102
EMAIL: James.Harris@tklaw.com

ONE ARTS PLAZA
1722 ROUTH STREET • SUITE 1500
DALLAS, TEXAS 75201-2533
(214) 969-1700
FAX (214) 969-1751
www.tklaw.com

BDA 101-095 & 096
Attach C
Pg 5

FOUR WORTH
HOUSTON
NEW YORK

ALGIERS
LONDON
MEXICO CITY
MONTERREY
PARIS

September 30, 2011

Via Hand Delivery

Steve Long
Board of Adjustment Administrator
Sustainable Development and Construction
City of Dallas
1500 Marilla Street, Room 5BN
Dallas, TX 75201

Re: BDA 101-095 and 096, Property at 3300 Knox Street

Dear Mr. Long:

I write on behalf of the Mary Victoria Keating Trust, the owner of property at 3300 Knox Street, which is the Applicant in the above-referenced Board of Adjustment matters. The purpose of this letter is to share background information that the city staff might consider in making a recommendation with respect to each matter.

The first matter involves an appeal of the building official's determination that the property owned by the Keating Trust has no Delta Credits. The second matter, which would only be reached if the Board of Adjustment agrees that the property has no Delta Credits, is a request for a variance from parking requirements because the parking demand associated with a current use of the property is significantly less than what the development code requires. I will address each matter in turn.

1. The property has sufficient Delta Credits to satisfy Development Code requirements.

The property in question consists of Lots 3 and 4 of the Cockrells Farmland Addition. The lots form an L-shape at the northwest corner of Knox and Travis Streets. Enclosed as Exhibit A is a diagram outlining the lots in question.

Lot 3 and a very small portion of Lot 4 are covered by a building that is believed to have been built in the 1930's, slightly expanded in the 1980's, and remodeled many times. The city has not identified a consistent square footage for the building over the last forty years. Square footage has ranged from 6,264 square feet to 7,397 square feet. At the current time, the owner and the city are in agreement that the square footage is 7,397 square feet.

Exhibit 1

During the 1970's there were three retail operations located in the building - - Flower a Day, Mary's Beauty and a TV store. At that time, required parking for retail uses was one space for each 200 square feet. Therefore, these uses should have required 31 to 37 parking spaces, depending on the square footage that actually existed. Because Lot 3 was covered by a building, the only area where off-street parking could have been provided was on Lot 4. Until mid-1980, however, Lot 4 was not used for off-street parking. Instead, eleven angled spaces on the north side of Knox in front of the building, and three parallel spaces along Travis on the east side of the building all in the public right of way was the only parking provided. Because no required parking was provided, the Delta Credits in the 1970's would have been 31 to 37 spaces, again depending on the actual square footage of the building.

In mid-1980, the city issued a Certificate of Occupancy for a restaurant to be operated in the building. A copy of the site plan associated with that Certificate of Occupancy is attached as Exhibit B. The site plan identifies the building area as 4,731 square feet. That number is obviously incorrect and appears to represent that portion of the building devoted to restaurant use. Again, depending upon what square footage is assigned to the entire building, the area marked as "office" contained either 2,666 square feet or 1,533 square feet. Therefore, the actual required parking, which had to be the sum of the restaurant use and the office use, was either 55 (47 for the restaurant, plus 8 for the office (for 2,666 square feet at one space for every 333 square feet as required in 1980)) or 52 (47 for the restaurant, plus 5 for the office (for 1,533 square feet)). The site plan provides for 33 spaces, of which 9 exist only because of a parking agreement approved by the city that allowed the portions of Lots 1 and 2 that did not contain buildings and Lot 4 to provide parking for the uses on Lot 3. Presumably, in order to issue the certificate of occupancy, the city recognized anywhere from 19 to 22 Delta Credit spaces that existed in connection with the retail uses occurring in the building in the 1970's.

In 1986, the city issued a new certificate of occupancy for a different restaurant, On the Border. This restaurant made use of the entire building and the site plan associated with that certificate of occupancy, a copy of which is attached as Exhibit C, suggests that at that point in time the building size was 7,397 square feet, all of which was used for a restaurant. Required parking then would have been 74 spaces, yet the site plan provided the total on-site parking, which included the spaces that existed because of the parking agreement, was 33, suggesting a Delta Credit of 41 spaces.

In 1995, the city issued a new certificate of occupancy for yet a different use, a retail operation, namely a Smith & Hawken store. By 1995, the property was part of the Oak Lawn PD and the parking requirement for a retail use was one for every 220 square feet of space. Applying that requirement to the building's square footage of 7,397 square feet means the store was required to have 34 spaces. It would have been necessary to use Delta Credits to satisfy that parking demand because the parking agreement entered into in 1980, a copy of which is attached as Exhibit D, was not effective for retail use. By its terms, that parking agreement was only applicable to a restaurant use. Therefore, the only area available for Smith & Hawken to provide required parking was on Lot 4, and according to a 2010 survey, a copy of which is attached as

Exhibit E, and which describes the parking provided on Lot 4 during Smith & Hawken tenure, 18 spaces were provided. The 16 additional required spaces must have been supplied through Delta Credits.

The section of the development code providing Delta Credits explicitly allows credits to be carried forward when a new use requires less parking than the previous use, if those credits are needed to satisfy required parking. The Delta Credits for Lots 3 and 4 were either 31 or 34 in the 1970's, 19 or 22 when the building was used as a Mariano's restaurant, and 44 when the building was used as an On the Border restaurant. Regardless of which Delta Credits apply, they all exceeded the 16 Delta Credits needed for Smith & Hawken's use of the building.

Smith & Hawken vacated the building in 2009. Recently, the owner was able to lease 3,389 square feet for a new retail use. The required parking for that use is 15 spaces. The owner is in negotiations to lease the remaining 4,008 square feet to another retail use that will require 18 parking spaces. Because only 18 spaces are currently available on Lot 4, use of 15 of the available Delta Credits would satisfy required parking needs for the entire building and allow the issuance of a certificate of occupancy for a retail use in the rest of the building.

Alternatively, if the city is of the view that the 1980 parking agreement applies to other than restaurant uses, then just as it was available to Smith & Hawken in 1995, it is available currently for a different retail use. There has been some suggestion that the 1980 parking agreement is no longer in effect because reciprocal cross easements referenced in that document no longer exist. In fact, regardless of the status of the reciprocal cross easements the parking agreement continues to be a binding covenant running with the land, requiring the owners of Lots 1 and 2 to make their property available for parking. This conclusion is supported by a February 23, 1988, memo signed by Claude Forte, a copy of which is attached as Exhibit F, which does not suggest that the reciprocal easements mentioned in the parking agreement in any way affect the continued existence of the covenant running with the land established by the 1980 parking agreement. Additionally, the city has never released the covenant. If the city considers the parking agreement to still be applicable, then as described in the site plan for the On the Border restaurant, 33 spaces can be provided to satisfy the current required parking for retail operations in the building.

In short, the building official should not withhold a Certificate of Occupancy to use the remaining portion of the building for retail purposes, either because sufficient Delta Credits are currently available to satisfy required parking demand or an existing parking agreement provides sufficient parking to meet required parking needs.

2. If required parking is not met by Delta Credits or the parking agreement, then a parking variance would be appropriate.

Of the 7,397 square feet of space available to lease since Smith & Hawken left in 2009, only 3,389 square feet has been re-leased. In January of this year, the owner entered into a lease for a retail outlet for Acme Brick that operates under the name Patina. That store opened for

business in mid-August. On display at the store are samples of flooring, tile, and brick for sale. The sales people are also interior designers. The target customer is someone who is seeking help in choosing and buying materials used in remodeling. Customers visit with one of the designers to discuss what type of materials might best meet their needs. The customer then selects from available samples and makes a purchase.

Given the nature of the retail operation, it was expected that the amount of car traffic generated by this store would be limited. The store is not by itself a destination, like a big box retailer. Its retail operations seem to complement other retail stores in the area, such as Weirs, Crate and Barrel, Pottery Barn, and Restoration Hardware. A recent parking survey conducted during the hours the store was opened from Friday, September 23, 2011, through Wednesday, September 28, 2011, supports this conclusion. During those six days, the average hourly parking demand was 3 cars (and that includes employees) and the hourly parking demand ranged from 1 car to 6 cars.

The store has also determined that a number of its customers are walk-ins in the sense that they have parked at another location to visit a restaurant or another store in the area, leave their car parked and walked to this store. For instance, over a four day period 74 customers visited the store, but only 20 cars parked behind the store during the same period and that total included employees. Given the proximity of the store to the Park Cities, as well as to local condominiums and townhomes, the adjacent Katy Trail, and retail stores it compliments, it is not surprising that a number of customers walk to the store from their homes or after first visiting other stores.

Included in the application is a parking layout that would allow, consistent with city requirements for size, configuration, and use of compact spaces, the 18 current spaces to be increased to 23 spaces. Using the average hourly parking demand of three spaces determined by the survey means that 20 spaces would be available for a retail use in the remaining 4,008 square feet of the building. Those 20 spaces exceed the required parking for such a retail use.

Reconfiguring the parking to provide 23 spaces would also provide more parking than was available during the 14 years that Smith & Hawken was located at the building. During that time, Smith & Hawken was unable to use any of the area on Lots 1 and 2 for parking and, therefore, had at most 18 spaces for its customers. During those 14 years, there were no complaints to the city of Dallas about a lack of parking associated with the Smith & Hawken store.

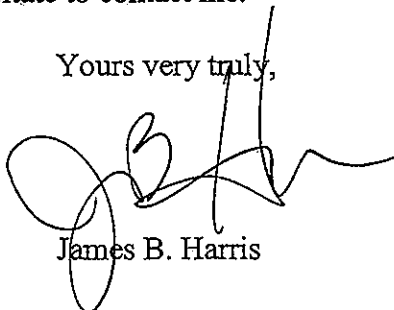
If the parking variance were to be granted, it would provide more parking than was available for a 14 year period without complaint. It would also insure that required parking is provided for half the building, recognizing that the use in the other half has demonstrated a parking demand significantly less than the required parking set forth in the Development Code.

Without this variance, it may not be possible to lease the other half of the building. The owner has talked with surrounding property owners, none of whom have exhibited any interest in

making space available at any price for parking that could be included in a parking agreement. If the other half of the building cannot be leased, the value of the building will necessarily drop, meaning a loss of property tax and without any retail operation no sales tax will be generated and new jobs will not be generated.

I hope the foregoing has been helpful. If you should have any questions or need any additional information, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in black ink, appearing to read 'JBH', with a large loop at the end.

James B. Harris

JBH/tkh
Enclosures

cc: Peter Kavanagh
Elizabeth McDonald

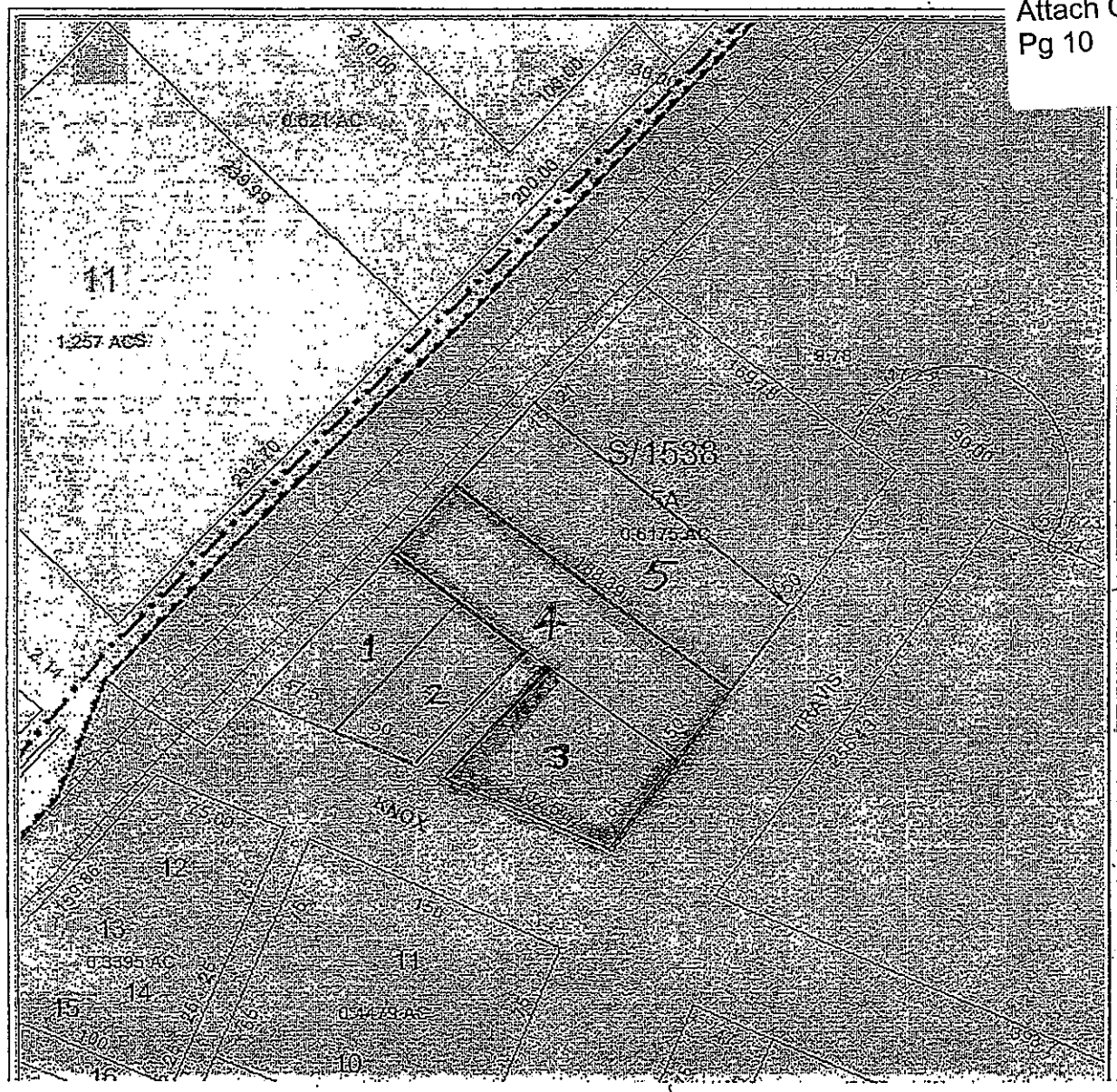
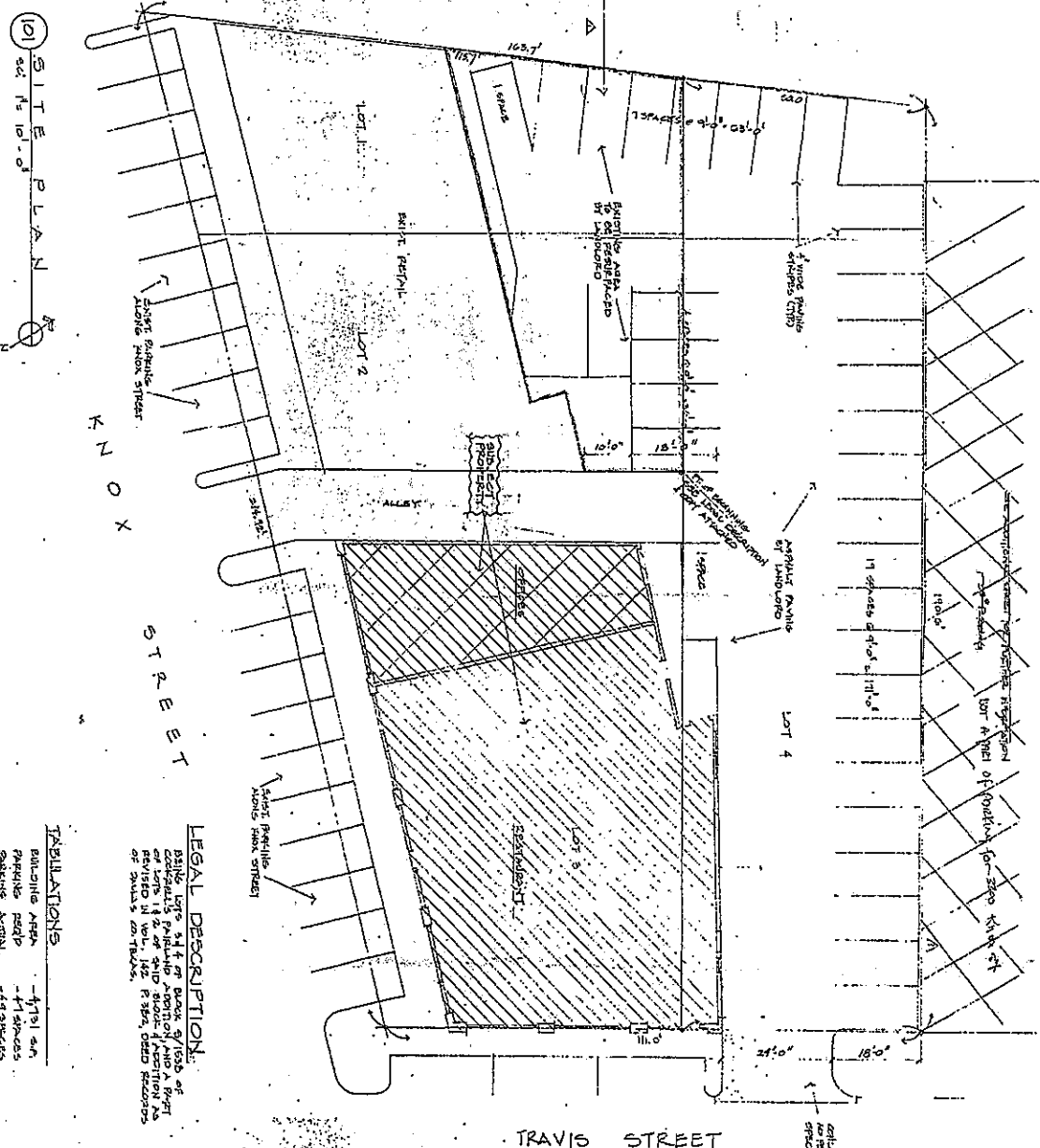


Exhibit A

SHEET INDEX:

- A-1 SITE PLAN
- A-2 PAVED PLAN
- A-3 EXISTING LAYOUT
- A-4 PERMITS/SECTION PLAN
- A-5 EXISTING/SECTION OFFICE
- A-6 EXISTING/SECTION OFFICE
- A-7 W/OUT/SECTION OFFICE
- A-8 W/OUT/SECTION OFFICE
- A-9 W/OUT/SECTION OFFICE

LEGAL DESCRIPTION
 AREA INVOLVED REFERRED TO THE PART
 IDENTIFIED ON THE SURVEY OF THE
 LOT OR LOTS AS SHOWN ON THE SURVEY



10 SITE PLAN
 24 N 10' 0" S

TABULATIONS

- BUILDING AREA - 4741 sqm
- PERMITS/SECTION - 41 sheets
- PERMITS/SECTION - 41 sheets
- W/OUT/SECTION - 41 sheets
- W/OUT/SECTION - 41 sheets
- W/OUT/SECTION - 41 sheets

LEGAL DESCRIPTION:

BLK. LOTS 34 & 35 OF BLOCK 51/150 OF
 CONGRESS PARKWAY SECTION AND A PART
 OF LOTS 14 & 15 OF SAID BLOCK 51/150 AS
 SHOWN IN VOL. 142 P. 322, 323, 324, 325
 OF THE 2011 TEXAS SURVEY.

JOB NUMBER: 101-095
 SHEET NUMBER: 11
 OF 11

JK&A
 Jon Fenton Associates, Inc. | Dallas, Texas
 10101 Preston Road, Suite 1000 | Dallas, TX 75249
 (214) 343-1111 | www.jkand.com

MARIANO'S CABRITO BAR
 AND
 OFFICE REMODEL
 KNOX @ TRAVIS STREET
 DALLAS TEXAS

Exhibit B

DEED RECORD

PARKING AGREEMENT

STATE OF TEXAS	§	5510	16.00 DEED
COUNTY OF DALLAS	§		1.06/27/83

WHEREAS, Mariano's Restaurants, Inc., hereinafter referred to as "Applicant", has filed an application with the building official of the City of Dallas, Texas, for a building permit and certificate of occupancy in order to refurbish and renovate an existing building to be used for restaurant purposes; and

WHEREAS, Applicant desires to implement said use in the eastern portion of that building located on Lot 3 in City Block S/1538, Cockrell Fairland Addition, which is located in the City of Dallas, Dallas County, Texas, and is hereinafter referred to as "Tract A"; and

WHEREAS, Article XX, CHAPTER 51, "COMPREHENSIVE GENERAL ZONING ORDINANCE", of the Dallas City Code, as amended, requires a specific number of off-street parking spaces to be provided for the above described use on Tract A; and

WHEREAS, the Estate of Mary Victor Keating, hereinafter referred to as "Keating", owns Lot 4 in City Block S/1538, in the Cockrell Fairland Addition, which is located in the City of Dallas, Dallas County, Texas, and is hereinafter referred to as "Tract B"; and

WHEREAS, the I. Jalonick Estate, hereinafter referred to as "Jalonick", owns that property which is described on Exhibit A, which is attached hereto and made a part hereof for all purposes, which is located in the City of Dallas, Dallas County, Texas, and is hereinafter referred to as "Tract C"; and

WHEREAS, Applicant desires to use Tracts B and C in order to satisfy, in whole or in part, the above described parking requirements for Tract A; and

-1-

80127 1392

Exhibit D

WHEREAS, Keating and Jalonick have entered into a Grant of Reciprocal Easement Agreement to provide parking on Tracts B and C for the benefit of Tract A, such grant being for a period of twenty-one years beginning on March 24, 1980 and terminating on March 23, 2001, now therefore,

AM
1980

~~WHEREAS, Applicant, Keating and Jalonick have entered into a Lease Agreement whereby Applicant has agreed to lease Tracts B and C beginning on March 24, 1980 and terminating on March 23, 2001, now therefore,~~

AM
1980

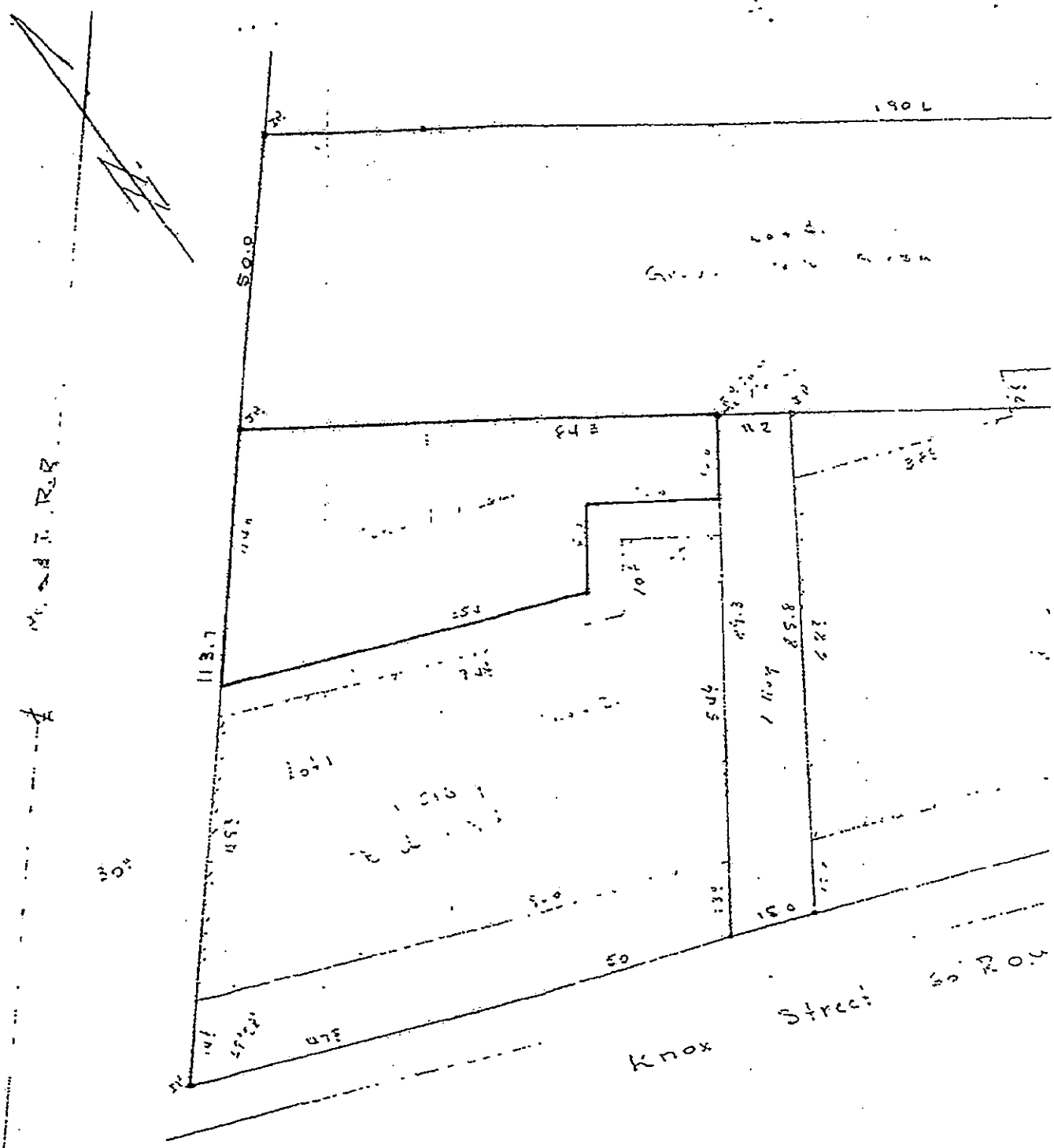
KNOW ALL MEN BY THESE PRESENTS:

That Applicant, Keating and Jalonick, for and in consideration of the City of Dallas granting to Applicant a building permit and certificate of occupancy in order that Tract A may be used for the above described use as defined in Article XX, CHAPTER 51, "COMPREHENSIVE GENERAL ZONING ORDINANCE", of the Dallas City Code, as amended, do hereby agree to the following:

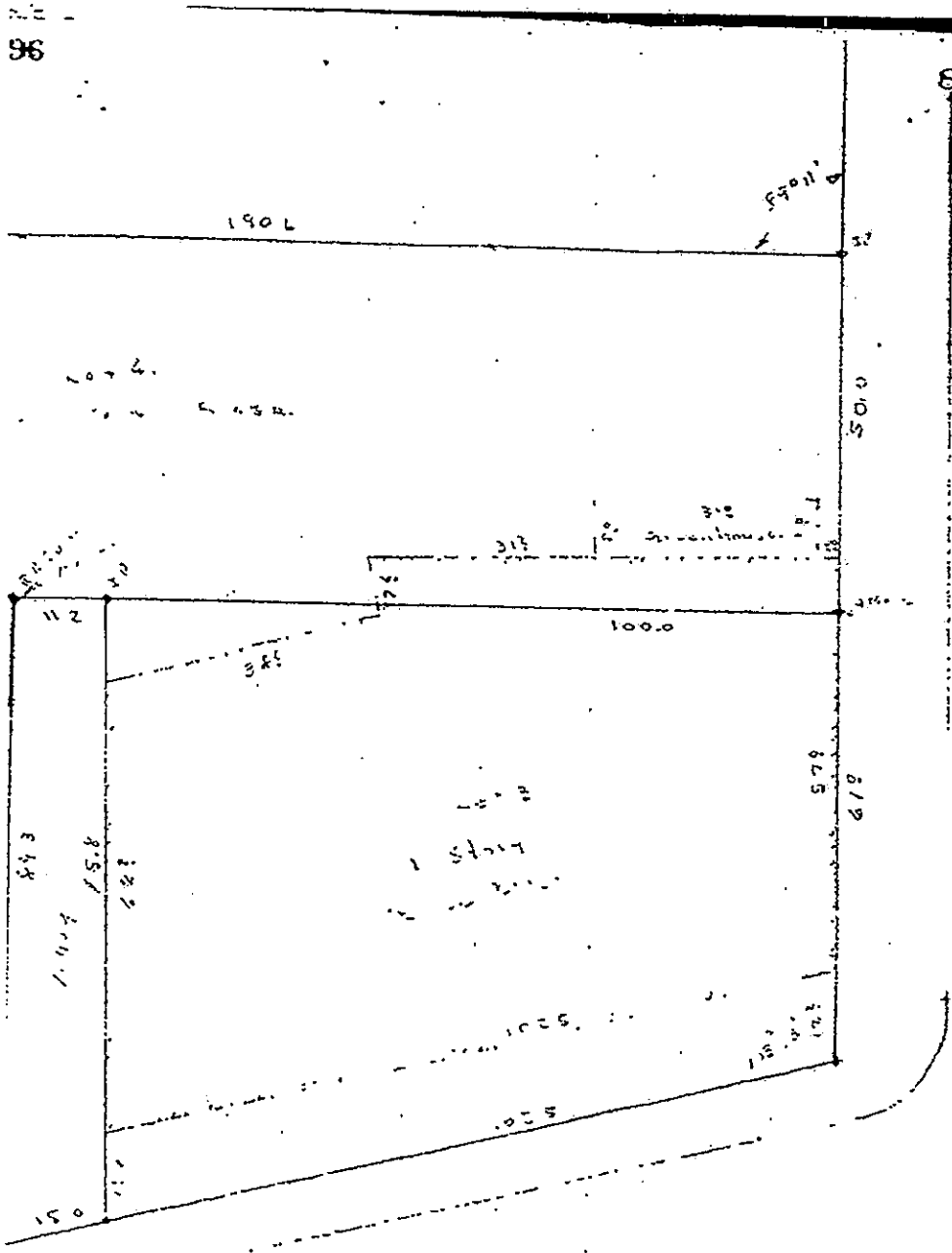
- (1) Tracts B and C will only be used for parking in connection with the above described use of Tract A;
- (2) Tracts B and C shall not be used for any other purpose other than parking;
- (3) This instrument is a covenant running with the land as to Tracts B and C;
- (4) The City of Dallas may revoke Applicant's Certificate of Occupancy regarding the above described use of Tract A if:
 - (a) the above described lease of Tracts B and C is terminated or rescinded for any reason; and
 - (b) Applicant does not provide other off-street parking spaces in accordance with Article XX of the Comprehensive General Zoning Ordinance of the City of Dallas;
- (5) This instrument shall cease to be effective only upon the filing in the Deed Records of Dallas County, Texas, of an instrument signed by the Building Official of the City of Dallas, Texas, or his designee, releasing the aforementioned covenants;
- (6) This instrument shall be filed in the Deed Records of Dallas County, Texas, by and at the expense of Applicant; and
- (7) The covenants recited herein shall bind the successors, heirs, employees and assigns of Applicant, Keating and Jalonick.

80127 1993

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96



80127 1997

Travis Street. G.O.R.O.W.

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 Block & Add.
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 Being desc
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 Thence
 of Lot 1 & 1
 point being
 Thence to
 Line of the
 corner of
 Thence
 feet to p

Street G.O.R.O.W.

Survey of
 Lots 1, 2, 3, 4 Block 5/1538
 Cockrells Fairland Addition
 As Revised in Vol. 142 P 382.
 Deed Records, Dallas County.

Scale 1" = 20'

The plat herein is a true, correct and
 the lines and dimensions of said prop
 buildings and improvements are as s
 back from property lines the distance
 road is as shown on said plat.

THERE ARE NO ENCROACHMENTS.

Scale 1" = 20'

Date 4/29/80

1997

80127 1998

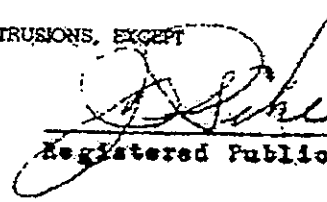
Being Lots 3 & 4 of Block 5/1538 of Cockrell's
Fairland Addition, and a part of Lots 1 & 2 of said
Block & Addition, as revised in Vol. 142 page 382, Deed
Records of Dallas County, Texas. The part of Lots 1 & 2
Being described as follows:

Beginning at the Southeast corner of lot 2.
Thence Westerly, along the South Line of lot 2 and the
North Line of an Alley 15.0 feet, to point for corner,
Thence Northerly, parallel with the East Line of lot 2, 23.0
feet to point for corner,
Thence Northwesterly, 65.4 feet to point on the North Line
of Lot 1 & the North R.O.W. Line of the M.K.&T. R.R. R.O.W., said
point being 25.0 feet from the Northeast corner of Lot 1.
Thence Easterly, along the North Line of Lot 1 & the South
Line of the M.K.&T. R.R. R.O.W. 44.0 feet to the Northeast
corner of lot 1.
Thence southerly, along the East Line of lots 1 & 2, 84.3
feet to place of beginning.

The plat hereon is a true, correct, and accurate representation of the property as determined by survey, the lines and dimensions of said property being as indicated by the plat; the size, location, and type of buildings and improvements are as shown, all improvements being within the boundaries of the property set back from property lines the distances indicated, and that the distance from the nearest intersecting street or road, is as shown on said plat.

THERE ARE NO ENCROACHMENTS, CONFLICTS, OR PROTRUSIONS, EXCEPT

Scale 1" = 20'
Date 4/29/80


Registered Public Surveyor



Return to:
William Teitelbaum
2731 Lemmon Avenue East - 200
Dallas, Tx. 75204

CLERK OF DISTRICT COURT, DALLAS COUNTY, TEXAS
JUN 27 1980
COUNTY OF DALLAS
STATE OF TEXAS
This document is a true and correct copy of the original as filed in the public records of the County of Dallas, Texas, and is subject to the provisions of the Public Information Act, Chapter 552, Texas Government Code, and the Texas Public Information Act, Chapter 552, Texas Government Code.

80 JUN 26 PM 3:04

W. Teitelbaum

80127 1989

5/1588

MULLINAX, WELLS, BAAB & CLOUTMAN, P.C.

ATTORNEYS AT LAW

330 ELM STREET DALLAS TEXAS 75226

PHONE (409) 922-9222 IN FT. WORTH CALL 253-7577

February 23, 1988

ROGER ALBRIGHT

Mr. Claude Forte
Chief Development Code
Administration
City of Dallas
Building Inspection Division
Department of Public Works
320 E. Jefferson Bldg.
Dallas, Texas 75203

RE: 3300-3308 Knox Street

Dear Claude:


Thank you for taking the time to meet with me on Monday, February 22, 1988 to review the off-street parking requirements of the uses located in the 3300 block of Knox and the parking agreement which exists between the owners of the two (2) tracts of property located along that block. As you suggested, I have drafted a memorandum which summarizes the information contained in the file so that any current or prospective tenant will be aware of precisely what parking is available. If this memo is acceptable, I would appreciate you signing the enclosed copies, placing one in the file and returning the other to me in the enclosed pre-addressed envelope.

If you have any questions, please give me a call.

Sincerely,

MULLINAX, WELLS, BAAB
& CLOUTMAN, P.C.

By:


Roger Albright

RA/klp
Encl.

Exhibit F

MEMORANDUM

DATE: February 23, 1988

RE: Parking Agreement for 3300 Block of
Knox; On the Border Restaurant.

Questions as to the use of off-street parking located behind the structures on the north side of Knox in the 3300 block have been raised and the Department of Housing and Neighborhood Services has been requested to issue a Notice of Violation based on the alleged failure of On the Border Restaurant to "follow agreed parking stipulations in deed". The purpose of this memorandum is to set forth the underlying facts and documentation contained in the City of Dallas file.

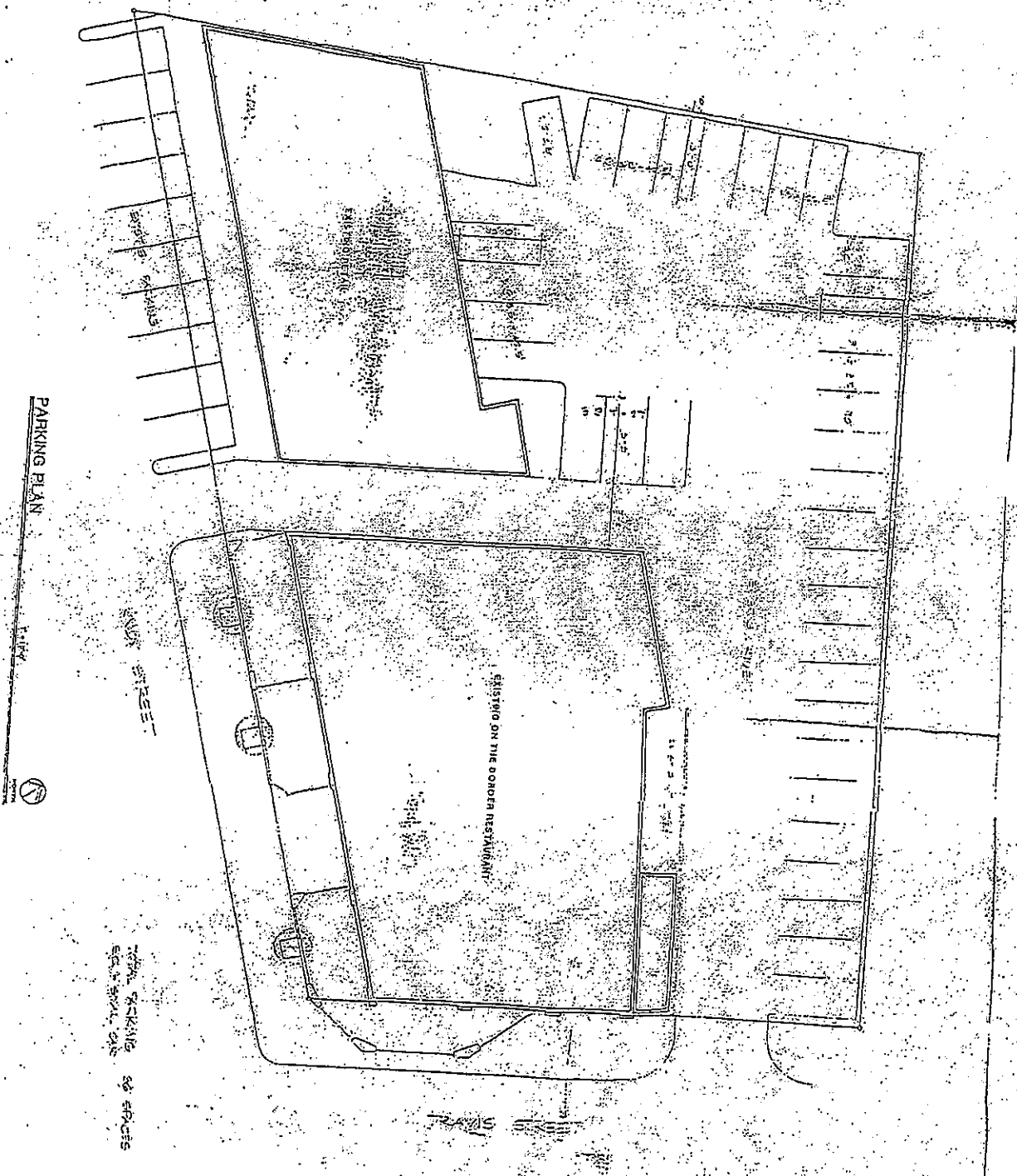
On the Border Restaurant is located at 3300-3308 Knox. This property, (Lot 3, Block S/1538) as well as Lot 4 located behind this property are owned by the Keating Estate. The retail uses located at 3310, 3312, 3314 and 3316 Knox are located on the front portions of Lots 1 and 2 which are owned by the Jalonick estate. The rear portion of Lots 1 and 2 as well as Lot 4 are paved and used for off-street parking. On May 1, 1980, the owners of the Keating and Jalonick properties entered into a parking agreement whereby the off-street parking spaces located on the rear of Lots 1 and 2 and Lot 4 (labeled Tracts B & C) could only be used for parking for the building located on Lot 3 (labeled Tract A) which was to be refurbished and renovated for restaurant purposes. This parking agreement was approved by the City and duly filed in the Deed Records. Based on that agreement, the restaurant met the off-street parking requirements of the Dallas Development Code and a certificate of occupancy was issued for the restaurant located at 3300-3308 Knox. Maps showing the areas that are restricted to restaurant parking by this parking agreement (Tracts B and C) as well as the parking plan are attached.

