

DEVELOPMENT AGREEMENT

THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This Development Agreement ("Agreement") is between the Village of Bee Cave, Texas ("the Village"), a general law municipality located in Travis County, Texas and Kenneth C. Margolis, Trustee ("Owner").

INTRODUCTION

Owner owns or controls approximately 36 acres of land (known as the "Land") located within the extraterritorial jurisdiction ("ETJ") of the Village locally known as Morningside PUD ("Morningside"). Morningside is more particularly described on Exhibit A. Morningside was originally approved as a planned unit development by the City of Austin, Texas on October 3, 1985 and was originally in that City's jurisdiction. A copy of the approved planned unit development is attached in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)). The City of Austin subsequently released Morningside from its ETJ. It presently is within the ETJ of the Village.

Owner and the Village wish to enter into this Agreement, provide an alternative to the Village's typical regulatory process for development, encourage innovative and comprehensive design, provide certainty of regulatory requirements throughout the term of this Agreement and ultimately result in annexation of Morningside to the Village.

Owner and the Village agree to work with each other in good faith to enhance and preserve the general area for the citizens of the Village and surrounding areas. Such cooperation shall include development of the Land in a manner which respects the environmental and aesthetic sensitivity of the Village.

Therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, including the agreements set forth below, the parties agree as follows.

ARTICLE I DEFINITIONS

Section 1.01 Definitions. In addition to the terms defined elsewhere in this Agreement or in the Village's ordinances, the following terms and phrases used in this Agreement will have the meanings set out below:

Agreement: This Development Agreement between the Village of Bee Cave, Texas and Owner.

Village Administrator: The Village Administrator of the Village.

Effective Date of this Agreement: The date when one or more counterparts of this Agreement, individually or taken together, bear the signature of all parties.

ARTICLE II MASTER DEVELOPMENT PLAN

Section 2.01 Phased Development. Owner may develop Morningside in phases. At the time of initial development, Owner may, in its discretion, submit a phasing plan which may be modified from time to time. The Village acknowledges that areas not then under active development may remain in use for agricultural lands or ranching purposes.

Section 2.02 PUD Plan; Approval of Exception. The Village hereby confirms its approval of the Morningside PUD Plan as shown in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)). The Village acknowledges that the PUD Plan complies with the Village's Comprehensive/Master Plan, as amended; approves the land uses, densities, building height, parking provisions, landscaping provisions, setbacks, impervious cover, exceptions, utility and roadway alignments and sizing and other matters shown on the PUD Plan, and confirms that the PUD Plan has been approved by all requisite Village departments, boards and commissions of the Village. It is understood that the applicant must file the necessary preliminary plats and final subdivision plats to comply with the PUD Plan and ordinances, as modified by this Agreement, and state law and that such applications will be approved by the Village. With respect to the Morningside PUD, the Owner agrees to comply with architectural standards and building materials that are set forth in the Village's proposed Comprehensive Master Plan, draft dated May, 2000. In addition, the Village approves in principle the development of the lands for a broader range of mixed uses, including residential, subject to the criteria outlined in Exhibit C (Development Criteria – Morningside Development With Residential or Other Major Modifications to The Morningside Planned Unit Development Plan Requiring Village Board Approval as Set Out in Section 2.06).

Section 2.03 Road Dedication. Notwithstanding the Village's approval of the Morningside PUD as shown in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)), it is the intent of the Owner to work with the Village prior to site development, to ensure that the road pattern complements the Village's overall road plans. It is not presently the intent of the Owner to dedicate Sesame Street as shown in Exhibit B. Owner agrees, instead of developing Sesame Street as shown in Exhibit B, (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)), to dedicate 50% of a new road elsewhere within Morningside to link adjacent properties, as long as the new road does not unreasonably adversely impact Owner's ability to develop Morningside for the intended purpose and the overall developable area of Morningside is not reduced from that shown in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)) and described in Exhibit C (Development Criteria – Morningside Development With Residential or Other Major Modifications to The Morningside Planned Unit Development Plan Requiring Village Board Approval as Set Out in Section 2.06). The exact alignment of any new road will be determined through discussions with Village staff and/or Board or Alderman prior to submission of the final plat, neither of which shall unreasonably withhold their approval.

