

# ANNEXATION APPLICATION

Updated: September, 2020



## CONTACT INFORMATION

Applicant's Name		Property Owner	
Company		Company	
Applicant's Mailing Address		Owner's Mailing Address	
Applicant's Phone #		Owner's Phone #	
Applicant's Email		Owner's Email	

## PROPERTY INFORMATION

Is the property adjacent to city limits:  YES  NO

Is the property proposing to connect to City utilities:  YES, WATER  YES, WASTE WATER  NO

Is the property subject to an approved development or other agreement :  YES  NO

Proposed Use: \_\_\_\_\_ Proposed Zoning: \_\_\_\_\_

Reason for Annexation / Other Considerations: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## AUTHORIZATION

*By submitting this digital application, I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.*

Filing Fee \$1,181      Technology Fee \$13      **TOTAL COST \$1,194**

Submittal of this digital Application shall constitute as acknowledgement and authorization to process this request.

APPLY ONLINE – [WWW.MYGOVERNMENTONLINE.ORG/](http://WWW.MYGOVERNMENTONLINE.ORG/)

PROPERTY OWNER AUTHORIZATION

I, Alp Yilmaz (owner name) on behalf of San Marcos Hampton LLC and CCM San Marcos LLC (company, if applicable) acknowledge that I/we am/are the rightful owner of the property located at SW of Posey Rd. and IH 35 SB frontage road (address).

I hereby authorize Pamela Madere (agent name) on behalf of Jackson Walker LLC (agent company) to file this application for annexation (application type), and, if necessary, to work with the Responsible Official / Department on my behalf throughout the process.

Signature of Owner:  Date: 4/14/2022

Printed Name, Title: Alp Yilmaz, Manager

Signature of Agent: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name, Title: \_\_\_\_\_

## PROPERTY OWNER AUTHORIZATION

I, \_\_\_\_\_ (owner name) on behalf of  
\_\_\_\_\_  
\_\_\_\_\_ (company, if applicable) acknowledge that I/we  
am/are the rightful owner of the property located at  
\_\_\_\_\_  
\_\_\_\_\_ (address).

I hereby authorize \_\_\_\_\_ (agent name) on behalf of  
\_\_\_\_\_  
\_\_\_\_\_ (agent company) to file this application for  
\_\_\_\_\_  
\_\_\_\_\_ (application type), and, if necessary, to work with  
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name, Title: \_\_\_\_\_

Signature of Agent:  \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name, Title: \_\_\_\_\_

Form Updated October, 2019

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**OWNER'S CONSENT TO ANNEXATION OF LAND**

**Date:** 4/14/2022  
**City:** City of San Marcos, Texas, a home rule municipal corporation  
**Owner:** San Marcos Hampton LLC and CCM San Marcos LLC  
**Property:** SW of Posey Rd and IH 35 SB Frontage Road

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Owner petitioned the City to initiate proceedings to annex the Property. Owner acknowledges and agrees that, in connection with annexation of the Property:

1. Owner does not wish to enter into a development agreement with the City under Section 212.172 and has declined the offer by the City of such a development agreement.

2. Unless specifically authorized by a written agreement with Owner approved by the City Council under applicable ordinances, the City has no obligation to extend water, wastewater, or electric utility services, roads, or other infrastructure to the Property at the City's expense, and the City has made no offers, representations or promises that the City will, at the City's expense, extend water, wastewater, or electric utility services, roads, or other infrastructure to the Property. Such extensions to the Property shall be made available in the same manner and on the same basis as available to other areas of the City, whereby it shall be Owner's sole obligation, and at Owner's sole expense, to construct and install all infrastructure necessary to extend such services to the Property under applicable ordinances.

3. Owner waives any and all rights of Owner to assert any claim or demand, or to file suit against, and covenants not to sue, the City on the basis that the annexation of the Property by the City is invalid, void or voidable, in whole or in part.

4. This instrument is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings concerning this instrument shall lie in State courts having jurisdiction located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

5. If any word, phrase, clause, sentence, or paragraph of this instrument is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this instrument will continue in force if they can be given effect without the invalid portion.

6. This instrument may be recorded in the Official Public Records of the County or Counties in which the Property is located and is binding on Owner's successors, heirs and assigns, and any future owners of the Property.

[SIGNATURE(S) ON NEXT PAGE]



OWNER:

By: [Signature]

Name: Alp Yilmaz

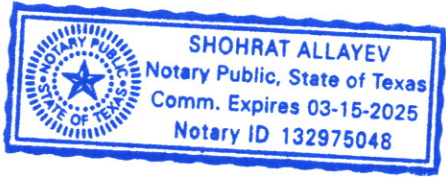
Title: Manager

ACKNOWLEDGMENT

STATE OF Texas §

COUNTY OF Harris §

This instrument was acknowledged before me on 14<sup>th</sup> April, 2022 by Alp Yilmaz, Manager of San Marcos Hampton LLC in such capacity on behalf of said entity. and CCM San Marcos LLC



[Signature]  
Notary Public, State of Texas

**DECLINATION OF OFFER OF DEVELOPMENT AGREEMENT**

The attached Development Agreement was offered by the City of San Marcos to the owner of the property subject to the following application/petition (check one):

- Out of City Utility Connection of Extension Application
- Petition for Annexation (without OCU Request)

By signing below, the owner of the subject property declines the offer to enter into such Development Agreement.

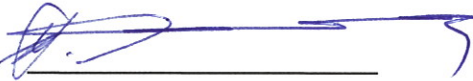
**OWNER (individual):**

\_\_\_\_\_

Date: \_\_\_\_\_

[OR]

**OWNER (Entity):**

By:  \_\_\_\_\_

Name: San Marcos Hampton LLC and CCM San Marcos LLC

Title: Manager

Date: 4/14/2022

Case No. AN-22-12 (to be inserted by City Staff)



**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**WARRANTY DEED WITH VENDOR'S LIEN**

**Date:** July 13, 2021

**Grantor:** Benjamin H. Johnston

**Grantor's Mailing Address:** 4106 Hunter Road  
San Marcos, Texas 78666

**Grantee:** San Marcos Hampton LLC, a Texas limited liability company

**Grantee's Mailing Address:** 7700 Kempwood Drive  
Houston, Texas 77055

**Consideration:** Cash and a note of even date executed by Grantee and payable to the order of American First National Bank in the principal amount of \$1,200,000.00. The note is secured by a first and superior vendor's lien and superior title retained in this deed in favor of American First National Bank and by a first-lien deed of trust of even date from Grantee to Walter A. Schroeder, Trustee.