Based on this agreement, On the Border has the sole right to use any of the parking spaces located behind any of the structures in the 3300 block of Knox. The only parking available for the retail uses located at 3310-3316 Knox are the on-street parking spaces located directly in front of those retail uses. Even though those retail uses do not provide any off-street parking, they are legal non-conforming uses although, none could be converted to a more intensive use without meeting the requirements of the Development Code.



with regard to off-street parking. Based on the information in the files of the City of Dallas, there is no basis for the issuance of a notice of violation for the failure of any use presently located in the 3300 block of Knox to provide required off-street parking or the failure to follow the parking stipulations contained in the parking agreement.



Claude Forte
Chief, Development Code
Administrator
City of Dallas
Building Inspection Division
Department of Public Works



TOWNSCAPE ARCHITECTS



ARCHITECTURE

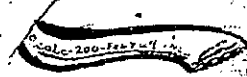
ON THE BORDER

ARCHITECTS

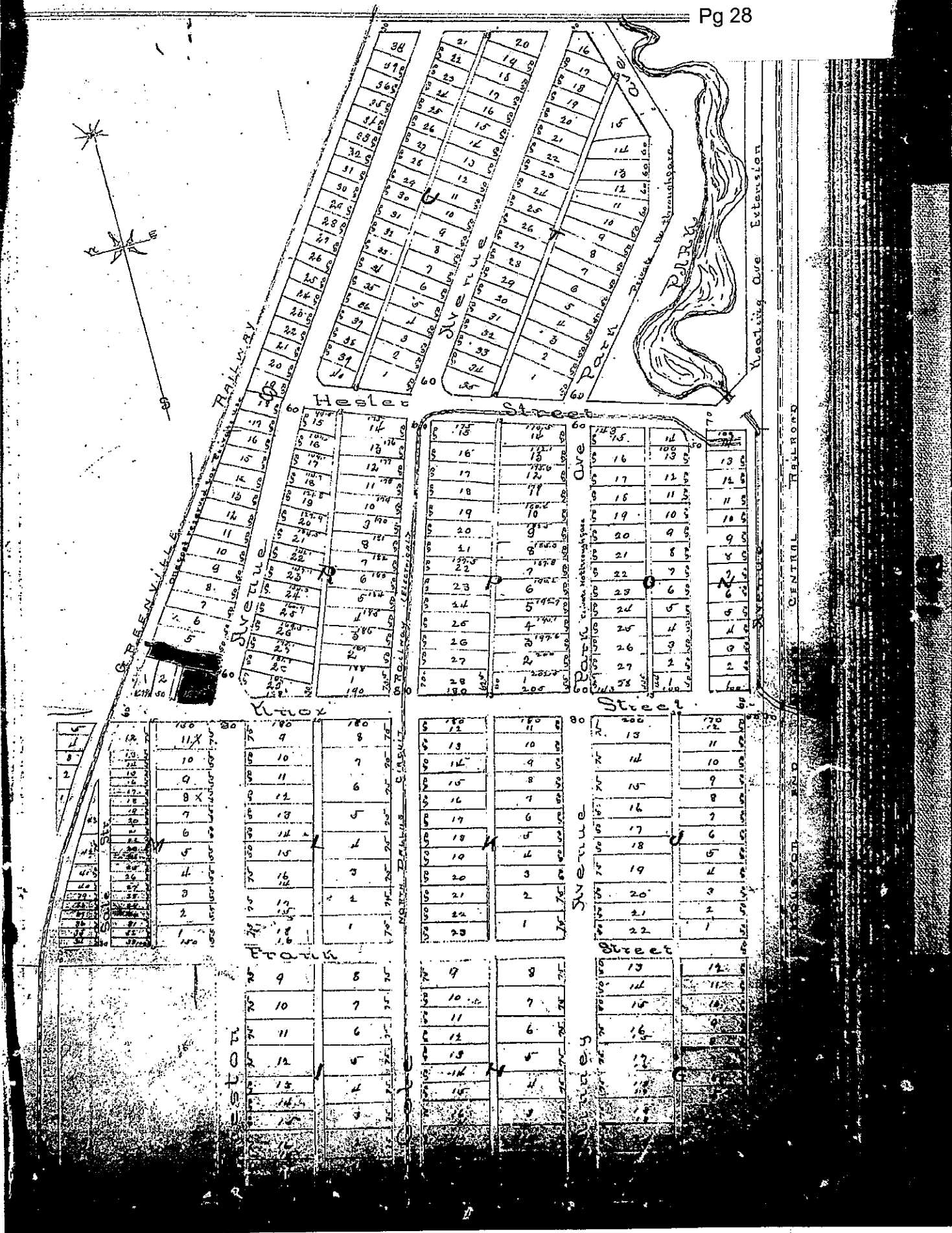
101-095

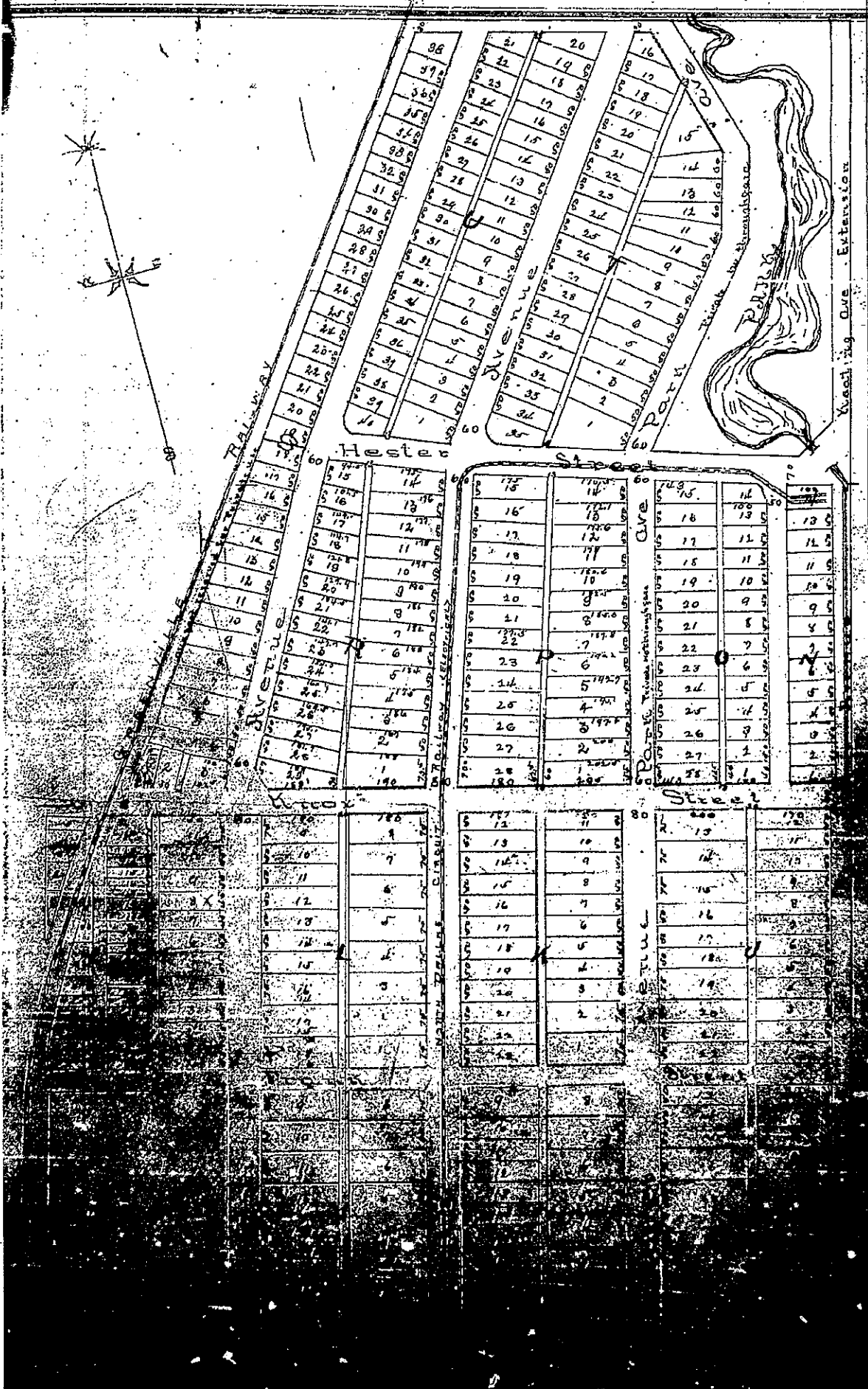
101-096

Revised
Maps
Garrett Fair land
ADDITION
to the
- City of Dallas -



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S	13	5	S	13
C	14		S	14
S	15	4	S	15
S	16	3	S	16
S	17		S	17
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The State of Texas } The Coebell Fair Land addition
County of Dallas } does hereby adopt this plat or map as a
true and correct plat or map of Coebell Fair Land addition
as revised to the City of Dallas hereby dedicating the
streets and alleys therein mentioned to the public forever
we reserving all rights on any and all streets for Railway
water and light purposes

Witness our hands this 2nd day of February 1891

Coebell Fairland Addition Company

Attest (Seal)
P. H. Worsin
Secretary

By J. P. Trotman
Vice President

The State of Texas } Before me J. B. Sears, Clerk of the County
County of Dallas } County of Dallas, State of Texas
on this day personally appeared J. P. Trotman vice
president of the Coebell Fairland Addition Company
known to me to be the person whose name is sub-
scribed to the foregoing instrument and acknowledged
to me that he executed the same for the purposes
and considerations therein expressed and as the
act and deed of said Coebell Fairland Addition
Company. Witness my hand and seal of
Office this 2nd day of February A.D. 1891

(Seal)

J. B. Sears
County Clerk Dallas County Texas
By R. P. Isaac Deputy

Filed for record February 2nd 1891 at 11 o'clock AM

J. B. Sears, County Clerk
By R. P. Isaac Deputy
J. B. Sears, Co. Secy
By J. E. Turner

Recorded Feb 11 1891

550

Filed for record Sept. 4th. A.D. 1915, at 12:15 P. M. B. F. Cullum, County Clerk,
By Ed Underwood, Deputy.

Recorded Sept. 10th. 1915. B.F. Cullum, County Clerk, By *OK L. Gray* Deputy.

-----000000000000000-----

35570

TERESA M. CAMPBELL, ET AL. : THE STATE OF TEXAS, :
T. W. DEED, : :
H. S. KEATING, : COUNTY OF DALLAS, : KNOW ALL MEN BY THESE PRESENTS:

That I, Theresa M. Campbell, joined by my husband H. M. Campbell, of the County of Dallas, State of Texas, for and in consideration of the sum of fifteen thousand two hundred fifty dollars, to me in hand paid by H. S. Keating, the receipt of which is hereby acknowledged; have granted, sold and conveyed, and by these presents do grant, sell and convey, unto the said H. S. Keating, of the County of Dallas, State of Texas, all that certain lot, parcel or tract of land lying and being situated in the City and County of Dallas, Texas, being lots 3 and 4, block "B", of Cockrell's Fairland Addition to the City of Dallas, and located on the N. W. corner of Travis (Formerly Preston street) and Knox avenue, according to the revised map of said addition, recorded in volume 142, page 383, of the deed records of Dallas County, Texas, and being the same property conveyed by general warranty deed dated Oct. 31, 1914, from Lillie B. Cullum, et vir., to Theresa M. Campbell and recorded in volume 632, page 477, of the deed records of Dallas County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said H. S. Keating, his heirs and assigns forever; and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend, all and singular the said premises unto the said H. S. Keating, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Witness our hands at Dallas, this 3d. day of Sept. A. D. 1915.

Theresa M. Campbell,
H. M. Campbell,

U. S. I. R. Stamps \$15.50 cancelled 9/3/15.

The State of Texas, :
County of Dallas, : Before me, a notary public in and for Dallas County, Texas, on this day personally appeared H. M. Campbell, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 3d. day of Sept. A. D. 1915.

(L. S.) Frank L. McNary,
Notary Public, Dallas County, Texas.

The State of Texas, :
County of Dallas, : Before me, a notary public in and for Dallas County, Texas, on this day personally appeared Theresa M. Campbell, wife of H. M. Campbell, known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Theresa M. Campbell, acknowledged such instrument to be her act and deed and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office this 3d. day of Sept. A. D. 1915.

(L. S.) Frank L. McManey,
Notary Public, Dallas County, Texas.

Filed for record Sept. 4th. A. D. 1915, at 12:30. P. M. B. F. Cullom, County Clerk,

By Ed Underwood, Deputy.

Recorded Sept. 11th. 1915. B.F. Cullom, County Clerk, By *W. L. Gray* Deputy.

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35880

E. G. PATTON, THE STATE OF TEXAS, :
TO: HERSELF, :
F. G. JESTER, COUNTY OF DALLAS, : WHEREAS, on November 28th. 1910, E. G. Patton conveyed to F. G. Jester, by deed of that date, recorded in the records of deeds for Dallas County, Texas, in vol. 508, page 33, 28.184 acres of land out of the E. B. Love survey, situated in Dallas County, Texas, fully described in said deed, and in said deed retained a vendor's lien to secure the several promissory notes set out and fully described in said deed, to which reference is hereby made; and

WHEREAS, on February 9, 1911, said E. G. Patton and F. G. Jester joined in a certification of dedication of a subdivision of said tract of land, known as "Cockrell Hill", a plat of which is recorded in vol. 1, pages 295 and 296, of the plat records of said County; and

WHEREAS, said F. G. Jester has sold lot twelve (12) in block "E" of said subdivision;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That I, E. G. Patton, the owner and holder of said notes, in consideration of \$100.00 and other valuable considerations to me in hand paid by E. G. Jester, the receipt of which is hereby acknowledged, have revised, released and relinquished, and do by these presents remise, release and relinquish unto the said F. G. Jester, his heirs and assigns all rights, titles and interest held by me against said lot 12, in block E. of Cockrell Hill by virtue of my being the owner of said notes; but this release shall not operate as a release of any other lots in said subdivision from the lien of said notes.

Witness my hand, this 3rd. day of September, A. D. 1915.

E. G. Patton,

The State of Texas, :
County of Dallas, : Before me, the undersigned authority, a notary public in and for Dallas County, Texas, on this day personally appeared E. G. Patton, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 3rd. day of September, A. D. 1915.

(L. S.) M. E. Smith,
Notary Public, Dallas County, Texas.

Filed for record Sept. 4th. A. D. 1915, at 1:20. P. M. B. F. Cullom, County Clerk,

By M. L. Camp, Deputy.

Recorded Sept. 11th. 1915. B.F. Cullom, County Clerk, By *W. L. Gray* Deputy.

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That Mary Victorio Keating, a widow, of Dallas County, Texas, hereinafter called "TRUSTOR", now temporarily residing in the City of Washington, District of Columbia, does hereby grant, bargain, sell and convey in trust, unto First National Bank in Dallas, a national banking association, of the City of Dallas, Dallas County, Texas, Trustee, hereinafter called "TRUSTEE", and to its successors and substitutes, in this Trust, and its and their assigns forever, the following described real ^{property} and personal property, listed in Exhibit "A", hereto, ^{attached,} and hereby made a part hereof:

(1), 50 x 100 feet on the north line of Commerce Street, being east one-half of Lot 25, and west one-half of Lot 26, Block 77, according to Murphy & Bolanz' official map of the City of Dallas, Texas, improved by a 2 story brick building, 50 x 90 feet, known as 1603-5 1/2 Commerce Street.

(2) 42 x 100 feet on the S; line of Elm Street in Block No. 69, of the City of Dallas, described as beginning at a point on the southeast line of Elm Street, 50 feet north 75 east, from the intersection of the southeast line of Elm Street with the northeast line of Murphy Street;

Thence north 75 east along the southeast line of Elm Street 42 feet;

Thence south 15 east at right angles with Elm Street 100 feet;

Thence south 75 west and parallel with Elm Street 42 feet;

Thence north 15 west, at right angles with Elm Street 100 feet to place of beginning, improved by 3 story brick building, 42 x 100 feet on ground floor, about 42 x 85 feet on third and fourth floors, known as 1204-6, Elm Street;

(3) Lots 3 and 4, Block 1538 according to the official map of the City of Dallas, being corner Knox and Travis Streets, improved by one story brick building, fronting on Knox Street, about 80 feet, and about 60 feet in depth, divided into three rooms, also small frame cottage about five rooms, on Travis Street;

(4) Lots 16, 17 and 18, Block 197, according to official map of the City of Dallas, each lot 50 x 125 feet, and being corner Taylor and Walton Streets, improved by 3 frame cottages, about five rooms each.

(5), 10 acres situate in the County of Stephens, State of Oklahoma, and being the northeast 1/4 of the southwest 1/4, section 16, Township 2, North Range 7, west I.K.

TO HAVE AND TO HOLD the above described real property, together with all and singular, the rights and appurtenances thereunto belonging, or in any wise appertaining, and the personal property described in said Exhibit "A", unto the said First National Bank in Dallas, Trustee, and to its successors or substitutes in this Trust, and to its or their assigns forever, and Trustor does hereby bind herself, her heirs and assigns, to warrant and forever defend, the above described real property unto the said Trustee, its successors and substitutes in this Trust, and to its and their assigns forever, against any and all persons lawfully claiming or to claim the same or any part thereof.

The aforesaid property, both real and personal, shall be held by Trustee, in trust, upon the terms herein set forth;

The Trust hereby created, shall be known as the "Mary V. Keating Trust".

Article A:

Distribution of Income and Corpus.

1. This trust is established for the benefit of Trustor, of Katherine Keating Wright, the daughter of Trustor (hereinafter called "Katherine"), and of Mary Helen Clonard Wright, daughter of said Katherine, and grand-daughter of Trustor, (hereinafter called "Mary Helen"), and certain other persons and organizations, hereinafter designated.

2. The Trustee shall hold and dispose of the income and corpus of this trust

Exhibit 4

estate, in accordance with the following directions:

(a) The Trustee shall pay to Trustor, during her life, all the net income from the Trust estate hereby created, such payments to be made as nearly as possible, in equal monthly payments, on the 28th day of each month.

(b) Upon the death of Trustor, if she is survived by Katherine, the entire net income shall be paid to said Katherine, during her life, with the privilege to said Katherine, to add any portion of said income, to the corpus of this trust estate, and any additions so made, shall become and remain a part of said corpus.

(c) Upon the death of Katherine, after the death of Trustor, or if Trustor shall survive Katherine, then upon the death of Trustor, if there shall be lineal descendants of Katherine surviving, the said net income shall be distributed by the Trustee, per stirpes, among the lineal descendants of said Katherine, surviving from time to time, until the termination of this trust, as hereinafter provided, so that equal shares shall be paid as between living children of said Katherine, and the issue from time to time surviving any child then deceased or thereafter dying. Such surviving issue, however, shall take, per stirpes, only the share his, her or their parent would have taken if living. In the event that any beneficiary hereunder, should receive the benefits of subparagraph (d) of this Article, then and in that event, the corpus of the trust estate, may be divided into as many separate trust estates, as there are grand-children, of the Trustor, living, at that time and/or deceased grandchildren then represented by issue of such deceased grandchild or grandchildren, in such a way that in case of the necessity of division, the aggregate of the principals of the various trusts, shall during the life of this trust, continue to be divided, per stirpes, for the benefit of Katherine's lineal descendants surviving from time to time, subject, however, to any deductions from corpus (pursuant to subparagraph (d), of this Article) and also subject to any variance which may be created through appreciation or depreciation in value of securities or other assets comprising the respective trust shares. In the setting up of said separate trusts, the Trustee is directed to allocate such securities and other assets among the various trusts, in such a way, that, as far as possible, the said trust estates may be subject to approximately the same appreciation or depreciation from time to time.

(d) If in the absolute control and discretion of the Trustee, the income herefrom of Trustor, of Katherine or of any child or lineal descendant of Katherine, shall not be sufficient for their reasonable needs and comforts, during any period or periods of illness, or other want or necessity, the Trustee may, and it is hereby empowered and authorized, but it shall in no event be required to do so, to pay or use, ^{to} apply or expend for the use and benefit of such beneficiary, such portion of the principal of said trust or trusts then applicable to the production of income for said beneficiary, as said Trustee in its absolute discretion may determine to be adequate to provide for such beneficiary during such period or periods.

(e) If any beneficiary entitled to receive income hereunder, is a minor, the Trustee is authorized to make payments thereof, to the guardian of the estate of such beneficiary during such minority, or if there is then no guardian of the estate of such minor, the Trustee shall withhold the payment of said income, until there shall be appointed a guardian of said minor's estate, provided, however, that pending the appointment of any such guardian, the Trustee may in its discretion, advance to the custodian of such minor, or pay for said minor's benefit, such amounts as may be necessary for the needs and uses of said minor, pending such appointment. The Trustee shall never be obliged to see to the application of the payments by any guardian or custodian to whom such funds shall have been paid.

(f) During the time that the corpus or any part thereof is held in trust by Trustee, no beneficiary shall have the right or power, to anticipate his or her share of either corpus or income, or sell, assign, mortgage, pledge or otherwise dispose of or encumber his or her share of

income or corpus, or any part thereof, or any interest therein, nor shall such share of income or corpus or any part of either, be liable for said beneficiary's debts or be subject to attachment, garnishment, execution, creditor's bills or other legal or equitable process. Trustee shall pay said income or distribute said corpus, direct to said beneficiaries, in accordance with the terms of this instrument, and regardless of any such attempted anticipation, sale, assignment, pledge or other disposition, and in spite of any such attempt or attachment, garnishment, execution, creditor's bill or other legal or equitable process.

(g) Income shall be paid to beneficiaries, (except Trustor) quarter-annually, insofar as it may be practicable to do so.

(h) This trust shall continue for a period of twenty (20) years, after the death of Mary Helen, if there shall be lineal descendants of Trustor surviving for that length of time, subject, however, to the provision, that this trust shall in no event terminate, during the life of either Trustor or the said Katherine. Upon the expiration of the period of twenty (20) years, after the death of said Mary Helen, or upon the death of survivor of Trustor, or said Katherine, whichever shall last occur, this trust shall terminate, and the principal or corpus thereof, together with all undistributed accumulations of net income thereon, shall be conveyed, transferred, assigned and paid over by Trustee, absolutely and in fee simple, unto the then living lineal descendants of Katherine, per stirpes, and not per capita, or, in case the corpus hereof has been divided as provided in sub-paragraph (c) of this Article, then the corpus of the various trusts, shall be conveyed, transferred, assigned and paid over by the Trustee, absolutely and in fee simple, per stirpes unto the respective lineal descendants of Katherine, who immediately preceding the termination of this trust, were entitled to receive the income therefrom.

(i) If, however, upon the death of the survivor of Trustor, and said Katherine, whichever shall last occur, or at any time thereafter, there shall be a failure of lineal descendants of Katherine to take hereunder, then this trust shall terminate and the Trustee shall thereupon distribute the corpus and all accumulations of net income thereon, in the following manner:

(1) Trustee shall pay the following persons the following amounts:

- (A) To Katherine Jalonick (sister of Trustor) now residing in the City of Dallas, State of Texas, \$10,000.00
- (B) To Grace and George and Charley Dexter, children of Grace Dexter (sister of Trustor) now residing in the City of Dallas, State of Texas, each \$10,000.00, \$30,000.00
- (C) To Jessie, Heloise and Agnes Keating (three daughters of Edward Keating) all now residing in the City of Toronto, Ontario, Canada, \$3,000.00, each \$ 9,000.00
- (D) To Annie O'Donnell, nurse, now residing in the City of Los Angeles, State of California \$ 1,000.00
- (E) To Mrs. Elizabeth Snodgrass, now residing in the City of Dallas, State of Texas, \$30,000.00
- (F) To Vera Keating (daughter of William Keating), now residing in the City of Porthcawl, Wales, Great Britain \$ 5,000.00
- (G) To Martha Leake (daughter of Trustor's brother, Wirt Leake) now residing in the City of Dallas, State of Texas, \$10,000.00
- (H) To Sam Leake Jr (son of Trustor's brother, Sam Leake) now residing in the City of Dallas, State of Texas, \$10,000.00
- (I) To Vernons Sillig Achevsky, of New York, and
 Vanessa Sillig Achevsky \$ 5,000.00

In the event that any of the persons named in clauses A to I, inclusive, above, die prior to the happening of the contingency, upon which the property becomes distributable, the Trustee shall distribute the amount designated for such person so dying, in accordance with the laws of descent and distribution then in force, in the State of Texas, to those persons who under said laws, would have been the heirs of such deceased person, if he or she had died instantly after the happening of the contingency upon which such property became distributable.

(2) Upon the termination of this trust, as hereinabove provided, and after the payment of the amounts stipulated in sub-paragraphs A to I, inclusive, aforesaid, the entire remainder of this trust then in the hands of the Trustee, shall be conveyed, transferred, assigned and paid over, absolutely and in fee simple, to the then Board of Trustees of Third Church of Christ, Scientist, of Dallas, Texas, or to the then governing body of the Church of Christ, Scientist, which shall then have succeeded said Third Church of Christ, Scientist. The said Board of Trustees, and their successors in trust, shall have, hold and possess the property so distributed to them, and shall pay over or use the corpus and/or the income therefrom, as they, in their discretion, deem best, for the establishment, equipment and maintenance of a home and day nursery, in or near the City of Dallas, for young white children, of the Caucasian race, of any denomination or sect, which home shall be called "Sunnyside, Inc", provided that if a home for similar purpose, or of the same character has been established, prior to the date of the distribution of property hereunder, and such home is under the management of a governing body, made up of members of said Church, or its successors appointed exclusively by the Board of Trustees of said Church or its successors, then such property shall be distributed to the governing body of the organization, which shall then be maintaining such established home, the corpus and/or income therefrom, to be held and disposed of by such governing body and its successors, as they in their discretion, deem best for the promotion of the purposes for which such home was established. If the said Third Church of Christ, Scientist, of Dallas, Texas, or a successor thereof, be not in existence, on the date for distribution of said property, or if the Board of Trustees or other governing body of said Church, or its successor, or the governing body of the organization which may be maintaining the home as hereinbefore provided, be unwilling or unable to accept said property, then the said property shall be transferred, assigned and paid over, absolutely, and in fee simple, unto the Board of Directors of the Mother Church of the Christian Science Church of Boston, Massachusetts, to be used as, in its discretion, may be advisable. In the event the remainder of this Trust estate is paid over under the provisions of this paragraph, the Trustee, shall be under no obligation, whatever, to see to the application thereof.

(3) Upon any distribution of corpus by Trustee, this trust shall thereupon cease and terminate as to the corpus so distributed.

ARTICLE B:

CONCERNING TRUSTEE:

Trustor hereby authorizes and empowers, Trustee:

1. To manage, control, conduct and operate the corpus of this trust or any part thereof, as it, in its discretion, may deem to be for the best interests of the trust estate, and to invest and from time to time, reinvest, the said corpus or any part thereof, in such investments as it in its discretion, may deem for the best interests of the trust estate, and to collect the rents, revenues and income therefrom. The Trustee shall be authorized to replace or reconstruct any building ^{belonging} to the trust estate, which has been destroyed by fire or otherwise, provided, however, that if the cost of such replacement or reconstruction shall be over Five Thousand Dollars (\$5,000.00) then the Trustee shall first obtain the consent in writing to any such replacement or reconstruction of the Trustor during her life, and after her death, of Katherine, during her life, and after the death of both Trustor and Katherine, and during the life of Mary Helen, of the beneficiaries then receiving income or their guardians, during minority. After the death of Trustor, Katherine and Mary

Helen, the Trustee shall have sole discretion in connection with such replacement and reconstruction. The Trustee hereunder, shall not (except in cases where it may in the opinion of the Trustee be necessary to protect an investment then held in this trust estate) purchase real estate as an investment, without first obtaining the written consent of Trustor or of Katherine, if the Trustor shall be deceased, or if both Trustor and Katherine shall be deceased, then the written consent of a majority (in financial interest) of those who may be beneficiaries then receiving income hereunder, or their guardians during minority. This provision, however, shall not restrict or prevent the Trustee from acquiring real property or an interest therein, by purchase at foreclosure sale or otherwise, or by deed or by any other method, without such written consent, if such acquisition shall, in the discretion of the Trustee, be deemed necessary to protect the best interests of the trust estate in any investment held hereunder. The Trustee is authorized, if it deems it to be for the best interests of the trust estate, to hold and retain any or all of the property hereby or hereafter conveyed or delivered to the Trustee by Trustor, to be held in trust hereunder, in the same form of investment in which said property may exist, at the time received by Trustee, whether or not such investments are legal for trust funds, until it, in its sole and uncontrolled discretion, deems a sale or sales thereof, to be advisable, and Trustee shall not be liable for any loss or decrease in value, of property so retained. The Trustee shall keep the real estate constituting a part of this trust estate, insured against loss from fire, tornado or other usual hazards, in solvent insurance companies, as in its sound discretion, it may deem necessary. The cost of such insurance shall be paid by the Trustee, as a part of the expenses of this trust.

2. To grant, bargain, sell and convey, and to assign, transfer, exchange, mortgage, hypothecate, pledge or loan all or any part of the corpus, be it real, personal or mixed, for such consideration, as Trustee, in its discretion, may deem advisable, and to make, execute, acknowledge and deliver, all such deeds or instruments, that Trustee may deem necessary or convenient, to carry said powers of sale, conveyance, assignment, transfer, exchange, mortgage, hypothecation, pledge or loan into effect; except that Trustee, shall not be authorized to sell, convey, alienate or encumber any real estate held in trust hereunder, without first obtaining written consent to any such sale, conveyance, alienation or encumbrance, such consent to be obtained from Trustor, during her life, and after her death, from Katherine, and after the death of both Trustor and Katherine, from a majority (in financial interest) of those who may then be beneficiaries receiving income hereunder, or of their guardians during minority. Any and all sales of all or any part of the corpus, may be made by Trustee, at public or private sale, as it in its discretion may deem advisable, if at public sale, upon such notice as it in its discretion may deem advisable. In the event of the sale of real estate under the provisions of this sub-paragraph, the total expense to the trust estate on account of fees or commissions in connection with such sale, shall not be more than five percent (5%) of the price at which said property may be sold.

3. To litigate, defend, settle, compromise or submit to arbitration, any and all disputes, suits or controversies, concerning this trust estate, and the terms of any settlement, compromise, adjustment or award of arbitration, shall be conclusive upon all parties at any time interested herein.

4. In regard to any property, real, personal or mixed, at any time held in trust hereunder, Trustee shall have the power to participate in any plan or reorganization, including consolidation or merger, to deposit any property held hereunder, under any plan of reorganization or with a protective or reorganization committee, and to delegate to such committee, discretionary powers with relation thereto, to pay any assessment levied under such plan, for the purpose of paying the proportionate part of the expenses of such committee. Trustee is further authorized to exercise all conversion, subscription, voting and other rights of whatsoever nature, pertaining

to any property held in trust hereunder, to pay such sums as Trustee may deem advisable in connection therewith, and to accept and retain (as though received from Trustor) any new securities deliverable to it, in pursuance of any reorganization, conversion or subscription.

5. Trustee may at any time, make loans or advancements to the trust estate, and receive interest thereon, at the then prevailing rates, and shall have a first and prior lien and charge on the property held in trust, except real estate, to secure the payment of any such loan or advancement.

6. Trustee is further authorized and empowered to pay any and all taxes, assessments and other governmental charges, which properly may become payable from time to time, under the laws of the United States or of any State, County or municipality, on said trust property, or for any transfer or transaction affecting the same, and to affix and cancel tax stamps, in accordance with the provisions of said laws.

7. Trustee is further authorized to pay all other and necessary costs, charges, expenses and outlays, incident to and in connection with the administration or management of this trust estate.

8. Except as in this agreement otherwise provided, authority is hereby given to Trustee hereunder, to determine whether property coming into Trustee's possession is corpus or income, or should be divided between same, or whether certain charges should be borne by corpus or income, or should be allocated between same, and in regard thereto, the Trustee shall make such decisions as to it shall seem wise and equitable, and such decisions shall bind all parties at any time, interested herein.

9. Whenever Trustee is directed to make a distribution or division of corpus, such distribution or division may be made in cash or in kind, or partly in cash and partly in kind, and the subject-matter and composition of shares thereunder, shall be wholly within Trustee's discretion, subject, however, to the provision, that any beneficiary may require an individual appraisal by three appraisers, of any property or securities to be distributed or divided; one of such appraisers to be selected by the Trustee, one by the beneficiary demanding such appraisal, and one by the two thus chosen, and the resulting valuations of such property or securities, so to be distributed or divided, shall be conclusive on all parties ever interested herein.

10. Whenever in this deed of trust, authority is granted to Trustee, to act or refuse to act upon its discretion, such action or refusal to act in the exercise of such discretion in good faith, shall be final and conclusive upon all parties at any time interested herein. Trustee shall not be liable to Trustor or other beneficiaries, for depreciation in the value of any portion of said estate, but shall exercise due and proper care, for its safe-keeping and preservation, and shall be liable for its negligence, fraud or breach of trust.

11. The title or interest acquired by any purchaser, lessee, assignee, transferee or mortgagee under any sale, lease, assignment, mortgage or other conveyance, made by the Trustee hereunder, shall be as complete and absolute in every respect, as the instrument evidencing any such transaction purports to convey, and no person shall be required to see to the legality of Trustee's action in making any such sale, lease, transfer, mortgage or other conveyance. No vendee, lessee, assignee, mortgagee or other transferee, shall ever be required to see to the proper disposal by Trustee, of any consideration paid to it, but shall be justified and fully protected in paying the same to Trustee, and when so paid, all parties making such payments, shall be released from any and all liability, for the proper use or disposal thereof, by Trustee.

12. Trustee shall keep full and accurate accounts of all receipts, disbursements and transactions, in connection with the property held in trust hereunder, and such records, shall be open, to inspection by any party interested herein, at his or her request, either personally or through an agent or attorney, at any and all reasonable and proper times.

13. Trustee, annually, on or about the 28th day of December of each year, shall provide all beneficiaries (including Trustor), then entitled to receive income hereunder, with a statement showing all transactions, in connection with this trust, during the year preceding the date of statement, and showing the amount and character of the property constituting the trust, and a schedule of all receipts and expenditures during the period covered by such statement, which statement, Trustor, while living, or any beneficiary after her death, may at their own expense, have verified, by a public accountant, and for such purpose, shall have full and free access to all records and securities in said Trustee's hands, pertaining to said trust estate.

14. The Trustee at any time it may see fit, may resign the trust created hereby, by mailing a written notice by registered mail, of such intention, to the last-known address of Trustor, or if she then be dead, to the last-known address of all the beneficiaries then entitled to receive income hereunder, such resignation to become effective, at the expiration of sixty days, from the date of such mailing, and before the expiration of such period, a successor trustee shall be appointed. During Trustor's life, such appointment shall be made by her, after Trustor's death, such appointment shall be made by the beneficiary (or by a majority of them if there be more than one) then (at the time of such notice) entitled to receive income hereunder. Such successor Trustee, however, shall be a national bank or trust company, with capital stock of at least one million dollars (\$1,000,000.00). Upon its acceptance of these trusts, any successor Trustee shall have all the powers conferred upon the original Trustee. In the event of the dissolution or insolvency of the Trustee or the revocation of its authority, or its inability or refusal to act, the above provisions regarding the appointment of a successor Trustee, shall obtain.

15. Any national bank or trust company to which any Trustee, original or successor, may be converted or merged, or with which it may be consolidated, or any national bank or trust company resulting from any converting merger or consolidation to which such Trustee may be a party, shall be the successor Trustee hereunder, without the execution or filing of any papers, or any further act on the part of any Trustee hereunder, provided always, that such successor institution shall be able and willing to accept this trust and execute the terms thereof.

16. Whenever income, or any part thereof, is in property other than cash, such income may in Trustee's discretion, be paid to beneficiaries, either in kind, or sold by Trustee and the proceeds therefrom, paid to said beneficiaries in cash, and Trustee is hereby authorized to do any and all things necessary or proper, to effect any such sale or sales, and no such purchaser shall be required to see to the regularity of the Trustee's action in making any such sale or to the application by the Trustee, of the proceeds thereof.