Section 2.04 Review Process. The Village acknowledges that Owner may elect to proceed with the development of Morningside within a compressed time schedule, and that efficient Village reviews are necessary for the effective implementation of Owner's development program. Therefore, the Village agrees that it will review and respond with substantive comments or approval to all construction and development applications and any requests for approvals under this Agreement within the shorter of sixty (60) days or any time frames established by any statutory or internal Village timeframes for development reviews which may be extended for a reasonable time under extraordinary circumstances beyond the control of the Village. If the Village fails to respond to an application within such time frame, the application will be deemed to have been approved as submitted unless beyond the control of the Village. The Village further agrees that if, at any time, Owner believes that an impasse has been reached with the Village staff on any development issue affecting Morningside, Owner may immediately appeal to the Village Administrator for a resolution and that the Village Administrator's decision is immediately appealable to the Village Board of Alderman at its next regularly scheduled Village Board of Alderman meeting. The Village will post the items in a timely manner in accordance with applicable law.

Section 2.05 Term of Approvals. The PUD Plan will be effective for the term of this Agreement, including any renewals as provided by Section 5.01.

Section 2.06 Amendments. Modifications to the PUD Plan may become desirable due to changes in market conditions or other factors. Owner may make minor changes to the PUD Plan upon written notification to the Village Administrator. Minor changes shall include: adjustments to the location of public roads, buildings, driveways and parking areas, or lot lines; adjustments to the number of stories, as long as the 4 story limit is not exceeded; or adjustments to the relative mix of office and retail square footages, as long as the total building square footage does not exceed 362,100 sq. ft. and as long as the total impervious cover is 35% or less of the total site area of Morningside. In the event of a major amendment, or the introduction of residential uses, the development criteria shall be as stated in Exhibit C and the revised plan shall require approval by the Village Board of Alderman, which approval will not be unreasonably withheld or delayed.

Section 2.07 Building Code Compliance. Permanent structures constructed within Morningside shall comply with the Southern Building Code adopted by the Village. Such code as it applies to Morningside shall be limited to health and safety issues and shall apply uniformly to all other property within the corporate limits of the Village. The Village shall provide timely inspections and shall provide adequate staff and resources so as not to unreasonably delay any construction activities within Morningside.

Section 2.08 Prohibited Uses. Unless authorized by specific action of the Board of Alderman, the industrial uses outlined in Section 3.17.4 of the Village Zoning Ordinance, as such ordinance exists on the Effective Date shall be prohibited.

Section 2.09 Easements and Rights-of-Way. The Village's Comprehensive Master Plan, now in the process of planning and adoption, provides for a hiking and jogging trail through the Land, as shown on Exhibit D. When the Village is ready to construct the hiking and jogging trail Owner will provide an easement to the Village, in the approximate location shown on Exhibit D, in a form reasonably satisfactory to the Village's Attorney. The easement shall contain language by which the Village shall assume all responsibility for claims, damages or causes of action of any nature arising from the easement and shall require the Village to maintain the easement. The use of the easement shall be limited to pedestrian uses and shall prohibit motorized vehicles. The location of the easement on Exhibit D is conceptual only and its exact location shall be determined at the time of final plat approval. The exact location of the connecting points of the easement with adjacent properties shall be determined through discussion between the Owner, the Village and property owners to the north and south. The easement shall have a maximum width of ten (10) feet, unless the terrain is such that more than ten (10) feet is required for a reasonably useful trail, in which case the parties will use good faith to agree on a wider easement as necessary to accomplish the intended purposes. The cost of preparation of the easements, including its metes and bounds description, shall be borne by the Village.

ARTICLE III
ANNEXATION

Section 3.01 Annexation.

a. Owner agrees to petition for annexation of the Land when the Land becomes contiguous to the Village, or when the first building permit for a structure on the Land is issued, whichever occurs last. Simultaneously, with such annexation, the subject lands shall be zoned to permit the mixed land uses as approved. The Village shall not alter such zoning or such zoning classification as it applies to the Land during the term of this Agreement, without the written consent of Owner or its successors or assigns.

b. Contemporaneously with the annexation by the Village, the Village will zone any undeveloped property on the subject lands consistently with the land uses as approved and will zone all developed property consistently with the land uses in existence on the date of the annexation as shown on the approved Plan.