**Property (including any improvements):**

Being a 37.674 acre tract of land out of the William H. Van Horn Survey, A-464, being a portion of a called 120 acre tract of land, recorded in Volume 1499, Page 203, Deed Records of Hays County, Texas (No Description), described in Volume 102, Page 612, Deed Records, Hays County, Texas; said 37.674 acre tract being more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof for all purposes.

**Reservations from Conveyance:** None.

**Exceptions to Conveyance and Warranty:**

1. Standby fees, taxes and assessments by any taxing authority for the year 2021, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership.
2. Easement to The Texas Pipeline Company, recorded in Volume 97, Page 542, of the Deed Records of Hays County, Texas.
3. Easement to Southwestern Bell Telephone Company, recorded in Volume 218, page 41, of the Deed Records of Hays County, Texas.
4. Utility Easement to Pedernales Electric Cooperative, Inc., of Johnson City, recorded in Volume 4454, Page 459, of the Official Public Records of Hays County, Texas.
5. City of San Marcos Request for Out-of-City Utility Extension or Connection, recorded in Volume 3712, Page 49 of the Official Public Records of Hays County, Texas. (Address 5520 IH 35 S, 36 ac)
6. Supplemental Final Order and Judgment, In RE: AT&T Fiber Optic Cable Installation Litigation, recorded in Volume 3277, Page 794, of the Official Public Records of Hays County, Texas.
7. Judgment in favor of Quest Communications Company, LLC, et al, recorded in Volume 5273, Page 815, of the Official Public Records of Hays County, Texas.
8. Interest in and to all coal, lignite, oil, gas and other minerals, and all rights incident thereto, contained in instrument dated November 6, 1998, recorded in Volume 1474, page 896, of the Official Public Records of Hays County, Texas.
9. Subject property lies within the York Creek Improvement District and Hays County Special Road District as reflected upon the tax rolls.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and Exceptions to Conveyance and Warranty, when the claim is made by, through or under Grantor, but not otherwise.

American First National Bank, at Grantee's request, has paid in cash to Grantor a portion of the purchase price of the Property and other property that is evidenced by the note. The first and superior vendor's lien against and superior title to the Property are retained for the benefit of American First National Bank and are transferred to American First National Bank without recourse against Grantor.

When the context requires, singular nouns and pronouns include the plural.

*Benjamin H. Johnston*

Benjamin H. Johnston

By Charlene Johnston, Attorney-in-Fact

*by Charlene Johnston, Attorney-in-Fact*

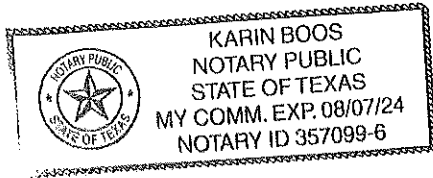
STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me on July 23, 2021, by Charlene Johnston, acting as Attorney-in-Fact for Benjamin H. Johnston.

*Karin Boos*

Notary Public, State of Texas





410 N. Seguin Ave.  
New Braunfels, TX 78130  
HMTNB.COM  
830.625.8555 • FAX: 830.625.8556  
TBPLS FIRM 10153600

EXHIBIT A

METES AND BOUNDS DESCRIPTION  
FOR A 37.674 ACRE TRACT OF LAND

Being a 37.674 acre tract of land out of the William H. Van Horn Survey, A-464, being a portion of a called 120 acre tract of land, recorded in Volume 1499, Page 203, Deed Records of Hays County, Texas (No Description), described in Volume 102, Page 612, Deed Records, Hays County, Texas, said 37.674 acre tract being more particularly described as follows:

BEGINNING at a 1/2" iron pin found in the Northwest right-of-way line of Interstate Highway 35 for the East corner of a called 3.94 acre tract, described in Volume 1128, Page 806, Official Public Records, Hays County, Texas, the South corner of the herein described tract;

THENCE with the common line of the herein described tract and said 3.94 acre tract, N 46°03'48" W a distance of 596.15 feet to a 1/2" iron pin found for the North corner of said 3.94 acre tract, same being the East corner of Lot 7, H&H Industrial Park Section Two, recorded in Volume 13, Page 341, Plat Records, Hays County, Texas, an angle point of the herein described tract;

THENCE with the common line of the herein described tract and Lot 7, N 45°54'34" W a distance of 336.99 feet to a 1/2" iron pin (w/ cap "Pro-Tech") found for the East corner of Central Texas Avenue, and the North corner of said Lot 7;

THENCE with the common line of the herein described tract and Central Texas Avenue, N 46°11'26" W a distance of 59.85 feet to a 1/2" iron pin (w/ cap "Pro-Tech") found for the North corner of Central Texas Avenue, the East corner of Lot 8B, Amending Plat of Lots 8A & 9A, H&H Industrial Park Section Two, recorded in Volume 19, Page 226, Plat Records, Hays County, Texas;

THENCE with the common line of the herein described tract and Lot 8B, N 45°59'11" W a distance of 529.72 feet to a 1/2" iron pin (w/ cap "Pro-Tech") found for the North corner of Lot 8B, the East corner of a called 32.975 acre tract, described in Document No. 10026134, Official Public Records, Hays County, Texas;

THENCE with the common line of the herein described tract and said 32.975 acre tract, N 46°00'10" W a distance of 912.09 feet to a 1/2" iron pin found in the South line of a Union Pacific Railroad right-of-way, for an angle point of said right-of-way, same being an angle point of said 32.975 acre tract and the West corner of the herein described tract, from which a 1/2" iron pin found for an angle point of said railroad right-of-way and the North corner of said 32.975 acre tract bears N 44°22'23" W a distance of 97.95 feet;

THENCE into and across said 120 acre tract with said railroad right-of-way, the following two calls:

1. Along the arc of a curve to the left, having a radius of 1435.08 feet, an arc length of 554.37 feet, and a chord bearing of N 58°59'38" E, a distance of 550.93 feet to a 1/2" iron pin (with cap stamped "HMT") set;
2. N 46°35'56" E a distance of 172.35 feet to a 3" metal post found in the North line of said 120 acre tract and the South line of another called 120 acre tract, described in Volume 105, Page 247, Deed Records, Hays County, Texas, the North corner of the herein described tract;