17. Where Trustee is given the power to invest and reinvest all or any part of the accumulations of income, such power shall include any and all powers granted to Trustee in this Article, and where Trustee is directed to make certain accumulations from income, and is authorized to invest and reinvest the same, such accumulations up to One Thousand Dollars (\$1,000.00) may be kept in an ordinary savings account, to avoid the necessity of investing small amounts. In the event the corpus of this estate, shall have been divided into separate trust shares, accumulations up to such amount for each such share, may be kept in an ordinary savings account.

18. Upon the distribution of the corpus of this estate by the Trustee, this trust shall thereupon cease, and terminate, as to the corpus so distributed.

19. The Trustee hereunder, shall be paid the following compensation for its services hereunder:

- (a) A fee of Fifty Dollars (\$50.00) for accepting this trust.
- (b) An annual fee of four percent (4%) of the annual gross income collected hereunder.

der, such fee to be deducted by the Trustee semi-annually, on the 28th days of June and December, of each year. The first payment of such fee shall be made on the 28th day of December 1932, and shall be computed on the basis of gross income, collected from the date of Trustee's acceptance of this trust, to date of payment. Thereafter, such payment shall be computed on the basis of gross income collected during the six(6) months' period preceding the time of payment. In the event of termination of this trust, between said payment dates, such fee shall be computed upon gross income collected from the last preceding payment date, to the date of termination.

(c) Upon the distribution of any part of the corpus, on termination of the trust, in respect to such property, a sum equal to one-half of one percent of the fair market value of the corpus so distributed.

(d) In the event the Trustee hereunder, may be changed, in accordance with the provisions of paragraph 5, of Article C, of this agreement, a fee of one-half of one percent, of the fair market value of the corpus, at the time of such change, unless, however, such change is made for good and sufficient cause, arising out of the administration of the trust by the Trustee, in which event, a fee of One Hundred Dollars (\$100.00), shall be paid. In the event there should arise a dispute, as to the amount of the fee to be paid under this paragraph, then the Trustee, is authorized to retain the greater amount, until some court of competent jurisdiction shall determine the amount of fee due under this sub-paragraph.

No charges, except those above mentioned, shall be made against the trust estate for keeping its accounts, making out income tax returns, the collection of rents or for the current services of the Trustee's regular salaried officers or employees,

ARTICLE C.

CONCERNING TRUSTOR AND BENEFICIARIES,

1. Trustor, declares this trust to be irrevocable after its acceptance by the Trustee. No part of the corpus of the trust estate, shall be withdrawn by the Trustor, except as provided in sub-paragraph (d) of Article A. The Trustor or any beneficiary hereunder, shall, however, have the right to take, receive or accept less than the full amount of income, which may be due such beneficiary, at any particular time, and in such event, the amount of income not taken, received or accepted, shall by the Trustee, be turned into the corpus, for the benefit of the beneficiary so failing to take, receive or accept such income, and such beneficiary shall be entitled to receive the income derived therefrom. The title to such accumulations, shall pass along with the said corpus.

2. Trustor, however, reserves the right to modify, amend or alter, the provisions of this trust, insofar as such provisions may apply to the disposition of principal or corpus, to the extent of Twenty-five Thousand Dollars, (\$25,000.00), in fair value, in the event this trust shall terminate, following the deaths of Trustor and Katherine, by reason of the failure of lineal descendants of Katherine, the right reserved, however, to be subject to the provision, that the powers, duties and liabilities, of the Trustee hereunder, shall not be substantially increased, nor its rights decreased without its written consent. Any such modification, amendment or alteration, shall be made by written instrument, signed by the Trustor, and shall become effective upon delivery of such instrument in writing, to Trustee, unless Trustee's consent thereto is required, in which event, it shall become effective upon execution of written consent thereto, by Trustee.

3. Trustor reserves the right to convey and deliver to Trustee, to be held under the terms hereof, at any time, and from time to time, such additional securities and other property as she may desire, and as may be acceptable to the Trustee.

4. From and after the death of the Trustor, this trust shall not be subject to modification, amendment or alteration, in any manner, by any person or persons, except, however, the beneficiary or beneficiaries as hereinafter provided, may at any time, change the Trustee of the

then trust estate, This, however, shall not be construed as a limitation upon Trustee's power to resign.

5. If, at any time, during the term of this trust, the person to whom the income is payable, (or if more than one, then a majority of the persons to whom the income is payable, together with the guardians of the estates of such persons who are then minors) shall desire to change the Trustees of this trust estate, then such person or persons, may in writing, name another national bank or trust company, which is capitalized at One Million Dollars (\$1,000,000.00) or more, to act as Trustee of the trust property, and sixty (60) days after receipt of notice, in writing of the designation of a new Trustee, the bank or trust company, then Trustee, under this trust, shall transfer, assign and convey the trust property to the bank or trust company so named, to thereafter act as Trustee, which bank or trust company so designated, shall thereafter act as Trustee upon the trusts herein created, and hold and manage the trust property in accordance with all the provisions hereof.

6. Wherever any beneficiaries hereunder, while under the age of twenty-one (21) years, have any rights under this instrument, such rights may be exercised in their behalf by their legally appointed guardian or guardians, without the necessity of securing the approval of any court thereto, unless said approval is specifically required by the statutes of the State of Texas.

ARTICLE D

MISCELLANEOUS

1. The trust hereby created shall be deemed a Texas trust, and shall in all respects be governed by the laws of the State of Texas.

2. Wherever in this instrument, an attempt is made to create an estate, and such attempt shall be held to be of no effect, because of the vagueness or uncertainty of the terms of this instrument, or because of the violation of the rule against perpetuities, or because of a restraint on alienations, the estate or estates contingent on the estate so attempted to be created, shall not fail, but shall vest immediately upon the failure of such attempted preceding estate.

3. All ordinary expenses, incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the corpus, as well as income taxes (except income taxes assessed on the sale or other disposition by Trustee of all or part of corpus), water rents, insurance premiums, interest on mortgages on the corpus, ordinary repairs, Trustee's compensation, court costs and counsel's fees, shall be paid out of income, unless, in the opinion of Trustee, one or more of the above items, shall at any time amount to an extraordinary expense or an excessive burden upon income, in which case, Trustee may charge to corpus, such part of such expense, as it may deem wise. Income taxes assessed on the sale or other disposition by Trustee, of all or part of corpus, and all disbursements deemed by Trustee, to be for permanent improvements to property, held as part of the corpus, as well as special benefit or improvement taxes or assessments, shall be paid out of corpus.

4. Accrued interest on bonds or debentures purchased between the dates at which interest thereon, is payable, shall be charged to income, and where bonds or debentures are sold between such dates, such accrued interest shall be credited to income. Trustee, shall not amortize securities bought at a premium. Where bonds or debentures are purchased by Trustee, at a discount, and the principal thereof is thereafter paid at maturity, the total principal amount so received by Trustee, shall be corpus, and where bonds or debentures purchased at a discount, are sold by Trustee, the consideration received from such sale (after crediting to income, any interest accrued thereon, at the time of such sale) shall likewise be corpus. Where bonds or debentures are called for redemption before maturity, and a premium is paid by the

obligor, for the privilege of said redemption, such premiums shall be corpus. Dividends paid in stock, shall become a part of the corpus of the estate.

5. The Trustee, is directed to pay out of corpus, if and when due, any and all Federal estate taxes, and State inheritance taxes, which may from time to time become lawfully assessed and payable, in connection with the corpus or any part thereof.

6. The Trustee hereby accepts the trust hereby created and agrees to execute the same in accordance with the terms hereof.

IN WITNESS WHEREOF, Trustor, has herunto set her hand and seal, this 18th day of July 1932, and Trustee has caused these presents to be executed by its officer, duly authorized and its corporate seal to be impressed hereon, this 17th day of August 1932, in duplicate.

MARY VICTORIA KEATING, TRUSTOR.

FIRST NATIONAL BANK IN DALLAS
BY: H.A. OLINSTEAD, VICE PRESIDENT,
TRUSTEE

ATTEST: I.S.

PAUL DANNA, CASHIER

STATE OF MASSACHUSETTS:

SS

COUNTY OF BARNSTABLE : BEFORE ME, the undersigned authority, on this day personally appeared Mary Victoria Keating, a widow, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND and seal of office this 18th day of July 1932.

CARROLL A. BEARSE, NOTARY PUBLIC
BARNSTABLE COUNTY, STATE OF MASSACHUSETTS

I.S.

STATE OF TEXAS:

SS

COUNTY OF DALLAS : BEFORE ME the undersigned authority, on this day personally appeared H.A. Olinstead, Vice President of First National Bank in Dallas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the set and deed of said corporation.

GIVEN Under My hand and seal of office this 17th day of August 1932.

BENNETT G. MOORE, NOTARY PUBLIC
DALLAS COUNTY, TEXAS.

I.S.

STATE OF MASSACHUSETTS:

SS

COUNTY OF BARNSTABLE : BEFORE ME, Carroll A. Bearse, a Notary Public in and for said County and State, on this 8th day of August 1932, personally appeared Mary Victoria Keating, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed, for the uses and purposes therein set forth.

CARROLL A. BEARSE, NOTARY PUBLIC
COUNTY OF BARNSTABLE, STATE OF MASSACHUSETTS

I.S.

My commission expires Dec. 4, 1936.

THE STATE OF TEXAS:

COUNTY OF DALLAS : BEFORE ME, the undersigned, a Notary Public in and for said County and State on this 17th day of Aug. 1932, personally appeared H.A. Olmsted, to me known to me the identical person who subscribed the name of First National Bank in Dallas, to the foregoing instrument, as its Vice President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of First National Bank in Dallas, for the uses and purposes therein set forth, and in the capacity therein stated.

BENNETT G. MOORE, NOTARY PUBLIC
MY COMMISSION EXPIRES June 1, 1933

L.S.

Filed for record this the 28 day of January A.D. 1942 at 4:24 P.M.

ED H STEGER COUNTY CLERK BY A. E. CRUGETT, DEPUTY

Recorded February 2, 1942, Ed H Steger County Clerk by *Fairley in Stegers* Deputy

6789-- 3.75

SYLVAN LANG ET UX : THE STATE OF TEXAS:
TO: PARTIAL RELEASE OF JUDGMENT LIEN : KNOW ALL MEN BY THESE PRESENTS:
C.N. ANDING : COUNTY OF BEKAR :

THAT WHEREAS on the 16th day of June 1936, in the District Court of Dallas County in and for the 68th Judicial District of Texas, in a certain cause, styled "Sylvan Lang et ux, Vs. C.N. Anding" No. 21766-C, Sylvan Lang et ux, as plaintiffs in judgment, recovered of C.N. Anding, defendant in judgment, judgment in the sum of \$662.50, together with costs of suit and interest from such day, at the rate of 6% per annum, an abstract of which judgment was placed and now appears of record in Vol. 55, page 23E, of the judgment records of Dallas County, Texas, which record is made a part hereof, and reference is here made to the same, for a better description of such judgment, and

WHEREAS the undersigned, Sylvan Lang and wife, Mary Lang, are the owners of such judgment, and the parties entitled to receive payment thereof, and

WHEREAS such judgment has been partly paid, and

WHEREAS it is the desire of the said Sylvan Lang and his wife, in consideration of such payment, to release said judgment lien, insofar as it affects certain hereinafter described property.

NOW THEREFORE, we, Sylvan Lang and wife, Mary Lang, in consideration of the premises, do hereby release unto C.N. Anding, his heirs and assigns forever, any and all liens heretofore existing by reason of said judgment, or of said record, upon the following described property, to-wit: Situated in the City of Dallas, Dallas County, Texas, being a part of Block 1034, according to the official map of the City of Dallas, and being more particularly described by metes and bounds, as follows: beginning at a stake in the southwest line of Cedar Springs Street, 62 feet northwest of the intersection of said line of Cedar Springs Street, with the northwest line of Sale Street;

Thence north 47 degrees 30 minutes west, along the southwest line of Cedar Springs Street, 62 feet, more or less, to corner of Mrs. M. J. Clark's lot;

Thence south 45 degrees west, with said Mrs. Clark's lot, a distance of 164 feet more or less, to a corner;

Thence south 46 degrees 15 minutes east 62 feet more or less, to the west corner of a lot conveyed by E. G. Knight to Mrs. S. M. McVeigh;

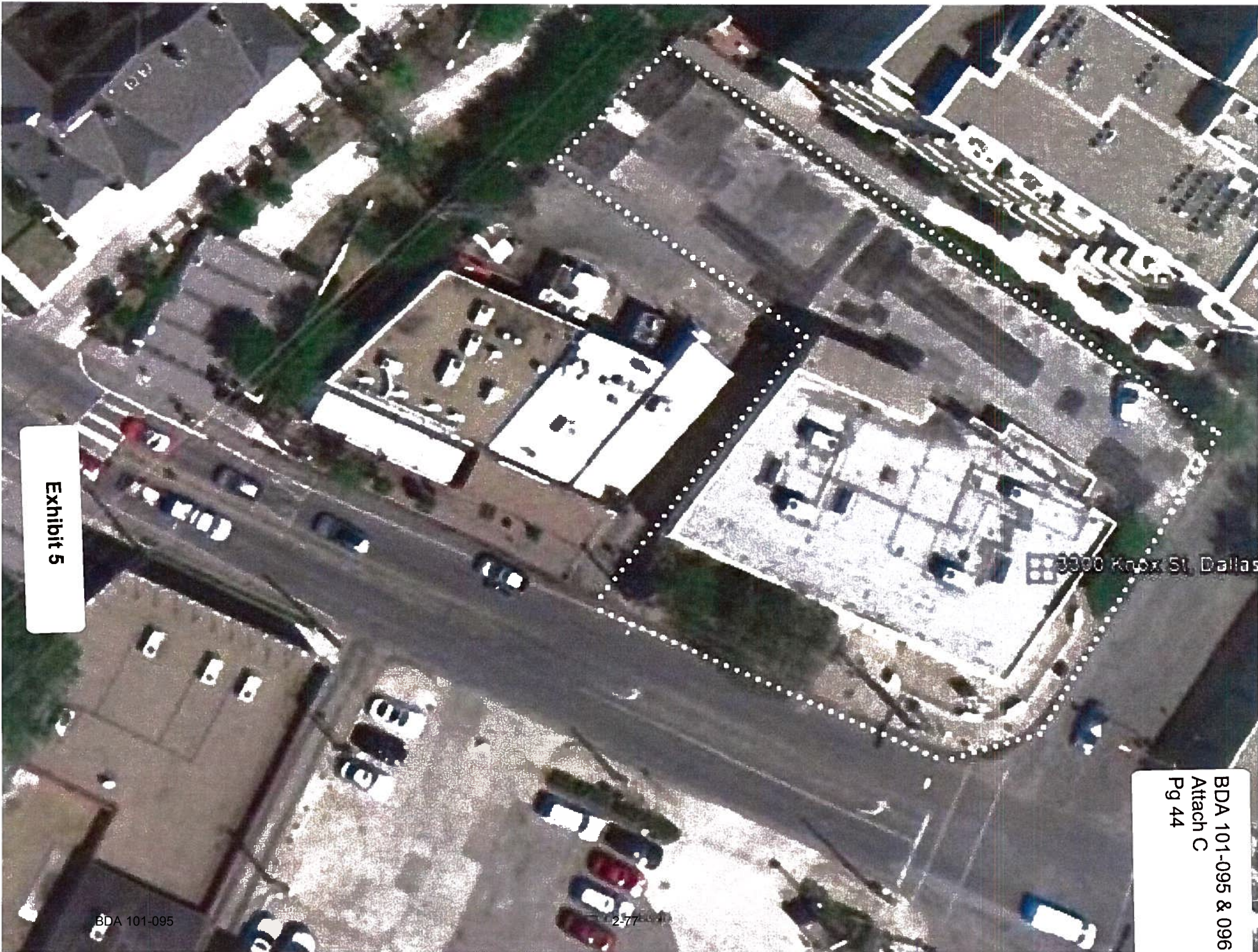


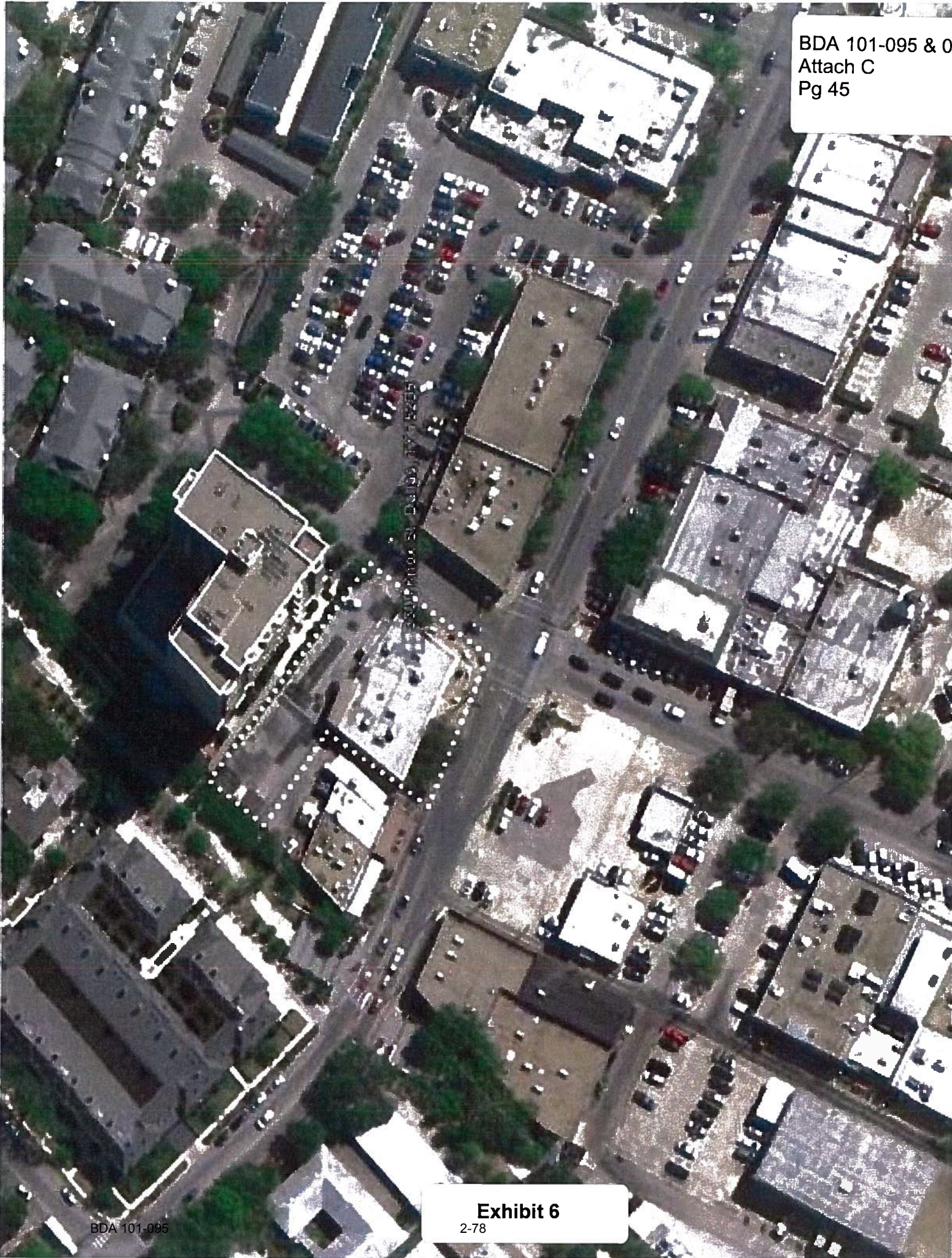
Exhibit 5

3300 Knox St, Dallas

BDA 101-095 & 096
Attach C
Pg 44

BDA 101-095

2-77-45-41



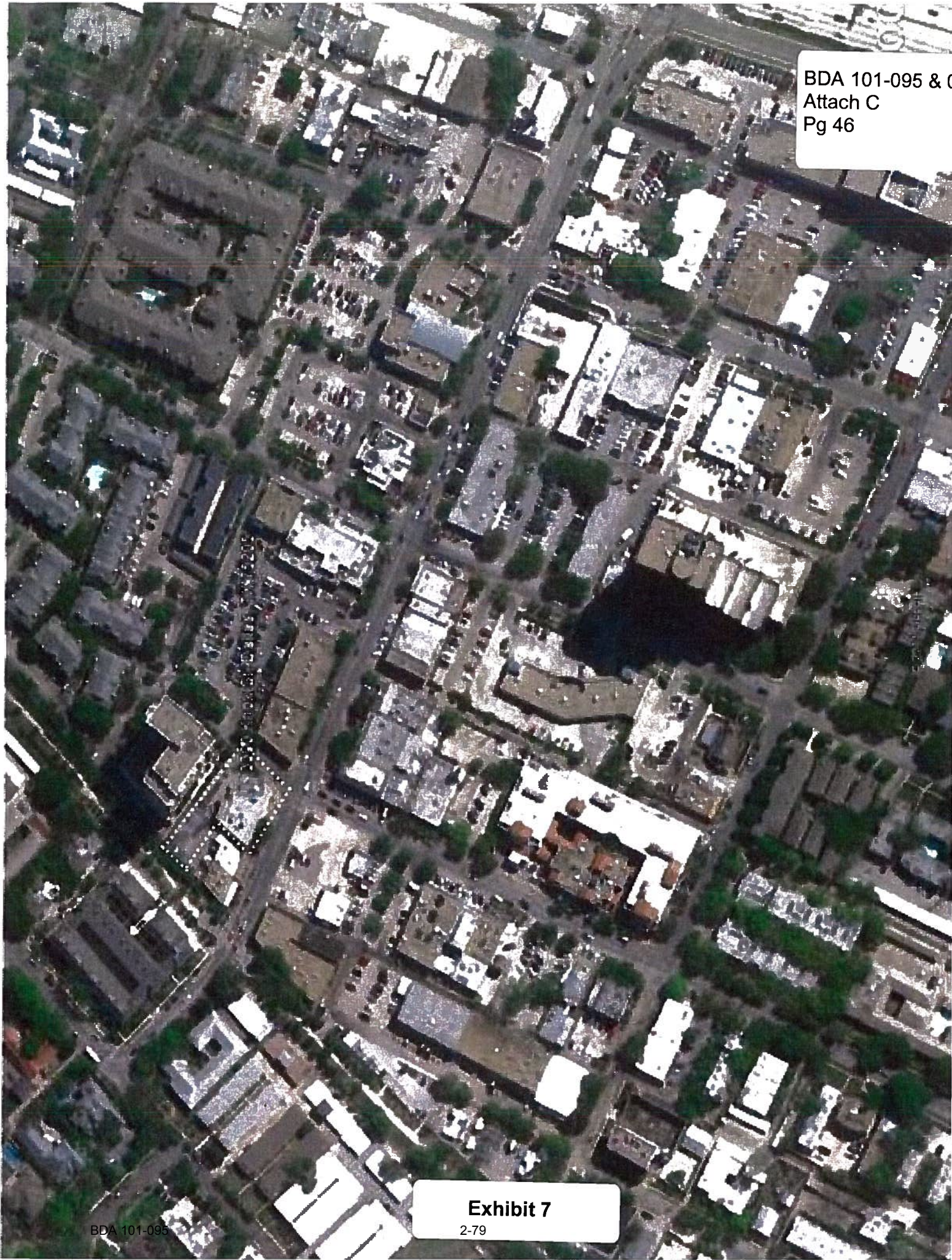
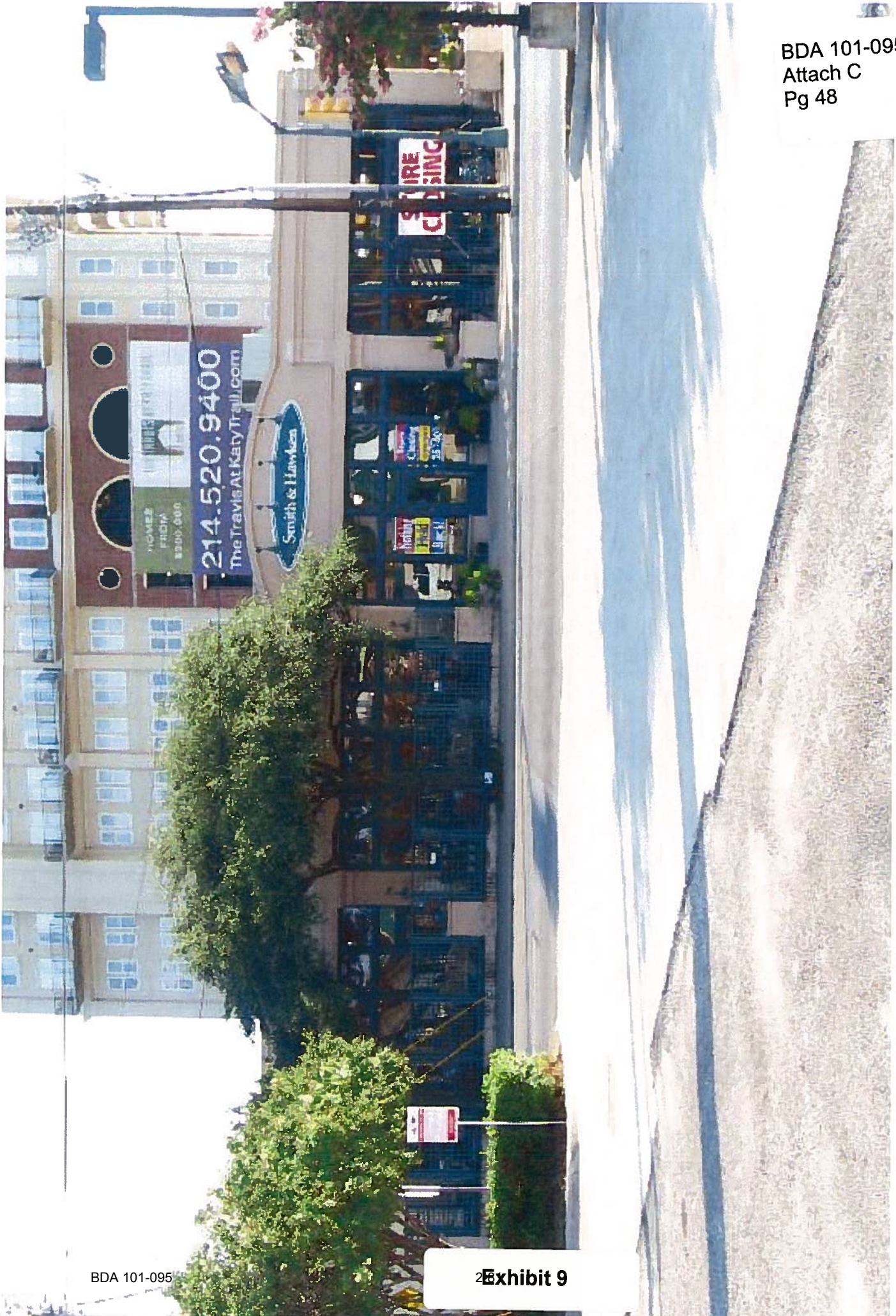


Exhibit 7
2-79



Exhibit 8



00000159253000000

Exhibit 10

Travis St

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JENNIFER COOPER
COMMERCIAL
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THE APARTS AT KATY TRAIL
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TheTravisAtKatyTrail.com



Exhibit 11

BDA 101-095 & 096
Attach C
Pg 50



BDA 101-095 & 096
Attach C
Pg 51





Exhibit 14

3300 Knox Parking Report

RPZ Valet Officer Name: Miguel Castillo

Date: Friday – 09/23/11

Time	Number of Employees	Number of Customers	Total
10:00	2	0	2
11:00	3	0	3
12:00	4	1	5
1:00	4	0	4
2:00	4	1	5
3:00	3	0	3
4:00	3	1	4
5:00	2	0	2
6:00	2	0	2
7:00	3	0	3

3300 Knox Parking Report

RPZ Valet Officer Name: Miguel Castillo

Date: Saturday - 09/24/11

Time	Number of Employees	Number of Customers	Total
10:00	2	0	2
11:00	2	0	2
12:00	2	1	3
1:00	3	1	4
2:00	2	1	3
3:00	2	1	3
4:00	2	0	2
5:00	2	0	2

3300 Knox Parking Report

RPZ Valet Officer Name: Miguel Castillo

Date: Sunday – 09/25/11

Time	Number of Employees	Number of Customers	Total
1:00	2	0	2
2:00	2	0	2
3:00	2	0	2
4:00	1	1	2
5:00	1	0	1

3300 Knox Parking Report

RPZ Valet Officer Name: Miguel Castillo

Date: Monday – 09/26/11

Time	Number of Employees	Number of Customers	Total
10:00	2	0	2
11:00	3	1	4
12:00	3	0	3
1:00	2	1	3
2:00	2	0	2
3:00	3	2	5
4:00	3	0	3
5:00	3	3	6
6:00	2	3	5
7:00	3	2	5

3300 Knox Parking Report

RPZ Valet Officer Name: Miguel Castillo

Date: Tuesday – 09/27/11

Time	Number of Employees	Number of Customers	Total
10:00	3	0	3
11:00	4	0	4
12:00	3	0	3
1:00	3	0	3
2:00	3	1	4
3:00	3	0	3
4:00	3	0	3
5:00	2	0	2
6:00	2	0	2
7:00	2	0	2

3300 Knox Parking Report

RPZ Valet Officer Name: Miguel Castillo

Date: Wednesday – 09/28/11

Time	Number of Employees	Number of Customers	Total
10:00	3	0	3
11:00	2	0	2
12:00	2	0	2
1:00	2	0	2
2:00	2	1	3
3:00	2	0	2
4:00	2	1	3
5:00	2	2	4
6:00	2	2	4
7:00	3	1	4



Exhibit 16



BDA 101-095

2-93



BDA 101-095 & 096
Attach C
Pg 60



Exhibit 17



BDA 101-095



BDA 101-095 & 096
Attach C
Pg 61



Exhibit 18

Patina Daily Activity Log – Dallas Store

Date: Friday – 09/23/11

Time	Number of Customers
10:00	0
11:00	1
12:00	3
1:00	2
2:00	1
3:00	2
4:00	1
5:00	0
6:00	2
Total:	12

Patina Daily Activity Log – Dallas Store

Date: Saturday – 09/24/11

Time	Number of Customers
10:00	3
11:00	0
12:00	11
1:00	4
2:00	6
3:00	2
4:00	8
Total:	34

Patina Daily Activity Log – Dallas Store

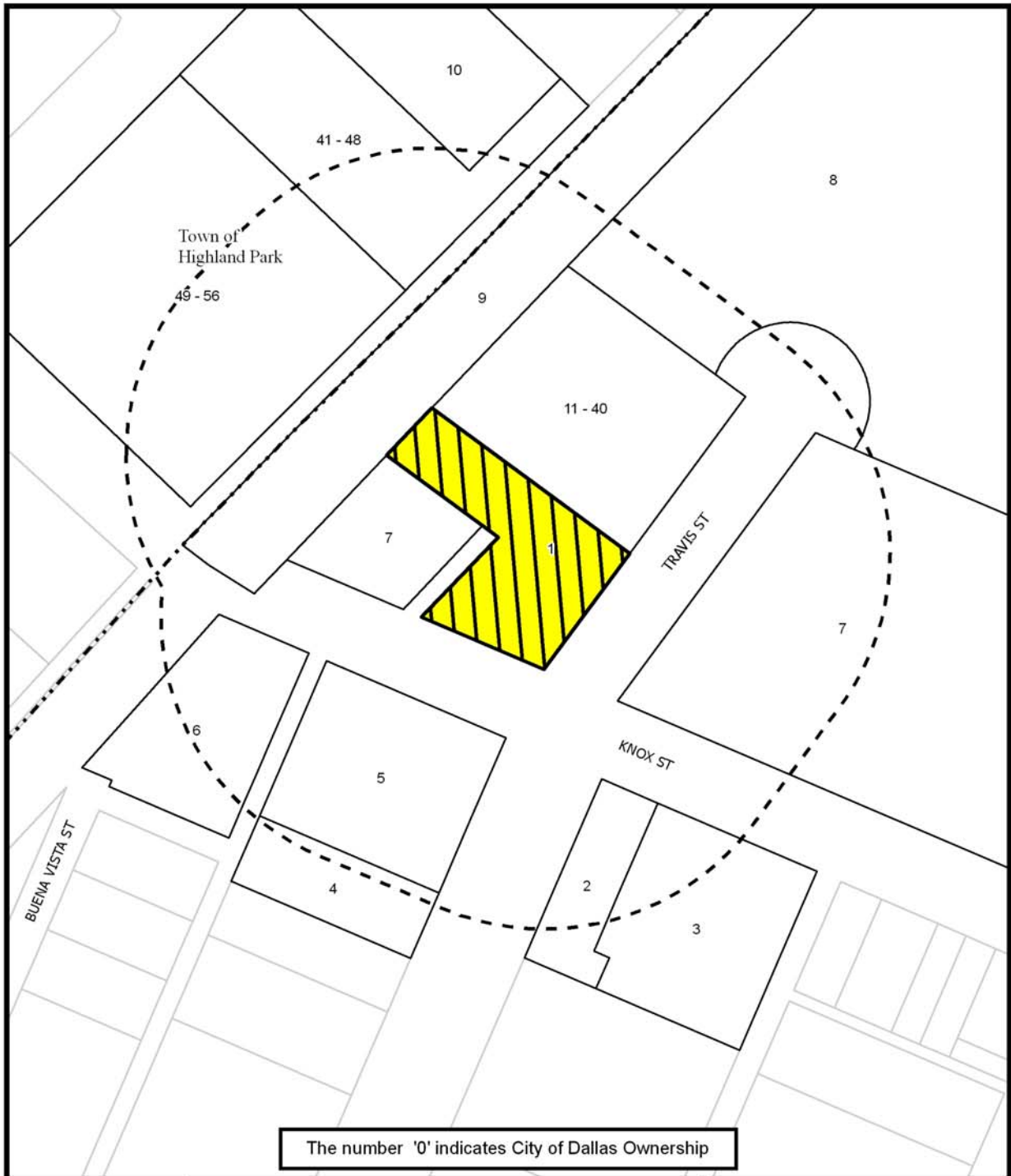
Date: Sunday – 09/25/11

Time	Number of Customers
1:00	8
2:00	1
3:00	3
Total:	12

Patina Daily Activity Log – Dallas Store

Date: Monday – 09/26/11

Time	Number of Customers
11:00	1
12:00	0
1:00	4
2:00	3
3:00	4
4:00	3
5:00	1
Total:	16



 1:1,200	<h2>NOTIFICATION</h2> <table border="1"> <tr> <td>200'</td> <td>AREA OF NOTIFICATION</td> </tr> <tr> <td>56</td> <td>NUMBER OF PROPERTY OWNERS NOTIFIED</td> </tr> </table>	200'	AREA OF NOTIFICATION	56	NUMBER OF PROPERTY OWNERS NOTIFIED	<p>Map no: <u> H-7 </u></p> <p>Case no: <u> BDA101-095 </u></p>
200'	AREA OF NOTIFICATION					
56	NUMBER OF PROPERTY OWNERS NOTIFIED					

DATE: September 29, 2011

Notification List of Property Owners

BDA101-095

56 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	3300 KNOX	KEATING MARY VICTORIA % SUN TRUST BANK A
2	3229 KNOX	WEIR J RAY TRUST & WEIR INVESTMENTS LP
3	3219 KNOX	WEIR J RAY TRUST
4	4535 TRAVIS	KNOX STREET VILLAGE HOLDINGS INC
5	3311 KNOX	KNOX TRAVIS HOLDING COMPANY LLC
6	3313 KNOX	KNOX STREET VILLAGE INC SUITE 400
7	3230 KNOX	KNOX STREET VILLAGE I INC SUITE 400
8	4647 COLE	CIM/4649 COLE AVENUE LP SUITE 900
9	8008 ELAM	DART
10	4700 ABBOTT	JACOBS ESTHER & ESTHER JACOBS TRUSTEE
11	4611 TRAVIS	WARREN ANN MARIE
12	4611 TRAVIS	HALL TRAVIS AT KNOX LLC % ATTN: DONALD L
13	4611 TRAVIS	RICHARDSON MICHAEL #PH3
14	4611 TRAVIS	KHOSHNOUDI AHMAD & FARIMAH
15	4611 TRAVIS	OLIVER JAMES L
16	4611 TRAVIS	MITCHELL THEODORE C
17	4611 TRAVIS	SATTLER SHELLA
18	4611 TRAVIS	WILSON DAVID L & REBECCA S
19	4611 TRAVIS	BRAUN DAVID
20	4611 TRAVIS	FISHER CRAIG S
21	4611 TRAVIS	BRAUN DONALD L & DEBORAH A
22	4611 TRAVIS	BRAUN DONALD L & DEBORAH A
23	4611 TRAVIS	ALHAZIM DINA
24	4611 TRAVIS	COLEMAN CAROLYN M
25	4611 TRAVIS	YIN RAY CHENGCHI & NANYI AGNES YIN
26	4611 TRAVIS	SANDERS BOWLBY DEBRA LYNN

9/29/2011

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
27	4611 TRAVIS	808B LLC
28	4611 TRAVIS	MCKAY LINDSEY
29	4611 TRAVIS	MOONEY DIANE C & JOHN T
30	4611 TRAVIS	TOUCHY JAMES QUENTON UNIT 1104B
31	4611 TRAVIS	YOUNG EUGENE & FAYE #1107B
32	4611 TRAVIS	HAYDEN LANE & MARY JEAN
33	4611 TRAVIS	ROSS WORTH W
34	4611 TRAVIS	MOONEY STEPHEN M
35	4611 TRAVIS	COUCH CONNIE L
36	4611 TRAVIS	MORENO MAURICIO A
37	4611 TRAVIS	AVERA INVESTMENTS INC
38	4611 TRAVIS	MESKIN LAURENCE
39	4611 TRAVIS	SEAL LARRY ELLIOT % KAY KOH
40	4611 TRAVIS	SEAY STEPHEN M FOUNDATION
41	4614 ABBOTT	KNIGHT JOYCE A
42	4616 ABBOTT	SHEPHERD PHILLIP
43	4618 ABBOTT	HOCHBERG CLAUDIA MERLE TR BLDG A UNIT B2
44	4612 ABBOTT	WESTBROOK J P & KATHRYN
45	4622 ABBOTT	ROTE FRANK CLAYTON
46	4624 ABBOTT	BEIS MELANIE K BLDG B UNIT B3
47	4626 ABBOTT	GIBBONS MOLLY JANE
48	4620 ABBOTT	PIKE WILLIAM R
49	4608 ABBOTT	STREBEL DOUGLAS W & LEE B D
50	4608 ABBOTT	SBLC MASTER FAMILY LTD PS
51	4608 ABBOTT	HIGHLAND GATES ON KATHY TR LLC % JD WEST
52	4608 ABBOTT	AVREA DARREN & AVREA SANDRA
53	4608 ABBOTT	RALSTON BENJAMIN P & BARBARA P RALSTON
54	4608 ABBOTT	MCKNIGHT WILLIAM D & CYNTHIA S
55	4608 ABBOTT	MONSALVE MIGUEL A
56	4608 ABBOTT	YARBROUGH DOUGLAS EUGENE & LAURA ANDERSO

FILE NUMBER: BDA 101-096

BUILDING OFFICIAL'S REPORT:

Application of Elizabeth McDonald, represented by James Harris of Thompson & Knight, for a variance to the off-street parking regulations at 3300 Knox Street. This property is more fully described as Lots 3 & 4 in City Block S/1538 and is zoned PD-193 (LC), which requires off-street parking to be provided. The applicant proposes to maintain a structure with certain retail and professional, personal service, and custom crafts uses, and provide 23 of the required 34 parking spaces, which will require a variance of 11 spaces.

