

AN ORDINANCE 2009-06-18-0535

AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SAN ANTONIO BY AMENDING CHAPTER 35, UNIFIED DEVELOPMENT CODE, SECTION 35-304, OF THE CITY CODE OF SAN ANTONIO, TEXAS BY CHANGING THE ZONING DISTRICT BOUNDARY OF CERTAIN PROPERTY.

* * * * *

WHEREAS, a public hearing was held regarding this amendment to the Official Zoning Map at which time parties in interest and citizens were given an opportunity to be heard; and

WHEREAS, the Zoning Commission has submitted a final report to the City Council regarding this amendment to the Official Zoning Map of the City of San Antonio; **NOW THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 35, Unified Development Code, Section 35-304, Official Zoning Map, of the City Code of San Antonio, Texas is amended by changing the zoning district boundary of 27.24 acres out of NCB 10675, NCB 10677, NCB 13143, and NCB 13144 from "R-5" Residential Single-Family District and "C-3" General Commercial District to "C-3" General Commercial District (15.124 acres) and "MF-25" Multi-Family District (12.116 acres).

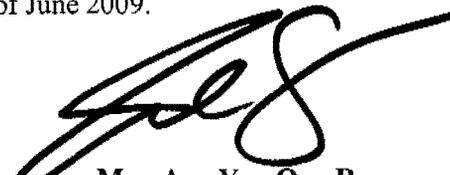
SECTION 2. A description of the property is attached as Exhibit "A" and made a part hereof and incorporated herein for all purposes.

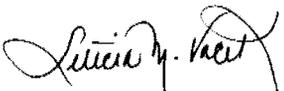
SECTION 3. All other provisions of Chapter 35 except those expressly amended by this ordinance shall remain in full force and effect including the penalties for violations as made and provided for in Section 35 -491.

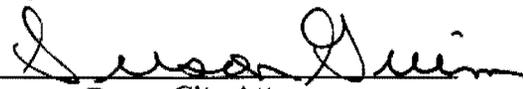
SECTION 4. The Director of Planning and Development Services shall change the zoning records and maps in accordance with this ordinance and the same shall be available and open to the public for inspection.

SECTION 5. This ordinance shall become effective immediately upon passage if passed by eight or more votes otherwise this ordinance shall become effective June 28, 2009.

PASSED AND APPROVED this 18th day of June 2009.


M A Y O R

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney

Agenda Item:	Z-3						
Date:	06/18/2009						
Time:	03:10:52 PM						
Vote Type:	Motion to Appr w Cond						
Description:	ZONING CASE # Z2009097 (District 2): An Ordinance amending the Zoning District Boundary from "R-5" Residential Single-Family District and "C-3" General Commercial District to "C-3" General Commercial District (15.124 acres) and "MF-33" Multi-Family District (12.116 acres) on 27.24 acres out of NCB 10675, 10677, 13143 and 13144 located at 3860 IH 10 East. Staff recommends Approval. Zoning Commission recommendation pending June 16, 2009 public hearing.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julian Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x			x	
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10	x					

FIELD NOTES
FOR
PROPOSED C-3 ZONING

Being 15.124 acres of land, more or less, out of the G. Nunez Survey No. 151, Abstract No. 548, County Block 5096, now in New City Block 10675 and New City Block 10677 in the City of San Antonio, Bexar County Texas. Said 15.124 acres also being a portion of a 2.922 acre tract described in deed recorded in Volume 11796, Page 2277 of the Real Property Records of Bexar County, Texas and a portion of a 60.682 acre tract described in deed recorded in Volume 11796, Page 2284 of the Real Property Records of Bexar County, Texas. Said 15.124 acres being more particularly described as follows with bearings based said referenced deeds:

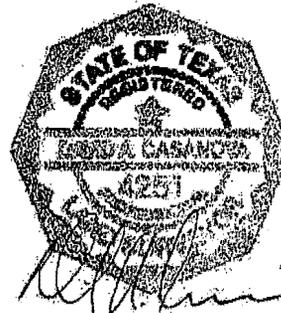
- BEGINNING: At a TxDOT monument located at the point of intersection of the southerly right-of-way line of East Houston Street and the easterly right-of-way line of Interstate Highway 10;
- THENCE: North 89 degrees 20 minutes 00 seconds East a distance of 233.00 feet along and with the southerly right-of-way line of East Houston Street to an iron rod in a TxDOT monument;
- THENCE: North 00 degrees 40 minutes 00 seconds West a distance of 65.00 feet along and with the southerly right-of-way line of East Houston Street to a point;
- THENCE: North 89 degrees 31 minutes 19 seconds East a distance of 321.81 feet along and with the southerly right-of-way line of East Houston Street to an iron rod for the point of curvature of a non-tangent curve;
- THENCE: Along a non-tangent curve to the right said curve having a radial bearing of South 00 degrees 33 minutes 51 seconds East, a radius of 25.00 feet, a central angle of 90 degrees 32 minutes 06 seconds, a chord bearing and distance of South 45 degrees 17 minutes 48 seconds East, 35.52 feet, an arc length of 39.50 feet to a point to an iron rod for a point of tangency;
- THENCE: South 00 degrees 01 minutes 48 seconds East a distance of 238.68 feet along and with the westerly right-of-way line of Noblewood Drive to a point;
- THENCE: Departing the westerly right-of-way line of Noblewood Drive and across said 60.682 acre tract and said 2.922 acre tract, South 89 degrees 20 minutes 00 seconds West a distance of 450.36 feet to a point;
- THENCE: Continuing across said 60.682 acre tract and said 2.922 acre tract, South 43 degrees 13 minutes 24 seconds West a distance of 731.73 feet to a point;

15.124 Acres
Job No.9090-09

22009097

- THENCE: Continuing across said 60.682 acre tract and said 2.922 acre tract, South 23 degrees 54 minutes 20 seconds West a distance of 173.17 feet to a point;
- THENCE: Continuing across said 60.682 acre tract and said 2.922 acre tract, South 00 degrees 23 minutes 21 seconds East a distance of 524.97 feet to a point;
- THENCE: Continuing across said 60.682 acre tract and said 2.922 acre tract, South 89 degrees 36 minutes 39 seconds West a distance of 697.36 feet to a point on the easterly right-of-way line of Interstate Highway 10;
- THENCE: North 31 degrees 56 minutes 40 seconds East a distance of 738.80 feet along and with the easterly right-of-way line of Interstate Highway 10 to a TxDOT monument;
- THENCE: Continuing with the easterly right-of-way line of Interstate Highway 10, North 43 degrees 13 minutes 24 seconds East a distance of 1087.99 feet to the POINT OF BEGINNING, and containing 15.124 acres in the City of San Antonio, Bexar County, Texas.

This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



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FIELD NOTES
FOR
PROPOSED MF-33 ZONING

Being 12.116 acres of land, more or less, out of the G. Nunez Survey No. 151, Abstract No. 548, County Block 5096, now in New City Block 10675, New City Block 13144 and New City Block 13143 in the City of San Antonio, Bexar County Texas. Said 12.116 acres also being a portion of a 2.922 acre tract described in deed recorded in Volume 11796, Page 2277 of the Real Property Records of Bexar County, Texas and a portion of a 60.682 acre tract described in deed recorded in Volume 11796, Page 2284 of the Real Property Records of Bexar County, Texas. Said 12.116 acres being more particularly described as follows with bearings based said referenced deeds:

- BEGINNING: At a point on the west right-of-way line of Noblewood Drive, said point bears South 00 degrees 01 minutes 48 seconds East a distance of 238.68 feet from an iron rod at the south end of a curve at the southwest corner of the intersection of Noblewood Drive and East Houston Street;
- THENCE: Along the west right-of-way line of Noblewood Drive, South 00 degrees 01 minutes 48 seconds East a distance of 508.67 feet to an iron rod at the point of curvature of a curve at the northwest corner of the intersection of Tamarak Drive and Noblewood Drive;
- THENCE: Along a tangent curve to the right said curve having radius of 15.00 feet, a central angle of 90 degrees 00 minutes 00 seconds, a chord bearing and distance of South 44 degrees 58 minutes 12 seconds West, 21.21 feet, an arc length of 23.56 feet to an iron rod;
- THENCE: Crossing said Tamarak Drive, South 00 degrees 01 minutes 48 seconds East a distance of 50.00 feet to a point;
- THENCE: Along the south right-of-way line of Tamarak Drive, North 89 degrees 58 minutes 12 seconds East a distance of 5.00 feet to an iron rod at the northeast corner of Lot 27, Block 3, New City Block 13143;
- THENCE: Departing said right-of-way line and along the east line of said Lot 27, South 00 degrees 01 minutes 48 seconds East a distance of 121.00 feet to an iron rod at the southeast corner of said Lot 27 and a corner of said 60.682 acre tract;