**EXHIBIT A**

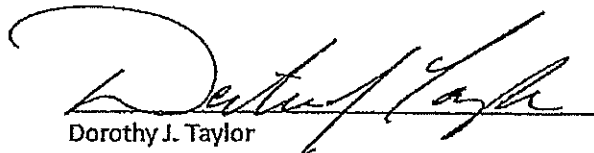
THENCE departing the right-of-way of Union Pacific Railroad, with the common line of the herein described tract and said remainder of 120 acres, with a barbed wire fence, S 46°01'21" E a distance of 2278.68 feet to a 3" metal post found in the Northwest right-of-way line of Interstate 35 for the South corner of said remainder of 120 acres, the East corner of the herein described tract, from which a TXDOT monument found at the intersection of the Northwest right-of-way line of Interstate 35 and the Southwest right-of-way line of Posey Road for the East corner of a called 52.39 acre tract, described in Document No. 06005849, Official Public Records, Hays County, Texas, bears N 43°32'45" E a distance of 1674.01 feet;

THENCE with the Northwest right-of-way line of Interstate 35, S 43°31'57" W a distance of 705.02 feet to the POINT OF BEGINNING and containing a 37.674 acre tract of land in Hays County, Texas.

Bearings shown hereon are based on the Texas Coordinate System, South Central Zone (4204), NAD 83.

Written this the 12th day of March, 2019.

Reference survey of said 37.674 acre tract of land prepared this same date.



Dorothy J. Taylor

Registered Professional Land Surveyor No. 6295

S:\Projects\Title Surveys\Van Horn, William\36 Acres - IH35\19-0219 Body\CAD\19-0219 m&b.docx

3-14-19



13-NEW BRAUNFELS  
4000142100914

DEED OF TRUST AND SECURITY AGREEMENT

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

THE STATE OF TEXAS                    §  
  §           KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF HAYS                     §

That the undersigned, CCM SAN MARCOS LLC, a Texas limited liability company, hereinafter called "Grantors" (whether one or more), whose address for notice hereunder is 7700 KEMPWOOD DRIVE, HOUSTON, TEXAS 77055, of HARRIS County, Texas, in consideration of TEN AND NO/100 DOLLARS (\$10.00) cash in hand paid by ROBERT J. ADAM, STEPHEN W. BING. LEIGH ANN THOMPSON OR PHILIP D. CONWAY, hereinafter called "Trustee", whose address for notice is 12611 JONES ROAD, SUITE 200, HOUSTON, TEXAS 77070, the receipt of which payment is hereby acknowledged and confessed, and of the debt and trust hereinafter mentioned have Granted, Bargained, Sold and Conveyed, and by these presents do Grant, Bargain, Sell and Convey unto Trustee, and unto the successor or substitute Trustee hereinafter provided, the following property situated in HAYS County, Texas, to-wit:

**A TRACT OR PARCEL CONTAINING 35.249 ACRES OR 1,535,432 SQUARE FEET OF LAND BEING OUT OF AND A PART OF A CALLED 88.25 ACRE TRACT OF LAND DESCRIBED IN DEED TO LANCE EVAN POSPISIL AND KATHLEEN POSPISIL WHITLOCK, AS RECORDED UNDER DOC. NO. 19015232, OFFICIAL PUBLIC RECORDS HAYS COUNTY TEXAS (O.P.R.H.C.T) SITUATED IN THE W.H. VAN HORN SURVEY, ABSTRACT NO. 464, HAYS COUNTY, TEXAS, WITH SAID 35.249 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF, WITH ALL BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83);**

together with all buildings and other improvements thereon and hereafter placed thereon, and all fixtures, materials, equipment, apparatus, furniture, furnishings and other property, real and personal, now or hereafter installed or used on the above-described property or the improvements thereon, including, but not limited to, all heating, lighting, refrigeration, plumbing, ventilating, incinerating, water-heating, cooking and air-conditioning equipment, fixtures and appurtenances, window screens, window shades, venetian blinds, awnings, drapes, rugs, and other floor coverings and shrubbery and other chattels and personal property used or furnished in connection with the operation, use and enjoyment of the above-described property and the improvements thereon, and all renewals, replacements and substitutions thereof and additions thereto, all of which said property and fixtures shall be deemed to be a part of and affixed to the above-described real property; all rents, revenues, income and profits arising from any part of the above-described property and the use thereof, including all rents, revenues, bonus money, royalties, rights and benefits accruing to Grantors under all present and future oil, gas and mineral leases on any part of the above-described property; all rights, title and interest of Grantors in and to any utility capacities and wastewater reservations relating to any part of the above-described property; all rights, title and interest of Grantors in and to any and all Wastewater Capacity Reservations of any kind or character, if any, covering the Land or Improvements, issued or which may be issued by any governmental agencies having jurisdictions thereof, and all other rights relating to sewage treatment capacity, water capacity and utilities servicing the Land or Improvements (said rights described in this subparagraph being collectively sometimes called

"Utilities Rights") and all rights, title and interest of Grantors in and to any permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with said real property; and all the estate, right, title and interest of every nature whatsoever of the Grantors in and to all of the foregoing and every part and parcel thereof.

Notwithstanding any other language contained herein, no lien or security interest created or evidenced by this agreement shall extend to cover any homestead property of Grantors in the event that such lien or security interest is not permitted by the Texas Constitution and/or Texas Law.

Notwithstanding any other language contained herein, if any person executing this agreement is a "Consumer" as defined in Regulation AA of the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 227, or the Federal Trade Commission Practices Rule, 16 C.F.R. Part 444, no lien or security interest created or evidenced by this agreement shall extend to cover a non possessory lien or security interest in "Household Goods", other than a purchase money lien or security interest, in accordance with regulations as applicable.