LOCATION: 3300 Knox Street

APPLICANT: Elizabeth McDonal
Represented by James Harris of Thompson & Knight

REQUEST:

- A variance to the off-street parking regulations of 11 parking spaces (or 32 percent reduction of the 34 off-street parking spaces that are required) is requested in conjunction with leasing/maintaining an existing approximately 7,400 square foot commercial/retail structure with certain retail and professional, personal service and custom craft uses, and providing 23 (or 68 percent) of the 34 required off-street parking spaces.

STAFF RECOMMENDATION:

Denial

Rationale:

- Staff concludes that there is no property hardship to the site/lot that warrants a variance to the off-street parking requirements.
- The site is flat, slightly irregular in shape, and according to the application, 0.394 acres in area, and zoned PD No. 193 (LC Subdistrict). The site is currently developed with (according to DCAD records), a "free standing retail store" with 7,588 square feet built in 1930.
- As a result of the structure that has been on the site/property for a number of years, it appears that the physical features of the site/lot have not/do not create hardship or preclude its development in a manner commensurate with other developments found in the same PD No. 193 (LC) zoning district. Although the site is slightly irregular in shape, this feature does not create a hardship on the lot where the applicant cannot provide required off-street parking for a number of uses permitted in the PD No. 193 (LC Subdistrict). The slightly irregular shape does not create a hardship that justifies a variance to the off-street parking regulations for the applicant to develop it in a

manner commensurate with the development upon other parcels of land within the same PD No. 193 (LC) zoning district.

- The Sustainable Development Department Project Engineer also recommends denial of the request since the applicant had not submitted an engineered-prepared parking analysis study to justify the proposed parking reduction.

STANDARD FOR A VARIANCE:

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area for structures accessory to single family uses, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations provided that is:

- (A) not contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done;
- (B) necessary to permit development of a specific parcel of land that differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land with the same zoning; and
- (C) not granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land with the same zoning.

GENERAL FACTS:

- PD No. 193 lists 21 specific “retail uses” each of which (other than “feed store” and “furniture store”) requires 1 space per 220 square feet of floor area. (“Feed store” and “Furniture store” uses require 1 space per 500 square feet of floor area). PD No. 193 lists 24 specific “professional, personal service, and custom crafts uses” of which the applicant is applying for any/all or these with a parking requirement of 1 space per 220 square feet of floor area or greater. The applicant proposes to provide 23 (or 68 percent) of the required 34 off-street parking spaces in conjunction with leasing/maintaining the 7,400 square foot structure with certain “retail uses” and certain “professional, personal service, and custom crafts uses” all of which have a parking requirement of 1 spaces per 220 square feet or greater.
- The site is flat, slightly irregular in shape, and according to the application, 0.394 acres in area. The site is zoned PD No. 193 (LC Subdistrict).
- DCAD records indicate that the “improvements” at 3300 Knox is a “free standing retail store” with 7,588 square feet built in 1930.
- On September 30, 2011, the applicant’s representative forwarded additional information to the Board Administrator regarding this appeal and his other related application at the same address BDA 101-095 beyond what was submitted with the original application (see Attachment A).
- On October 4, 2011, the applicant’s representative forwarded additional information to the Board Administrator regarding this appeal beyond what was submitted with the original application (see Attachment B).

- On October 7, 2011, the applicant's representative forwarded additional information to the Board Administrator regarding this appeal and his related application at the same address BDA 101-095 beyond what was submitted with the original applications (see Attachment C). (Note that this information was submitted past the October 4, 2011 staff review team meeting, therefore was not factored into the staff recommendation for this application).

Zoning:

Site: PD No. 193 (LC) (Planned Development, Light Commercial)
North: PD No. 193 (LC) (Planned Development, Light Commercial)
South: PD No. 193 (LC) (Planned Development, Light Commercial)
East: PD No. 193 (LC) (Planned Development, Light Commercial)
West: PD No. 193 (LC) (Planned Development, Light Commercial)

Land Use:

The subject site is developed with commercial/retail structure, part of which is leased, part of which is vacant. The area to the north is developed with residential use; and the areas to the east, south, and west are developed with retail uses.

Zoning/BDA History:

1. BDA 101-096, Property at 3300 Knox Street (the subject site)

Depending on whether Board of Adjustment Panel A grants the applicant's other request made on the subject site (BDA 101-095) on October 18, 2011, overturning/reversing the Building Official's July 27, 2011 decision to deny an application for a Certificate of Occupancy (CO) on the subject site – specifically Certificate of Occupancy application #11071191052 for "retail use" on the property, will be whether the Board of Adjustment Panel A will consider the this request of the applicant on the subject site: BDA 101-096- an application for a variance to off-street parking regulations of 11 spaces.

If the board grants the applicant's request in BDA 101-095 reversing/overturning the Building Official's decision, the applicant is aware that the board will not be required to consider the applicant's other request on the subject site (BDA 101-096) - an application for a variance to the off-street parking regulations.

If the board denies the applicant's request in BDA 101-095 and affirms the Building

Official's decision, the applicant is aware that the board will then be required to consider his other request made on the subject site (BDA 101-096): an application for a variance to the off-street parking regulations of 11 spaces.

Timeline:

- June 10, 2011: The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- September 21, 2011: The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel A.
- September 21, 2011: The Board Administrator emailed the applicant's representative the following information:
- an attachment that provided the public hearing date and panel that will consider the application; the September 30th deadline to submit additional evidence for staff to factor into their analysis; and the October 7th deadline to submit additional evidence to be incorporated into the Board's docket materials; and
 - the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence."
- September 30, 2011: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment A).
- October 4, 2011: The applicant's representative submitted additional information to staff beyond what was submitted with the original application (see Attachment B).
- October 4, 2011: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for October public hearings. Review team members in attendance included: the Sustainable Development and Construction Department Current Planning Assistant Director, the Sustainable Development and Construction Department Engineering Assistant Director, the Building Inspection Chief Planner, the Board Administrator, the Building Inspection Senior Plans Examiner/Development Code Specialist, the City of Dallas Chief Arborist, the Sustainable Development and Construction Department Project Engineer, and the Assistant City Attorney to the Board.
- October 6, 2011: The Sustainable Development Department Project Engineer submitted a review comment sheet marked "Recommends this be

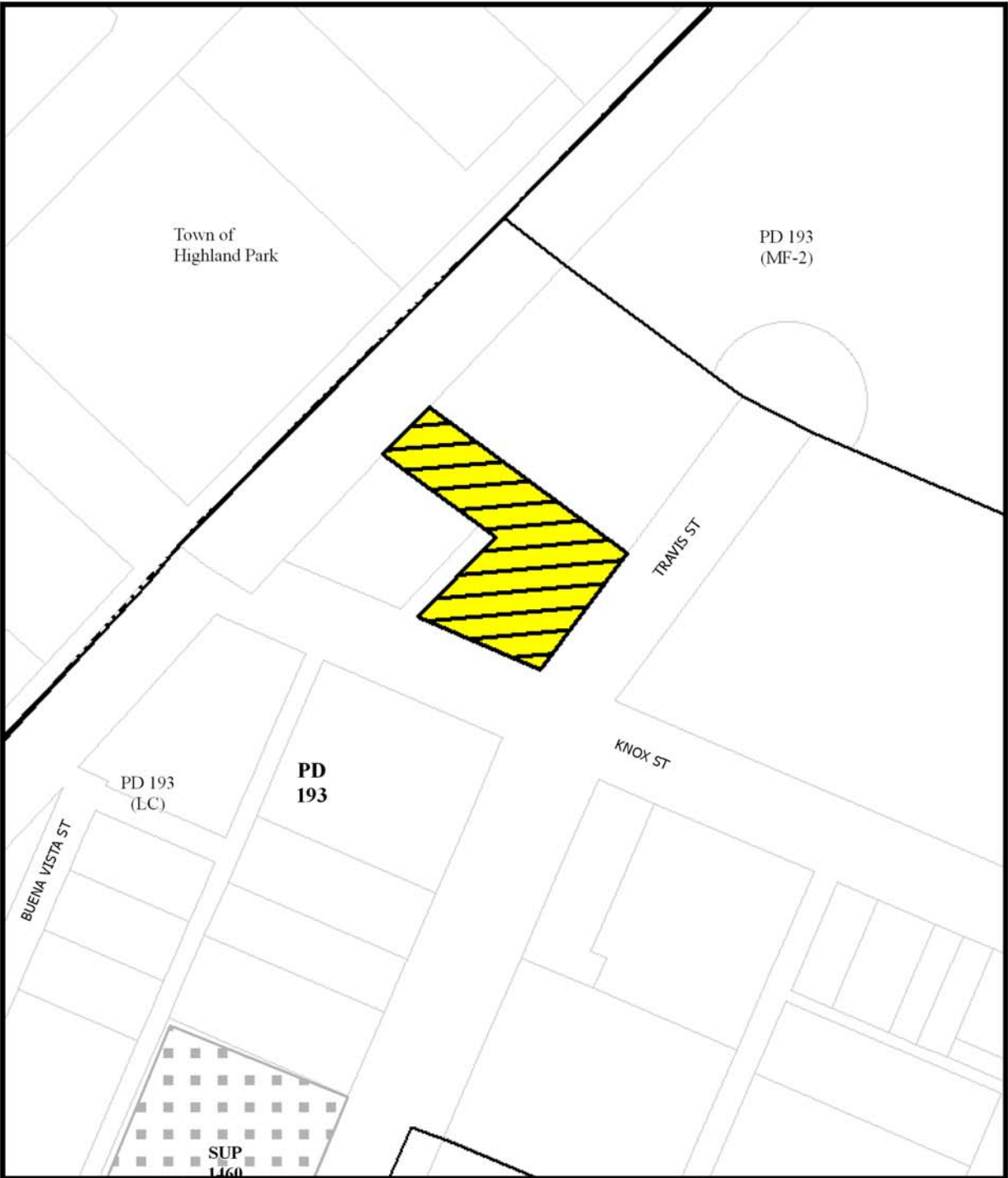
denied” with the following comments: “Applicant needs to submit for review a parking analysis study, by a qualified registered professional engineer, to justify the proposed parking reduction.”

October 7, 2011: The applicant’s representative submitted additional information to staff beyond what was submitted with both of his applications at this address – BDA 101-095 and 096 (see Attachment C). (Note that this information was submitted past the October 4, 2011 staff review team meeting, therefore was not factored into the staff recommendation for this application).

STAFF ANALYSIS:

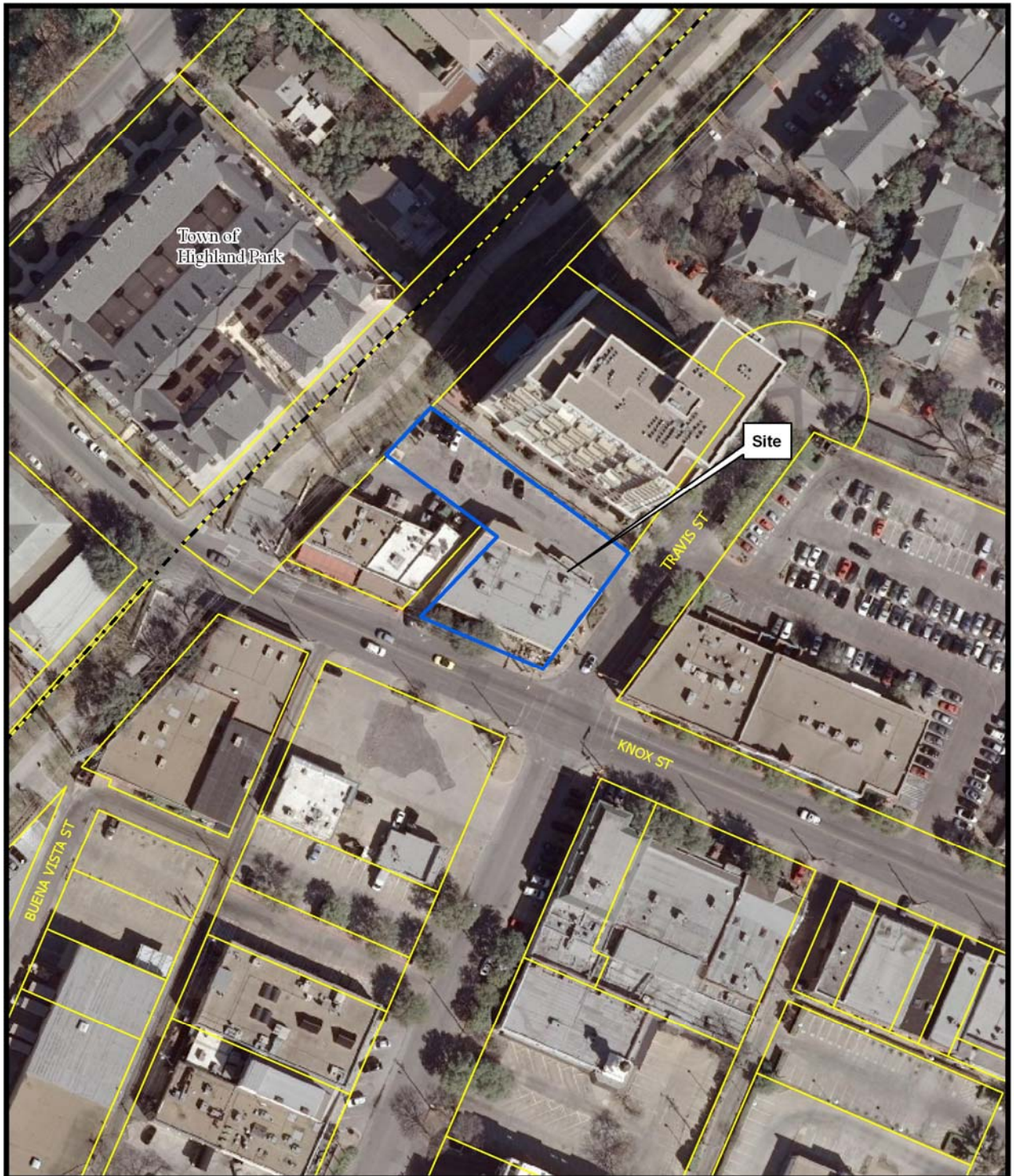
- The request focuses on reducing required off-street parking on the site by 11 spaces or 32 percent of what is required for the certain retail and personal services uses that the applicant proposes to lease/maintain within an existing approximately 7,400 square foot commercial/retail structure.
- The applicant proposes to provide 23 (o 68 percent) of the 34 off-street parking spaces required for the certain retail and professional, personal service, and custom craft uses all with a parking requirement of 1 space per 220 square feet of floor area or greater that the applicant proposes to lease/maintain in the existing structure.
- Depending on the decision made by the Board of Adjustment Panel A on the applicant’s other request on the site, BDA 101-095 - an appeal requesting the Board of Adjustment to overturn or reverse the Building Official’s July 27th decision to deny an application for a Certificate of Occupancy (CO) on the subject site will be whether the applicant needs the board’s consideration or approval of this request for a variance to the off-street parking regulations on the subject site.
- If the Board of Adjustment denies the applicant’s other request on the subject site (BDA 101-095) and upholds the Building Official’s July 27th decision, Certificate of Occupancy application #11071191052 for “retail use” on the property at 3300 Knox Street will remain denied. If this action occurs, the Board of Adjustment Panel A will consider this request for a variance to the off-street parking regulations of 11 spaces on the subject site.
- If the Board of Adjustment grants the applicant’s other request on the subject site (BDA 101-095) and overturns/reverses the Building Official’s July 27th decision, Certificate of Occupancy application #11071191052 for “retail use” on the property at 3300 Knox Street will be approved. If this action occurs, the applicant will not need approval from the Board of Adjustment Panel A on this request for a variance to the off-street parking regulations of 11 spaces on the subject site.
- On October 6, 2011, the Sustainable Development and Construction Department Project Engineer submitted a review comment sheet marked “Recommends that this be denied” with the following comments: “Applicant needs to submit for review a parking analysis study, by a qualified registered professional engineer, to justify the proposed parking reduction.”
- The site is flat, slightly irregular in shape, and according to the application, 0.394 acres in area. The site is zoned PD No. 193 (LC Subdistrict).
- DCAD records indicate that the “improvements” at 3300 Knox is a “free standing retail store” with 7,588 square feet built in 1930.

- The applicant has the burden of proof in establishing the following:
 - That granting the variance to off-street parking regulations will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
 - The variance is necessary to permit development of the subject site that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same PD No. 193 (LC) zoning classification.
 - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the same PD No. 193 (LC) zoning classification.



 1:1,200	<h1>ZONING MAP</h1>	Map no: <u> H-7 </u> Case no: <u> BDA101-096 </u>
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DATE: September 29, 2011




1:1,200

AERIAL MAP

Map no: H-7
Case no: BDA101-096

DATE: September 29, 2011

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

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BDA 101-095 & 096
Attach A
Pg 1

AUSTIN
DALLAS
DETROIT
FORT WORTH
HOUSTON
NEW YORK

ALGIERS
LONDON
MEXICO CITY
MONTERREY
PARIS

September 30, 2011

Via Hand Delivery

Steve Long
Board of Adjustment Administrator
Sustainable Development and Construction
City of Dallas
1500 Marilla Street, Room 5BN
Dallas, TX 75201

Re: BDA 101-095 and 096, Property at 3300 Knox Street

Dear Mr. Long:

I write on behalf of the Mary Victoria Keating Trust, the owner of property at 3300 Knox Street, which is the Applicant in the above-referenced Board of Adjustment matters. The purpose of this letter is to share background information that the city staff might consider in making a recommendation with respect to each matter.

The first matter involves an appeal of the building official's determination that the property owned by the Keating Trust has no Delta Credits. The second matter, which would only be reached if the Board of Adjustment agrees that the property has no Delta Credits, is a request for a variance from parking requirements because the parking demand associated with a current use of the property is significantly less than what the development code requires. I will address each matter in turn.

1. The property has sufficient Delta Credits to satisfy Development Code requirements.

The property in question consists of Lots 3 and 4 of the Cockrells Farmland Addition. The lots form an L-shape at the northwest corner of Knox and Travis Streets. Enclosed as Exhibit A is a diagram outlining the lots in question.

Lot 3 and a very small portion of Lot 4 are covered by a building that is believed to have been built in the 1930's, slightly expanded in the 1980's, and remodeled many times. The city has not identified a consistent square footage for the building over the last forty years. Square footage has ranged from 6,264 square feet to 7,397 square feet. At the current time, the owner and the city are in agreement that the square footage is 7,397 square feet.

During the 1970's there were three retail operations located in the building - - Flower a Day, Mary's Beauty and a TV store. At that time, required parking for retail uses was one space for each 200 square feet. Therefore, these uses should have required 31 to 37 parking spaces, depending on the square footage that actually existed. Because Lot 3 was covered by a building, the only area where off-street parking could have been provided was on Lot 4. Until mid-1980, however, Lot 4 was not used for off-street parking. Instead, eleven angled spaces on the north side of Knox in front of the building, and three parallel spaces along Travis on the east side of the building all in the public right of way was the only parking provided. Because no required parking was provided, the Delta Credits in the 1970's would have been 31 to 37 spaces, again depending on the actual square footage of the building.

In mid-1980, the city issued a Certificate of Occupancy for a restaurant to be operated in the building. A copy of the site plan associated with that Certificate of Occupancy is attached as Exhibit B. The site plan identifies the building area as 4,731 square feet. That number is obviously incorrect and appears to represent that portion of the building devoted to restaurant use. Again, depending upon what square footage is assigned to the entire building, the area marked as "office" contained either 2,666 square feet or 1,533 square feet. Therefore, the actual required parking, which had to be the sum of the restaurant use and the office use, was either 55 (47 for the restaurant, plus 8 for the office (for 2,666 square feet at one space for every 333 square feet as required in 1980)) or 52 (47 for the restaurant, plus 5 for the office (for 1,533 square feet)). The site plan provides for 33 spaces, of which 9 exist only because of a parking agreement approved by the city that allowed the portions of Lots 1 and 2 that did not contain buildings and Lot 4 to provide parking for the uses on Lot 3. Presumably, in order to issue the certificate of occupancy, the city recognized anywhere from 19 to 22 Delta Credit spaces that existed in connection with the retail uses occurring in the building in the 1970's.

In 1986, the city issued a new certificate of occupancy for a different restaurant, On the Border. This restaurant made use of the entire building and the site plan associated with that certificate of occupancy, a copy of which is attached as Exhibit C, suggests that at that point in time the building size was 7,397 square feet, all of which was used for a restaurant. Required parking then would have been 74 spaces, yet the site plan provided the total on-site parking, which included the spaces that existed because of the parking agreement, was 33, suggesting a Delta Credit of 41 spaces.

In 1995, the city issued a new certificate of occupancy for yet a different use, a retail operation, namely a Smith & Hawken store. By 1995, the property was part of the Oak Lawn PD and the parking requirement for a retail use was one for every 220 square feet of space. Applying that requirement to the building's square footage of 7,397 square feet means the store was required to have 34 spaces. It would have been necessary to use Delta Credits to satisfy that parking demand because the parking agreement entered into in 1980, a copy of which is attached as Exhibit D, was not effective for retail use. By its terms, that parking agreement was only applicable to a restaurant use. Therefore, the only area available for Smith & Hawken to provide required parking was on Lot 4, and according to a 2010 survey, a copy of which is attached as

Exhibit E, and which describes the parking provided on Lot 4 during Smith & Hawken tenure, 18 spaces were provided. The 16 additional required spaces must have been supplied through Delta Credits.

The section of the development code providing Delta Credits explicitly allows credits to be carried forward when a new use requires less parking than the previous use, if those credits are needed to satisfy required parking. The Delta Credits for Lots 3 and 4 were either 31 or 34 in the 1970's, 19 or 22 when the building was used as a Mariano's restaurant, and 44 when the building was used as an On the Border restaurant. Regardless of which Delta Credits apply, they all exceeded the 16 Delta Credits needed for Smith & Hawken's use of the building.

Smith & Hawken vacated the building in 2009. Recently, the owner was able to lease 3,389 square feet for a new retail use. The required parking for that use is 15 spaces. The owner is in negotiations to lease the remaining 4,008 square feet to another retail use that will require 18 parking spaces. Because only 18 spaces are currently available on Lot 4, use of 15 of the available Delta Credits would satisfy required parking needs for the entire building and allow the issuance of a certificate of occupancy for a retail use in the rest of the building.

Alternatively, if the city is of the view that the 1980 parking agreement applies to other than restaurant uses, then just as it was available to Smith & Hawken in 1995, it is available currently for a different retail use. There has been some suggestion that the 1980 parking agreement is no longer in effect because reciprocal cross easements referenced in that document no longer exist. In fact, regardless of the status of the reciprocal cross easements the parking agreement continues to be a binding covenant running with the land, requiring the owners of Lots 1 and 2 to make their property available for parking. This conclusion is supported by a February 23, 1988, memo signed by Claude Forte, a copy of which is attached as Exhibit F, which does not suggest that the reciprocal easements mentioned in the parking agreement in any way affect the continued existence of the covenant running with the land established by the 1980 parking agreement. Additionally, the city has never released the covenant. If the city considers the parking agreement to still be applicable, then as described in the site plan for the On the Border restaurant, 33 spaces can be provided to satisfy the current required parking for retail operations in the building.

In short, the building official should not withhold a Certificate of Occupancy to use the remaining portion of the building for retail purposes, either because sufficient Delta Credits are currently available to satisfy required parking demand or an existing parking agreement provides sufficient parking to meet required parking needs.

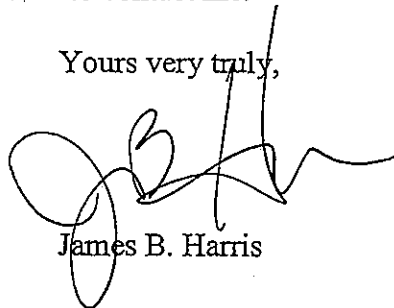
2. If required parking is not met by Delta Credits or the parking agreement, then a parking variance would be appropriate.

Of the 7,397 square feet of space available to lease since Smith & Hawken left in 2009, only 3,389 square feet has been re-leased. In January of this year, the owner entered into a lease for a retail outlet for Acme Brick that operates under the name Patina. That store opened for

making space available at any price for parking that could be included in a parking agreement. If the other half of the building cannot be leased, the value of the building will necessarily drop, meaning a loss of property tax and without any retail operation no sales tax will be generated and new jobs will not be generated.

I hope the foregoing has been helpful. If you should have any questions or need any additional information, please do not hesitate to contact me.

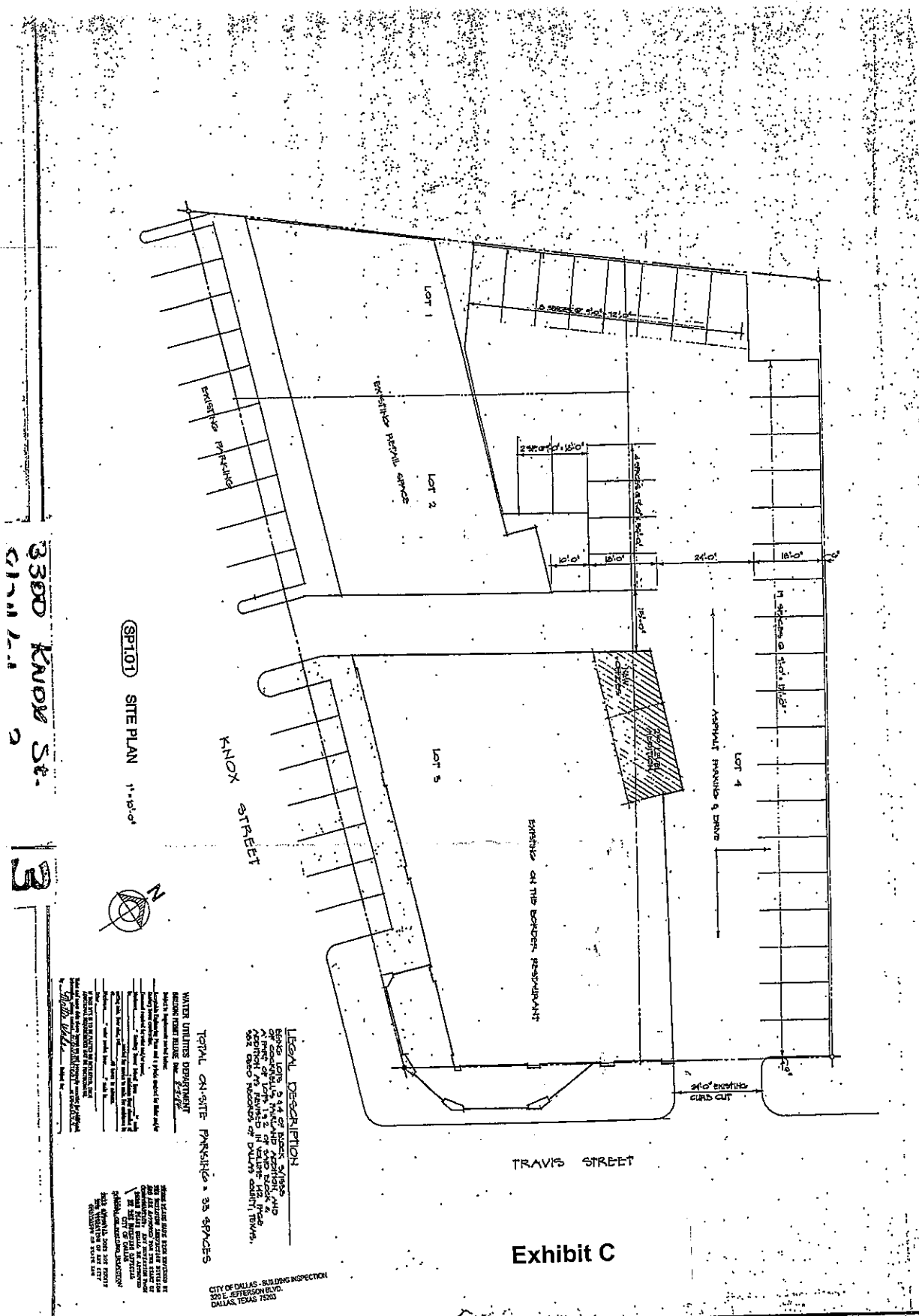
Yours very truly,

A handwritten signature in black ink, appearing to read 'JBH', with a large, stylized flourish extending to the right.

James B. Harris

JBH/tkh
Enclosures

cc: Peter Kavanagh
Elizabeth McDonald



3300 Knox St.
 CH 11 2.1 2

(SP101) SITE PLAN 11-10-10



LEGAL DESCRIPTION
 BEING LOTS 2, 3, 4 OF BLOCK 2150 OF COOPERVILLE TRACT, N. 1/2 OF CHOP BLOCK #1, COUNTY OF DALLAS, TEXAS, AS SHOWN ON PLAT 1008, DALLAS COUNTY RECORDS, 1988, 2ND PAGES 1008-1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, 1043, 1044, 1045, 1046, 1047, 1048, 1049, 1050, 1051, 1052, 1053, 1054, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 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2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2689, 2690, 2691, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2723, 2724, 2725, 2726, 2727, 2728, 2729, 2730, 2731, 2732, 2733, 2734, 2735, 2736, 2737, 2738, 2739, 2740, 2741, 2742, 2743, 2744, 2745, 2746, 2747, 2748, 2749, 2750, 2751, 2752, 2753, 2754, 2755, 2756, 2757, 2758, 2759, 2760, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2768, 2769, 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789, 2790, 2791, 2792, 2793, 2794, 2795, 2796, 2797, 2798, 2799, 2800, 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2825, 2826, 2827, 2828, 2829, 2830, 2831, 2832, 2833, 2834, 2835, 2836, 2837, 2838, 2839, 2840, 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2848, 2849, 2850, 2851, 2852, 2853, 2854, 2855, 2856, 2857, 2858, 2859, 2860, 2861, 2862, 2863, 2864, 2865, 2866, 2867, 2868, 2869, 2870, 2871, 2872, 2873, 2874, 2875, 2876, 2877, 2878, 2879, 2880, 2881, 2882, 2883, 2884, 2885, 2886, 2887, 2888, 2889, 2890, 2891, 2892, 2893, 2894, 2895, 2896, 2897, 2898, 2899, 2900, 2901, 2902, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2927, 2928, 2929, 2930, 2931, 2932, 2933, 2934, 293

DEED RECORD

PARKING AGREEMENT

STATE OF TEXAS	\$	5510	16.00 DEED
COUNTY OF DALLAS	\$		1 06/27/80

WHEREAS, Mariano's Restaurants, Inc., hereinafter referred to as "Applicant", has filed an application with the building official of the City of Dallas, Texas, for a building permit and certificate of occupancy in order to refurbish and renovate an existing building to be used for restaurant purposes; and

WHEREAS, Applicant desires to implement said use in the eastern portion of that building located on Lot 3 in City Block S/1538, Cockrell Fairland Addition, which is located in the City of Dallas, Dallas County, Texas, and is hereinafter referred to as "Tract A"; and

WHEREAS, Article XX, CHAPTER 51, "COMPREHENSIVE GENERAL ZONING ORDINANCE", of the Dallas City Code, as amended, requires a specific number of off-street parking spaces to be provided for the above described use on Tract A; and

WHEREAS, the Estate of Mary Victor Keating, hereinafter referred to as "Keating", owns Lot 4 in City Block S/1538, in the Cockrell Fairland Addition, which is located in the City of Dallas, Dallas County, Texas, and is hereinafter referred to as "Tract B"; and

WHEREAS, the I. Jalonick Estate, hereinafter referred to as "Jalonick", owns that property which is described on Exhibit A, which is attached hereto and made a part hereof for all purposes, which is located in the City of Dallas, Dallas County, Texas, and is hereinafter referred to as "Tract C"; and

WHEREAS, Applicant desires to use Tracts B and C in order to satisfy, in whole or in part, the above described parking requirements for Tract A; and

-1-

80127 1992

Exhibit D

14 1108 v

WHEREAS, Keating and Jalonick have entered into a Grant of Reciprocal Easement Agreement to provide parking on Tracts B and C for the benefit of Tract A, such grant being for a period of twenty-one years beginning on March 24, 1980 and terminating on March 23, 2001, now therefore,

Handwritten initials

~~WHEREAS, Applicant, Keating and Jalonick have entered into a Lease Agreement whereby Applicant has agreed to lease Tracts B and C beginning on March 24, 1980 and terminating on March 23, 2001, now therefore,~~

Handwritten initials

KNOW ALL MEN BY THESE PRESENTS:

That Applicant, Keating and Jalonick, for and in consideration of the City of Dallas granting to Applicant a building permit and certificate of occupancy in order that Tract A may be used for the above described use as defined in Article XX, CHAPTER 51,

"COMPREHENSIVE GENERAL ZONING ORDINANCE", of the Dallas City Code, as amended, do hereby agree to the following:

- (1) Tracts B and C will only be used for parking in connection with the above described use of Tract A;
- (2) Tracts B and C shall not be used for any other purpose other than parking;
- (3) This instrument is a covenant running with the land as to Tracts B and C;
- (4) The City of Dallas may revoke Applicant's Certificate of Occupancy regarding the above described use of Tract A if:
 - (a) the above described lease of Tracts B and C is terminated or rescinded for any reason; and
 - (b) Applicant does not provide other off-street parking spaces in accordance with Article XX of the Comprehensive General Zoning Ordinance of the City of Dallas;
- (5) This instrument shall cease to be effective only upon the filing in the Deed Records of Dallas County, Texas, of an instrument signed by the Building Official of the City of Dallas, Texas, or his designee, releasing the aforementioned covenants;
- (6) This instrument shall be filed in the Deed Records of Dallas County, Texas, by and at the expense of Applicant; and
- (7) The covenants recited herein shall bind the successors, heirs, employees and assigns of Applicant, Keating and Jalonick.

80127 1993

EXECUTED this the 1st day of MAY, 1980.

MARIANO'S, INC.

by: Mariano Martinez
Its President

ESTATE OF MARY VICTOR KEATING

by: W. J. Coyle
Senior Vice President and Trust Officer

I. JALONICK ESTATE

by: Hugh E. Peatzer, Jr.

STATE OF TEXAS

§

COUNTY OF DALLAS

§

BEFORE ME, the undersigned authority, on this day personally appeared Mariano Martinez, President of Mariano's, Inc., known to me to be the person whose name is subscribed to the above and foregoing instrument, who, having been by me duly sworn, stated on his oath that he is the President of Mariano's, Inc., is authorized to make this affidavit, and that he signed the above and foregoing instrument for the purposes and consideration and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 1 day of May, 1980.

John Lee Knight
Notary Public
Dallas County, Texas

My Commission Expires:

6-8-80

STATE OF TEXAS District §

COUNTY OF DALLAS Columbia §

BEFORE ME, the undersigned authority, on this day personally appeared Andrew C. Conner of the Estate of Mary Victor Keating, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said ESTATE OF MARY VICTOR KEATING, and that he executed the same as the act of such Estate for the purposes and consideration therein expressed and in the capacity therein stated.

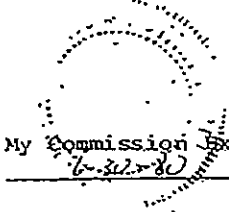
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 2 day of June, 1980.

Robert E. Spry
Notary Public
Dallas County, Texas
80127 1394

STATE OF TEXAS §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared Hugh E. Prothro, Jr., Executor of the I. JALONICK ESTATE, known to me to be the person and ~~owner~~ whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said I. JALONICK ESTATE, and that he executed the same as the act of such I. JALONICK ESTATE for the purposes and consideration therein expressed and in the capacity therein stated.