12.116 Acres
Job No. 9090-09

Z2009097

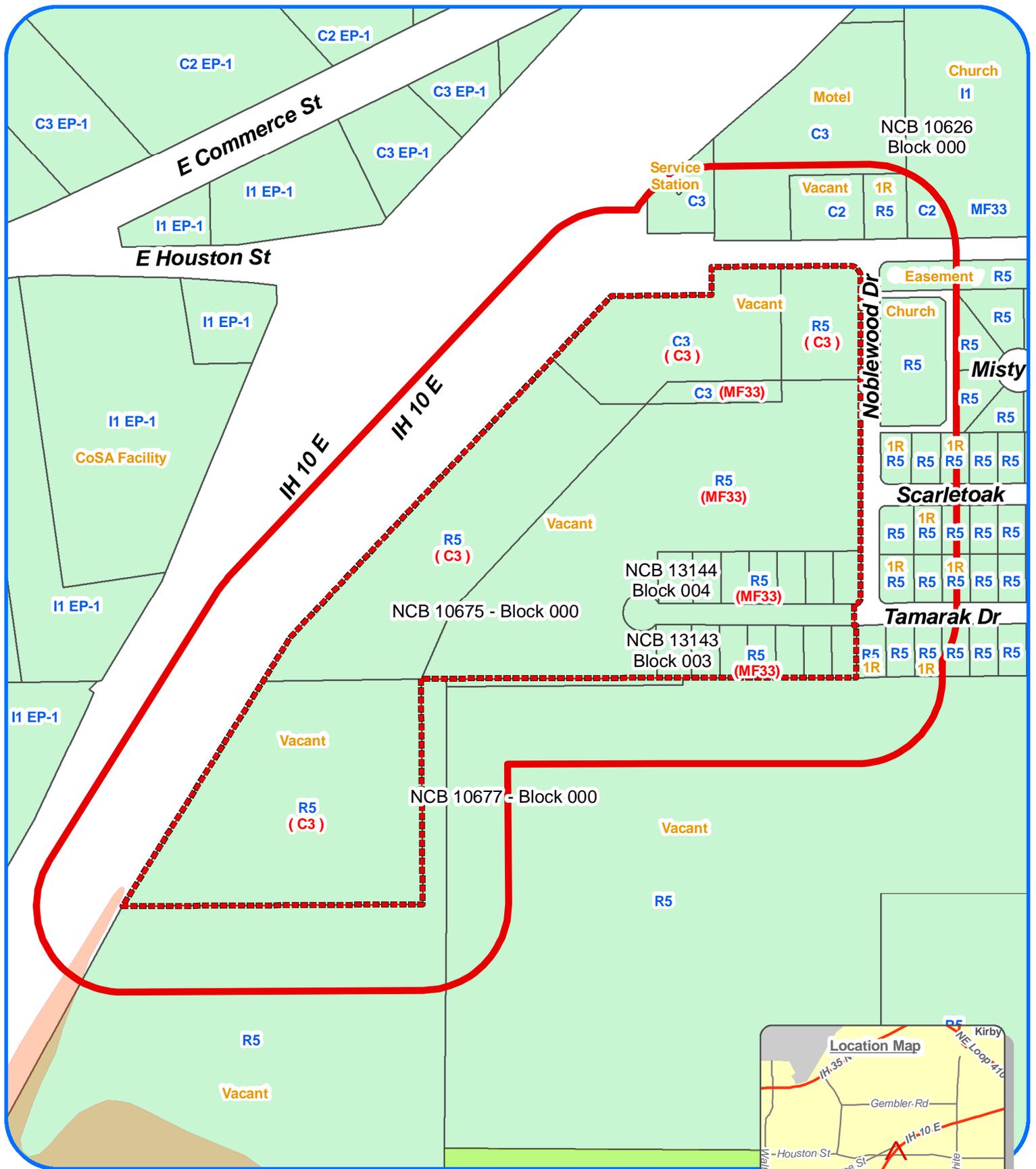
- THENCE: Along the south line of Block 3, New City Block 13143, and a south line of said 60.682 acre tract, South 89 degrees 58 minutes 12 seconds West a distance of 461.50 feet to the southwest corner of Lot 33, Block 3, New City Block 13143;
- THENCE: Continuing along a south line of said 60.682 acre tract, South 89 degrees 48 minutes 30 seconds West a distance of 550.49 feet to a pk nail at a corner of said 60.682 acre tract;
- THENCE: Departing said line and across said 60.682 acre tract and said 2.922 acre tract, North 23 degrees 54 minutes 20 seconds East a distance of 173.17 feet to a point;
- THENCE: Continuing across said 60.682 acre tract and said 2.922 acre tract, North 43 degrees 13 minutes 24 seconds East a distance of 731.73 feet to a point;
- THENCE: Continuing across said 60.682 acre tract and said 2.922 acre tract, North 89 degrees 20 minutes 00 seconds East a distance of 450.36 feet to the **POINT OF BEGINNING**, and containing 12.116 acres in the City of San Antonio, Bexar County, Texas.