TO HAVE AND TO HOLD the above-described property, together with all and singular the rights, privileges, hereditament and appurtenances thereunto in anywise incident, appertaining or belonging (all of which are hereinafter called "Premises") unto Trustee, and his successors or substitutes forever; and Grantors hereby bind themselves, their heirs, successors, assigns and legal representatives, to warrant and forever defend title to said Premises unto Trustee, his successors and substitutes, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

This Deed of Trust is made on the following trusts, terms and conditions, and for the purpose of securing and enforcing the payment of a certain promissory note (hereinafter called "Note") of even date herewith in the principal sum of **ONE MILLION SIX HUNDRED NINETY THOUSAND AND NO/100 (\$1,690,000.00) DOLLARS**, being payable on or before **TWO (2) YEARS** from the date thereof and bearing interest before and after maturity thereof as therein specified, containing certain accelerating, maturity and attorney's fee collection clauses, as specified therein, executed by Grantors and payable to the order of **AMERICAN FIRST NATIONAL BANK** (hereinafter, together with any subsequent holder of the Note, called "Beneficiary"), whose address is **9999 BELLAIRE BOULEVARD, HOUSTON, TEXAS 77036**, in lawful money of the United States of America; all renewals, rearrangements, extensions and/or modifications of the Note; and all other sums of money which may be hereafter paid or advanced by or on behalf of Beneficiary under the terms and provisions of this Deed of Trust; any additional loans made by Beneficiary to Grantors (it being reasonably contemplated that Beneficiary may lend additional sums to Grantors from time to time, but shall not be obligated to do so, and Grantors hereby agreeing that any such additional loans shall be secured by this Deed of Trust); and any and all other indebtedness, obligations and liabilities of any kind of the Grantors, or any Maker of the Note, to Beneficiary, now or hereafter existing, absolute or contingent, joint and/or several, secured or unsecured, due or not due, arising by operation of law or otherwise, or direct or indirect, including indebtedness, obligations and liabilities to Beneficiary or the Maker of the Note, or Grantors and/or said maker of the Note as a member of any partnership, syndicate, association or other group, and whether incurred by the Grantors as principal, surety, endorser, guarantor, accommodation party or otherwise, and whether originally contracted with Beneficiary or acquired by Beneficiary pursuant to a loan participation agreement or otherwise (all of which are hereinafter referred to as the "Indebtedness").

Grantors hereby expressly covenant and agree that:

1. **PROMISE TO PAY NOTE:** Grantors will pay, or cause to pay, the Note secured hereby in accordance with the terms and provisions thereof.
2. **NON-DISTURBANCE OF THIS LIEN:** The execution of this Deed of Trust shall not impair or affect any other security which may be given to secure the payment of the Indebtedness secured hereby, and all such additional security shall be considered as cumulative. The taking of additional security, execution of partial releases of the security or any extension of time of payment of the Indebtedness secured hereby shall not diminish the force, effect or lien of this Deed of Trust and shall not affect or impair the liability of any maker, surety or endorser for the payment of said Indebtedness.

3. **PAYMENT OF AD VALOREM TAXES, ASSESSMENTS, ETC:** Grantors will pay as same come due and before same become delinquent, all taxes, assessments and other charges imposed, levied or assessed against the Premises. Grantors shall furnish to Beneficiary paid tax receipts or other evidence satisfactory to Beneficiary on or before January 31 of each year with respect to taxes paid on the Premises for the previous year.

4. **KEEPING PREMISES IN GOOD REPAIR:** Grantors will keep the Premises in good condition and repair and will not commit or permit any waste, impairment or deterioration of the same and generally will not do any act by which the value of the above-described Premises may become impaired. Neither shall any improvements, fixtures, or personal property be added to, altered, destroyed or removed from said Premises without the written consent of Beneficiary.

5. **RENTS AS ADDITIONAL COLLATERAL:** On default in the prompt payment of any sums of money secured by this Deed of Trust, Beneficiary, or any agent of Beneficiary, shall have the right, but not the obligation, to demand, collect, receive, sue for and recover in its own name all presently owing or future rents, revenues, and incomes and to apply the same to the payment of the Indebtedness secured hereby, after first deducting therefrom all expenses of collection. On such default, Beneficiary shall also have the right to take possession of the Premises, remove all persons therefrom and rent the same for the account of Grantors, and employ such agents and attorneys as may be necessary with respect thereto. Likewise, on such default, Beneficiary shall be entitled to have a receiver appointed to take possession of the Premises and to collect all rents, income and revenues without notice to Grantors and without regard to the valuation of said Premises or the solvency or insolvency of Grantors or any other person liable for any part of the Indebtedness secured hereby, and without prejudice to any other rights or remedies. Notwithstanding other language contained herein, if a separate Assignment of Rents and Leases is executed in connection with this Deed of Trust, said Assignment of Rents and Leases shall be controlling in connection with Grantors' assignment of rents and leases to Beneficiary.

Notwithstanding anything to the contrary above, this section shall be in compliance with the Texas Assignment of Rents Act (TARA). "Rents" shall include all such income included in TARA.

6. **INSURANCE REQUIREMENTS:** Grantors will keep the Premises insured against such hazards and in such companies, forms and amounts as may be required by Beneficiary, including flood insurance. All such insurance policies shall contain mortgagee's clauses payable to Beneficiary as its interest may appear, and at Beneficiary's option, include a "Lender Loss Payee" endorsement, and all insurance policies and renewals thereof shall be delivered to Beneficiary immediately upon issuance thereof, together with receipts showing payment of all premiums thereon. Grantors shall furnish to Beneficiary each year evidence of compliance with the requirements of this paragraph. Beneficiary shall have the right to collect and receive all money that may become payable and collectible on all such policies (whether through loss or damage to the Premises, or otherwise) and apply all or any part of the same, less a reasonable collection expense, as a credit on the Indebtedness secured hereby, even though such Indebtedness may not be due according to its terms. At its option, Beneficiary may use any part of such money for the rebuilding and restoration of any part of the damaged or destroyed Premises. Any such money held by Beneficiary for rebuilding or restoration shall be held without payment or allowance of interest. This provision shall not create any duty on the part of the Beneficiary to collect insurance proceeds and the Beneficiary shall not be responsible for the failure to collect the same regardless of the cause of such failure.

Notwithstanding any other provisions contained in this Deed of Trust, at any time that any improvements on the real property described herein are located in a special flood hazard area (such as Zone A or V) as designated by the Administrator of the Federal Emergency Management Agency (FEMA), any tangible personal property which is either (i) included in the definition of the "Premises" in this Deed of Trust, or (ii) is the object of a security interest created by this Deed of Trust, shall be limited to only those items specifically covered (now or hereafter) by Coverage A of the standard flood insurance policy issued in accordance with either (iii) the National Flood Insurance Program, or (iv) equivalent coverage similarly issued by a private insurer to satisfy the National Flood Insurance Act (as amended).