ARTICLE IV
AUTHORITY AND VESTING OF RIGHTS

Section 4.01 Authority. This Agreement is entered into, in part, under the statutory authority of Section 42.044 of the Texas Local Government Code, "Creation of Industrial District in Extraterritorial Jurisdiction", which authorizes the Village to make written contracts with the owners of land within an industrial district, establishing lawful terms and considerations that the parties agree to be reasonable, appropriate, and not unduly restrictive of business activities. In accordance with the authority granted to the Village under Section 42.044, Texas Local Government Code, the Village hereby designates the Morningside as an industrial district, which includes not only industrial uses, but also areas in which tourist-related businesses and facilities will be located. The parties intend that this Agreement guarantee the continuation of the extraterritorial status of portions of Morningside not presently in the Village's corporate limits as provided in this Agreement; authorize certain land uses and development with Morningside; provide for the uniform review and approval of plats and development plans for Morningside; provide exceptions to certain ordinances; and provide other terms and consideration, including the continuation of land uses and zoning after annexation of Morningside.

Section 4.02 Vesting of Rights. This Agreement constitutes an application by Owner for the subdivision and development of Morningside, and initiates the subdivision and development permit process for Morningside. The Village acknowledges that Owner has vested authority to develop Morningside in accordance with this Agreement. It is the intent of the Village and Owner that these vested development rights include the character of land uses, the number of square feet or living unit equivalents, the general location of roadways, the design standards for streets and roadways, and development of Morningside in accordance with the standards and criteria set forth in this Agreement, and only the Village ordinances in existence as

of June 13, 2000, as set out in Exhibit B (Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)) and Exhibit C (Development Criteria – Morningside Development With Residential or Other Major Modifications to The Morningside Planned Unit Development Plan Requiring Village Board Approval as Set Out in Section 2.06), unless otherwise expressly set forth in this Agreement]. In the event of a conflict between this Agreement and the Village's ordinances or requirements, the terms of this Agreement shall prevail.

Section 4.03 Landowner's Right to Continue Development. In consideration of Owner's agreements, the Village agrees that it will not, during the term of this Agreement, impose or attempt to impose: (a) any moratorium on building or development within The Project or (b) any land use or development regulation that limits the rate or timing of land use approvals, whether affecting preliminary plats, final plats, site plans, building permits, certificates of occupancy or other necessary approvals, within Morningside. The preceding sentence does not apply to temporary moratoriums uniformly imposed throughout the Village due to an emergency constituting imminent threat to the public health or safety, provided that such a moratorium will continue only during the duration of the emergency.

ARTICLE V TERM, ASSIGNMENT AND REMEDIES

Section 5.01 Term. The term of this Agreement will commence on the Effective Date and continue for fifteen (15) years, unless terminated on an earlier date under other provisions of this Agreement or by written agreement of the Village and Owner. Upon the expiration of fifteen (15) years, this Agreement may be extended, at Owner's request, with Village Board of Alderman approval, for up to one successive five-year period.

Section 5.02 Termination and Amendment by Agreement. This Agreement may be terminated or amended as to all of the Land at any time by mutual written consent of the Village and Owner or may be terminated or amended only as to a portion of Morningside by the mutual written consent of the Village, the owners of the portion of the Land affected by the amendment or termination and Owner.

Section 5.03 Assignment.

a. This Agreement, and the rights of Owner, in whole or in part, may be assigned by Owner to a subsequent developer of all or a portion of Morningside upon forty-five (45) days written notice to the Village. Any assignment will be in writing, specifically set forth the assigned rights and obligations and be executed by the proposed assignee.

b. If Owner assigns its rights and obligations as to a portion of Morningside, then the rights and obligations of any assignee and Owner will be severable, and Owner will not be liable for the nonperformance of the assignee and vice versa. In the case of nonperformance by one developer, the Village may pursue all remedies against that nonperforming developer, but will

not impede development activities of any performing developer as a result of that nonperformance.

c. This Agreement is not intended to be binding upon, or create any encumbrance to title as to, any ultimate consumer who purchases any portion of Morningside.

d. Upon Owner's request and at Owner's expense and subject to Village's approval, Village and Owner may elect to seek legislative validation of this Agreement and statutory authorization to extend the term of this Agreement beyond fifteen (15) years.