This document was prepared under 22 TAC 663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.



S-11-09

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Zoning Case Notification Plan

Case Z-2009-097

Council District 2

Scale: 1" approx. = 300 Feet

Subject Property Legal Description(s): 27.24 acres out of NCB 10675, NCB 10677, NCB 13143, and NCB 13144

Legend

- Subject Property (27.24 Acres)
- 200' Notification Buffer
- Current Zoning R6
- Requested Zoning Change (R6)
- 100-Year FEMA Floodplain



Planning & Development Services Dept
 City of San Antonio
 (04/29/2009 - E Hart)

the City of San Antonio, Bexar County, Texas, all of which is eligible for development and the subject of City of San Antonio Zoning Case Number Z2009097.

III.

Recitals

1. WHEREAS, Declarant is the Owner of the Property, as more particularly defined in Article II above.
2. WHEREAS, Declarant submitted a Zoning Application to the City's Development Services Department formally referenced as Zoning Case Number Z2009097. Pursuant to Zoning Case Number Z2009097, Declarant has requested rezoning of the Property to "C-3" (Commercial District) and "MF-25" (Multi-Family District 25 units per acre) zoning districts.
3. WHEREAS, Declarant has requested support from the Association for the above referenced request for "C-3" and "MF-25" zoning.
4. WHEREAS, the Association has consented to the request for the above-referenced rezoning as consideration for this Declaration, and shall agree not to oppose the same when such request is heard by the Zoning Commission and the City Council.
6. WHEREAS, the undersigned Declarant does hereby finally and irrevocably impose the following restrictions on the Property, and burdens the Property with such restrictions, which are to run with the land for the term herein, to survive all transfers of ownership of the Property, and to govern any development or use of the Property.

NOW THEREFORE, in consideration of the mutual covenants and agreements, and other valuable consideration, it is declared that the Property, shall be held, sold, and conveyed subject to the following restrictions, covenants and conditions:

IV.

Restrictions

1. **Sexually Oriented Businesses:** Declarant agrees to prohibit sexually oriented businesses, as defined by the COSA Unified Development Code, from operating on the Property.
2. **Bars/Taverns:** Declarant agrees to prohibit free-standing bars and/or taverns from operating on the premises. As defined by the COSA Unified Development Code, a bar or tavern shall be defined as any use in which seventy-five (75) percent or more of gross revenue is derived from the on-premise sale and consumption of alcoholic beverages. Declarant further agrees to prohibit the operation of any bar, tavern and/or club that allows patrons to bring alcoholic beverages, purchased off-premise, into the bar, tavern or

club for consumption on premise. This provision shall in no way prevent bars or taverns from operating on the Property that are operated ancillary to the main use of the premise, such as a bar/tavern located in a hotel or restaurant.