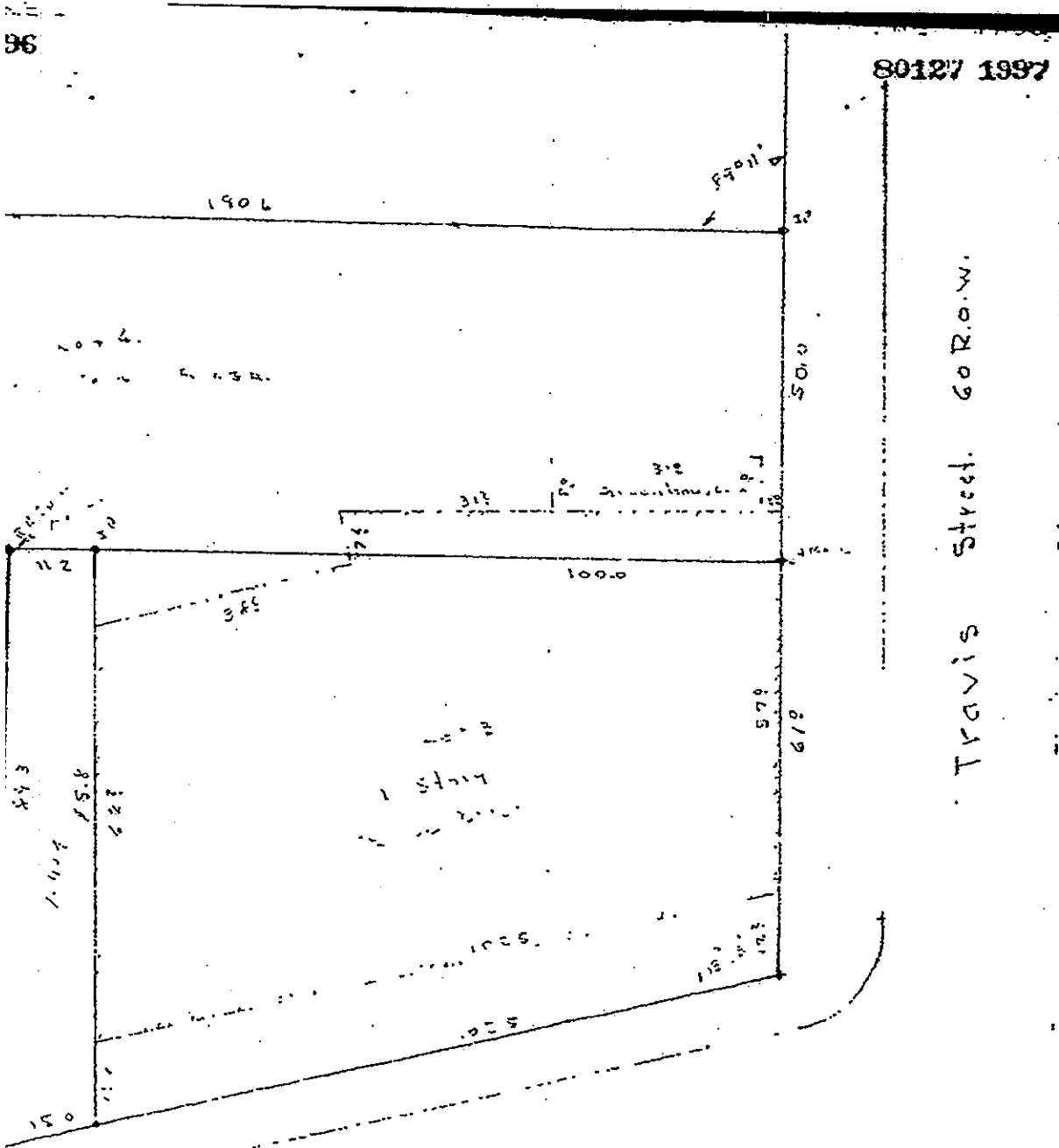
GIVEN UNDER MY HAND AND SEAL OF OFFICE: this the 5 day of May, 1980.



Stanley Knight
Notary Public
Dallas County, Texas

City Attorney
Barry R. Knight
Assistant City Attorney

80127 1995



Being
 Fairland Ad
 Block & Add.
 Records o
 Being desc
 Beginn
 Thence
 North line o
 Thence
 feet to poi
 Thence
 of lot 1 & 1
 point being
 Thence
 line of the
 corner of
 Thence
 feet to p

Street 60 R.O.W.

Survey of
 Lots 1, 2, 3, & Block 5/1538
 Cockrells Fairland Addition
 As Revised in Vol. 142 P 382.
 Deed Records, Dallas County.

Scale 1"=20'

The plat herein is a true, correct and
 the lines and dimensions of said prop
 buildings and improvements are as s
 back from property lines the distance
 road, is as shown on said plat.

THERE ARE NO ENCROACHMENTS.

Scale 1" = 20'
 Date 4/29/80

1997

PAGE 15

80127 1998

Being Lots 3 & 4 of Block S/1538 of Cockrells Fairland Addition, and a part of Lots 1 & 2 of Said Block & Addition, as revised in Vol. 142 page 382, Deed. Records of Dallas County, Texas. The part of Lots 1 & 2 Being described as follows

Beginning at the Southeast corner of Lot 2.

Thence Westerly, along the South Line of Lot 2 and the North Line of an Alley 15.0 feet to point for corner,

Thence Northerly, parallel with the East Line of Lot 2, 23.0 feet to point for corner,

Thence Northwestly, 65.4 feet to point on the North Line of Lot 1 & the south R.O.W. line of the M.K.&T. R.R. Row, said point being 24.0 feet from the Northeast corner of Lot 1.

Thence Easterly, along the North Line of Lot 1 & the South Line of the M.K.&T. R.R. R.O.W. 44.0 feet to the Northeast corner of Lot 1.

Thence Southerly, along the East Lines of Lots 1 & 2, 84.3 feet to place of beginning

The plat hereon is a true, correct, and accurate representation of the property as determined by survey, the lines and dimensions of said property being as indicated by the plat; the size, location, and type of buildings and improvements are as shown, all improvements being within the boundaries of the property set back from property lines the distances indicated, and that the distance from the nearest intersecting street or road, is as shown on said plat.

THERE ARE NO ENCROACHMENTS, CONFLICTS, OR PROTRUSIONS, EXCEPT

Scale 1" = 20'

Date 4/29/00

[Signature]
Registered Public Surveyor



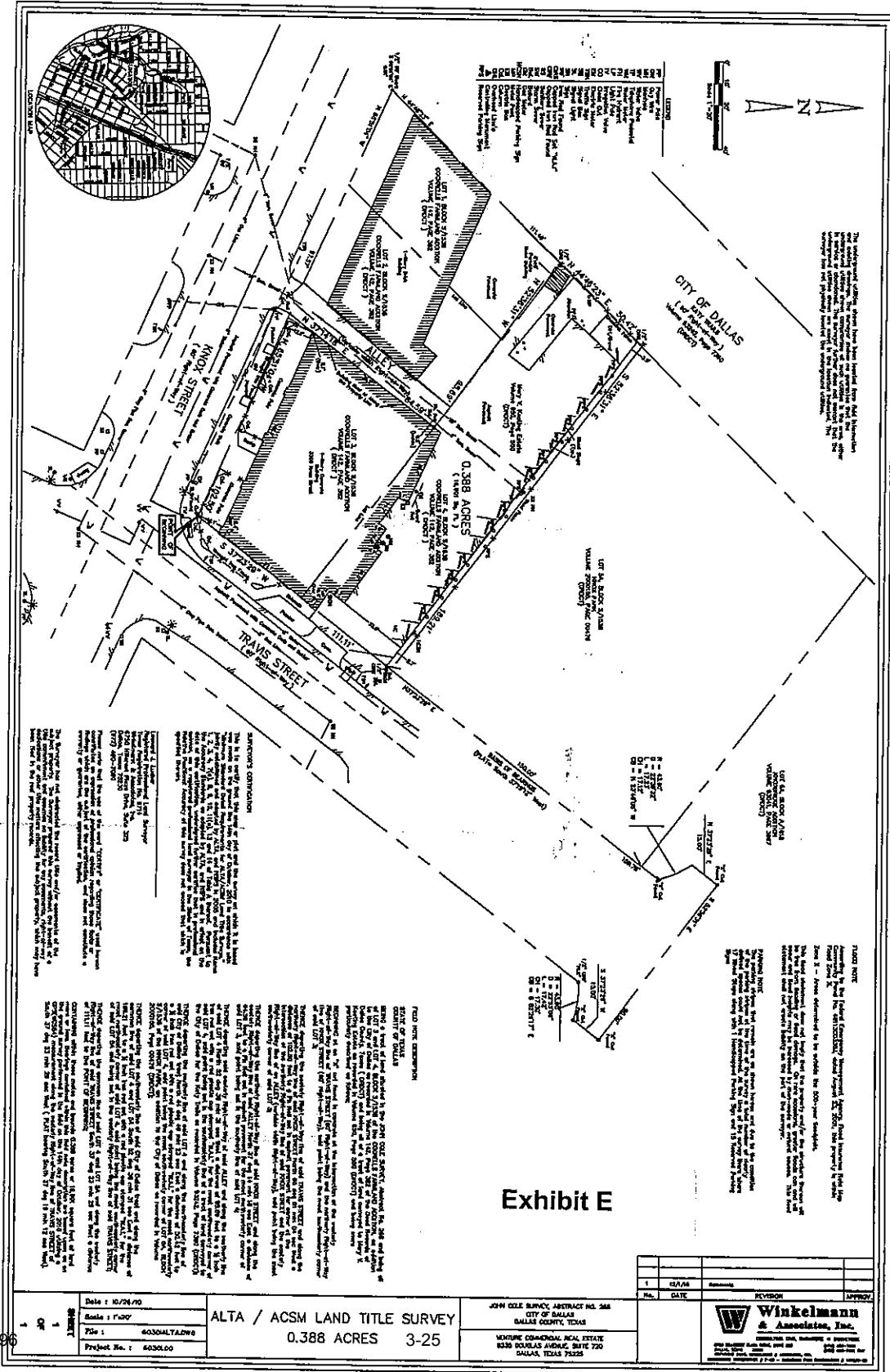
Return to:
William Teitelbaum
2731 Lemmon Avenue East - 200
Dallas, Tx. 75204

CLERK OF DISTRICT COURT, DALLAS COUNTY, TEXAS
W. E. M... ..
JUN 27 1980
MAIL ROOM
COUNTY OF DALLAS
DALLAS, TEXAS
I hereby certify that the foregoing was
sent to the County Clerk, Dallas County, Texas,
at the City of Dallas, Texas, on the 27th day of
June, 1980, and that the same was received by
the County Clerk, Dallas County, Texas, at
Dallas, Texas, on the 27th day of June, 1980.

80 JUN 26 PM 3:04

W. E. M... ..

80127 1980



Date: 10/26/00
 Scale: 1"=50'
 File: 60304L72D9
 Project No.: 60300.00

ALTA / ACSM LAND TITLE SURVEY
 0.388 ACRES 3-25

JOHN COLE SURVY, ABSTRACT NO. 248
 CITY OF DALLAS
 DALLAS COUNTY, TEXAS
 MONTGOMERY COMMERCIAL REAL ESTATE
 8030 BOULDER AVENUE, SUITE 720
 DALLAS, TEXAS 75225

No.	DATE	REVISION	APPROVED
1	02/04/00	REVISION	

Winkelmann & Associates, Inc.
 1000 WEST END AVENUE, SUITE 1000
 DALLAS, TEXAS 75201
 PHONE: 214-760-1000
 FAX: 214-760-1001
 WWW: WWW.WINKELMANN.COM

MULLINAX, WELLS, BAAB & CLOUTMAN, P.C.

ATTORNEYS AT LAW

330 ELM STREET DALLAS, TEXAS 75226
PHONE (214) 939-9222 IN FT. WORTH CALL 263-1527

February 23, 1988

ROGER ALBRIGHT

Mr. Claude Forte
 Chief Development Code
 Administration
 City of Dallas
 Building Inspection Division
 Department of Public Works
 320 E. Jefferson Bldg.
 Dallas, Texas 75203

RE: 3300-3308 Knox Street

Dear Claude:

Thank you for taking the time to meet with me on Monday, February 22, 1988 to review the off-street parking requirements of the uses located in the 3300 block of Knox and the parking agreement which exists between the owners of the two (2) tracts of property located along that block. As you suggested, I have drafted a memorandum which summarizes the information contained in the file so that any current or prospective tenant will be aware of precisely what parking is available. If this memo is acceptable, I would appreciate you signing the enclosed copies, placing one in the file and returning the other to me in the enclosed pre-addressed envelope.

If you have any questions, please give me a call.

Sincerely,

MULLINAX, WELLS, BAAB
& CLOUTMAN, P.C.By: 

Roger Albright

RA/klp
Encl.

Exhibit F

MEMORANDUM

DATE: February 23, 1988

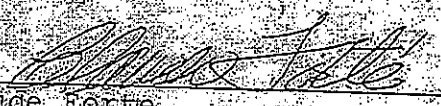
RE: Parking Agreement for 3300 Block of
Knox; On the Border Restaurant

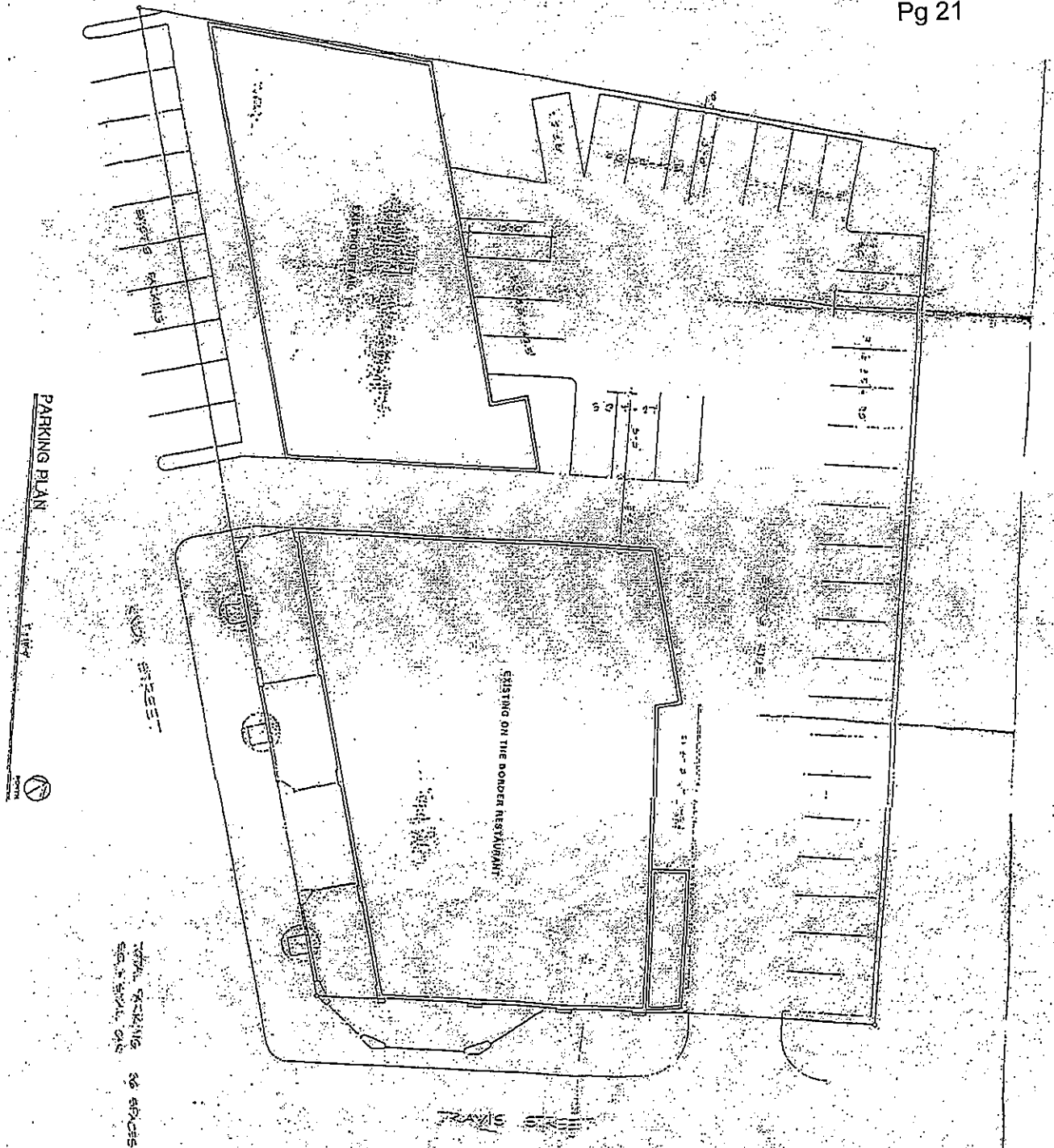
Questions as to the use of off-street parking located behind the structures on the north side of Knox in the 3300 block have been raised and the Department of Housing and Neighborhood Services has been requested to issue a Notice of Violation based on the alleged failure of On the Border Restaurant to "follow agreed parking stipulations in deed". The purpose of this memorandum is to set forth the underlying facts and documentation contained in the City of Dallas file.

On the Border Restaurant is located at 3300-3308 Knox. This property, (Lot 3, Block S/1538) as well as Lot 4 located behind this property are owned by the Keating Estate. The retail uses located at 3310, 3312, 3314 and 3316 Knox are located on the front portions of Lots 1 and 2 which are owned by the Jalonick estate. The rear portion of Lots 1 and 2 as well as Lot 4 are paved and used for off-street parking. On May 1, 1980, the owners of the Keating and Jalonick properties entered into a parking agreement whereby the off-street parking spaces located on the rear of Lots 1 and 2 and Lot 4 (labeled Tracts B & C) could only be used for parking for the building located on Lot 3 (labeled Tract A) which was to be refurbished and renovated for restaurant purposes. This parking agreement was approved by the City and duly filed in the Deed Records. Based on that agreement, the restaurant met the off-street parking requirements of the Dallas Development Code and a certificate of occupancy was issued for the restaurant located at 3300-3308 Knox. Maps showing the areas that are restricted to restaurant parking by this parking agreement (Tracts B and C) as well as the parking plan are attached.

Based on this agreement, On the Border has the sole right to use any of the parking spaces located behind any of the structures in the 3300 block of Knox. The only parking available for the retail uses located at 3310-3316 Knox are the on-street parking spaces located directly in front of those retail uses. Even though those retail uses do not provide any off-street parking, they are legal non-conforming uses although, none could be converted to a more intensive use without meeting the requirements of the Development Code

with regard to off-street parking. Based on the information in the files of the City of Dallas, there is no basis for the issuance of a notice of violation for the failure of any use presently located in the 3300 block of Knox to provide required off-street parking or the failure to follow the parking stipulations contained in the parking agreement.


Claude Forte
Chief, Development Code
Administrator
City of Dallas
Building Inspection Division
Department of Public Works



PARKING PLAN

EXISTING ON THE BORDER RESTAURANT

TOTAL PARKING 56 SPACES

TOWNSCAPE ARCHITECTS
1000 BROADWAY, SUITE 2000, DALLAS, TEXAS 75201
PH: 214.760.1234 FAX: 214.760.1235

ON THE BORDER

BDA 101-095 & 096

Attach B

Long, Steve

Pg 1

From: Harris, James B. [James.Harris@tklaw.com]
Sent: Tuesday, October 04, 2011 11:27 AM
To: Long, Steve
Subject: RE: Draft news ad for BDA 101-096, Property at 3300 Knox Street

Steve, looks fine.

From: Long, Steve [mailto:steve.long@dallascityhall.com]
Sent: Tuesday, October 04, 2011 10:51 AM
To: Harris, James B.
Cc: Duerksen, Todd; Palomino, Tammy
Subject: FW: Draft news ad for BDA 101-096, Property at 3300 Knox Street

Dear Mr. Harris,

I have attached a draft news ad regarding BDA 101-096 for your review. As you can see, this draft news ad incorporates some of your comments/suggestions below into a standard form that the City typically does for news ads pertaining to parking reduction requests.

Please note that I have intentionally not included the parking ratio that you mentioned below in this draft since this information to my recollection has historically never been conveyed in the news ad or property owner notice. (Details such as parking ratios are however conveyed in the docket that is part of the public record on this type of parking reduction application).

Please take a look at this draft and let me know if you have any concerns with the information that is conveyed.

Thanks,

Steve

From: Harris, James B. [mailto:James.Harris@tklaw.com]
Sent: Tuesday, October 04, 2011 10:22 AM
To: Long, Steve
Subject: RE:

Steve, I understand as a result of a conversation between Todd Duerkson and Peter Kavanaugh (who is working with me on the variance request) there has been some confusion about the type of uses that would be covered by the variance request and the size of the variance being requested. To be clear we are not proposing to construct and maintain a building but intend to maintain an existing building that was originally constructed in the 1930's. We intend to use the building for retail and professional, personal service and custom craft uses requiring one parking space for each 220 square feet or more of floor area. Additionally, by our calculations the number of required spaces for those uses, as the building is currently configured, is 33 not 34.

At any rate, in light of this background you may want to consider changing the building official's report to delete in fourth line the word "construct." You may also want to delete the phrase "general merchandise or food store less than 3500 square feet and personal service uses" in the fifth and sixth lines and replace it with "retail and professional, personal service and custom crafts uses."

I think the 220 or more issue and the number of required spaces can be addressed at the hearing.

BDA101-095 & 096

Call me if this email is unclear or we need to discuss further.

Jim Harris

Attach B
Pg 2

From: Long, Steve [mailto:steve.long@dallascityhall.com]
Sent: Tuesday, October 04, 2011 7:54 AM
To: Harris, James B.
Cc: Duerksen, Todd
Subject: FW:

Dear Mr. Harris,

Would you please give me a call on this today before noon? I need to touch base with you on this since this document could effect your application BDA 101-096.

Thanks,

Steve

From: Long, Steve
Sent: Monday, October 03, 2011 2:39 PM
To: 'james.harris@tklaw.com'
Subject:

Mr. Harris,

Would you give me a call on the attachment, please? 214/670-4666.

Thanks,

Steve

PUBLIC NOTICE
BOARD OF ADJUSTMENT OF THE CITY OF DALLAS (PANEL A)

NOTICE IS HEREBY GIVEN that the **BOARD OF ADJUSTMENT OF THE CITY OF DALLAS (PANEL A)** will hold a hearing as follows:

- DATE:** TUESDAY, OCTOBER 18, 2011
- BRIEFING:** 11:00 A.M. in 5ES, Dallas City Hall, 1500 Marilla Street
- PUBLIC HEARING:** 1:00 P.M. in Council Chambers, Dallas City Hall, 1500 Marilla Street

The purpose of the hearing is to consider the following applications now pending before the Board of Adjustment:

-
1. **BDA101-096** - Application of Elizabeth McDonald, represented by James Harris of Thompson & Knight, for a variance to the off-street parking regulations at **3300 Knox Street**. This property is more fully described as lots 3 & 4 in City Block S/1538 and is zoned PD-193 (LC) which requires off-street parking to be provided. The applicant proposes to maintain a structure with certain retail and professional, personal service, and custom crafts uses, and provide 23 of the required 34 parking spaces which will require a variance of 11 spaces.

Please contact Steve Long, Board Administrator at (214) 670-4666, or Trena Law, Board Secretary at (214) 670-4206 if you have any further questions or need any additional information.

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

JAMES B. HARRIS
DIRECT DIAL: (214) 969-1102
EMAIL: James.Harris@tklaw.com

ONE ARTS PLAZA
1722 ROUTH STREET • SUITE 1500
DALLAS, TEXAS 75201-2533
(214) 969-1700
FAX (214) 969-1751
www.tklaw.com

BDA 101-095 & 096
Attach C
Pg 1

HOUSTON
NEW YORK
ALGIERS
LONDON
MEXICO CITY
MONTERREY
PARIS

October 7, 2011

Via Hand Delivery

Steve Long
Board of Adjustment Administrator
Sustainable Development and Construction
City of Dallas
1500 Marilla Street, Room 5BN
Dallas, TX 75201

Re: BDA 101-095 and 096, Property at 3300 Knox Street

Dear Mr. Long:

I would appreciate your including this letter and its attachments in the materials shared with the Board of Adjustment (the "Board") in connection with the above-referenced cases set to be heard on Tuesday, October 18, 2011. The above-referenced cases involve two discreet issues. The first is whether the building official erred in denying a request for a building permit to renovate one-half of a building at 3300 Knox Street. The second case, which will only be heard if the building official's decision is upheld, seeks a parking variance for the building at 3300 Knox Street. I have already submitted one background letter to you for consideration by city staff in connection with these cases and I attach that letter as Exhibit 1 so that it will also be before the Board of Adjustment. I will address in turn each of the issues the Board will consider on October 18, 2011.

1. Denial of Building Permit.

The building has been vacant since 2009, when Smith & Hawken discontinued retail operations nationwide. Since then the owner has been looking for suitable replacement tenants. Since mid-August of this year, approximately one-half of the building, consisting of 3,389 square feet, has been occupied by Patina, a store that provides remodeling services and materials. The building official was willing to issue a building permit and certificate of occupancy for the Patina store because it required 15 spaces, which were available on property controlled by the owner. The building official has been unwilling to issue a building permit to remodel the remainder of the building containing about 4,000 square feet, because the building official believes an additional 19 spaces are required for a retail, professional, personal service, or customs crafts uses to be located there. For the reasons set forth in the letter previously provided for staff review, we believe that the building official should have reached a different conclusion.

In discussions with Phil Sikes of the Building Inspection Division, the owners' representatives were advised that the reason the no building permit would be issued for the

remainder of the building was because it had no Delta Credits. According to Mr. Sikes, in 1995 when Smith & Hawken occupied the entire building there existed a parking agreement that resulted in either 33 or 34 spaces being available for that retail use. In recent conversations with the City Attorney's Office, I have been advised that the parking agreement referred to by Mr. Sikes did not provide required parking for a retail use. Instead, it only provided required parking for a restaurant use.

In the absence of a parking agreement, the number of parking spaces that could be provided for Smith & Hawken's retail store, as demonstrated from a survey in 2010, was 18. Nevertheless, issuance of a certificate of occupancy for Smith & Hawken in 1995 was proper because at that point in time there existed somewhere between 31 and 41 Delta Credits. Under the Dallas Development Code, Delta Credits are measured by looking at the number of spaces required for an existing use and subtracting out the number of spaces provided. In 1995, just before Smith & Hawken occupied the building, it was being used as an On the Border restaurant. The square footage of that restaurant was somewhere between 6,400 and 7,400 square feet. The parking requirement was 1 per 100 square feet. Therefore, the required parking was either 64 or 74. The approved site plan for On the Border only identified 33 parking spaces. Therefore, at that time, the Delta Credits were 31 to 41 spaces depending on the actual square footage occupied by On the Border.

Under the Dallas Development Code if a new use requires less parking, it is still entitled to the number of Delta Credits necessary to satisfy required parking. When Smith & Hawken moved in, it only could provide 18 parking spaces (because the parking agreement was no longer applicable) meaning that it needed to use 16 of the Delta Credits that existed with respect to the On the Border restaurant.

The required parking for the Smith & Hawken's use was one space per 220 square feet. That is the same requirement that exists for Patina's use and for the proposed uses for the remainder of the building. Given that Delta Credits were available for Smith & Hawken, they should also be available for similar uses that would replace Smith & Hawken.

Overruling the building official's decision in this case simply insures fairness and consistency allowing new uses that have the same parking demand as a previous use to operate with the same amount of parking. If it was appropriate for Smith & Hawken to operate for 14 years with 16 Delta Credits then similar uses with the same parking demand should be entitled to make use of the same Delta Credits to satisfy required parking.

2. Even if the Building Official was Right, this Case Presents Appropriate Facts for the Granting of a Parking Variance.

If the property owner can show an unnecessary hardship that is not self-created, but results from special conditions, then a variance from required parking is appropriate so long as doing so would be in the public interest. The history and the size and shape of the property in question demonstrate why these conditions have been met.

The property in question involves Lots 3 and 4 of the Cockrell Fair Land addition to the City of Dallas that was filed in 1891. A copy of that plat is attached as Exhibit 2. Lots 3 and 4 are currently owned by a testamentary trust that traces its ownership of Lots 3 and 4 to a 1915 deed in which H.S. Keating acquired Lots 3 and 4. See Exhibit 3. Mr. Keating passed away in 1921 and in 1932 his widow, Mary Victoria Keating, conveyed to the testamentary trust, which still owns the property, Lots 3 and 4. A copy of that transfer is attached as Exhibit 4. That exhibit reflects that in 1932 Lots 3 and 4 were improved by a one-story brick building about 80 feet long and 60 feet in depth. That is the same structure, with only slight additions, that is currently found on the property.

Attached as Exhibits 5, 6 & 7 are aerial photographs of the property with an outline of the area covered by Lots 3 and 4. As is evident from these aerial photographs the building occupies all of Lot 3 and part of Lot 4, leaving only the remainder of Lot 4 to provide parking. This situation has existed since prior to 1932. In fact, prior to 1980 no parking was provided on Lot 4. Attached as Exhibit 8, is an aerial photograph from 1979 that establishes Lot 4 was unimproved. The use of Lot 4 was changed in 1980 when a restaurant, Mariano's, was located in the building and has now continued to be used for parking through the present. Obviously prior to 1980 no off-site parking was provided in connection with the building. And since 1980, Lots 3 and 4 have never satisfied required parking under the Dallas Development Code.

Attached as Exhibit 9 is a photo of the building as it looked when Smith & Hawken was present and a second photograph attached as Exhibit 10 that shows the building after Smith & Hawken vacated the space. Attached as Exhibits 11, 12, 13, and 14 are photos showing how the building currently looks.

The unnecessary hardship presented by this case is an inability to lease one-half of the building because of the shape and limited area presented by the configuration and size of Lots 3 and 4. Without demolishing a significant portion of a building that has been present since before 1932, additional parking cannot be provided. The size and shape of Lot 4 does not allow below-ground or a parking garage type structure. Moreover, such parking is not provided anywhere else in the vicinity.

These special conditions were not self-created. At the time the property was platted, in 1891, none of the current zoning requirements were in place. Moreover at the time the building was constructed, parking requirements were not in place. In short, a purchase in 1915 and the construction of buildings prior to 1932 that were entirely legal have now turned out to be a hardship because of changes over time in the development code. Moreover, it was not until the city's change in position this year regarding the application to the property of Delta Credits that sufficient parking became an issue. In short, there is nothing that the owner of the property has done to create this hardship other than to have purchased many years ago two small lots with an unusual configuration and hold on to them.

Granting a parking variance here would also be in the public interest. During the time Smith & Hawken occupied the building it generated approximately \$2.4 million a year in retail sales. The city's share of sales tax from those sales have been lost since 2009. Additionally, the

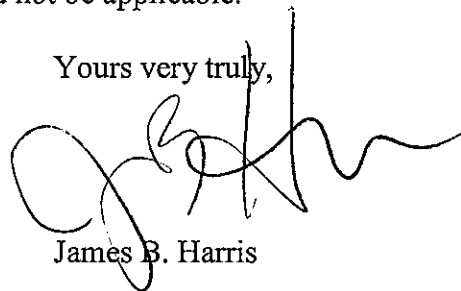
value of the building for property tax purposes has dropped more than \$500,000 since 2009. If the remainder of the building cannot be leased out, only a portion of the \$2.4 million in annual sales will be recouped and there will be a further deterioration in the value of the building for property tax purposes meaning less tax revenue to the City of Dallas. An inability to lease the rest of the building also means fewer jobs generated at that location.

Granting the variance will not create a parking problem. The number of spaces being proposed are actually an increase over what was available when Smith & Hawken occupied the building, an increase from 18 to 23 spaces. Secondly, the parking study undertaken on behalf of the tenant demonstrates that the average hourly parking demand for the current tenant, Patina, was 3, and that in any one hour the number of cars present because of that tenant range from 1 to 6. Attached as Exhibit 15 is a copy of the daily parking reports. Also attached as Exhibits 16, 17, and 18, are photographs taken during that parking study showing the current parking configuration, which will be modified if the variance is granted.

The fact that the current tenant is generating less parking demand than the development code would predict is not surprising. Attached as Exhibits 19 is a copy of charts showing the number of customers at Patina between Friday, September 23, 2011, and Monday, September 26, 2011. There were many more customers than there were cars. The difference results from walk-ins, that is people who have not driven to get to the shopping center or who have parked in another spot in the area and visited Patina after shopping at other stores.

Under these circumstances, the granting of a parking variance would be appropriate. In that regard one point needs to be clarified. The request for a parking variance is only for those retail, professional, personal service, and custom crafts uses that require one space per 220 square feet or more. This variance would not apply to restaurant uses and would not apply to any retail, professional, personal service or custom crafts use if the parking requirement was one space for 219 square feet or less. In other words, if a retail use required one space for each 150 square feet, the requested variance would not be applicable.

Yours very truly,



James B. Harris

JBH/tkh
Enclosures

cc: Peter Kavanagh
Elizabeth McDonald

THOMPSON & KNIGHT LLP

ATTORNEYS AND COUNSELORS

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BDA 101-095 & 096
Attach C
Pg 5

FOUR WORTH
HOUSTON
NEW YORK

ALGIERS
LONDON
MEXICO CITY
MONTERREY
PARIS

September 30, 2011

Via Hand Delivery

Steve Long
Board of Adjustment Administrator
Sustainable Development and Construction
City of Dallas
1500 Marilla Street, Room 5BN
Dallas, TX 75201

Re: BDA 101-095 and 096, Property at 3300 Knox Street

Dear Mr. Long:

I write on behalf of the Mary Victoria Keating Trust, the owner of property at 3300 Knox Street, which is the Applicant in the above-referenced Board of Adjustment matters. The purpose of this letter is to share background information that the city staff might consider in making a recommendation with respect to each matter.

The first matter involves an appeal of the building official's determination that the property owned by the Keating Trust has no Delta Credits. The second matter, which would only be reached if the Board of Adjustment agrees that the property has no Delta Credits, is a request for a variance from parking requirements because the parking demand associated with a current use of the property is significantly less than what the development code requires. I will address each matter in turn.

1. The property has sufficient Delta Credits to satisfy Development Code requirements.

The property in question consists of Lots 3 and 4 of the Cockrells Farmland Addition. The lots form an L-shape at the northwest corner of Knox and Travis Streets. Enclosed as Exhibit A is a diagram outlining the lots in question.

Lot 3 and a very small portion of Lot 4 are covered by a building that is believed to have been built in the 1930's, slightly expanded in the 1980's, and remodeled many times. The city has not identified a consistent square footage for the building over the last forty years. Square footage has ranged from 6,264 square feet to 7,397 square feet. At the current time, the owner and the city are in agreement that the square footage is 7,397 square feet.

Exhibit 1

During the 1970's there were three retail operations located in the building - - Flower a Day, Mary's Beauty and a TV store. At that time, required parking for retail uses was one space for each 200 square feet. Therefore, these uses should have required 31 to 37 parking spaces, depending on the square footage that actually existed. Because Lot 3 was covered by a building, the only area where off-street parking could have been provided was on Lot 4. Until mid-1980, however, Lot 4 was not used for off-street parking. Instead, eleven angled spaces on the north side of Knox in front of the building, and three parallel spaces along Travis on the east side of the building all in the public right of way was the only parking provided. Because no required parking was provided, the Delta Credits in the 1970's would have been 31 to 37 spaces, again depending on the actual square footage of the building.

In mid-1980, the city issued a Certificate of Occupancy for a restaurant to be operated in the building. A copy of the site plan associated with that Certificate of Occupancy is attached as Exhibit B. The site plan identifies the building area as 4,731 square feet. That number is obviously incorrect and appears to represent that portion of the building devoted to restaurant use. Again, depending upon what square footage is assigned to the entire building, the area marked as "office" contained either 2,666 square feet or 1,533 square feet. Therefore, the actual required parking, which had to be the sum of the restaurant use and the office use, was either 55 (47 for the restaurant, plus 8 for the office (for 2,666 square feet at one space for every 333 square feet as required in 1980)) or 52 (47 for the restaurant, plus 5 for the office (for 1,533 square feet)). The site plan provides for 33 spaces, of which 9 exist only because of a parking agreement approved by the city that allowed the portions of Lots 1 and 2 that did not contain buildings and Lot 4 to provide parking for the uses on Lot 3. Presumably, in order to issue the certificate of occupancy, the city recognized anywhere from 19 to 22 Delta Credit spaces that existed in connection with the retail uses occurring in the building in the 1970's.

In 1986, the city issued a new certificate of occupancy for a different restaurant, On the Border. This restaurant made use of the entire building and the site plan associated with that certificate of occupancy, a copy of which is attached as Exhibit C, suggests that at that point in time the building size was 7,397 square feet, all of which was used for a restaurant. Required parking then would have been 74 spaces, yet the site plan provided the total on-site parking, which included the spaces that existed because of the parking agreement, was 33, suggesting a Delta Credit of 41 spaces.

In 1995, the city issued a new certificate of occupancy for yet a different use, a retail operation, namely a Smith & Hawken store. By 1995, the property was part of the Oak Lawn PD and the parking requirement for a retail use was one for every 220 square feet of space. Applying that requirement to the building's square footage of 7,397 square feet means the store was required to have 34 spaces. It would have been necessary to use Delta Credits to satisfy that parking demand because the parking agreement entered into in 1980, a copy of which is attached as Exhibit D, was not effective for retail use. By its terms, that parking agreement was only applicable to a restaurant use. Therefore, the only area available for Smith & Hawken to provide required parking was on Lot 4, and according to a 2010 survey, a copy of which is attached as

Exhibit E, and which describes the parking provided on Lot 4 during Smith & Hawken tenure, 18 spaces were provided. The 16 additional required spaces must have been supplied through Delta Credits.

The section of the development code providing Delta Credits explicitly allows credits to be carried forward when a new use requires less parking than the previous use, if those credits are needed to satisfy required parking. The Delta Credits for Lots 3 and 4 were either 31 or 34 in the 1970's, 19 or 22 when the building was used as a Mariano's restaurant, and 44 when the building was used as an On the Border restaurant. Regardless of which Delta Credits apply, they all exceeded the 16 Delta Credits needed for Smith & Hawken's use of the building.

Smith & Hawken vacated the building in 2009. Recently, the owner was able to lease 3,389 square feet for a new retail use. The required parking for that use is 15 spaces. The owner is in negotiations to lease the remaining 4,008 square feet to another retail use that will require 18 parking spaces. Because only 18 spaces are currently available on Lot 4, use of 15 of the available Delta Credits would satisfy required parking needs for the entire building and allow the issuance of a certificate of occupancy for a retail use in the rest of the building.