7. **BENEFICIARY'S RIGHT TO PAY AD VALOREM TAXES AND INSURANCE PREMIUMS:** If Grantors fail to pay as same become due and payable, all taxes, assessments and other charges imposed, levied or assessed against said Premises or to maintain the insurance coverage, including flood insurance coverage, all as herein provided, Beneficiary may, at its option and without waiver of any other rights granted by this Deed of Trust for breach of the covenants contained herein, procure and pay for any such insurance coverage and pay any such taxes, assessments and other charges, including any sums that may be necessary to redeem the Premises from tax sale, without obligation to inquire into the validity of any such taxes, assessments, charges and tax sales, the receipts of the proper officers being conclusive evidence of the validity and amount thereof. Such failure shall be considered an event of default by Grantors, under this Deed of Trust. All amounts so paid by Beneficiary shall immediately become due to Beneficiary, together with interest thereon from the date on which such payments were made at the rate provided in the Note secured hereby, and all such amounts shall be added to and become a part of the Indebtedness secured by this Deed of Trust. In connection herewith, Grantors should refer to the Collateral Protection Insurance Notice, if any, provided by Beneficiary, for additional information.

8. **NO OTHER SUPERIOR LIENS:** Grantors will not suffer or permit any lien superior or equal to the lien created hereby to attach to or be enforced against the Premises.

9. **EMINENT DOMAIN:** If any part of the Premises shall be taken for public use under the power of eminent domain, Beneficiary shall have the right to receive and collect all amounts and damages awarded by such condemnation proceedings and apply the same on the last maturing installments of the Indebtedness secured hereby.

10. **SUBSEQUENT OWNERS:** Subject to the provisions of the Due on Sale paragraph herein, Beneficiary may deal with any subsequent owner or successors in interest of the Premises or any part thereof without notice to Grantors and without limiting or discharging the liability of Grantors under this Deed of Trust and the Indebtedness secured hereby. Sale of the Premises, forbearance by Beneficiary, extensions of the time of payment of the Indebtedness secured hereby or acceleration of the time for payment of the Indebtedness secured hereby and the subsequent reinstatement of same, shall not operate to release, discharge, modify, change or affect the original liability of Grantors in whole or in part.

11. **WAIVER OF APPRAISEMENT LAWS:** Grantors expressly waive and renounce the benefit of all present and future laws providing for any appraisal before sale of any of the Premises covered by this Deed of Trust, commonly known as "appraisal laws", and all present and future laws extending in any manner the time for enforcement of collection of the Indebtedness secured hereby, commonly known as "stay laws" and "redemption laws".

12. **DEFECT IN TITLE:** If, subsequent to the execution and delivery of this Deed of Trust, it should be ascertained that there is a defect in the title of Grantors to the Premises, or that there is a lien of any nature whatsoever on any part of the Premises, which is equal or superior in rank to the lien granted by this instrument, or if a homestead claim is asserted to any part of the Premises adverse to this trust, or if Grantors or any subsequent owner of the Premises or any guarantor of the Indebtedness become insolvent or bankrupt, or a receiver be appointed for their property, or a petition for reorganization, arrangement, receivership, bankruptcy or related proceedings be filed by or against Grantors or any subsequent owner of the Premises, or any guarantor of the Indebtedness, then in any such event any Beneficiary shall have the right to declare the Indebtedness secured hereby at once due and payable without demand or notice, and the lien granted by this Deed of Trust may be foreclosed.

13. **FORECLOSURE PROVISIONS:** (a) If the Indebtedness secured hereby is fully paid in accordance with the terms and provisions of this instrument and the Note, and if the covenants and agreements contained herein are kept and performed, then this conveyance shall become null and void and shall be released at the expense of Grantors, otherwise, the same shall remain in full force and effect; and if default is made in the payment of any part of the Indebtedness secured hereby or in the performance of any of the covenants and agreements contained in this instrument or in the Note, or in any document executed in connection therewith, then the entire Indebtedness secured hereby shall, at once or at any time thereafter while any part of said Indebtedness remains unpaid, at the option of any Beneficiary, become due and payable without demand or notice (all rights to demand and notice being hereby expressly waived), and

it shall thereupon be the duty of the above named Trustee, or his successor or substitute as hereinafter provided (such Trustee, or his successor or substitute who acts hereunder being hereinafter called the "Acting Trustee"), to enforce this trust at the request of any Beneficiary (which request shall be presumed) and to sell the Premises with or without first having taken possession of the same and in whole or in part, as the Acting Trustee may elect (all rights to a marshalling of assets of Grantors being expressly waived hereby), to the highest bidder for cash at public auction at the Courthouse door of the County in which said Premises are situated on the first Tuesday of any month between the hours of 10 A.M. and 4 P.M.; however, in the event the first Tuesday of the month is New Years Day (January 1) or Independence Day (July 4), the date of foreclosure shall be on the following day (i.e. January 2 or July 5), after giving notice of the time, place and terms of sale and the Premises to be sold by (i) the Acting Trustee or any person chosen by him posting or causing to be posted written or printed notice thereof at least twenty-one (21) days preceding the date of said sale at the County Courthouse door or the place designated by the appropriate authorities of said County (whichever place is legally appropriate), (ii) the Acting Trustee or any person chosen by him filing or causing to be filed with the County Clerk of the County in which the Premises are situated written or printed notice thereof at least twenty-one (21) days preceding the date of said sale, and (iii) the Beneficiary or any person chosen by it, at least twenty-one (21) days preceding the date of said sale, serving written notice of such proposed sale by certified mail on each debtor obligated to pay the Indebtedness evidenced by the Note according to the records of Beneficiary. Service of such notice to each debtor shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to each debtor at the most recent address as shown by the records of Beneficiary, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be prima facie evidence of the fact of service.

After such sale, the Acting Trustee shall make due conveyance with general warranty to the purchaser or purchasers and the Grantors bind themselves, their heirs, assigns, executors, administrators, successors and legal representatives to warrant and forever defend the title of such purchaser or purchasers.