Section 5.04 Remedies.

a. If the Village defaults under this Agreement, Owner may enforce this Agreement by seeking a writ of mandamus from a Travis County District Court, or may give notice setting forth the event of default ("Notice") to the Village. In addition, if the Village fails to cure any alleged default within forty-five (45) days from the date the Village receives the Notice, Owner may terminate this Agreement by providing written notice to the Village as to all of the Land owned by Owner, or as to the portion of Morningside affected by the default and/or Owner may pursue any injunctive relief from a court or proper jurisdiction.

b. If Owner defaults under this Agreement, the Village shall give Notice to Owner. If Owner fails to commence the cure of an alleged default specified in the Notice within a reasonable period of time, not less than forty-five (45) days, after the date of the Notice, and thereafter to diligently pursue such cure to completion, the Village may terminate this Agreement or seek injunctive relief from a court of proper jurisdiction.

c. Each party waives any action for damages against the other except for the recovery of attorneys' fees, as per subparagraph d below.

d. If either party defaults, the prevailing party in the dispute will be entitled to recover its reasonable attorney's fees, expenses and court costs from the non-prevailing party.

Section 5.05 Cooperation.

a. The Village and Owner each agree to cooperate with each other as may be reasonably necessary to carry out the intent of this Agreement, including but not limited to the execution of such further documents as may be reasonably necessary.

b. The Village agrees to cooperate with Owner at Owner's expense, in connection with any waivers, permits or approvals Owner may need or desire from the City of Austin, Travis County, TNRCC, United States Fish & Wildlife Service or any other regulatory authority in order to carry out the Plan.

c. In the event of any third party lawsuit or other claim relating to the validity of this Agreement or any actions taken hereunder, Owner and the Village agree to cooperate in the

defense of such suit or claim, and to use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Agreement. Each party shall pay their own expenses and attorney's fees.

d. Owner or the Village may initiate mediation on any issues in dispute and the other party shall participate in good faith. The cost of mediation shall be a joint expense.

ARTICLE VI MISCELLANEOUS PROVISIONS

Section 6.01 Notice. Any notice given under this Agreement must be in writing and may be given: (i) by depositing it in the United States mail, certified, with return receipt requested, addressed to the party to be notified and with all charges prepaid; or (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the party to be notified and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement, or (iv) by facsimile with confirming copy sent by one of the other described methods of notice set forth. Notice by United States mail will be effective on the earlier of the date of receipt or 3 days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

Village: Village of Bee Cave
13333-A Hwy. 71 West
Bee Cave, Texas 78738
Attn: Village Administrator

With Required Copy to: Mike Willatt
Village Attorney
2001 N. Lamar
Austin, TX 78705

Owner: Kenneth C. Margolis, Trustee
c/o Goldeneye, Inc.
2000 West Loop South, Suite 1080
Houston, TX 77027
Attn: Barry Lewis

With Required Copy to: David Armbrust
Armbrust Brown & Davis, LLP
100 Congress Avenue, Suite 1300
Austin, TX 78701

The parties may change their respective addresses to any other address within the United States of America by giving at least five (5) days' written notice to the other party. Owner may, by giving at least five (5) days' written notice to the Village, designate additional parties to receive copies of notices under this Agreement.

Section 6.02 Severability; Waiver. If any provision of this Agreement is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected, and, in lieu of each illegal, invalid, or unenforceable provision, that a provision be added to this Agreement which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid or enforceable provision as is possible.

Any failure by a party to insist upon strict performance by the other party of any material provision of this Agreement will not be deemed a waiver or of any other provision, and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Agreement.

Section 6.03 Applicable Law and Venue. The interpretation, performance, enforcement and validity of this Agreement is governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Travis County, Texas.

Section 6.04 Entire Agreement. This Agreement contains the entire agreement of the parties. There are no other agreements or promises, oral or written, between the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties. This Agreement supersedes all other agreements between the parties concerning the subject matter.