Alternatively, if the city is of the view that the 1980 parking agreement applies to other than restaurant uses, then just as it was available to Smith & Hawken in 1995, it is available currently for a different retail use. There has been some suggestion that the 1980 parking agreement is no longer in effect because reciprocal cross easements referenced in that document no longer exist. In fact, regardless of the status of the reciprocal cross easements the parking agreement continues to be a binding covenant running with the land, requiring the owners of Lots 1 and 2 to make their property available for parking. This conclusion is supported by a February 23, 1988, memo signed by Claude Forte, a copy of which is attached as Exhibit F, which does not suggest that the reciprocal easements mentioned in the parking agreement in any way affect the continued existence of the covenant running with the land established by the 1980 parking agreement. Additionally, the city has never released the covenant. If the city considers the parking agreement to still be applicable, then as described in the site plan for the On the Border restaurant, 33 spaces can be provided to satisfy the current required parking for retail operations in the building.

In short, the building official should not withhold a Certificate of Occupancy to use the remaining portion of the building for retail purposes, either because sufficient Delta Credits are currently available to satisfy required parking demand or an existing parking agreement provides sufficient parking to meet required parking needs.

2. If required parking is not met by Delta Credits or the parking agreement, then a parking variance would be appropriate.

Of the 7,397 square feet of space available to lease since Smith & Hawken left in 2009, only 3,389 square feet has been re-leased. In January of this year, the owner entered into a lease for a retail outlet for Acme Brick that operates under the name Patina. That store opened for

business in mid-August. On display at the store are samples of flooring, tile, and brick for sale. The sales people are also interior designers. The target customer is someone who is seeking help in choosing and buying materials used in remodeling. Customers visit with one of the designers to discuss what type of materials might best meet their needs. The customer then selects from available samples and makes a purchase.

Given the nature of the retail operation, it was expected that the amount of car traffic generated by this store would be limited. The store is not by itself a destination, like a big box retailer. Its retail operations seem to complement other retail stores in the area, such as Weirs, Crate and Barrel, Pottery Barn, and Restoration Hardware. A recent parking survey conducted during the hours the store was opened from Friday, September 23, 2011, through Wednesday, September 28, 2011, supports this conclusion. During those six days, the average hourly parking demand was 3 cars (and that includes employees) and the hourly parking demand ranged from 1 car to 6 cars.

The store has also determined that a number of its customers are walk-ins in the sense that they have parked at another location to visit a restaurant or another store in the area, leave their car parked and walked to this store. For instance, over a four day period 74 customers visited the store, but only 20 cars parked behind the store during the same period and that total included employees. Given the proximity of the store to the Park Cities, as well as to local condominiums and townhomes, the adjacent Katy Trail, and retail stores it compliments, it is not surprising that a number of customers walk to the store from their homes or after first visiting other stores.

Included in the application is a parking layout that would allow, consistent with city requirements for size, configuration, and use of compact spaces, the 18 current spaces to be increased to 23 spaces. Using the average hourly parking demand of three spaces determined by the survey means that 20 spaces would be available for a retail use in the remaining 4,008 square feet of the building. Those 20 spaces exceed the required parking for such a retail use.

Reconfiguring the parking to provide 23 spaces would also provide more parking than was available during the 14 years that Smith & Hawken was located at the building. During that time, Smith & Hawken was unable to use any of the area on Lots 1 and 2 for parking and, therefore, had at most 18 spaces for its customers. During those 14 years, there were no complaints to the city of Dallas about a lack of parking associated with the Smith & Hawken store.

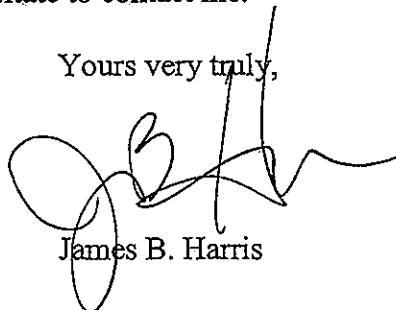
If the parking variance were to be granted, it would provide more parking than was available for a 14 year period without complaint. It would also insure that required parking is provided for half the building, recognizing that the use in the other half has demonstrated a parking demand significantly less than the required parking set forth in the Development Code.

Without this variance, it may not be possible to lease the other half of the building. The owner has talked with surrounding property owners, none of whom have exhibited any interest in

making space available at any price for parking that could be included in a parking agreement. If the other half of the building cannot be leased, the value of the building will necessarily drop, meaning a loss of property tax and without any retail operation no sales tax will be generated and new jobs will not be generated.

I hope the foregoing has been helpful. If you should have any questions or need any additional information, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in black ink, appearing to read 'JBH', with a large loop at the end.

James B. Harris

JBH/tkh
Enclosures

cc: Peter Kavanagh
Elizabeth McDonald

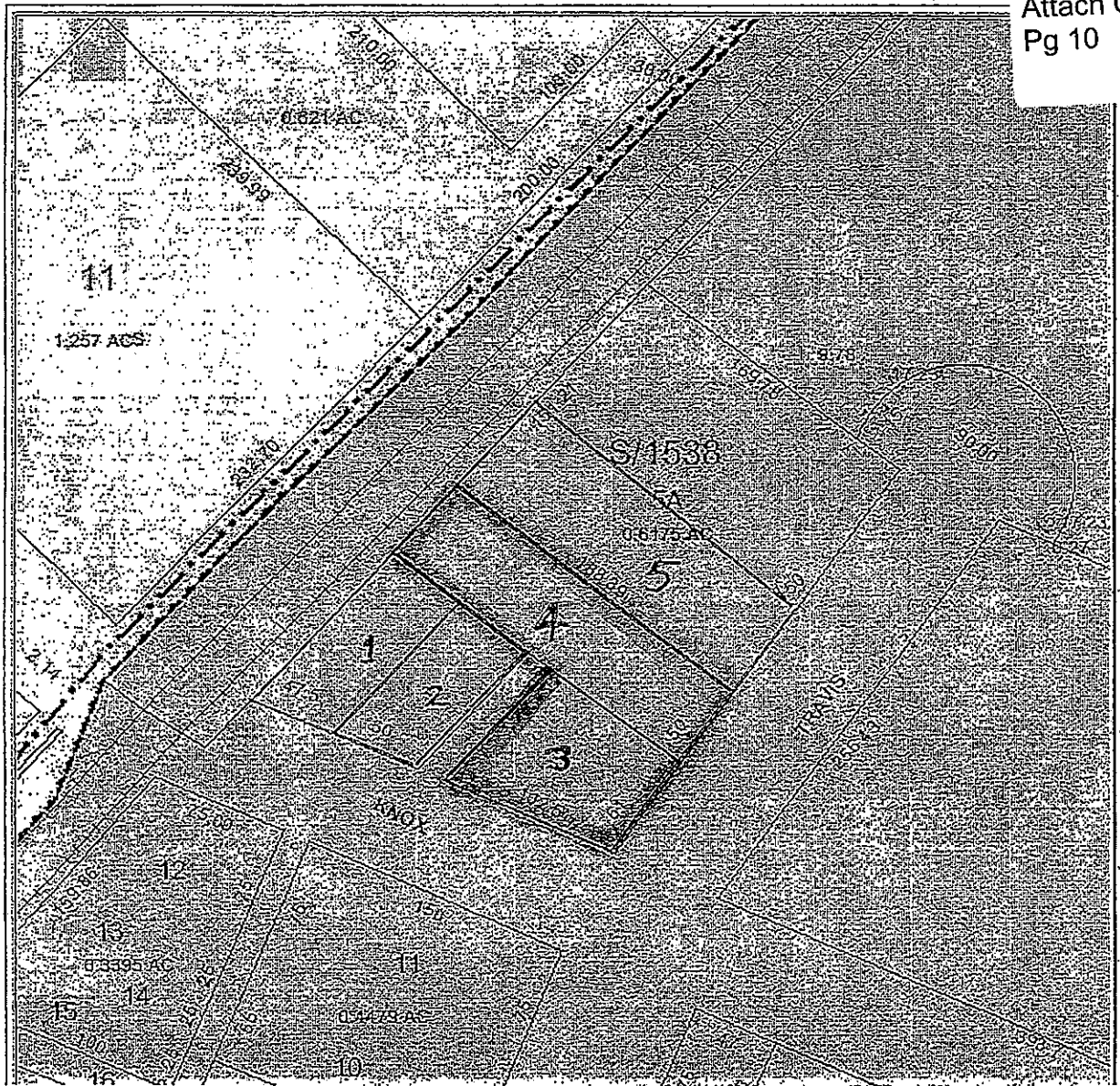
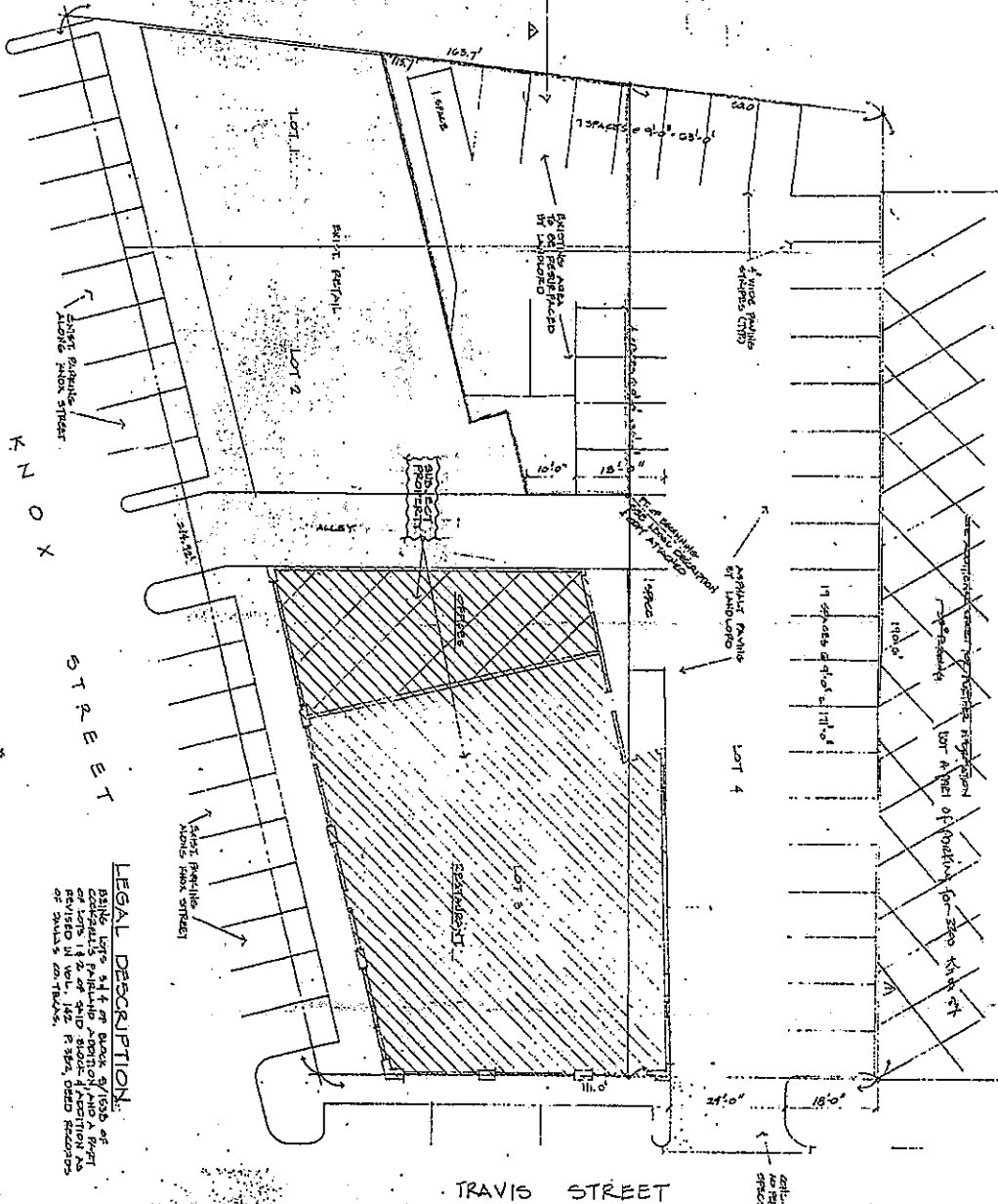


Exhibit A

SHEET INDEX

- A-1 SITE PLAN
- A-2 PAVED PLAN
- A-3 EXISTING LAYOUT
- A-4 PERMITS/SECTION PLAN
- A-5 EXISTING/SECTION OFFICE
- A-6 EXISTING SAND/CR. MIXTURE/SECTION
- A-7 WINDROW SOLID/CR. MIXTURE
- A-8 SUR PROJECTIONS - RECONSTRUCTION
- A-9 SUR PROJECTIONS - RECONSTRUCTION

LEGAL DESCRIPTION
 AREA IN PROPORTION TO THE PART
 DESCRIBED IN THE COUNTY OF TARRANT
 (SEE COUNTY RECORDS)



10 SITE PLAN
 24' N 10' 0" E

TABULATIONS

- BUILDING AREA - 4741 sq. ft.
- PAVED AREA - 41 sq. ft.
- EXISTING SAND/CR. MIXTURE - 41 sq. ft.
- WINDROW SOLID/CR. MIXTURE - 41 sq. ft.
- APPROXIMATE LEGAL DESCRIPTION FOR RECONSTRUCTION (SEE SHEET A-8)

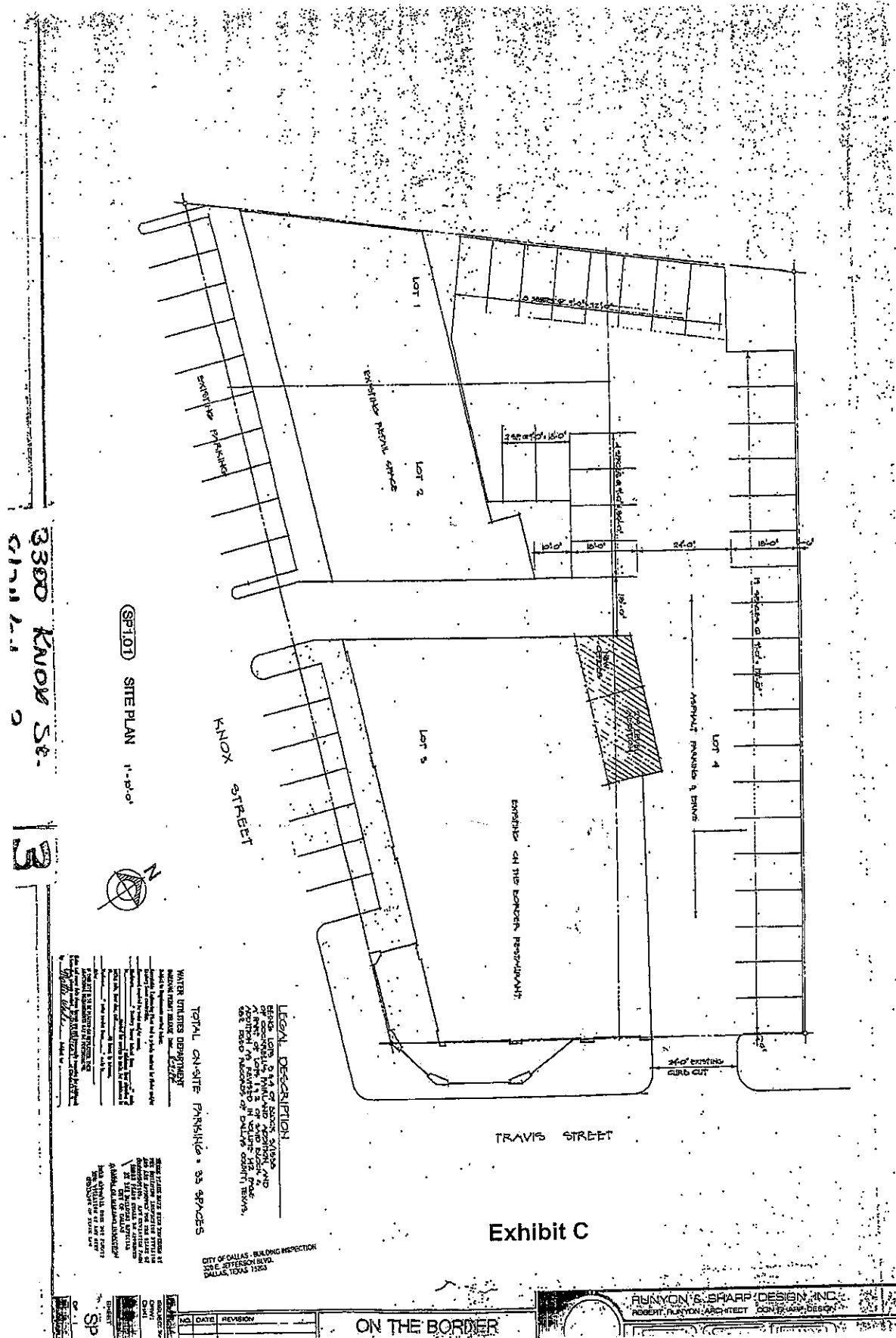
LEGAL DESCRIPTION:

BLK. 101 34 E. 1/4 SEC. 31 T. 10 N. R. 10 E. OF
 COUNTY OF TARRANT TEXAS. PART
 OF LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

JK&A
 JOHN FORTSON ASSOCIATES, INC. | 10000 WEST LOOP SOUTH, SUITE 1000 | DALLAS, TEXAS 75243 | TEL: 972.382.1111 | FAX: 972.382.1112

MARIANO'S CABRITO BAR
 AND
 OFFICE REMODEL
 KNOX @ TRAVIS STREET
 DALLAS TEXAS

Exhibit B



DEED RECORD

PARKING AGREEMENT

STATE OF TEXAS	§	5510	16.00 DEED
COUNTY OF DALLAS	§		1.06/27/83

WHEREAS, Mariano's Restaurants, Inc., hereinafter referred to as "Applicant", has filed an application with the building official of the City of Dallas, Texas, for a building permit and certificate of occupancy in order to refurbish and renovate an existing building to be used for restaurant purposes; and

WHEREAS, Applicant desires to implement said use in the eastern portion of that building located on Lot 3 in City Block S/1538, Cockrell Fairland Addition, which is located in the City of Dallas, Dallas County, Texas, and is hereinafter referred to as "Tract A"; and

WHEREAS, Article XX, CHAPTER 51, "COMPREHENSIVE GENERAL ZONING ORDINANCE", of the Dallas City Code, as amended, requires a specific number of off-street parking spaces to be provided for the above described use on Tract A; and

WHEREAS, the Estate of Mary Victor Keating, hereinafter referred to as "Keating", owns Lot 4 in City Block S/1538, in the Cockrell Fairland Addition, which is located in the City of Dallas, Dallas County, Texas, and is hereinafter referred to as "Tract B"; and

WHEREAS, the I. Jalonick Estate, hereinafter referred to as "Jalonick", owns that property which is described on Exhibit A, which is attached hereto and made a part hereof for all purposes, which is located in the City of Dallas, Dallas County, Texas, and is hereinafter referred to as "Tract C"; and

WHEREAS, Applicant desires to use Tracts B and C in order to satisfy, in whole or in part, the above described parking requirements for Tract A; and

-1-

80127 1392

Exhibit D

WHEREAS, Keating and Jalonick have entered into a Grant of Reciprocal Easement Agreement to provide parking on Tracts B and C for the benefit of Tract A, such grant being for a period of twenty-one years beginning on March 24, 1980 and terminating on March 23, 2001, now therefore,

AM
1980

~~WHEREAS, Applicant, Keating and Jalonick have entered into a Lease Agreement whereby Applicant has agreed to lease Tracts B and C beginning on March 24, 1980 and terminating on March 23, 2001, now therefore,~~

AM
1980

KNOW ALL MEN BY THESE PRESENTS:

That Applicant, Keating and Jalonick, for and in consideration of the City of Dallas granting to Applicant a building permit and certificate of occupancy in order that Tract A may be used for the above described use as defined in Article XX, CHAPTER 51, "COMPREHENSIVE GENERAL ZONING ORDINANCE", of the Dallas City Code, as amended, do hereby agree to the following:

- (1) Tracts B and C will only be used for parking in connection with the above described use of Tract A;
- (2) Tracts B and C shall not be used for any other purpose other than parking;
- (3) This instrument is a covenant running with the land as to Tracts B and C;
- (4) The City of Dallas may revoke Applicant's Certificate of Occupancy regarding the above described use of Tract A if:
 - (a) the above described lease of Tracts B and C is terminated or rescinded for any reason; and
 - (b) Applicant does not provide other off-street parking spaces in accordance with Article XX of the Comprehensive General Zoning Ordinance of the City of Dallas;
- (5) This instrument shall cease to be effective only upon the filing in the Deed Records of Dallas County, Texas, of an instrument signed by the Building Official of the City of Dallas, Texas, or his designee, releasing the aforementioned covenants;
- (6) This instrument shall be filed in the Deed Records of Dallas County, Texas, by and at the expense of Applicant; and
- (7) The covenants recited herein shall bind the successors, heirs, employees and assigns of Applicant, Keating and Jalonick.

80127 1993

1997

80127 1998

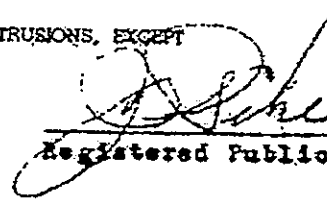
Being Lots 3 & 4 of Block 5/1538 of Cockrell's
Fairland Addition, and a part of Lots 1 & 2 of said
Block & Addition, as revised in Vol. 142 page 382, Deed
Records of Dallas County, Texas. The part of Lots 1 & 2
Being described as follows:

Beginning at the Southeast corner of lot 2.
Thence Westerly, along the South Line of lot 2 and the
North Line of an Alley 15.0 feet, to point for corner,
Thence Northerly, parallel with the East Line of lot 2, 23.0
feet to point for corner,
Thence Northwesterly, 65.4 feet to point on the North Line
of Lot 1 & the North R.O.W. Line of the M.K.&T. R.R. R.O.W., said
point being 25.0 feet from the Northeast corner of Lot 1.
Thence Easterly, along the North Line of Lot 1 & the South
Line of the M.K.&T. R.R. R.O.W. 44.0 feet to the Northeast
corner of lot 1.
Thence southerly, along the East Line of lots 1 & 2, 84.3
feet to place of beginning.

The plat hereon is a true, correct, and accurate representation of the property as determined by survey, the lines and dimensions of said property being as indicated by the plat; the size, location, and type of buildings and improvements are as shown, all improvements being within the boundaries of the property set back from property lines the distances indicated, and that the distance from the nearest intersecting street or road, is as shown on said plat.

THERE ARE NO ENCROACHMENTS, CONFLICTS, OR PROTRUSIONS, EXCEPT

Scale 1" = 20'
Date 4/29/80


Registered Public Surveyor



Return to:
William Teitelbaum
2731 Lemmon Avenue East - 200
Dallas, Tx. 75204

CLERK OF DISTRICT COURT, DALLAS COUNTY, TEXAS
JUN 27 1980
COUNTY OF DALLAS
TEXAS
This document is a true and correct copy of the original as filed in the County of Dallas, Texas, on the 27th day of June, 1980, at 3:04 PM.

80 JUN 26 PM 3:04

W. Teitelbaum

80127 1980

5/1588

MULLINAX, WELLS, BAAB & CLOUTMAN, P.C.

ATTORNEYS AT LAW

330 ELM STREET DALLAS TEXAS 75226

PHONE (409) 922-1222 IN FT. WORTH CALL 253-7577

February 23, 1988

ROGER ALBRIGHT

Mr. Claude Forte
Chief Development Code
Administration
City of Dallas
Building Inspection Division
Department of Public Works
320 E. Jefferson Bldg.
Dallas, Texas 75203

RE: 3300-3308 Knox Street


Dear Claude:

Thank you for taking the time to meet with me on Monday, February 22, 1988 to review the off-street parking requirements of the uses located in the 3300 block of Knox and the parking agreement which exists between the owners of the two (2) tracts of property located along that block. As you suggested, I have drafted a memorandum which summarizes the information contained in the file so that any current or prospective tenant will be aware of precisely what parking is available. If this memo is acceptable, I would appreciate you signing the enclosed copies, placing one in the file and returning the other to me in the enclosed pre-addressed envelope.

If you have any questions, please give me a call.

Sincerely,

MULLINAX, WELLS, BAAB
& CLOUTMAN, P.C.

By: 
Roger Albright

RA/klp
Encl.

Exhibit F

MEMORANDUM

DATE: February 23, 1988

RE: Parking Agreement for 3300 Block of
Knox; On the Border Restaurant.

Questions as to the use of off-street parking located behind the structures on the north side of Knox in the 3300 block have been raised and the Department of Housing and Neighborhood Services has been requested to issue a Notice of Violation based on the alleged failure of On the Border Restaurant to "follow agreed parking stipulations in deed". The purpose of this memorandum is to set forth the underlying facts and documentation contained in the City of Dallas file.

On the Border Restaurant is located at 3300-3308 Knox. This property, (Lot 3, Block S/1538) as well as Lot 4 located behind this property are owned by the Keating Estate. The retail uses located at 3310, 3312, 3314 and 3316 Knox are located on the front portions of Lots 1 and 2 which are owned by the Jalonick estate. The rear portion of Lots 1 and 2 as well as Lot 4 are paved and used for off-street parking. On May 1, 1980, the owners of the Keating and Jalonick properties entered into a parking agreement whereby the off-street parking spaces located on the rear of Lots 1 and 2 and Lot 4 (labeled Tracts B & C) could only be used for parking for the building located on Lot 3 (labeled Tract A) which was to be refurbished and renovated for restaurant purposes. This parking agreement was approved by the City and duly filed in the Deed Records. Based on that agreement, the restaurant met the off-street parking requirements of the Dallas Development Code and a certificate of occupancy was issued for the restaurant located at 3300-3308 Knox. Maps showing the areas that are restricted to restaurant parking by this parking agreement (Tracts B and C) as well as the parking plan are attached.

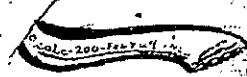
Based on this agreement, On the Border has the sole right to use any of the parking spaces located behind any of the structures in the 3300 block of Knox. The only parking available for the retail uses located at 3310-3316 Knox are the on-street parking spaces located directly in front of those retail uses. Even though those retail uses do not provide any off-street parking, they are legal non-conforming uses although, none could be converted to a more intensive use without meeting the requirements of the Development Code.

with regard to off-street parking. Based on the information in the files of the City of Dallas, there is no basis for the issuance of a notice of violation for the failure of any use presently located in the 3300 block of Knox to provide required off-street parking or the failure to follow the parking stipulations contained in the parking agreement.

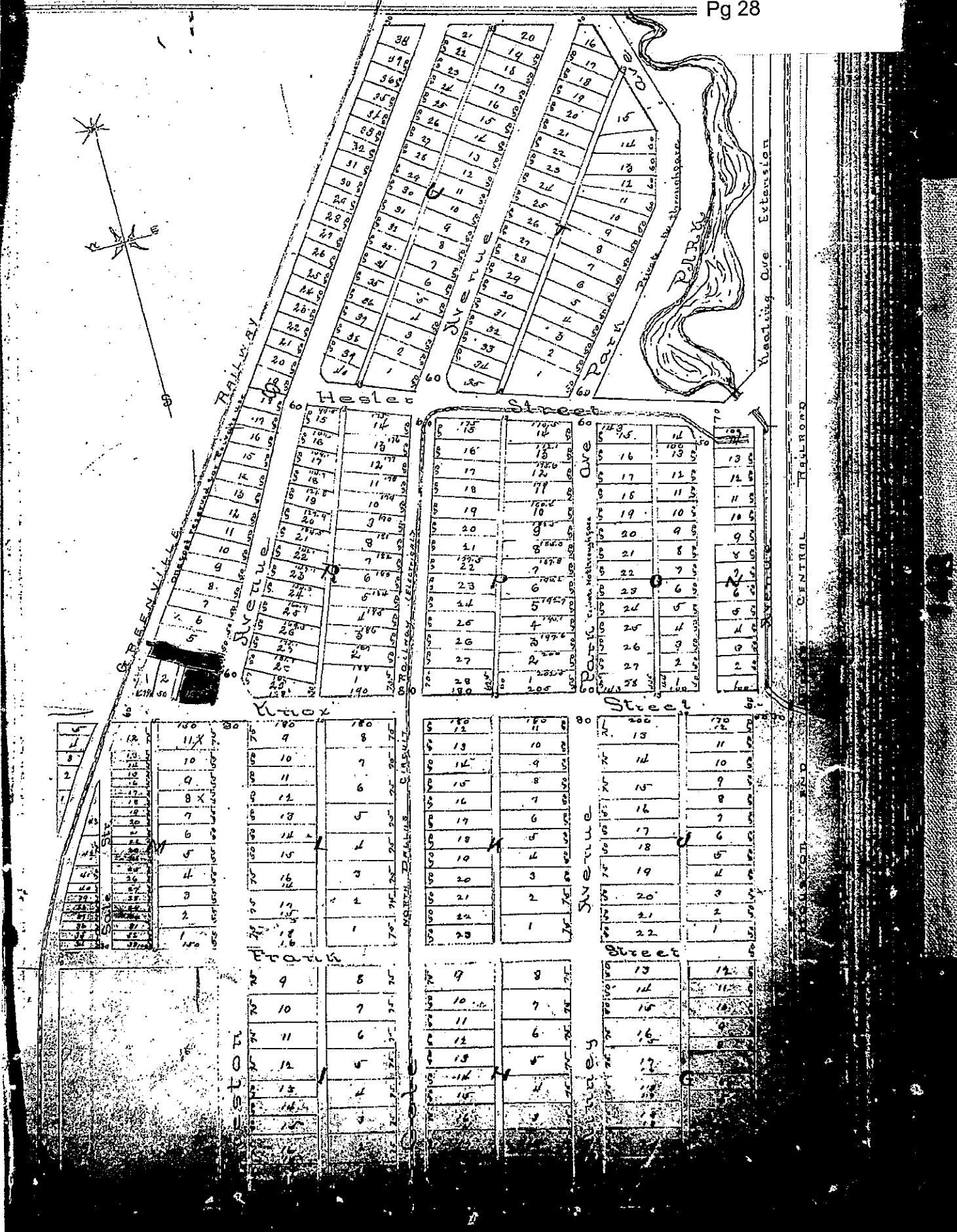


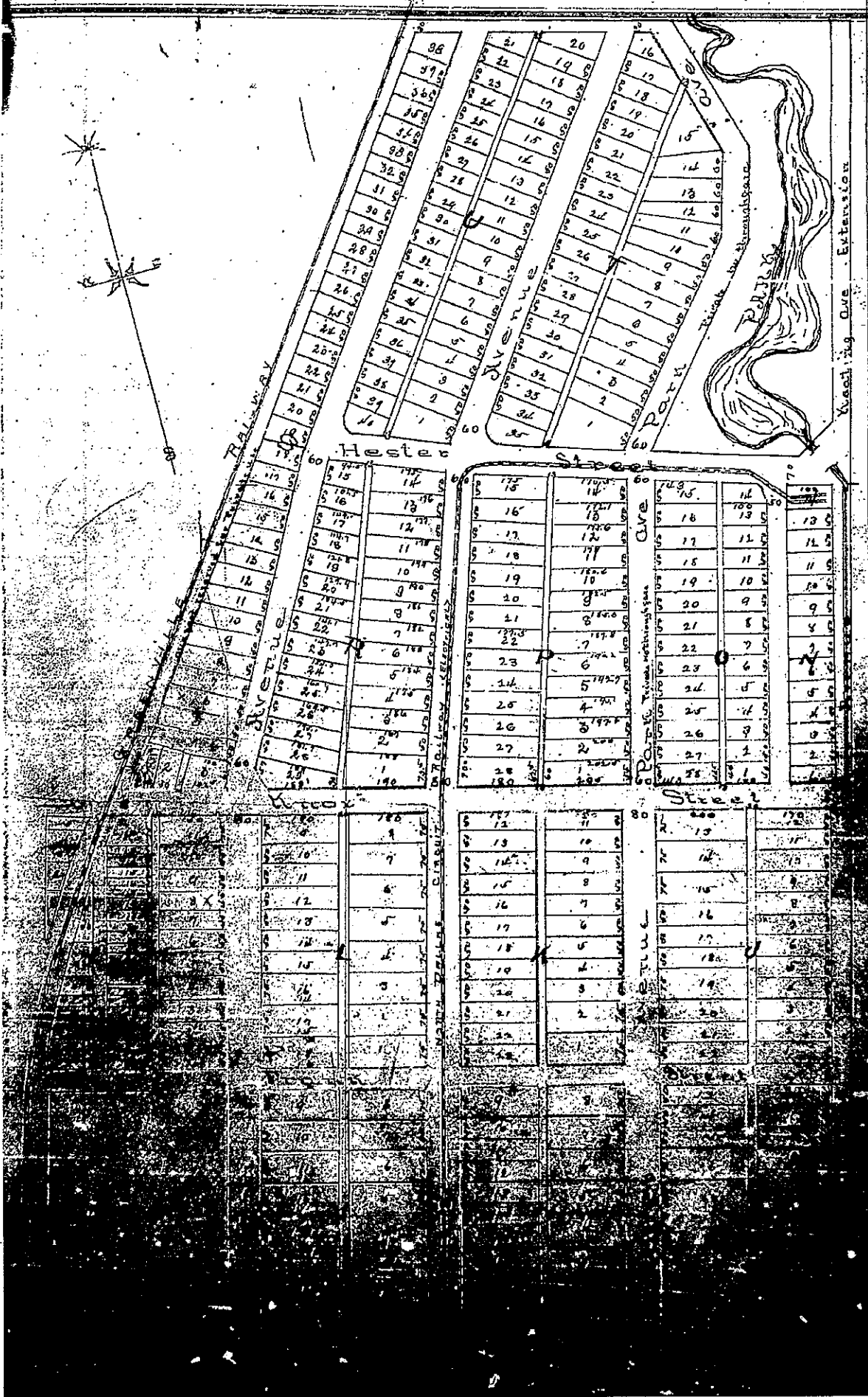
Claude Forte
Chief, Development Code
Administrator
City of Dallas
Building Inspection Division
Department of Public Works

Revised
Maps
Garrett Fair land
ADDITION
to the
- City of Dallas -



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The State of Texas } The Coebell Fair Land addition
County of Dallas } does hereby adopt this plat or map as a
true and correct plat or map of Coebell Fair Land addition
as revised to the City of Dallas hereby dedicating the
streets and alleys therein mentioned to the public forever
we reserving all rights on any and all streets for Railway
water and light purposes

Witness our hands this 2nd day of February 1891

Coebell Fairland Addition Company

Attest
P. H. Wain
Secretary

By J. P. Trotman
Vice President

The State of Texas } Before me J. B. Scott, Clerk of the County
County of Dallas } County of Dallas, State of Texas
on this day personally appeared J. P. Trotman Vice
President of the Coebell Fairland Addition Company
known to me to be the person whose name is sub-
scribed to the foregoing instrument and acknowledged
to me that he executed the same for the purposes
and considerations therein expressed and as the
act and deed of said Coebell Fairland Addition
Company. Witness my hand and seal of
Office this 2nd day of February A. D. 1891

(Sd)

J. B. Scott
County Clerk Dallas County Texas
By R. P. Isaac Deputy

Filed for record February 2nd 1891 at 11 o'clock AM

Recorded Feb 11 1891

J. B. Scott, County Clerk
By R. P. Isaac Deputy
J. B. Scott, County Clerk
By J. E. Turner

550

Filed for record Sept. 4th. A.D. 1915, at 12:15 P. M. B. F. Cullum, County Clerk,
By Ed Underwood, Deputy.
Recorded Sept. 10th. 1915. B.F. Cullum, County Clerk, By *OK L. Gray* Deputy.

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35570

TERESA M. CAMPBELL, ET AL. : THE STATE OF TEXAS, :
T. W. DEED, : :
H. S. KEATING, : COUNTY OF DALLAS, : KNOW ALL MEN BY THESE PRESENTS:

That I, Theresa M. Campbell, joined by my husband H. M. Campbell, of the County of Dallas, State of Texas, for and in consideration of the sum of fifteen thousand two hundred fifty dollars, to me in hand paid by H. S. Keating, the receipt of which is hereby acknowledged; have granted, sold and conveyed, and by these presents do grant, sell and convey, unto the said H. S. Keating, of the County of Dallas, State of Texas, all that certain lot, parcel or tract of land lying and being situated in the City and County of Dallas, Texas, being lots 3 and 4, block "B", of Cockrell's Fairland Addition to the City of Dallas, and located on the N. W. corner of Travis (Formerly Preston street) and Knox avenue, according to the revised map of said addition, recorded in volume 142, page 383, of the deed records of Dallas County, Texas, and being the same property conveyed by general warranty deed dated Oct. 31, 1914, from Lillie B. Cullum, et vir., to Theresa M. Campbell and recorded in volume 632, page 477, of the deed records of Dallas County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said H. S. Keating, his heirs and assigns forever; and I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend, all and singular the said premises unto the said H. S. Keating, his heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Witness our hands at Dallas, this 3d. day of Sept. A. D. 1915.

Theresa M. Campbell,
H. M. Campbell,

U. S. I. R. Stamps \$15.50 cancelled 9/3/15.

The State of Texas, :
County of Dallas, : Before me, a notary public in and for Dallas County, Texas, on this day personally appeared H. M. Campbell, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 3d. day of Sept. A. D. 1915.

(L. S.) Frank L. McNary,
Notary Public, Dallas County, Texas.

The State of Texas, :
County of Dallas, : Before me, a notary public in and for Dallas County, Texas, on this day personally appeared Theresa M. Campbell, wife of H. M. Campbell, known to me to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband and having the same fully explained to her, she, the said Theresa M. Campbell, acknowledged such instrument to be her act and deed and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

107c

Given under my hand and seal of office this 3d. day of Sept. A. D. 1915.

(L. S.)

Frank L. McManey,

Notary Public, Dallas County, Texas.

Filed for record Sept. 4th. A. D. 1915, at 12:30. P. M. B. F. Cullom, County Clerk,

By Ed Underwood, Deputy.

Recorded Sept. 11th. 1915. B.F. Cullom, County Clerk, By *W. L. Gray* Deputy.