(b) If default is made in the payment of any part of the Indebtedness secured hereby or in the performance of any of the covenants and agreements contained in this instrument or in the Note, any Beneficiary shall have the right and option to proceed with foreclosure in satisfaction of such item or items by directing the Trustee, or his successor or substitute as hereinafter provided, to proceed as if under a full foreclosure, conducting the sale as herein provided, and without declaring the whole debt due, and provided that if sale is made because of default as hereinabove mentioned, such sale may be made subject to the unmatured part of the Note and the Indebtedness secured hereby, and it is agreed that such sale, if so made, shall not in any manner affect any other obligation or obligations secured hereby, but as to such other obligations this Deed of Trust and the liens created hereby shall remain in full force and effect just as though no sale had been made under the provisions of this paragraph. It is further agreed that several sales may be made hereunder without exhausting the right of sale for any other breach of any of the obligation secured hereby; it being the purpose to provide for a foreclosure and sale of the Premises for any matured portion of any of the indebtedness secured hereby or other items provided for herein without exhausting the power to foreclose and to sell the Premises for any other part of the Indebtedness secured hereby whether matured at the time or subsequently maturing.

(c) The proceeds from any such sale shall be applied by the Acting Trustee as follows:

**FIRST:** To the payment of all expenses of advertising, selling and conveying said Premises, including a commission to the Acting Trustee of five percent (5%) of the amount of the unpaid Indebtedness secured hereby.

**SECOND:** To the payment to Beneficiary of all unpaid Indebtedness and accrued interest to the date of sale.

**THIRD:** The balance, if any, shall be paid to Grantors.

(d) The Acting Trustee hereunder shall have the right to sell the Premises in whole or in part and in such parcels and order as he may determine, and the right of sale hereunder shall not be exhausted by one or more sales, but

successive sales may be had until all of the Premises have been legally sold. In the event any sale hereunder is not completed or is defective in the opinion of Beneficiary or the holder of any part of the Indebtedness, such sale shall not exhaust the power of sale hereunder, and Beneficiary or such holder shall have the right to cause a subsequent sale or sales to be made by the Trustee or any successor or substitute Trustee. Likewise, Beneficiary may become the purchaser at any such sale if it is the highest bidder, and shall have the right, after paying or accounting for all costs of said sale or sales, to credit the amount of the bid upon the amount of the Indebtedness owing, in lieu of cash payment. The purchaser or purchasers at foreclosure shall have the right to affirm or disaffirm any lease of said Premises.

(e) It shall not be necessary for the Acting Trustee to have constructively in his possession any part of the real or personal property covered by this Deed of Trust, and the title and right of possession of said property shall pass to the purchaser or purchasers at such sale herein contained or otherwise. Grantors or any person claiming any part of the Premises by, through or under Grantors, shall not be entitled to a marshalling of assets or a sale in inverse order of alienation.

(f) The recitals and statements of fact contained in any notice or in any conveyance to the purchaser or purchasers at any such sale shall be prima facie evidence of the truth of such facts, and all prerequisites and requirements necessary to the validity of any such sale shall be presumed to have been performed.

(g) Any sale under the powers granted by this Deed of Trust shall be a perpetual bar against Grantors, their heirs, successors, assigns and legal representatives.

14. **TENANTS AT WILL AFTER FORECLOSURE:** In the event of a foreclosure under the powers granted by this Deed of Trust, Grantors, and all other persons in possession of any part of the Premises, shall be deemed tenants at will of the purchaser at such foreclosure sale and shall be liable for a reasonable rental for the use of said Premises; and if any such tenants refuse to surrender possession of said Premises upon demand, the purchaser shall be entitled to institute and maintain the statutory action of forcible entry and detainer and procure a writ of possession thereunder, and Grantors expressly waive all damages sustained by reason thereof.

15. **PROVISIONS FOR SUBSTITUTE TRUSTEE:** In case of the death, inability, refusal or incapacity of the herein named Trustee to act, or at the option of any Beneficiary at any time and without cause or notice, a successor or substitute Trustee may be named, constituted and appointed. Successor or substitute trustees may be named, constituted and appointed without procuring the resignation of the former trustee and without other formality than the execution and acknowledgement by Beneficiary of a written instrument (which instrument, if Beneficiary is a corporation, shall be executed by the President or any Vice President and without the necessity of any action by the Board of Directors authorizing such appointment) appointing and designating such successor or substitute trustee, whereupon such successor or substitute trustee shall become vested with and succeed to all of the rights, titles, privileges, powers and duties of the Trustee named herein. Such right of appointment of a substitute trustee shall exist as often and whenever for any of said causes the original or successor or substitute trustee cannot or will not act or has been removed as herein provided.

16. **USURY SAVINGS CLAUSE:** This Deed of Trust has been executed and/or delivered in, and the Note has been issued in, the State of Texas, and each is to be construed in accordance with and governed by the laws of the State of Texas and the laws of the United States of America, as applicable. In the event that any one or more of the provisions contained in this Deed of Trust shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Deed of Trust. Furthermore, it is the intention of Grantors and Beneficiary to conform strictly to applicable usury laws, as presently in effect. Accordingly, if the transactions contemplated hereby would be usurious under applicable law (including the laws of the State of Texas and the laws of the United States of America), then notwithstanding anything to the contrary in the Note or any other evidence of the Indebtedness, or any agreement entered into in connection with or as security for the Indebtedness, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under applicable law that is contracted for, charged or received under the Indebtedness or under any of the other aforesaid agreements or otherwise in connection with the Indebtedness shall under no circumstances exceed the maximum amount of interest permitted by applicable law, and any excess shall be credited on the Indebtedness by the holder thereof (or, if the

Indebtedness shall have been paid in full, refunded to the Grantors); and (ii) in the event that the maturity of the Indebtedness is accelerated by reason of an election of the holder thereof resulting from any event of default under this Deed of Trust or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount permitted by applicable law, and excess interest, if any, provided for in this Deed of Trust or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited on the Indebtedness (or, if the Indebtedness shall have been paid in full, refunded to the Grantors).

17. **FIXTURE FILING:** This instrument shall be deemed to be and may be enforced from time to time as a Deed of Trust, Chattel Mortgage, Assignment, Contract, Security Agreement, Financing Statement, or Lien on Machinery Situated on Realty, and from time to time as any one or more thereof, and shall constitute a "Fixture Filing" for purposes of Article 9 of the Texas Uniform Commercial Code.