3. **Multi-Family Housing Tract:** Declarant agrees to not develop the multi-family housing on the property with the assistance of federal tax credits. Such credits shall include, but not be limited to, tax credits received for low income housing pursuant to the federal Low Income Housing Tax Credit Program.
4. **Multi-Family Housing – Lighting and Fencing:** Declarant agrees to provide lighting similar to other multi-family apartments in the area, and fencing around the Multi-Family Housing Tract. Additionally, the ingress and egress points into the Multi-Family Housing Tract shall be gated.
5. **Zoning Case Support:** In consideration for the restrictions granted in this Declaration, the Association shall agree not to oppose, and to support, Declarant’s application for rezoning of the Property in zoning case number Z2009097 that is pending before the City of San Antonio’s Zoning Commission and City Council. This Declaration shall not be effective or recorded unless and until the Multi-Family Housing Tract is rezoned to MF-25 and the remainder of the Property is rezoned to C-3.

V.

Condition Precedent

1. **Zoning:** All obligations agreed to by the Declarant as part of this Declaration are expressly contingent upon the City Council’s approval of “C-3” (Commercial District) and “MF-25” (Multi-Family District 25 units per acre) zoning for the Property pursuant to Zoning Case Number Z2009097.

VI.

General Provisions

1. **Enforcement:** Failure to enforce any covenant or restriction shall not be deemed a waiver of the right of enforcement either with respect to the violation in question or any other violation. Declarant hereby agrees that upon receipt of a written notice from the Association of any violation of these restrictive covenants, the Property shall be brought into compliance with the restrictive covenant(s) violated within sixty (60) days of written notice thereof. It is understood and agreed by the parties to this Declaration that upon the sale of the Property by the Declarant or any other purchaser or developer of the Property, the Declarant shall be released from any and all liability and responsibility under this Declaration, excepting only liability that the Declarant may already have for any breach of Declarant’s obligations under this Declaration that occurred prior to the sale of the Property by the Declarant.

2. **Covenants Running With The Land:** These restrictions, covenants, and conditions are for the purpose of protecting the value and desirability of the property owned by the Association. Consequently, unless terminated pursuant to the provisions of this Declaration, they shall run with the real property and shall be binding on all parties having any right, title, or interest in the Property, described within this Declaration, or property owned by the Association in whole or in part, and their heirs, successors, and assigns. These covenants, conditions, and restrictions shall be for the benefit of the Property, described within this Declaration, or property owned by the Association.
3. **Attorney Fees:** If any controversy, claim, or dispute arises relating to this instrument, its breach, or enforcement, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees, and costs.
4. **Severability:** Declarant agrees that invalidation of any of these covenants or restrictions by judgment or court order shall in no way effect any other provision, and all other provisions shall remain in full force and effect.
5. **Headings:** The headings and other captions contained in this Declaration are for convenience of reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this Agreement.
6. **Unintended Omission:** If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.
7. **Term:** Declarant agrees that the covenants, conditions, and restrictions of this Declaration shall be effective for a term of ten (10) years from the date this Declaration is recorded, after which period the covenants, conditions, and restrictions shall be automatically extended for three (3) successive periods of five (5) years each, unless terminated earlier by agreement of the parties herein, as set forth below.
8. **Waiver and Amendment:** The Association may effectively waive the applicability of all or a portion of any one of the restrictions set forth herein or amend a provision, but only if approved by a majority (51%) of the owners of the Association, and evidenced by an instrument executed in writing by the then-serving President of the Association expressly setting forth that such waiver or amendment has been approved as set forth above. Said waiver or amendment shall be acknowledged before a Notary Public, and verify the then-current officer capacity of each signatory for the Association, specifically referencing this Declaration (including the Volume and Page numbers of recordation of this Declaration in the Records), quoting the language of the restriction(s) to be waived or amended, and duly recorded in the Bexar County Real Property Records. Should the Association cease to exist or operate, the Declarant shall have the sole power to amend this Declaration.

Furthermore, the Declarant shall have the sole authority to amend or remove Restriction Number three (3), as set forth above, as needed.

9. **Entire Agreement:** This Declaration reflects the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection herewith.
10. **Authority:** Alsbury Crossing, Ltd., Cherry Hills Neighborhood Association, and Bethany First Baptist Church, and the persons signing on their behalf, hereby represent to the other parties to this Declaration that they are duly organized and qualified to do business in the State of Texas and they have the requisite power and authority to execute this Declaration.