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35880

E. G. PATTON, : THE STATE OF TEXAS, :
TO: HENDERSON, :
F. G. JESTER, : COUNTY OF DALLAS, : WHEREAS, on November 28th. 1910, E. G. Patton conveyed to F. G. Jester, by deed of that date, recorded in the records of deeds for Dallas County, Texas, in vol. 508, page 33, 28.184 acres of land out of the E. B. Love survey, situated in Dallas County, Texas, fully described in said deed, and in said deed retained a vendor's lien to secure the several promissory notes set out and fully described in said deed, to which reference is hereby made; and

WHEREAS, on February 9, 1911, said E. G. Patton and F. G. Jester joined in a certification of dedication of a subdivision of said tract of land, known as "Cockrell Hill", a plat of which is recorded in vol. 1, pages 295 and 296, of the plat records of said County; and

WHEREAS, said F. G. Jester has sold lot twelve (12) in block "E" of said subdivision;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That I, E. G. Patton, the owner and holder of said notes, in consideration of \$100.00 and other valuable considerations to me in hand paid by E. G. Jester, the receipt of which is hereby acknowledged, have revised, released and relinquished, and do by these presents remise, release and relinquish unto the said F. G. Jester, his heirs and assigns all rights, titles and interest held by me against said lot 12, in block E. of Cockrell Hill by virtue of my being the owner of said notes; but this release shall not operate as a release of any other lots in said subdivision from the lien of said notes.

Witness my hand, this 3rd. day of September, A. D. 1915.

E. G. Patton,

The State of Texas, :

County of Dallas, : Before me, the undersigned authority, a notary public in and for Dallas County, Texas, on this day personally appeared E. G. Patton, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 3rd. day of September, A. D. 1915.

(L. S.)

M. E. Smith,

Notary Public, Dallas County, Texas.

Filed for record Sept. 4th. A. D. 1915, at 1:20. P. M. B. F. Cullom, County Clerk,

By M. L. Camp, Deputy.

Recorded Sept. 11th. 1915. B.F. Cullom, County Clerk, By *W. L. Gray* Deputy.

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That Mary Victorio Keating, a widow, of Dallas County, Texas, hereinafter called "TRUSTOR", now temporarily residing in the City of Washington, District of Columbia, does hereby grant, bargain, sell and convey in trust, unto First National Bank in Dallas, a national banking association, of the City of Dallas, Dallas County, Texas, Trustee, hereinafter called "TRUSTEE", and to its successors and substitutes, in this Trust, and its and their assigns forever, the following described real ^{property} and personal property, listed in Exhibit "A", hereto, ^{attached,} and hereby made a part hereof:

(1), 50 x 100 feet on the north line of Commerce Street, being east one-half of Lot 25, and west one-half of Lot 26, Block 77, according to Murphy & Bolanz' official map of the City of Dallas, Texas, improved by a 2 story brick building, 50 x 90 feet, known as 1603-5 $\frac{1}{2}$ Commerce Street.

(2) 42 x 100 feet on the S; line of Elm Street in Block No. 69, of the City of Dallas, described as beginning at a point on the southeast line of Elm Street, 50 feet north 75 east, from the intersection of the southeast line of Elm Street with the northeast line of Murphy Street;

Thence north 75 east along the southeast line of Elm Street 42 feet;

Thence south 15 east at right angles with Elm Street 100 feet;

Thence south 75 west and parallel with Elm Street 42 feet;

Thence north 15 west, at right angles with Elm Street 100 feet to place of beginning, improved by 3 story brick building, 42 x 100 feet on ground floor, about 42 x 85 feet on third and fourth floors, known as 1204-6, Elm Street;

(3) Lots 3 and 4, Block 1538 according to the official map of the City of Dallas, being corner Knox and Travis Streets, improved by one story brick building, fronting on Knox Street, about 80 feet, and about 60 feet in depth, divided into three rooms, also small frame cottage about five rooms, on Travis Street;

(4) Lots 16, 17 and 18, Block 197, according to official map of the City of Dallas, each lot 50 x 125 feet, and being corner Taylor and Walton Streets, improved by 3 frame cottages, about five rooms each.

(5), 10 acres situate in the County of Stephens, State of Oklahoma, and being the northeast 1/4 of the southwest 1/4, section 16, Township 2, North Range 7, west I.K.

TO HAVE AND TO HOLD the above described real property, together with all and singular, the rights and appurtenances thereunto belonging, or in any wise appertaining, and the personal property described in said Exhibit "A", unto the said First National Bank in Dallas, Trustee, and to its successors or substitutes in this Trust, and to its or their assigns forever, and Trustor does hereby bind herself, her heirs and assigns, to warrant and forever defend, the above described real property unto the said Trustee, its successors and substitutes in this Trust, and to its and their assigns forever, against any and all persons lawfully claiming or to claim the same or any part thereof.

The aforesaid property, both real and personal, shall be held by Trustee, in trust, upon the terms herein set forth;

The Trust hereby created, shall be known as the "Mary V. Keating Trust".

Article A:

Distribution of Income and Corpus.

1. This trust is established for the benefit of Trustor, of Katherine Keating Wright, the daughter of Trustor (hereinafter called "Katherine"), and of Mary Helen Clonard Wright, daughter of said Katherine, and grand-daughter of Trustor, (hereinafter called "Mary Helen"), and certain other persons and organizations, hereinafter designated.

2. The Trustee shall hold and dispose of the income and corpus of this trust

Exhibit 4

estate, in accordance with the following directions:

(a) The Trustee shall pay to Trustor, during her life, all the net income from the Trust estate hereby created, such payments to be made as nearly as possible, in equal monthly payments, on the 28th day of each month.

(b) Upon the death of Trustor, if she is survived by Katherine, the entire net income shall be paid to said Katherine, during her life, with the privilege to said Katherine, to add any portion of said income, to the corpus of this trust estate, and any additions so made, shall become and remain a part of said corpus.

(c) Upon the death of Katherine, after the death of Trustor, or if Trustor shall survive Katherine, then upon the death of Trustor, if there shall be lineal descendants of Katherine surviving, the said net income shall be distributed by the Trustee, per stirpes, among the lineal descendants of said Katherine, surviving from time to time, until the termination of this trust, as hereinafter provided, so that equal shares shall be paid as between living children of said Katherine, and the issue from time to time surviving any child then deceased or thereafter dying. Such surviving issue, however, shall take, per stirpes, only the share his, her or their parent would have taken if living. In the event that any beneficiary hereunder, should receive the benefits of subparagraph (d) of this Article, then and in that event, the corpus of the trust estate, may be divided into as many separate trust estates, as there are grand-children, of the Trustor, living, at that time and/or deceased grandchildren then represented by issue of such deceased grandchild or grandchildren, in such a way that in case of the necessity of division, the aggregate of the principals of the various trusts, shall during the life of this trust, continue to be divided, per stirpes, for the benefit of Katherine's lineal descendants surviving from time to time, subject, however, to any deductions from corpus (pursuant to subparagraph (d), of this Article) and also subject to any variance which may be created through appreciation or depreciation in value of securities or other assets comprising the respective trust shares. In the setting up of said separate trusts, the Trustee is directed to allocate such securities and other assets among the various trusts, in such a way, that, as far as possible, the said trust estates may be subject to approximately the same appreciation or depreciation from time to time.

(d) If in the absolute control and discretion of the Trustee, the income herefrom of Trustor, of Katherine or of any child or lineal descendant of Katherine, shall not be sufficient for their reasonable needs and comforts, during any period or periods of illness, or other want or necessity, the Trustee may, and it is hereby empowered and authorized, but it shall in no event be required to do so, to pay or use, ^{to} apply or expend for the use and benefit of such beneficiary, such portion of the principal of said trust or trusts then applicable to the production of income for said beneficiary, as said Trustee in its absolute discretion may determine to be adequate to provide for such beneficiary during such period or periods.

(e) If any beneficiary entitled to receive income hereunder, is a minor, the Trustee is authorized to make payments thereof, to the guardian of the estate of such beneficiary during such minority, or if there is then no guardian of the estate of such minor, the Trustee shall withhold the payment of said income, until there shall be appointed a guardian of said minor's estate, provided, however, that pending the appointment of any such guardian, the Trustee may in its discretion, advance to the custodian of such minor, or pay for said minor's benefit, such amounts as may be necessary for the needs and uses of said minor, pending such appointment. The Trustee shall never be obliged to see to the application of the payments by any guardian or custodian to whom such funds shall have been paid.

(f) During the time that the corpus or any part thereof is held in trust by Trustee, no beneficiary shall have the right or power, to anticipate his or her share of either corpus or income, or sell, assign, mortgage, pledge or otherwise dispose of or encumber his or her share of

income or corpus, or any part thereof, or any interest therein, nor shall such share of income or corpus or any part of either, be liable for said beneficiary's debts or be subject to attachment, garnishment, execution, creditor's bills or other legal or equitable process. Trustee shall pay said income or distribute said corpus, direct to said beneficiaries, in accordance with the terms of this instrument, and regardless of any such attempted anticipation, sale, assignment, pledge or other disposition, and in spite of any such attempt or attachment, garnishment, execution, creditor's bill or other legal or equitable process.

(g) Income shall be paid to beneficiaries, (except Trustor) quarter-annually, insofar as it may be practicable to do so.

(h) This trust shall continue for a period of twenty (20) years, after the death of Mary Helen, if there shall be lineal descendants of Trustor surviving for that length of time, subject, however, to the provision, that this trust shall in no event terminate, during the life of either Trustor or the said Katherine. Upon the expiration of the period of twenty (20) years, after the death of said Mary Helen, or upon the death of survivor of Trustor, or said Katherine, whichever shall last occur, this trust shall terminate, and the principal or corpus thereof, together with all undistributed accumulations of net income thereon, shall be conveyed, transferred, assigned and paid over by Trustee, absolutely and in fee simple, unto the then living lineal descendants of Katherine, per stirpes, and not per capita, or, in case the corpus hereof has been divided as provided in sub-paragraph (c) of this Article, then the corpus of the various trusts, shall be conveyed, transferred, assigned and paid over by the Trustee, absolutely and in fee simple, per stirpes unto the respective lineal descendants of Katherine, who immediately preceding the termination of this trust, were entitled to receive the income therefrom.

(i) If, however, upon the death of the survivor of Trustor, and said Katherine, whichever shall last occur, or at any time thereafter, there shall be a failure of lineal descendants of Katherine to take hereunder, then this trust shall terminate and the Trustee shall thereupon distribute the corpus and all accumulations of net income thereon, in the following manner:

(1) Trustee shall pay the following persons the following amounts:

- (A) To Katherine Jalonick (sister of Trustor) now residing in the City of Dallas, State of Texas, \$10,000.00
- (B) To Grace and George and Charley Dexter, children of Grace Dexter (sister of Trustor) now residing in the City of Dallas, State of Texas, each \$10,000.00, \$30,000.00
- (C) To Jessie, Heloise and Agnes Keating (three daughters of Edward Keating) all now residing in the City of Toronto, Ontario, Canada, \$3,000.00, each \$ 9,000.00
- (D) To Annie O'Donnell, nurse, now residing in the City of Los Angeles, State of California \$ 1,000.00
- (E) To Mrs. Elizabeth Snodgrass, now residing in the City of Dallas, State of Texas, \$30,000.00
- (F) To Vera Keating (daughter of William Keating), now residing in the City of Porthcawl, Wales, Great Britain \$ 5,000.00
- (G) To Martha Leake (daughter of Trustor's brother, Wirt Leake) now residing in the City of Dallas, State of Texas, \$10,000.00
- (H) To Sam Leake Jr (son of Trustor's brother, Sam Leake) now residing in the City of Dallas, State of Texas, \$10,000.00
- (I) To Vernons Sillig Achevsky, of New York, and
 Vanessa Sillig Achevsky \$ 5,000.00

In the event that any of the persons named in clauses A to I, inclusive, above, die prior to the happening of the contingency, upon which the property becomes distributable, the Trustee shall distribute the amount designated for such person so dying, in accordance with the laws of descent and distribution then in force, in the State of Texas, to those persons who under said laws, would have been the heirs of such deceased person, if he or she had died instantly after the happening of the contingency upon which such property became distributable.

(2) Upon the termination of this trust, as hereinabove provided, and after the payment of the amounts stipulated in sub-paragraphs A to I, inclusive, aforesaid, the entire remainder of this trust then in the hands of the Trustee, shall be conveyed, transferred, assigned and paid over, absolutely and in fee simple, to the then Board of Trustees of Third Church of Christ, Scientist, of Dallas, Texas, or to the then governing body of the Church of Christ, Scientist, which shall then have succeeded said Third Church of Christ, Scientist. The said Board of Trustees, and their successors in trust, shall have, hold and possess the property so distributed to them, and shall pay over or use the corpus and/or the income therefrom, as they, in their discretion, deem best, for the establishment, equipment and maintenance of a home and day nursery, in or near the City of Dallas, for young white children, of the Caucasian race, of any denomination or sect, which home shall be called "Sunnyside, Inc", provided that if a home for similar purpose, or of the same character has been established, prior to the date of the distribution of property hereunder, and such home is under the management of a governing body, made up of members of said Church, or its successors appointed exclusively by the Board of Trustees of said Church or its successors, then such property shall be distributed to the governing body of the organization, which shall then be maintaining such established home, the corpus and/or income therefrom, to be held and disposed of by such governing body and its successors, as they in their discretion, deem best for the promotion of the purposes for which such home was established. If the said Third Church of Christ, Scientist, of Dallas, Texas, or a successor thereof, be not in existence, on the date for distribution of said property, or if the Board of Trustees or other governing body of said Church, or its successor, or the governing body of the organization which may be maintaining the home as hereinbefore provided, be unwilling or unable to accept said property, then the said property shall be transferred, assigned and paid over, absolutely, and in fee simple, unto the Board of Directors of the Mother Church of the Christian Science Church of Boston, Massachusetts, to be used as, in its discretion, may be advisable. In the event the remainder of this Trust estate is paid over under the provisions of this paragraph, the Trustee, shall be under no obligation, whatever, to see to the application thereof.

(3) Upon any distribution of corpus by Trustee, this trust shall thereupon cease and terminate as to the corpus so distributed.

ARTICLE B:

CONCERNING TRUSTEE:

Trustor hereby authorizes and empowers, Trustee:

1. To manage, control, conduct and operate the corpus of this trust or any part thereof, as it, in its discretion, may deem to be for the best interests of the trust estate, and to invest and from time to time, reinvest, the said corpus or any part thereof, in such investments as it in its discretion, may deem for the best interests of the trust estate, and to collect the rents, revenues and income therefrom. The Trustee shall be authorized to replace or reconstruct any building ^{belonging} to the trust estate, which has been destroyed by fire or otherwise, provided, however, that if the cost of such replacement or reconstruction shall be over Five Thousand Dollars (\$5,000.00) then the Trustee shall first obtain the consent in writing to any such replacement or reconstruction of the Trustor during her life, and after her death, of Katherine, during her life, and after the death of both Trustor and Katherine, and during the life of Mary Helen, of the beneficiaries then receiving income or their guardians, during minority. After the death of Trustor, Katherine and Mary

Helen, the Trustee shall have sole discretion in connection with such replacement and reconstruction. The Trustee hereunder, shall not (except in cases where it may in the opinion of the Trustee be necessary to protect an investment then held in this trust estate) purchase real estate as an investment, without first obtaining the written consent of Trustor or of Katherine, if the Trustor shall be deceased, or if both Trustor and Katherine shall be deceased, then the written consent of a majority (in financial interest) of those who may be beneficiaries then receiving income hereunder, or their guardians during minority. This provision, however, shall not restrict or prevent the Trustee from acquiring real property or an interest therein, by purchase at foreclosure sale or otherwise, or by deed or by any other method, without such written consent, if such acquisition shall, in the discretion of the Trustee, be deemed necessary to protect the best interests of the trust estate in any investment held hereunder. The Trustee is authorized, if it deems it to be for the best interests of the trust estate, to hold and retain any or all of the property hereby or hereafter conveyed or delivered to the Trustee by Trustor, to be held in trust hereunder, in the same form of investment in which said property may exist, at the time received by Trustee, whether or not such investments are legal for trust funds, until it, in its sole and uncontrolled discretion, deems a sale or sales thereof, to be advisable, and Trustee shall not be liable for any loss or decrease in value, of property so retained. The Trustee shall keep the real estate constituting a part of this trust estate, insured against loss from fire, tornado or other usual hazards, in solvent insurance companies, as in its sound discretion, it may deem necessary. The cost of such insurance shall be paid by the Trustee, as a part of the expenses of this trust.

2. To grant, bargain, sell and convey, and to assign, transfer, exchange, mortgage, hypothecate, pledge or loan all or any part of the corpus, be it real, personal or mixed, for such consideration, as Trustee, in its discretion, may deem advisable, and to make, execute, acknowledge and deliver, all such deeds or instruments, that Trustee may deem necessary or convenient, to carry said powers of sale, conveyance, assignment, transfer, exchange, mortgage, hypothecation, pledge or loan into effect; except that Trustee, shall not be authorized to sell, convey, alienate or encumber any real estate held in trust hereunder, without first obtaining written consent to any such sale, conveyance, alienation or encumbrance, such consent to be obtained from Trustor, during her life, and after her death, from Katherine, and after the death of both Trustor and Katherine, from a majority (in financial interest) of those who may then be beneficiaries receiving income hereunder, or of their guardians during minority. Any and all sales of all or any part of the corpus, may be made by Trustee, at public or private sale, as it in its discretion may deem advisable, if at public sale, upon such notice as it in its discretion may deem advisable. In the event of the sale of real estate under the provisions of this sub-paragraph, the total expense to the trust estate on account of fees or commissions in connection with such sale, shall not be more than five percent (5%) of the price at which said property may be sold.

3. To litigate, defend, settle, compromise or submit to arbitration, any and all disputes, suits or controversies, concerning this trust estate, and the terms of any settlement, compromise, adjustment or award of arbitration, shall be conclusive upon all parties at any time interested herein.

4. In regard to any property, real, personal or mixed, at any time held in trust hereunder, Trustee shall have the power to participate in any plan or reorganization, including consolidation or merger, to deposit any property held hereunder, under any plan of reorganization or with a protective or reorganization committee, and to delegate to such committee, discretionary powers with relation thereto, to pay any assessment levied under such plan, for the purpose of paying the proportionate part of the expenses of such committee. Trustee is further authorized to exercise all conversion, subscription, voting and other rights of whatsoever nature, pertaining

to any property held in trust hereunder, to pay such sums as Trustee may deem advisable in connection therewith, and to accept and retain (as though received from Trustor) any new securities deliverable to it, in pursuance of any reorganization, conversion or subscription.

5. Trustee may at any time, make loans or advancements to the trust estate, and receive interest thereon, at the then prevailing rates, and shall have a first and prior lien and charge on the property held in trust, except real estate, to secure the payment of any such loan or advancement.

6. Trustee is further authorized and empowered to pay any and all taxes, assessments and other governmental charges, which properly may become payable from time to time, under the laws of the United States or of any State, County or municipality, on said trust property, or for any transfer or transaction affecting the same, and to affix and cancel tax stamps, in accordance with the provisions of said laws.

7. Trustee is further authorized to pay all other and necessary costs, charges, expenses and outlays, incident to and in connection with the administration or management of this trust estate.

8. Except as in this agreement otherwise provided, authority is hereby given to Trustee hereunder, to determine whether property coming into Trustee's possession is corpus or income, or should be divided between same, or whether certain charges should be borne by corpus or income, or should be allocated between same, and in regard thereto, the Trustee shall make such decisions as to it shall seem wise and equitable, and such decisions shall bind all parties at any time, interested herein.

9. Whenever Trustee is directed to make a distribution or division of corpus, such distribution or division may be made in cash or in kind, or partly in cash and partly in kind, and the subject-matter and composition of shares thereunder, shall be wholly within Trustee's discretion, subject, however, to the provision, that any beneficiary may require an individual appraisal by three appraisers, of any property or securities to be distributed or divided; one of such appraisers to be selected by the Trustee, one by the beneficiary demanding such appraisal, and one by the two thus chosen, and the resulting valuations of such property or securities, so to be distributed or divided, shall be conclusive on all parties ever interested herein.

10. Whenever in this deed of trust, authority is granted to Trustee, to act or refuse to act upon its discretion, such action or refusal to act in the exercise of such discretion in good faith, shall be final and conclusive upon all parties at any time interested herein. Trustee shall not be liable to Trustor or other beneficiaries, for depreciation in the value of any portion of said estate, but shall exercise due and proper care, for its safe-keeping and preservation, and shall be liable for its negligence, fraud or breach of trust.

11. The title or interest acquired by any purchaser, lessee, assignee, transferee or mortgagee under any sale, lease, assignment, mortgage or other conveyance, made by the Trustee hereunder, shall be as complete and absolute in every respect, as the instrument evidencing any such transaction purports to convey, and no person shall be required to see to the legality of Trustee's action in making any such sale, lease, transfer, mortgage or other conveyance. No vendee, lessee, assignee, mortgagee or other transferee, shall ever be required to see to the proper disposal by Trustee, of any consideration paid to it, but shall be justified and fully protected in paying the same to Trustee, and when so paid, all parties making such payments, shall be released from any and all liability, for the proper use or disposal thereof, by Trustee.

12. Trustee shall keep full and accurate accounts of all receipts, disbursements and transactions, in connection with the property held in trust hereunder, and such records, shall be open, to inspection by any party interested herein, at his or her request, either personally or through an agent or attorney, at any and all reasonable and proper times.

13. Trustee, annually, on or about the 28th day of December of each year, shall provide all beneficiaries (including Trustor), then entitled to receive income hereunder, with a statement showing all transactions, in connection with this trust, during the year preceding the date of statement, and showing the amount and character of the property constituting the trust, and a schedule of all receipts and expenditures during the period covered by such statement, which statement, Trustor, while living, or any beneficiary after her death, may at their own expense, have verified, by a public accountant, and for such purpose, shall have full and free access to all records and securities in said Trustee's hands, pertaining to said trust estate.

14. The Trustee at any time it may see fit, may resign the trust created hereby, by mailing a written notice by registered mail, of such intention, to the last-known address of Trustor, or if she then be dead, to the last-known address of all the beneficiaries then entitled to receive income hereunder, such resignation to become effective, at the expiration of sixty days, from the date of such mailing, and before the expiration of such period, a successor trustee shall be appointed. During Trustor's life, such appointment shall be made by her, after Trustor's death, such appointment shall be made by the beneficiary (or by a majority of them if there be more than one) then (at the time of such notice) entitled to receive income hereunder. Such successor Trustee, however, shall be a national bank or trust company, with capital stock of at least one million dollars (\$1,000,000.00). Upon its acceptance of these trusts, any successor Trustee shall have all the powers conferred upon the original Trustee. In the event of the dissolution or insolvency of the Trustee or the revocation of its authority, or its inability or refusal to act, the above provisions regarding the appointment of a successor Trustee, shall obtain.

15. Any national bank or trust company to which any Trustee, original or successor, may be converted or merged, or with which it may be consolidated, or any national bank or trust company resulting from any converting merger or consolidation to which such Trustee may be a party, shall be the successor Trustee hereunder, without the execution or filing of any papers, or any further act on the part of any Trustee hereunder, provided always, that such successor institution shall be able and willing to accept this trust and execute the terms thereof.

16. Whenever income, or any part thereof, is in property other than cash, such income may in Trustee's discretion, be paid to beneficiaries, either in kind, or sold by Trustee and the proceeds therefrom, paid to said beneficiaries in cash, and Trustee is hereby authorized to do any and all things necessary or proper, to effect any such sale or sales, and no such purchaser shall be required to see to the regularity of the Trustee's action in making any such sale or to the application by the Trustee, of the proceeds thereof.

17. Where Trustee is given the power to invest and reinvest all or any part of the accumulations of income, such power shall include any and all powers granted to Trustee in this Article, and where Trustee is directed to make certain accumulations from income, and is authorized to invest and reinvest the same, such accumulations up to One Thousand Dollars (\$1,000.00) may be kept in an ordinary savings account, to avoid the necessity of investing small amounts. In the event the corpus of this estate, shall have been divided into separate trust shares, accumulations up to such amount for each such share, may be kept in an ordinary savings account.

18. Upon the distribution of the corpus of this estate by the Trustee, this trust shall thereupon cease, and terminate, as to the corpus so distributed.

19. The Trustee hereunder, shall be paid the following compensation for its services hereunder:

- (a) A fee of Fifty Dollars (\$50.00) for accepting this trust.
- (b) An annual fee of four percent (4%) of the annual gross income collected hereunder.

der, such fee to be deducted by the Trustee semi-annually, on the 28th days of June and December, of each year. The first payment of such fee shall be made on the 28th day of December 1932, and shall be computed on the basis of gross income, collected from the date of Trustee's acceptance of this trust, to date of payment. Thereafter, such payment shall be computed on the basis of gross income collected during the six(6) months' period preceding the time of payment. In the event of termination of this trust, between said payment dates, such fee shall be computed upon gross income collected from the last preceding payment date, to the date of termination.

(c) Upon the distribution of any part of the corpus, on termination of the trust, in respect to such property, a sum equal to one-half of one percent of the fair market value of the corpus so distributed.

(d) In the event the Trustee hereunder, may be changed, in accordance with the provisions of paragraph 5, of Article C, of this agreement, a fee of one-half of one percent, of the fair market value of the corpus, at the time of such change, unless, however, such change is made for good and sufficient cause, arising out of the administration of the trust by the Trustee, in which event, a fee of One Hundred Dollars (\$100.00), shall be paid. In the event there should arise a dispute, as to the amount of the fee to be paid under this paragraph, then the Trustee, is authorized to retain the greater amount, until some court of competent jurisdiction shall determine the amount of fee due under this sub-paragraph.

No charges, except those above mentioned, shall be made against the trust estate for keeping its accounts, making out income tax returns, the collection of rents or for the current services of the Trustee's regular salaried officers or employees,

ARTICLE C.

CONCERNING TRUSTOR AND BENEFICIARIES,

1. Trustor, declares this trust to be irrevocable after its acceptance by the Trustee. No part of the corpus of the trust estate, shall be withdrawn by the Trustor, except as provided in sub-paragraph (d) of Article A. The Trustor or any beneficiary hereunder, shall, however, have the right to take, receive or accept less than the full amount of income, which may be due such beneficiary, at any particular time, and in such event, the amount of income not taken, received or accepted, shall by the Trustee, be turned into the corpus, for the benefit of the beneficiary so failing to take, receive or accept such income, and such beneficiary shall be entitled to receive the income derived therefrom. The title to such accumulations, shall pass along with the said corpus.

2. Trustor, however, reserves the right to modify, amend or alter, the provisions of this trust, insofar as such provisions may apply to the disposition of principal or corpus, to the extent of Twenty-five Thousand Dollars, (\$25,000.00), in fair value, in the event this trust shall terminate, following the deaths of Trustor and Katherine, by reason of the failure of lineal descendants of Katherine, the right reserved, however, to be subject to the provision, that the powers, duties and liabilities, of the Trustee hereunder, shall not be substantially increased, nor its rights decreased without its written consent. Any such modification, amendment or alteration, shall be made by written instrument, signed by the Trustor, and shall become effective upon delivery of such instrument in writing, to Trustee, unless Trustee's consent thereto is required, in which event, it shall become effective upon execution of written consent thereto, by Trustee.

3. Trustor reserves the right to convey and deliver to Trustee, to be held under the terms hereof, at any time, and from time to time, such additional securities and other property as she may desire, and as may be acceptable to the Trustee.

4. From and after the death of the Trustor, this trust shall not be subject to modification, amendment or alteration, in any manner, by any person or persons, except, however, the beneficiary or beneficiaries as hereinafter provided, may at any time, change the Trustee of the

then trust estate, This, however, shall not be construed as a limitation upon Trustee's power to resign.

5. If, at any time, during the term of this trust, the person to whom the income is payable, (or if more than one, then a majority of the persons to whom the income is payable, together with the guardians of the estates of such persons who are then minors) shall desire to change the Trustees of this trust estate, then such person or persons, may in writing, name another national bank or trust company, which is capitalized at One Million Dollars (\$1,000,000.00) or more, to act as Trustee of the trust property, and sixty (60) days after receipt of notice, in writing of the designation of a new Trustee, the bank or trust company, then Trustee, under this trust, shall transfer, assign and convey the trust property to the bank or trust company so named, to thereafter act as Trustee, which bank or trust company so designated, shall thereafter act as Trustee upon the trusts herein created, and hold and manage the trust property in accordance with all the provisions hereof.

6. Wherever any beneficiaries hereunder, while under the age of twenty-one (21) years, have any rights under this instrument, such rights may be exercised in their behalf by their legally appointed guardian or guardians, without the necessity of securing the approval of any court thereto, unless said approval is specifically required by the statutes of the State of Texas.

ARTICLE D

MISCELLANEOUS

1. The trust hereby created shall be deemed a Texas trust, and shall in all respects be governed by the laws of the State of Texas.

2. Wherever in this instrument, an attempt is made to create an estate, and such attempt shall be held to be of no effect, because of the vagueness or uncertainty of the terms of this instrument, or because of the violation of the rule against perpetuities, or because of a restraint on alienations, the estate or estates contingent on the estate so attempted to be created, shall not fail, but shall vest immediately upon the failure of such attempted preceding estate.

3. All ordinary expenses, incurred in connection with the trust estate or with its administration and management, including regularly recurring taxes assessed against any portion of the corpus, as well as income taxes (except income taxes assessed on the sale or other disposition by Trustee of all or part of corpus), water rents, insurance premiums, interest on mortgages on the corpus, ordinary repairs, Trustee's compensation, court costs and counsel's fees, shall be paid out of income, unless, in the opinion of Trustee, one or more of the above items, shall at any time amount to an extraordinary expense or an excessive burden upon income, in which case, Trustee may charge to corpus, such part of such expense, as it may deem wise. Income taxes assessed on the sale or other disposition by Trustee, of all or part of corpus, and all disbursements deemed by Trustee, to be for permanent improvements to property, held as part of the corpus, as well as special benefit or improvement taxes or assessments, shall be paid out of corpus.

4. Accrued interest on bonds or debentures purchased between the dates at which interest thereon, is payable, shall be charged to income, and where bonds or debentures are sold between such dates, such accrued interest shall be credited to income. Trustee, shall not amortize securities bought at a premium. Where bonds or debentures are purchased by Trustee, at a discount, and the principal thereof is thereafter paid at maturity, the total principal amount so received by Trustee, shall be corpus, and where bonds or debentures purchased at a discount, are sold by Trustee, the consideration received from such sale (after crediting to income, any interest accrued thereon, at the time of such sale) shall likewise be corpus. Where bonds or debentures are called for redemption before maturity, and a premium is paid by the

obligor, for the privilege of said redemption, such premiums shall be corpus. Dividends paid in stock, shall become a part of the corpus of the estate.

5. The Trustee, is directed to pay out of corpus, if and when due, any and all Federal estate taxes, and State inheritance taxes, which may from time to time become lawfully assessed and payable, in connection with the corpus or any part thereof.

6. The Trustee hereby accepts the trust hereby created and agrees to execute the same in accordance with the terms hereof.

IN WITNESS WHEREOF, Trustor, has herunto set her hand and seal, this 18th day of July 1932, and Trustee has caused these presents to be executed by its officer, duly authorized and its corporate seal to be impressed hereon, this 17th day of August 1932, in duplicate.

MARY VICTORIA KEATING, TRUSTOR.

FIRST NATIONAL BANK IN DALLAS

BY: H.A. OLINSTEAD, VICE PRESIDENT,

TRUSTEE

ATTEST: I.S.

PAUL DANNA, CASHIER

STATE OF MASSACHUSETTS:

SS

COUNTY OF BARNSTABLE : BEFORE ME, the undersigned authority, on this day personally appeared Mary Victoria Keating, a widow, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND and seal of office this 18th day of July 1932.

CARROLL A. BEARSE, NOTARY PUBLIC

BARNSTABLE COUNTY, STATE OF MASSACHUSETTS

I.S.

STATE OF TEXAS:

SS

COUNTY OF DALLAS : BEFORE ME the undersigned authority, on this day personally appeared H.A. Olinstead, Vice President of First National Bank in Dallas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the set and deed of said corporation.

GIVEN Under My hand and seal of office this 17th day of August 1932.

BENNETT G. MOORE, NOTARY PUBLIC

DALLAS COUNTY, TEXAS.

I.S.

STATE OF MASSACHUSETTS:

SS

COUNTY OF BARNSTABLE : BEFORE ME, Carroll A. Bearse, a Notary Public in and for said County and State, on this 8th day of August 1932, personally appeared Mary Victoria Keating, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed, for the uses and purposes therein set forth.

CARROLL A. BEARSE, NOTARY PUBLIC

COUNTY OF BARNSTABLE, STATE OF MASSACHUSETTS

I.S.

My commission expires Dec. 4, 1936.

THE STATE OF TEXAS:

COUNTY OF DALLAS : BEFORE ME, the undersigned, a Notary Public in and for said County and State on this 17th day of Aug. 1932, personally appeared H.A. Olmsted, to me known to me the identical person who subscribed the name of First National Bank in Dallas, to the foregoing instrument, as its Vice President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of First National Bank in Dallas, for the uses and purposes therein set forth, and in the capacity therein stated.

BENNETT G. MOORE, NOTARY PUBLIC
MY COMMISSION EXPIRES June 1, 1933

L.S.

Filed for record this the 28 day of January A.D. 1942 at 4:24 P.M.

ED H STEGER COUNTY CLERK BY A. E. CRUGETT, DEPUTY

Recorded February 2, 1942, Ed H Steger County Clerk by *Fairley in Stegers* Deputy

6789-- 3.75

SYLVAN LANG ET UX : THE STATE OF TEXAS:
TO: PARTIAL RELEASE OF JUDGMENT LIEN : KNOW ALL MEN BY THESE PRESENTS:
C.M. ANDING : COUNTY OF BEKAR :

THAT WHEREAS on the 16th day of June 1936, in the District Court of Dallas County in and for the 68th Judicial District of Texas, in a certain cause, styled "Sylvan Lang et ux, Vs. C.M. Anding" No. 21766-C, Sylvan Lang et ux, as plaintiffs in judgment, recovered of C.M. Anding, defendant in judgment, judgment in the sum of \$662.50, together with costs of suit and interest from such day, at the rate of 6% per annum, an abstract of which judgment was placed and now appears of record in Vol. 55, page 23E, of the judgment records of Dallas County, Texas, which record is made a part hereof, and reference is here made to the same, for a better description of such judgment, and

WHEREAS the undersigned, Sylvan Lang and wife, Mary Lang, are the owners of such judgment, and the parties entitled to receive payment thereof, and

WHEREAS such judgment has been partly paid, and

WHEREAS it is the desire of the said Sylvan Lang and his wife, in consideration of such payment, to release said judgment lien, insofar as it affects certain hereinafter described property.