18. **UNSECURED PORTION OF DEBT:** If the lien created by this Deed of Trust shall be invalid or unenforceable as to any part of the Indebtedness secured hereby, the unsecured portion of said Indebtedness shall be completely paid and liquidated prior to the payment and liquidation of the remaining and secured portion of said Indebtedness, and all payments made on said Indebtedness shall be considered to have been first paid on and applied to the complete payment and liquidation of that portion of the Indebtedness which is not secured by the lien of this Deed of Trust.

19. **ESCROW ACCOUNT:** Notwithstanding paragraph 3 above, upon request from Beneficiary, Grantors shall create a fund or reserve for the payment of all insurance premiums, taxes and assessments against the Premises by paying to Beneficiary each month contemporaneously with the installments due and payable on the Note, a sum equal to the premiums that will next become due and payable on the hazard insurance policies covering the Premises, plus taxes and assessments next due and payable on the Premises, as estimated by Beneficiary, less all sums paid therefor, divided by the number of months to elapse before two months prior to the date when such premiums, taxes and assessments will become due and payable, such sums to be held by Beneficiary without interest for the purpose of paying such premiums, taxes and assessments. Any excess reserve shall, at the discretion of Beneficiary, be credited by Beneficiary on subsequent payments to be made by Grantors, and any deficiency shall be paid by Grantors to Beneficiary on or before the date when such premiums, taxes and assessments shall be due. Transfer of legal title to the Premises shall automatically transfer to the new owner the beneficial interest in all sums deposited under the provisions of this paragraph.

20. **SUBROGATION RIGHTS OF BENEFICIARY:** It is understood and agreed that the proceeds of the Note, to the extent that the same are utilized to take up any outstanding liens and charges against the Premises, or any portion thereof, have been advanced by Beneficiary at Grantors' request and upon Grantors' representation that such amounts are due and payable. Beneficiary shall be subrogated to any and all rights, superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens however remote, regardless of whether said liens are acquired by assignment or are released by the holder thereof upon payment.

21. **DUE ON SALE:** Grantors shall not sell, assign, mortgage or otherwise transfer or encumber their interest in any portion of the Premises without first obtaining the prior written consent of Beneficiary. Beneficiary shall be under no obligation to consent to any requested sale, assignment, transfer, mortgage or encumbrance of Grantors' interest in the Premises. Without limiting the foregoing, if Beneficiary does grant such consent, it may make such conditions for the granting of that consent as it may in its sole, subjective discretion deem necessary, desirable or appropriate, including without limitation (i) requiring the payment to it of a transfer fee to cover the cost of documenting the transaction on its books, (ii) requiring the payment of all of its attorneys' fees in connection with such sale, assignment, transfer, mortgage or encumbrance, (iii) increasing the interest rate on the Indebtedness, (iv) requiring the express assumption of payment of the Indebtedness and of the obligations under this Deed of Trust and Security Agreement by the transferee of such interest in the Premises (with or without the release of Grantors from liability for such payment and obligations), (v) requiring the execution of an assumption agreement, modification agreement, supplemental security documents and financing statements satisfactory in form and substance to Beneficiary, (vi) requiring endorsements to any existing

mortgage title insurance policies insuring its security interest in the Premises, and (vii) requiring additional security for the payment of the Indebtedness. Grantors' failure to comply with this paragraph prior to consummating any such sale, assignment, transfer, mortgage or encumbrance shall constitute a default under the Note and breach of this Deed of Trust and Security Agreement, entitling Trustee and Beneficiary to avail themselves of all rights, powers, remedies and resources allowed or permitted therein or herein.

22. **GRANTING OF SECURITY INTEREST:** To further secure said Indebtedness, Grantors hereby grant to Beneficiary a security interest in and to the Premises insofar as such Premises consists of equipment, inventory, fixtures, chattel paper, documents, instruments, accounts, contract rights, consumer goods, farm products, money, general intangibles, goods and any and all other personal property of any kind or character defined in and subject to the provisions of the Texas Uniform Commercial Code, including the proceeds and product of and from any and all of such personal property. If any default occurs under the terms of the Note or this instrument, Beneficiary is and shall be entitled to all of the rights, powers and remedies afforded a Secured Party by the Texas Uniform Commercial Code with reference to the personal property and fixtures in which Beneficiary has been granted a security interest herein, or the Trustee or Beneficiary may proceed as to both the real and personal property covered hereby in accordance with the rights, powers and remedies granted under this instrument in respect of the real property covered hereby.

23. **HEIRS, SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES:** The covenants and agreements herein contained shall inure to the benefit of and be binding upon the respective heirs, successors, assigns, and legal representatives of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

24. **APPRAISALS AND CLASSIFICATION OF LOAN:** Grantors hereby agree and covenant (i) that Grantors shall reimburse Beneficiary for any and all expenses incurred by Beneficiary in connection with any test appraisal of the Premises required by any regulatory authority of Beneficiary, such payment to be paid within ten (10) days after written request by Beneficiary, and (ii) in the event that any regulatory authority of Beneficiary requires it to create a specific reserve for the Note or classifies the Note as a "scheduled item", Grantors shall, within ten (10) days after written request by Beneficiary, deposit in a pledged savings account in Beneficiary the amount of money necessary to remove the Note as a "scheduled item" or "classified loan", and/or remove the specific reserve requirements of such authority. Grantors hereby agree and covenant that Beneficiary, at its option, may on one (1) year from the date hereof and on any one (1) year anniversary date thereafter during the term of this Deed of Trust and Security Agreement, require that an appraisal be made on the Premises and that Grantors shall pay for any and all expenses incurred by Beneficiary in connection with any such appraisal, with such payment to be made within ten (10) days after written request by Beneficiary.

25. **SUBJECT TO EASEMENTS, RESTRICTIONS, ETC:** This Deed of Trust and Security Agreement is executed subject to all valid easements, restrictions, covenants, mineral and/or royalty reservations and maintenance charges, if any, applicable to and enforceable against the Premises which have been duly recorded in the real estate records of the county in which the Premises are located prior to the date of the recording of this Deed of Trust and Security Agreement.

26. **FURNISHING OF FINANCIAL INFORMATION:** Grantors agree to provide, or cause to be provided, promptly to Beneficiary, all information reasonably requested by Beneficiary concerning the Premises and the financial status, including, without limitation, financial statements and tax returns of Grantors and of any other parties obligated on the Indebtedness.