Section 6.05 Exhibits, Headings, Construction and Counterparts. All schedules and exhibits referred to in or attached to this Agreement are incorporated into and made a part of this Agreement for all purposes. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs. The parties acknowledge that each of them have been actively and equally involved in the negotiation of this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in interpreting this Agreement or any exhibits. If there is any conflict or inconsistency between the provisions of this Agreement and otherwise applicable Village ordinances, the terms of this Agreement will control. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument. This Agreement will become effective only when one or more counterparts, individually or taken together, bear the signatures of all of the parties.

Section 6.06 Time. Time is of the essence of this Agreement. In computing the number of days for purposes of this Agreement, all days will be counted, including Saturdays, Sundays and legal holidays; however, if the final day of any time period falls on a Saturday,

Sunday or legal holiday, then the final day will be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

Section 6.07 Authority for Execution. The Village certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with Village ordinances and Comprehensive/Master Plan. Owner hereby certifies, represents, and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of each entity executing on behalf of Owner.

Section 6.08 Exhibits. The following exhibits are attached to this Agreement, and made a part hereof for all purposes:

Exhibit A - Metes and Bounds Description

Exhibit B - Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)

Exhibit C - Development Criteria – Morningside Development With Residential or Other Major Modifications to The Morningside Planned Unit Development Plan Requiring Village Board Approval as Set Out in Section 2.06

Exhibit D - Hike and Jogging Trail

The undersigned parties have executed this Agreement on the dates indicated below.

VILLAGE OF BEE CAVE

By: Caroline L. Murphy
Printed Name: Caroline L. Murphy
Title: Mayor
Date: 7-25-2000

ATTEST:

Sherry Mashburn
Printed Name: Sherry Mashburn
Title: Village Secretary

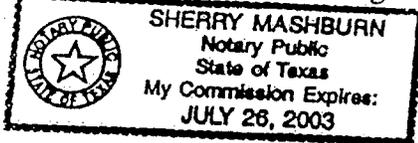
OWNER

Barry M. Lewis
Kenneth C. Margolis, Trustee
By: Barry M. Lewis, Authorized Agent
Date: 7-25-2000

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me the 25th day of July, 2000, by Caroline L. Murphy, Mayor of the Village of Bee Cave, Texas, a general law municipality, on behalf of the Village.

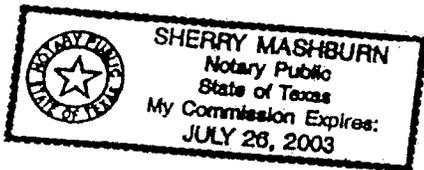


Sherry Mashburn
Notary Public Signature

STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me the 25th day of July, 2000, by Barry M. Lewis on behalf of Kenneth C. Margolis, Trustee.



Sherry Mashburn
Notary Public Signature

EXHIBIT A

METES AND BOUNDS DESCRIPTION

TRACT ONE – 36.171 Acres

ALL OF THAT CERTAIN PARCEL OR TRACT OF LAND OUT OF THE A. STRAHLE SURVEY IN TRAVIS COUNTY, TEXAS AND BEING A PORTION OF THAT CERTAIN 35.5 ACRE TRACT DESCRIBED IN A DEED TO LEE BLOCKER, ET. AL. OF RECORD IN VOLUME 2682, PAGE 599 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS AND A PORTION OF THAT CERTAIN 107.10 ACRE TRACT DESCRIBED IN A DEED TO LEE BLOCKER ET. AL., OF RECORD IN VOLUME 2683, PAGE 11 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, SAID 36.171 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at an iron pipe found at the northwest corner of said 35.5 acre tract in the south line of a tract described in a deed to H.J. Spillman of record Volume 403, Page 341 of the Deed Records of Travis County, Texas, for the northwest corner and POINT OF BEGINNING hereof

THENCE, with the south line of said Spillman tract, and north line of said 35.5 acre tract the following 3 calls as found fenced and used upon the ground:

- 1) N 65° 34' 23" E for a distance of 1411.86 feet to an iron pin set at a fence post for an angle point
- 2) N 69° 22' 38" E for a distance of 252.41 feet to an iron pin set at a fence post for an angle point
- 3) N 66° 17' 11" E for a distance of 177.12 feet to an iron pin set at a fence corner post in the west R.O.W. line of Ranch Road 620 at the northeast corner of said 35.5 acre tract for the northeast corner hereof

THENCE, with the west R.O.W. line of R M 620 the following 2 calls:

- 1) S 31° 01' 00" E for a distance of 118.98 feet to a point of curve from which point a 1-1/4 inch iron pin found bears N 51° 09' W at a distance of 0.24 feet
- 2) with said curve to the left whose central angle is 21° 35' 39", radius is 931.47 feet and whose chord bears S 41° 48' 49" E for an arc distance of 351.06 feet and a chord distance of 348.99 feet to an iron pin set for the northerly southeast corner hereof

THENCE, with the south line hereof, S 66° 09' 47" W for a distance of 535.00 feet to an iron pin set for an ell corner hereof

THENCE, with an east line hereof, S 23° 50' 13" E at a distance of approximately 275 feet passing the south line of said 35.5 acres and north line of said 107.10 acre tract and continuing on for a total distance of 502.01 feet to a iron pin set for the southerly southeast corner hereof

THENCE, with the south line hereof, S 66° 09' 47" W for a distance of 1426.45 feet to a iron pin set in the west line of said 107.10 acre tract as found fenced and used upon the ground, and the east line of a tract of land described in a deed to R.H. Wilder, Jr. of record in Volume 3715, Page 573 of the Deed Records of Travis County, Texas for the southwest corner hereof

THENCE, with the west line of said 107.10 acre tract and east line of said Wilder tract as found fenced and used upon the ground, N 22° 44' 53" W for a distance of 100.09 feet to a iron pin set at a fence post

THENCE, continuing with the west line of said 107.10 acre tract, west line of said 35.5 acre tract, east line of said Wilder tract and east line of said Spillman tract, N 24° 06' 02" W at approximately 100 feet pass the northwest corner of said 107.10 acre tract and southwest corner of said 35.5 acre tract, at a distance of approximately 750 feet pass the northeast corner of said Wilder tract and a southeast corner of said Spillman tract and continuing on for a total distance of 851.95 feet to the POINT OF BEGINNING and containing 36.171 acres of land.

SAVE AND EXCEPT 0.449 acres as described below.

EXCEPTION – 0.449 Acres

Being 0.449 of one acre of land, more or less, out of and a part of that certain 36.171 acre tract of land lying in and being a part of the A. Strahle Survey, No. 594, Travis County, Texas, said 36.171 acres of land being the same land described in a deed from Frank W. Head, et ux, to Wiley McIlwain, dated March 5, 1984, recorded in Volume 8513, Page 381, Deed Records, Travis County, Texas; said 36.171 acre tract also being the same land described as Tract One in a Partition Deed recorded in Volume 8514, page 437, Deed Records, Travis County Texas; said 0.449 of one acre of land being more particularly described by metes and bounds as follows:

BEGINNING at a point in the existing southwest right of way line of RM Highway 620, said point being the Grantor's most easterly property corner, said point also being South 63° 55' 30.69" East a distance of 535.0 feet from Grantor's interior ell corner, said point is further identified as being 37.80 feet Southwest of and at right angles to the Proposed Engineer's Survey Line Station 623+36.50;

THENCE NORTH 63° 55' 30.69" West a distance of 47.08 feet along Grantor's southeasterly property line to the point of intersection with the proposed right of way line of said Highway,

said point being 80.0 feet Southwest of and at right angles to the Proposed Engineer's Survey Line Station 623+16.25;

THENCE along the proposed right of way line of said Highway, said right of way line being in a curve to the right of 1225.92 feet in radius, an arc length of 397.16 feet (the long chord of said curve bears North 42° 43' 34.87" West a distance of 395.43 feet) to a point, said point being 80.0 feet Southwest of and at right angles to the Proposed Engineer's Survey Line Station 619+45.00;

THENCE NORTH 25° 21' 06.18" West a distance of 71.08 feet along the proposed right of way line of said Highway to the point of intersection with Grantor's Northwesterly property line, said point being 70.0 feet Southwest of and at right angles to the Proposed Engineer's Survey Line Station 618+74.63;

THENCE NORTH 63° 52' 09.82" East a distance of 36.55 feet to a point, said point being Grantor's most Northerly property corner, said point also being in the existing Southwesterly right of way line of said Highway;

THENCE SOUTH 33° 26' 01.18" East a distance of 118.98 feet along the existing right of way line to a point;

THENCE along the existing right of way line of said Highway, said right of way line being in a curve to the left of 931.47 feet in radius, an arc length of 351.06 feet (the long chord of said curve bears South 44° 03' 05.31" East a distance of 348.99 feet) to the point of BEGINNING.