NOW THEREFORE, we, Sylvan Lang and wife, Mary Lang, in consideration of the premises, do hereby release unto C.M. Anding, his heirs and assigns forever, any and all liens heretofore existing by reason of said judgment, or of said record, upon the following described property, to-wit: Situated in the City of Dallas, Dallas County, Texas, being a part of Block 1034, according to the official map of the City of Dallas, and being more particularly described by metes and bounds, as follows: beginning at a stake in the southwest line of Cedar Springs Street, 62 feet northwest of the intersection of said line of Cedar Springs Street, with the northwest line of Sale Street;

Thence north 47 degrees 30 minutes west, along the southwest line of Cedar Springs Street, 62 feet, more or less, to corner of Mrs. M. J. Clark's lot;

Thence south 45 degrees west, with said Mrs. Clark's lot, a distance of 164 feet more or less, to a corner;

Thence south 46 degrees 15 minutes east 62 feet more or less, to the west corner of a lot conveyed by E. G. Knight to Mrs. S. M. McVeigh;

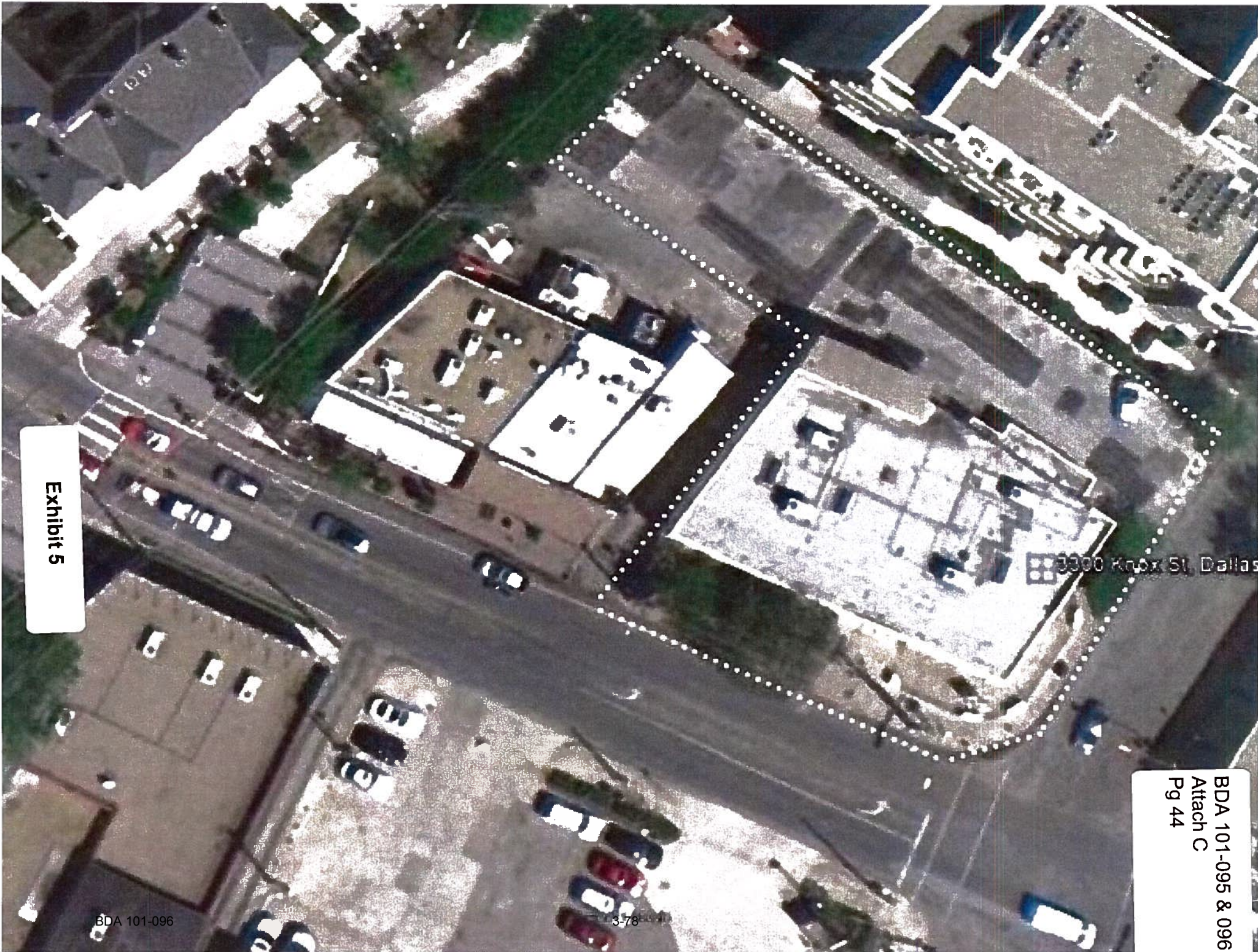


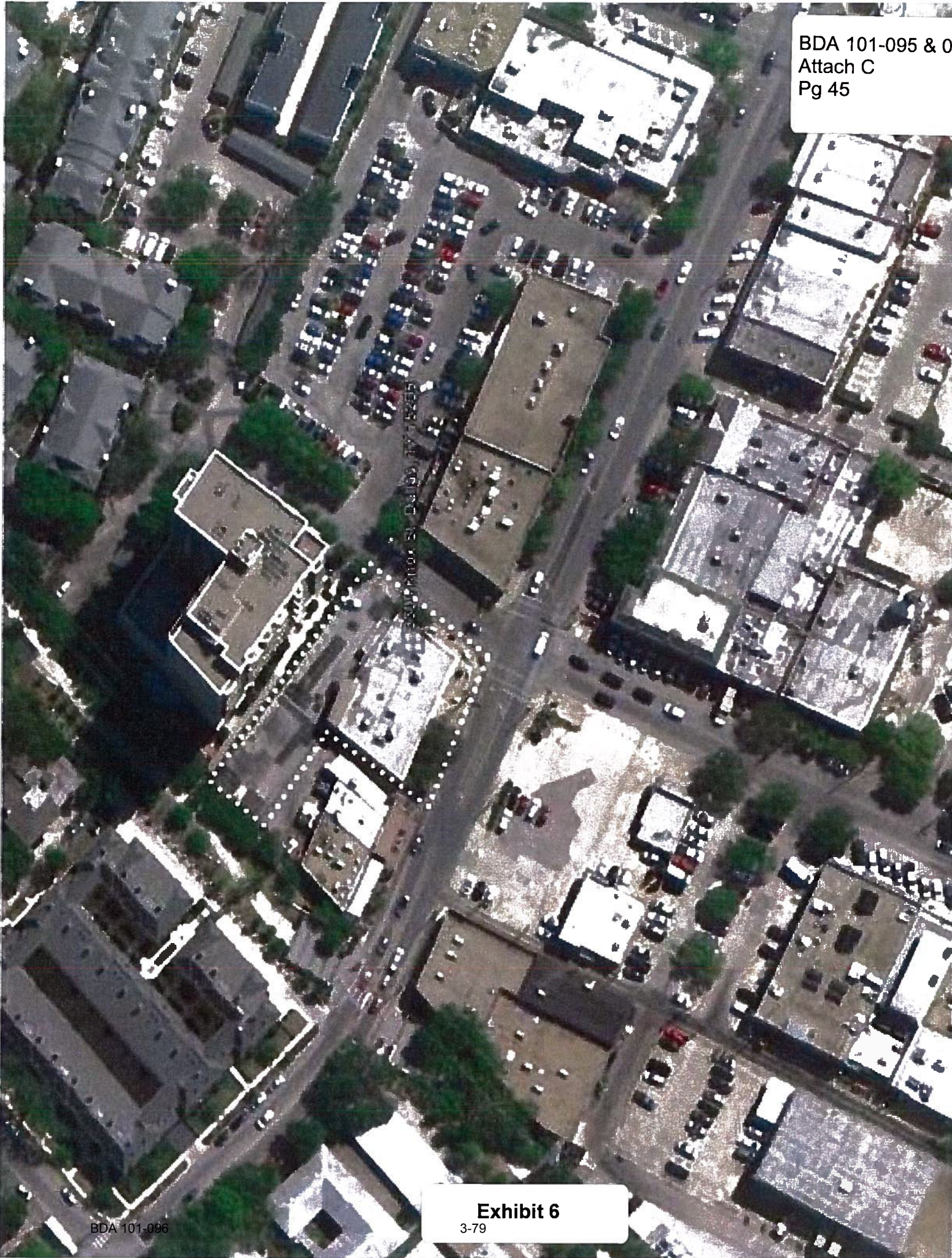
Exhibit 5

3300 Knox St, Dallas

BDA 101-095 & 096
Attach C
Pg 44

BDA 101-096

3-78-45-913



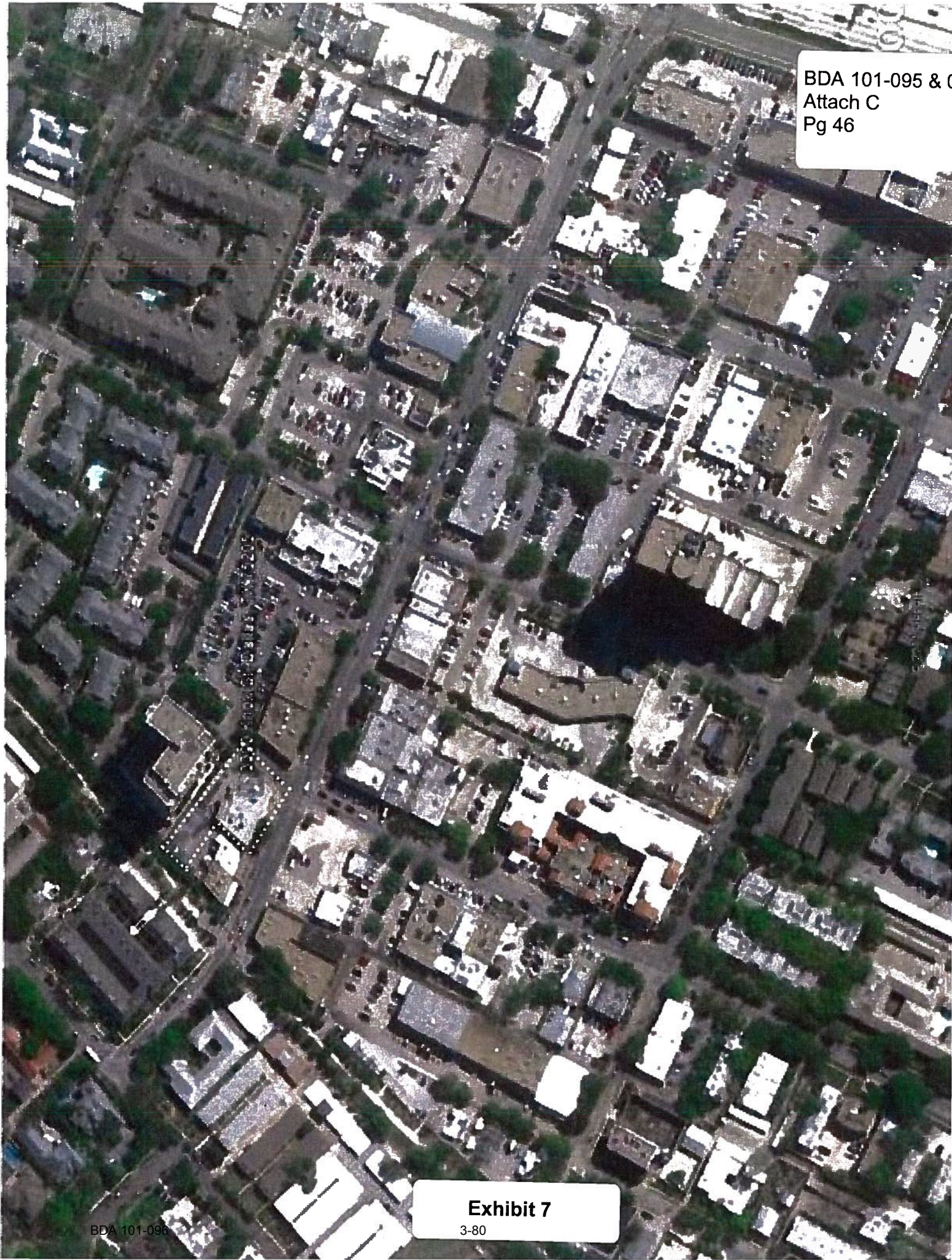
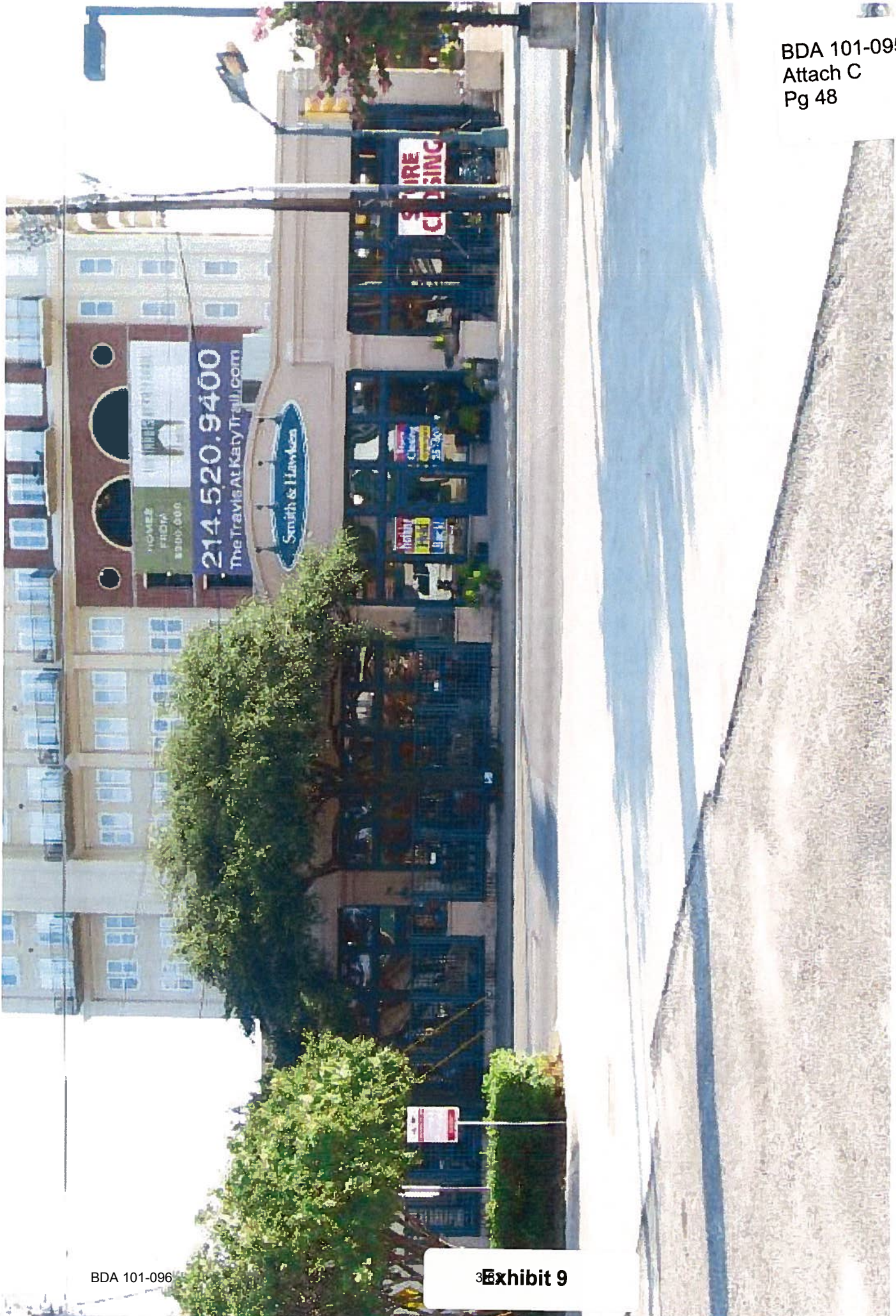


Exhibit 7
3-80



Exhibit 8



00000159253000000



Exhibit 10

BDA 101-095 & 096
Attach C
Pg 49



Exhibit 11

BDA 101-095 & 096
Attach C
Pg 50







3300 Knox Parking Report

RPZ Valet Officer Name: Miguel Castillo

Date: Friday – 09/23/11

Time	Number of Employees	Number of Customers	Total
10:00	2	0	2
11:00	3	0	3
12:00	4	1	5
1:00	4	0	4
2:00	4	1	5
3:00	3	0	3
4:00	3	1	4
5:00	2	0	2
6:00	2	0	2
7:00	3	0	3

3300 Knox Parking Report

RPZ Valet Officer Name: Miguel Castillo

Date: Saturday – 09/24/11

Time	Number of Employees	Number of Customers	Total
10:00	2	0	2
11:00	2	0	2
12:00	2	1	3
1:00	3	1	4
2:00	2	1	3
3:00	2	1	3
4:00	2	0	2
5:00	2	0	2

3300 Knox Parking Report

RPZ Valet Officer Name: Miguel Castillo

Date: Sunday – 09/25/11

Time	Number of Employees	Number of Customers	Total
1:00	2	0	2
2:00	2	0	2
3:00	2	0	2
4:00	1	1	2
5:00	1	0	1

3300 Knox Parking Report

RPZ Valet Officer Name: Miguel Castillo
Date: Monday – 09/26/11

Time	Number of Employees	Number of Customers	Total
10:00	2	0	2
11:00	3	1	4
12:00	3	0	3
1:00	2	1	3
2:00	2	0	2
3:00	3	2	5
4:00	3	0	3
5:00	3	3	6
6:00	2	3	5
7:00	3	2	5

3300 Knox Parking Report

RPZ Valet Officer Name: Miguel Castillo

Date: Tuesday – 09/27/11

Time	Number of Employees	Number of Customers	Total
10:00	3	0	3
11:00	4	0	4
12:00	3	0	3
1:00	3	0	3
2:00	3	1	4
3:00	3	0	3
4:00	3	0	3
5:00	2	0	2
6:00	2	0	2
7:00	2	0	2

3300 Knox Parking Report

RPZ Valet Officer Name: Miguel Castillo

Date: Wednesday – 09/28/11

Time	Number of Employees	Number of Customers	Total
10:00	3	0	3
11:00	2	0	2
12:00	2	0	2
1:00	2	0	2
2:00	2	1	3
3:00	2	0	2
4:00	2	1	3
5:00	2	2	4
6:00	2	2	4
7:00	3	1	4

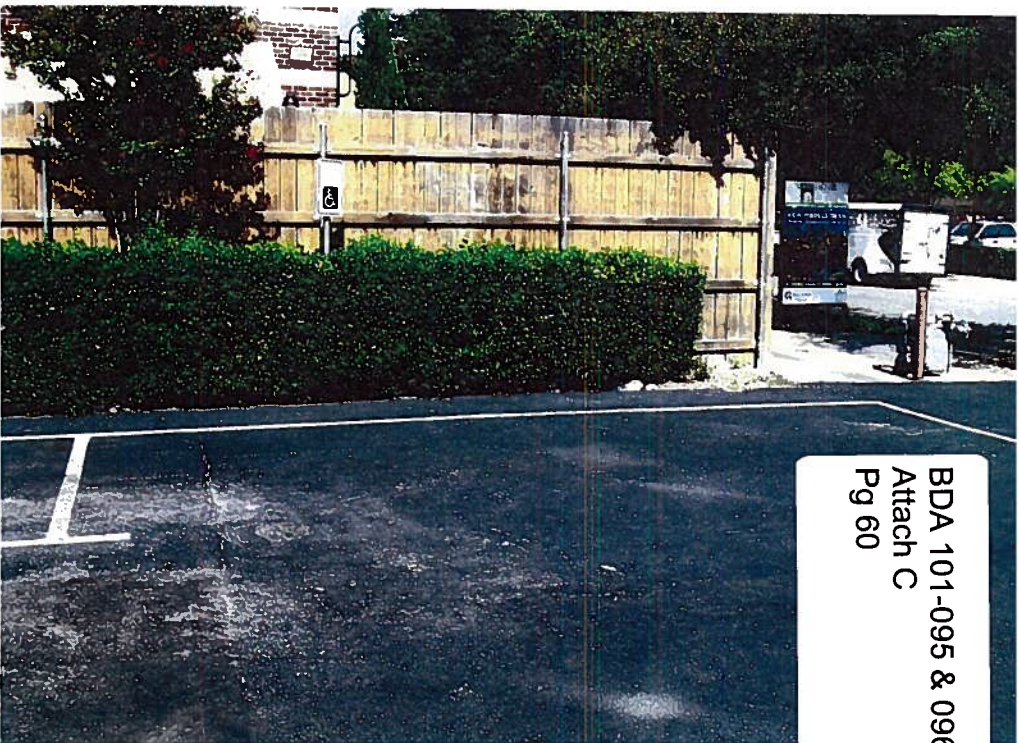


Exhibit 16

BDA 101-096

3-94

BDA 101-095 & 096
Attach C
Pg 60



Exhibit 17



BDA 101-096



BDA 101-095 & 096
Attach C
Pg 61

395



Exhibit 18

Patina Daily Activity Log – Dallas Store

Date: Friday – 09/23/11

Time	Number of Customers
10:00	0
11:00	1
12:00	3
1:00	2
2:00	1
3:00	2
4:00	1
5:00	0
6:00	2
Total:	12

Patina Daily Activity Log – Dallas Store

Date: Saturday – 09/24/11

Time	Number of Customers
10:00	3
11:00	0
12:00	11
1:00	4
2:00	6
3:00	2
4:00	8
Total:	34

Patina Daily Activity Log – Dallas Store

Date: Sunday – 09/25/11

Time	Number of Customers
1:00	8
2:00	1
3:00	3
Total:	12

Patina Daily Activity Log – Dallas Store

Date: Monday – 09/26/11

Time	Number of Customers
11:00	1
12:00	0
1:00	4
2:00	3
3:00	4
4:00	3
5:00	1
Total:	16



City of Dallas

A

APPLICATION/APPEAL TO THE BOARD OF ADJUSTMENT

Case No.: BDA 101-096

Data Relative to Subject Property:

Date: 6/10/11

Location address: 3300 Knox

Zoning District: PD-193 (LC)

Lot No.: 3&4 Block No.: S/1538 Acreage: 0.394 Census Tract: 0007.02

Street Frontage (in Feet): 1) 102.5 2) 111 3) _____ 4) _____ 5) _____ 5024

To the Honorable Board of Adjustment :

Owner of Property/or Principal: Mary Victoria Keating - Sun Trust Bank

Applicant: Elizabeth McDonald Telephone: _____

Mailing Address: 515 King, FL:2, Alexandria, VA Zip Code: 22314

Represented by: Thompson & Knight, James Harris Telephone: 214-969-1102

Mailing Address: 1722 Routh St, Ste.1500, Dallas Zip Code: 75201

Affirm that a request has been made for a Variance or Special Exception of 11 Parking spaces requirement for retail use of 34 spaces.

Application is now made to the Honorable Board of Adjustment, in accordance with the provisions of the Dallas Development Code, to grant the described request for the following reason:
Property operated with 18 spaces for many years. Revised site plan with more efficient layout has added five spaces. 34 spaces required. Site now contains 23 spaces.

Note to Applicant: If the relief requested in this application is granted by the Board of Adjustment, said permit must be applied for within 180 days of the date of the final action of the Board, unless the Board specifically grants a longer period. Sun Trust Bank, Pamela

Respectfully submitted: ELIZABETH McDONALD Elizabeth McDonald, Vice President
Applicant's name printed Applicant's signature

Affidavit

Before me the undersigned on this day personally appeared Elizabeth McDonald who on (his/her) oath certifies that the above statements are true and correct to his/her best knowledge and that he/she is the owner/or principal/or authorized representative of the subject property.

Elizabeth McDonald, Vice President
Affiant (Applicant's signature)

Subscribed and sworn to before me this 10th day of June, 2011

Brenda Lee Newcomb
Notary Public in and for Dallas County, Texas

(Rev. 08-20-09)

BRENDA LEE NEWCOMB
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES AUG. 31, 2018
COMMISSION # 7036151 2011/6/11

**MEMORANDUM OF
ACTION TAKEN BY THE
BOARD OF ADJUSTMENT**

Date of Hearing _____

Appeal was--Granted OR Denied

Remarks _____

Chairman

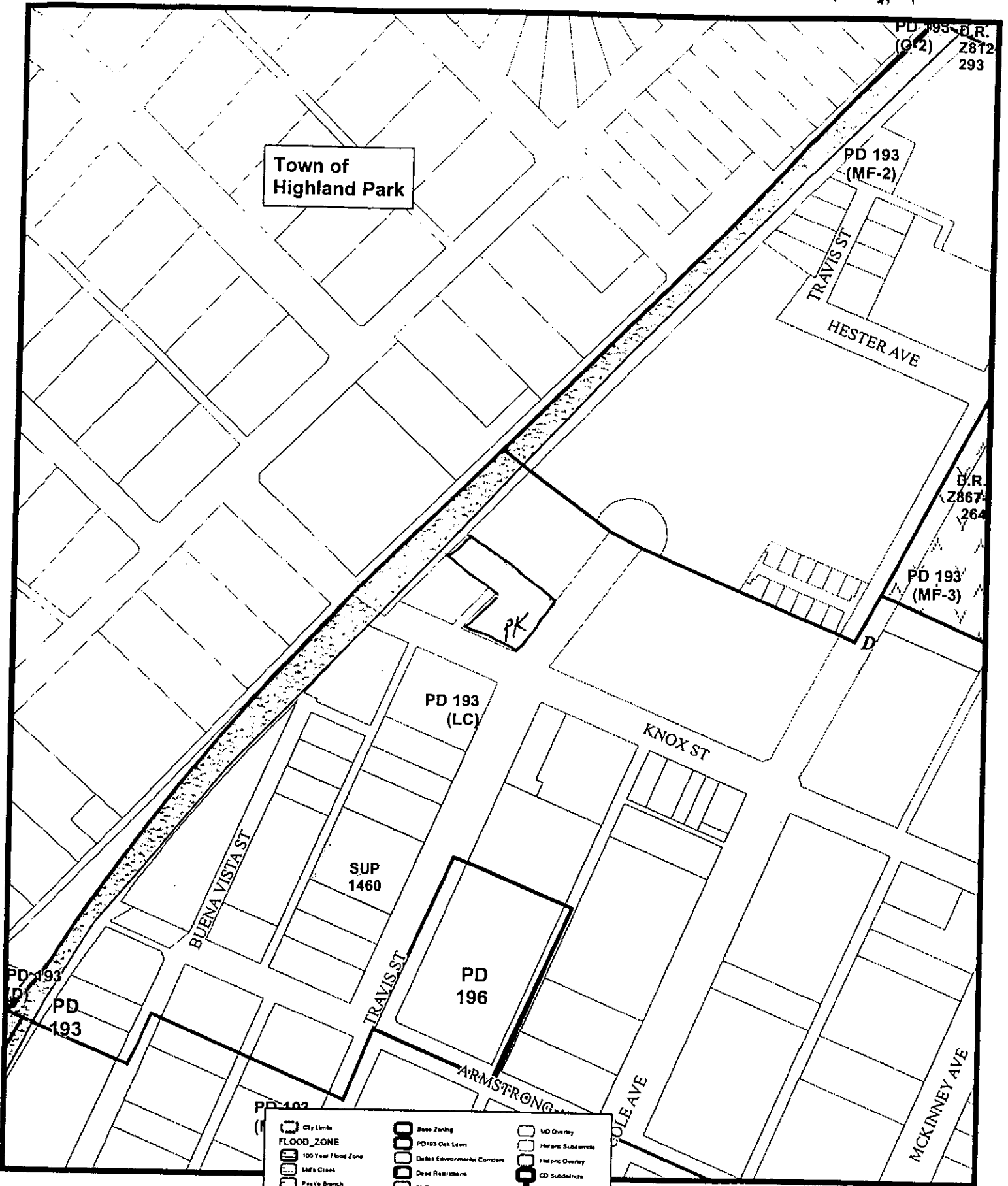
Building Official's Report

I hereby certify that Elizabeth McDonald
represented by Thompson & Knight
did submit a request for a variance to the parking regulations
at 3300 Knox Street

BDA101-096. Application of Elizabeth McDonald represented by James Harris of Thompson & Knight for a variance to the parking regulations at 3300 Knox Street. This property is more fully described as lots 3 & 4 in city block S/1538 and is zoned PD-193 (LC), which requires parking to be provided. The applicant proposes to construct and maintain a nonresidential structure for general merchandise or food store less than 3500 square feet uses and provide 23 of the required 34 parking spaces, which will require an 11 space variance to the parking regulation.

Sincerely,

Batsheba Antebi
Batsheba Antebi, Building Official

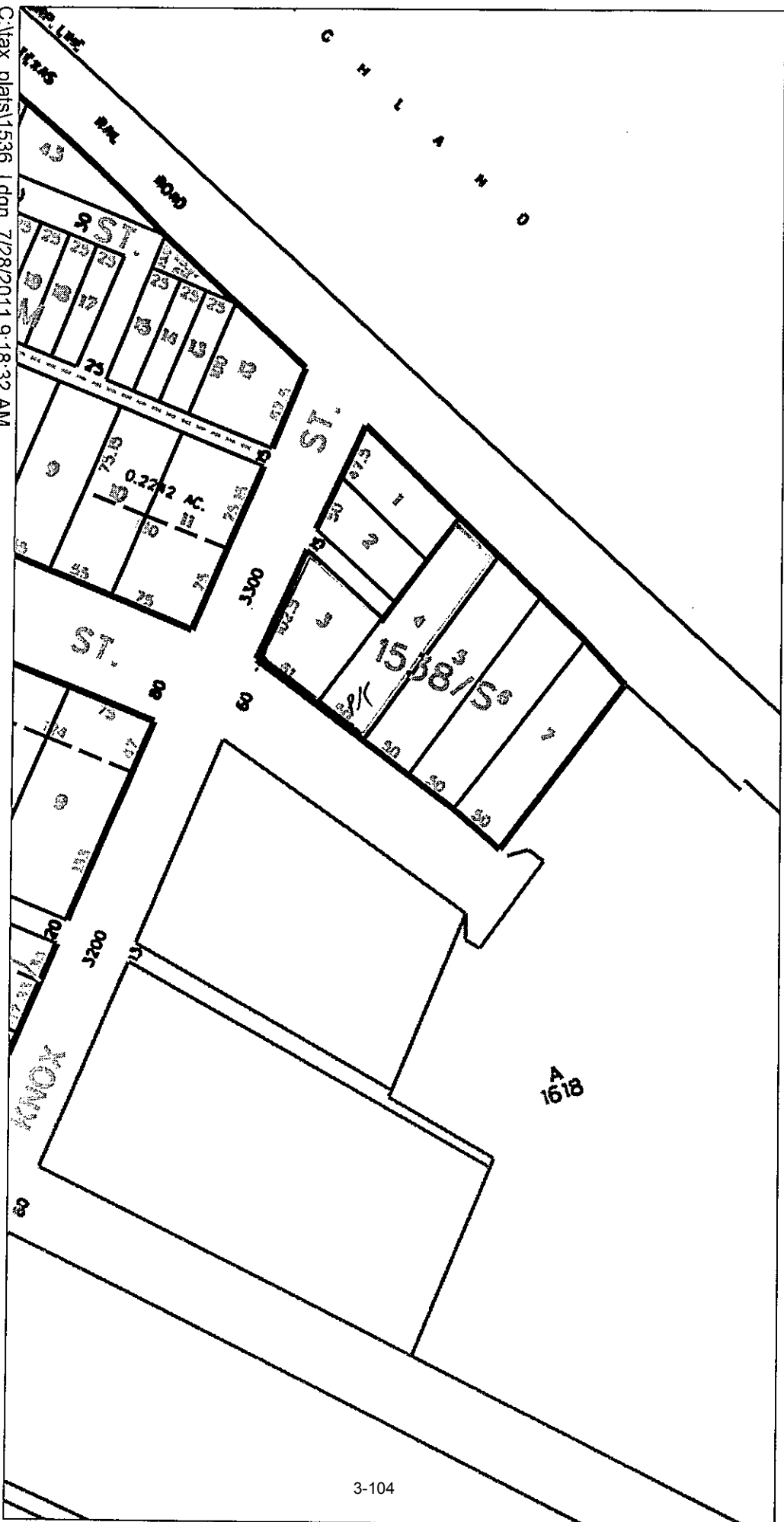


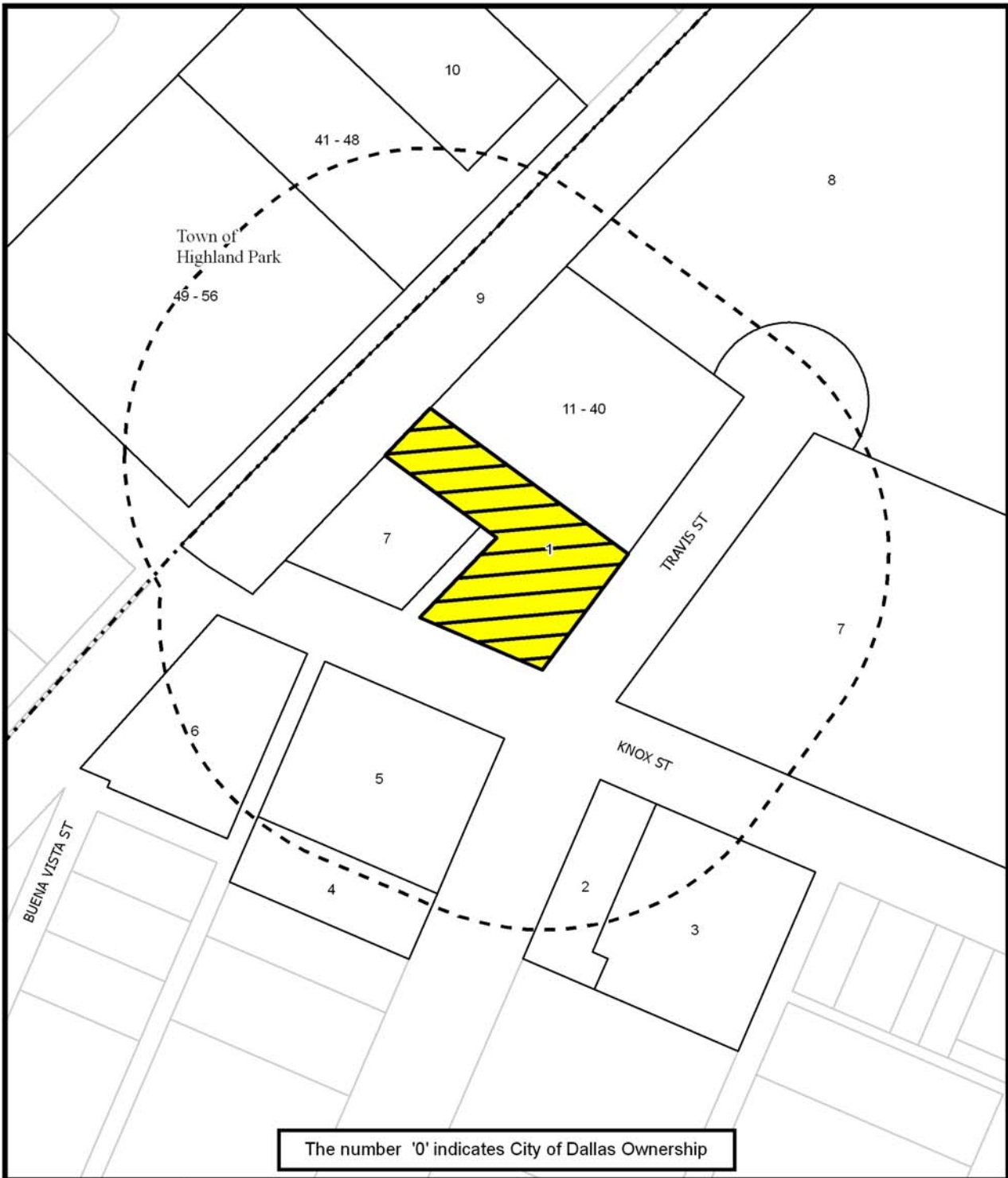
City Limits	Base Zoning	MO Overlay
FLOOD_ZONE	PD193 Oak Lawn	Historic Subdistrict
100 Year Flood Zone	Dates Environmental Corridor	Historic Overlay
MFA Creek	Dead Restrictions	CD Subdistrict
Parks Branch	SUP	PD Subdistrict
PROTECTED BY LEVEE	D	PDS Subdistrict
Parks	D-1	NEO Subdistrict
	LP	H&O Overlay
	SP	Escarpment Overlay

1:2,400

Case ID:
Printed: 6/2/2011

C:\tax_plats\1536_1.dgn 7/28/2011 9:18:32 AM





 1:1,200	<h2>NOTIFICATION</h2> <table border="1"> <tr> <td>200'</td> <td>AREA OF NOTIFICATION</td> </tr> <tr> <td>56</td> <td>NUMBER OF PROPERTY OWNERS NOTIFIED</td> </tr> </table>	200'	AREA OF NOTIFICATION	56	NUMBER OF PROPERTY OWNERS NOTIFIED	Map no: <u> H-7 </u> Case no: <u> BDA101-096 </u>
200'	AREA OF NOTIFICATION					
56	NUMBER OF PROPERTY OWNERS NOTIFIED					

DATE: September 29, 2011

Notification List of Property Owners

BDA101-096

56 Property Owners Notified

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
1	3300 KNOX	KEATING MARY VICTORIA % SUN TRUST BANK A
2	3229 KNOX	WEIR J RAY TRUST & WEIR INVESTMENTS LP
3	3219 KNOX	WEIR J RAY TRUST
4	4535 TRAVIS	KNOX STREET VILLAGE HOLDINGS INC
5	3311 KNOX	KNOX TRAVIS HOLDING COMPANY LLC
6	3313 KNOX	KNOX STREET VILLAGE INC SUITE 400
7	3230 KNOX	KNOX STREET VILLAGE I INC SUITE 400
8	4647 COLE	CIM/4649 COLE AVENUE LP SUITE 900
9	8008 ELAM	DART
10	4700 ABBOTT	JACOBS ESTHER & ESTHER JACOBS TRUSTEE
11	4611 TRAVIS	WARREN ANN MARIE
12	4611 TRAVIS	HALL TRAVIS AT KNOX LLC % ATTN: DONALD L
13	4611 TRAVIS	RICHARDSON MICHAEL #PH3
14	4611 TRAVIS	KHOSHNOUDI AHMAD & FARIMAH
15	4611 TRAVIS	OLIVER JAMES L
16	4611 TRAVIS	MITCHELL THEODORE C
17	4611 TRAVIS	SATTLER SHELLA
18	4611 TRAVIS	WILSON DAVID L & REBECCA S
19	4611 TRAVIS	BRAUN DAVID
20	4611 TRAVIS	FISHER CRAIG S
21	4611 TRAVIS	BRAUN DONALD L & DEBORAH A
22	4611 TRAVIS	BRAUN DONALD L & DEBORAH A
23	4611 TRAVIS	ALHAZIM DINA
24	4611 TRAVIS	COLEMAN CAROLYN M
25	4611 TRAVIS	YIN RAY CHENGCHI & NANYI AGNES YIN
26	4611 TRAVIS	SANDERS BOWLBY DEBRA LYNN

9/29/2011

<i>Label #</i>	<i>Address</i>	<i>Owner</i>
27	4611 TRAVIS	808B LLC
28	4611 TRAVIS	MCKAY LINDSEY
29	4611 TRAVIS	MOONEY DIANE C & JOHN T
30	4611 TRAVIS	TOUCHY JAMES QUENTON UNIT 1104B
31	4611 TRAVIS	YOUNG EUGENE & FAYE #1107B
32	4611 TRAVIS	HAYDEN LANE & MARY JEAN
33	4611 TRAVIS	ROSS WORTH W
34	4611 TRAVIS	MOONEY STEPHEN M
35	4611 TRAVIS	COUCH CONNIE L
36	4611 TRAVIS	MORENO MAURICIO A
37	4611 TRAVIS	AVERA INVESTMENTS INC
38	4611 TRAVIS	MESKIN LAURENCE
39	4611 TRAVIS	SEAL LARRY ELLIOT % KAY KOH
40	4611 TRAVIS	SEAY STEPHEN M FOUNDATION
41	4614 ABBOTT	KNIGHT JOYCE A
42	4616 ABBOTT	SHEPHERD PHILLIP
43	4618 ABBOTT	HOCHBERG CLAUDIA MERLE TR BLDG A UNIT B2
44	4612 ABBOTT	WESTBROOK J P & KATHRYN
45	4622 ABBOTT	ROTE FRANK CLAYTON
46	4624 ABBOTT	BEIS MELANIE K BLDG B UNIT B3
47	4626 ABBOTT	GIBBONS MOLLY JANE
48	4620 ABBOTT	PIKE WILLIAM R
49	4608 ABBOTT	STREBEL DOUGLAS W & LEE B D
50	4608 ABBOTT	SBLC MASTER FAMILY LTD PS
51	4608 ABBOTT	HIGHLAND GATES ON KATHY TR LLC % JD WEST
52	4608 ABBOTT	AVREA DARREN & AVREA SANDRA
53	4608 ABBOTT	RALSTON BENJAMIN P & BARBARA P RALSTON
54	4608 ABBOTT	MCKNIGHT WILLIAM D & CYNTHIA S
55	4608 ABBOTT	MONSALVE MIGUEL A
56	4608 ABBOTT	YARBROUGH DOUGLAS EUGENE & LAURA ANDERSO