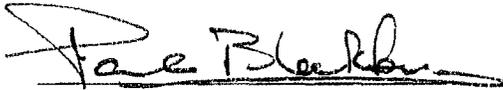
[SIGNATURES ON FOLLOWING PAGES]

WHEREFORE, this Declaration is executed this _____ day of _____, 2009, at San Antonio, Texas.

DECLARANT:

Alsbury Crossing, Ltd.
A Texas Limited Partnership

By Its General Partner, PKB Development, LLC:



Paul K. Blackburn
PKB Development, LLC

DECLARANT ACKNOWLEDGEMENT

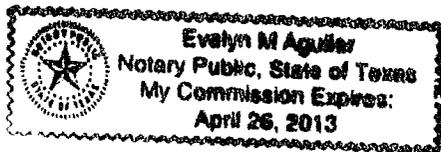
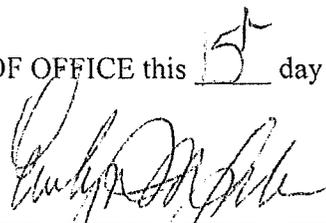
STATE OF TEXAS §

§

COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared Paul K. Blackburn, member of PKB Development, LLC, on behalf of Alsbury Crossing, Ltd.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 5th day of June, 2009.



Notary Public, State of _____
Printed Name: _____
My Commission Expires: _____

THE ASSOCIATION:

Bethany First Baptist Church

By: Rev. Ronald Benson

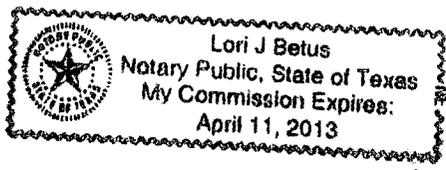
THE ASSOCIATION ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared Ronald Benson, on behalf of Bethany First Baptist Church.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 10th day of June, 2009.

Lori J Betus
Notary Public, State of Texas
Printed Name: Lori J Betus
My Commission Expires: 4-11-13



Cherry Hills Neighborhood Association

By: [Signature]

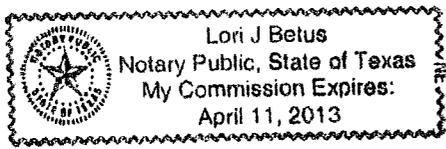
THE ASSOCIATION ACKNOWLEDGEMENT

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared John McCall, on behalf of Cherry Hills Neighborhood Association.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14 day of July, 2009.

[Signature]
Notary Public, State of Texas
Printed Name: Lori J Betus
My Commission Expires: 4/11/13



AFTER RECORDING RETURN TO:

PAUL K. BLACKBURN
8100 BROADWAY, SUITE 205
SAN ANTONIO, TX 78209

AFFIDAVIT OF PUBLICATION

Before me, the undersigned authority, on this day personally appeared Helen I. Lutz, who being by me duly sworn, deposes and says that she is the Publisher of *The Hart Beat*; that said newspaper is generally circulated in San Antonio, Bexar County, Texas; that the attached notice was published in said newspaper on the following date(s):

June 22, 2009

Subscribed and sworn to before me this 22nd day of June, 2009, to certify which witness my hand and seal of office.

PUBLIC NOTICE

AN ORDINANCE
2009-06-18-0535

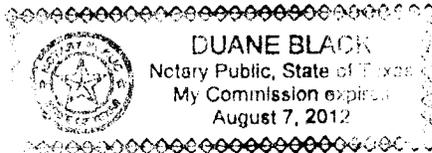
AMENDING CHAPTER 35 OF THE CITY CODE THAT CONSTITUTES THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF SAN ANTONIO BY CHANGING THE CLASSIFICATION AND REZONING OF CERTAIN PROPERTY DESCRIBED HEREIN AS: 27.24 acres out of NCB 10675, NCB 10677, NCB 13143, and NCB 13144 TO WIT: From "R-5" Residential Single-Family District and "C-3" General Commercial District to "C-3" General Commercial District (15.124 acres) and "MF-25" Multi-Family District (12.116 acres). "THE PENALTY FOR VIOLATION IS A FINE NOT TO EXCEED \$1,000.00".
6/22



Helen I. Lutz, Publisher



Notary Public in and for the State of Texas



Duane Black

Name of Notary

My commission expires August 7, 2012