The above described parcel of land contains 0.449 of one acre of land, more or less.

EXHIBIT B

DEVELOPMENT CRITERIA: ORIGINAL MORNINGSIDE PLANNED UNIT DEVELOPMENT PLAN (OFFICE AND RETAIL)

Development of the Morningside PUD is permitted as set out on the attached site plan prepared by Espey, Huston & Associates, Inc., dated April 1985 and revised August 1987, which provides for the following development:

- Minimum Developable Area 20.84 Acres
- Total Developed Square Footage 362,100 sq. ft.
- Proposed Uses:
 - Office 321,300 sq. ft.
 - Retail 40,800 sq. ft.
- Parking 1207 spaces
- Maximum Buffer/Drainage Easement 15.33 acres

In addition to the development criteria set out on the Morningside site plan, the following criteria shall apply:

1. Architectural standards and building materials as set forth in Village's proposed Comprehensive Master Plan, draft dated May, 2000.
2. The only development ordinances that the developer shall have to comply with will be those that currently apply to the Village's ETJ, namely the development will comply with the Village's current subdivision, sign and water quality ordinances as they exist on June 13, 2000. In addition, Owner agrees to comply with the Lighting Ordinance, as it exists on June 13, 2000.

EXHIBIT C

DEVELOPMENT CRITERIA: MORNINGSIDE DEVELOPMENT WITH RESIDENTIAL OR OTHER MAJOR MODIFICATIONS TO THE MORNINGSIDE PLANNED UNIT DEVELOPMENT PLAN REQUIRING VILLAGE BOARD APPROVAL AS SET OUT IN SECTION 2.06

In addition to the uses contemplated by the original Morningside PUD (Exhibit B – Development Criteria – Original Morningside Planned Unit Development Plan (Office and Retail)), the development of a mixed-use community including townhouses, not to exceed 15 dwelling units per acre on the net 20.84 developable acres, shall be permitted. Office, retail, townhouse/condominium residential shall be permitted in any mix, so long as the total impervious cover does not exceed 35%.

The Land Use Equivalency chart on the following page illustrates the square footage and impervious cover percentages with the property being developed as office only, retail only, or townhouses only, purely for illustration purposes. It also illustrates the impact of a sample mixed-use development plan using 35% office, 15% retail and 50% townhouses with an impervious cover below the maximum 35% as contemplated above. This sample is presented for illustrative purposes only and the actual mix could vary.

The following criteria shall apply in the event that Morningside is developed to include residential uses, or if major changes are made to the PUD plan set out in Exhibit B as provided in section 2.06 of this agreement:

- Minimum Developable Area 20.84 Acres
- Maximum Buffer/Drainage Easement 15.33 acres
- Impervious cover up to, but not exceeding 35% of the total site area (including public roads)
- Uses can be distributed either in single use or multi-use buildings, such as retail first floor, office second floor.
- Size of buildings - maximum footprint of each separate structure: 45,000 sq. ft. for office use and 15, 000 sq. ft. for retail use and maximum height of four (4) stories.
- Connections between buildings, such as enclosed walkways or porte cocheres, shall be excluded from the calculation of the maximum building footprint. Such connections between buildings will not result in the buildings being considered as one structure or footprint.

- The Owner agrees to comply with the following Village ordinances as they exist on June 13, 2000, relating to a mixed use development as set out in this Exhibit:
 1. Article 9.1 Sign Regulations
 2. Article 3.3 Landscaping Requirements
 3. Article 10.1 Off-Street Parking
 4. Article 3.4 Outdoor Lighting
 5. Article 11.1 Nonpoint Source Pollution Control
 6. Ordinance 87-2 Subdivision Ordinance
- Architectural standards and building materials as set forth in the Village's proposed Comprehensive Master Plan, draft dated May 2000.

Sample Land Use Equivalencies - For Illustrative Purposes Only			
Existing PUD			
			Impervious Cover (% of total area)
Building Sq. Ft.			
Office	321,300.0 sq. ft.		
Retail	40,800.0 sq. ft.		
Total	362,100.0 sq. ft.		
Coverage			
Building	107,800.0 sq. ft.	2.47 ac.	
Parking, Structures & Driveway	439,541.7 sq. ft.	10.09 ac.	
Total	547,231.7 sq. ft.	12.56 ac.	34.7%
Same Sq. Ft. - Retail Only ⁽¹⁾			
			Impervious Cover (% of total area)
Building Sq. Ft.			
Retail (50% 1 story & 50% 2 story)	362,100.0 sq. ft.		
Total	362,100.0 sq. ft.		
Estimated Coverage			
Building	241,400.0 sq. ft.	5.5 ac.	
Estimated Parking, Structures, Driveways	593,217.4 sq. ft.	13.5 ac.	
Estimated Total	834,617.4 sq. ft.	19.2 ac.	53.0%
Same Sq. Ft. - Professional Office Only ⁽²⁾			
			Impervious Cover (% of total area)
Building Sq. Ft.			
Office (2 story)	362,100.0 sq. ft.		
Total	362,100.0 sq. ft.		
Coverage			
Building	181,050.0 sq. ft.	4.13 ac.	
Estimated Parking, Structures, Driveways	439,541.7 sq. ft.	10.09 ac.	
Estimated Total	620,591.7 sq. ft.	14.25 ac.	39.4%
Medium Density/Townhouses Only			
			Impervious Cover (% of total area)
Townhouses			
@ 15 units/acre ⁽³⁾	313 units		
Average unit size	2300 sq. ft. ⁽⁴⁾		
Coverage			
Buildings	359,950 sq. ft.	8.25 ac.	
Estimated Parking, Driveways ⁽⁵⁾	113,982 sq. ft.	2.52 ac.	
Estimated Total	473,932 sq. ft.	10.78 ac.	30.1%
Sample Mixed Use Development			
			Impervious Cover (% of total area)
Office			
35% total land area	551,447.82 sq. ft.	12.56 ac.	
at a coverage of	39.4%		
Total Office Coverage	217,270.44 sq. ft.	4.99 ac.	
Parking & Driveways	153,884.46 sq. ft.	3.53 ac.	
Building foot print	63,385.96 sq. ft.	1.46 ac.	
2-story office	126,771.96 sq. ft.		13.75%
Retail			
15% of total land area	236,334.78 sq. ft.	5.43 ac.	
at a coverage of	53.0%		
Total Retail Coverage	125,257.43 sq. ft.	2.88 ac.	
Parking & Driveways	89,028.69 sq. ft.	2.04 ac.	
Building Foot Print	36,228.75 sq. ft.	0.83 ac.	
1 & 2 storey retail	54,343.13 sq. ft.		7.65%
Townhouses			
50% of total land area	630,228.08 sq. ft.	14.47 ac.	
at a coverage of	30.0%		
Total Townhouse Coverage	189,067.82 sq. ft.	4.34 ac.	
Parking & Driveways	45,471.42 sq. ft.	1.04 ac.	
Building Foot Print	143,596.40 sq. ft.	3.30 ac.	
No. of Units	125 units		12.00%
Total Mixed Use Coverage	531,595.70 sq. ft.	12.23 ac.	33.74%
Total Mixed Use Development			
Office - 2-story	126,771.96 sq. ft.		
Retail - 50% 1-story & 50% 2-story	54,343.13 sq. ft.		
Townhouses - 125 units @ 2300 sq. ft./unit	287,500.00 sq. ft.		
Total	468,615.09 sq. ft.		

Notes:

- ⁽¹⁾ Parking required - 1629 parking spaces (1 space / 200 sq. ft. of retail use - assume 10% common areas)
- ⁽²⁾ Parking required - 1207 parking spaces (1 space / 300 sq. ft. of professional office)
- ⁽³⁾ Total developable area = 20.84 acres (36.17-15.33 buffer) @ 15 units/acre = 313 units
- ⁽⁴⁾ Assumes each unit contains a two-car garage
- ⁽⁵⁾ Assumes 1 space/unit visitor parking and 20' wide double loaded access driveway

EXHIBIT D
HIKE AND JOGGING TRAIL
(from 2000 Comprehensive Plan)