27. **WAIVER OF DEFICIENCY STATUTE PROTECTIONS/FAIR MARKET VALUE FOR CALCULATING DEFICIENCIES.** Notwithstanding the provisions of Sections 51.003, 51.004, and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Grantors agree that Beneficiary shall be entitled to seek a deficiency judgment from Grantors and any other party obligated on the Note or any guarantor of the Note equal to the difference between the amount owing on the Note and the amount for which the Premises was sold pursuant to a judicial or nonjudicial foreclosure sale. Grantors expressly recognize that this

section constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Grantors and other persons against whom recovery of deficiencies is sought or guarantors independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Premises as of the date of foreclosure and offset the fair market value of the Premises as of the date of foreclosure against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantors further recognize and agree that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Premises for purposes of calculating deficiencies owed by Grantors, other borrowers on the Note, guarantors, and others against whom recovery of a deficiency is sought.

Alternatively, in the event this waiver is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Premises as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004, and 51.005 of the Texas Property Code (as amended from time to time):

- a. The Premises shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Premises will be repaired or improved in any manner before a resale of the Premises after foreclosure;
- b. The valuation shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Premises for cash promptly (but no later than twelve months) following the foreclosure sale;
- c. All reasonable closing costs customarily borne by the seller in a commercial real estate transaction should be deducted from the gross fair market value of the Premises, including, without limitation, brokerage commissions, title insurance, a survey of the Premises, tax prorations, attorney's fees, and marketing costs;
- d. The gross fair market value of the Premises shall be further discounted to account for any estimated holding costs associated with maintaining the Premises pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in paragraph c. above), and other maintenance expenses.
- e. Any expert opinion testimony given or considered in connection with a determination of the fair market value of the Premises must be given by persons having at least five years experience in appraising property similar to the Premises and who have conducted and prepared a complete written appraisal of the Premises taking into consideration the factors set forth above.

**28. PERFECTION OF SECURITY INTERESTS.**

- (i) Grantors hereby authorize Beneficiary to file a financing statement (the "Financing Statement") describing the collateral securing the Indebtedness.
- (ii) Beneficiary shall, at Beneficiary's option and at the expense of Grantors, receive prior to the date hereof an official report from the Secretary of State (or other appropriate authority) of each State in which (a) the aforementioned collateral is located, (b) the Chief Executive Office State, and (c) the Grantor State (each as defined below)(the "SOS reports") indicating that Beneficiary's security interest is prior to all other security interests or other interests reflected in the report.

**29. LOCATION, STATE OF INCORPORATION (OR RESIDENCE) AND, NAME OF GRANTORS.**

Grantors:

- (i) chief executive office, and place of business, (if Grantor is an organization) or residence (if Grantor is a natural person) is located in the State of Texas (the "Chief Executive Office State").
- (ii) state of incorporation, and organization (if Grantor is an organization) or residence (if Grantor is a natural person), is the State of Texas ( the "Grantor State"); and,
- (iii) exact legal name is as set forth in the first paragraph of this Deed of Trust.

30. **GENERAL COVENANTS.** Until the Indebtedness is paid in full, Grantors agrees that it will:

- (i) preserve its corporate, and/or organizational existence and not, in one transaction or a series of related transactions, merge into or consolidate with any other entity, or sell all or substantially all of its assets (if Grantor is not a natural person);
- (ii) not change the state of its incorporation or organization (if Grantor is not a natural person);
- (iii) not change its corporate or organization name without providing Beneficiary with 30 days' prior written notice (if Grantor is not a natural person);
- (iv) deliver such Financing Statement or Statements, or amendments thereof or supplements thereto, or other instruments as Beneficiary may from time to time require in order to comply with the Texas Uniform Commercial Code (or other applicable State law of the jurisdiction where any of the Collateral is located) and to preserve and protect the security interest hereby granted; and
- (v) not change the state of its residence (if Grantor is a natural person).

31. **IMAGING OF LOAN DOCUMENTS AND RELATED INSTRUMENTS:** The undersigned understands and agrees that (i) Beneficiary's document retention policy may involve the imaging of executed loan documents and other miscellaneous documents, papers, reports and other correspondence, and the destruction of the paper originals, and (ii) the undersigned waives any right that it may have to claim that the imaged copies of the loan documents and other miscellaneous documents, papers and other correspondence related thereto are not originals.

32. **AUTHORIZATION TO DISCLOSE INFORMATION:** Grantors and each other liable party acknowledge and agree that Beneficiary may, at any time, without the consent of or notice to Grantors or any other liable party assign, sell, transfer or grant participations in all or part of the obligations of Grantors secured hereby, together with any liens or collateral securing the payment of the said Note. Beneficiary may disseminate to any assignee, purchaser, transferee or participant, prospective assignee, purchaser, transferee, participant, or any party expressing an interest in the Note hereby secured any information that Beneficiary has pertaining to the loan by the Note hereby secured, including without limitation, any information regarding Grantors, any other liable party, or any property owned or held by Grantors or any other liable party or offered as security for or securing the loan evidenced by the Note hereby secured.

33. **RELEASE OF CLAIMS:** Grantors hereby release, discharge and acquit forever Beneficiary and its officers, directors, trustees, agents, employees and counsel (in each case, past, present or future) from any and all Claims existing as of the date hereof (or the date of actual execution hereof by Grantors, if later). As used herein, the term "Claim" shall mean any and all liabilities, claims, defenses, demands, actions, causes of action, judgments, deficiencies, interest, liens, costs or expenses (including court costs, penalties, attorneys' fees and disbursements, and amounts paid in settlement) of any kind and character whatsoever, including claims for usury, breach of contract, breach of commitment, negligent misrepresentation, any type of fraud (including fraud in the inducement) or failure to act in good faith, in each case whether now known or unknown, suspected or unsuspected, asserted or unasserted or primary or contingent, and whether arising out of written documents, unwritten undertakings, course of conduct, tort, violations of

laws or regulations or otherwise. To the maximum extent permitted by applicable law, Grantor hereby waives all rights, remedies, claims and defenses based upon or related to Sections 51.003, 51.004 and 51.005 of the Texas Property Code, to the extent the same pertain or may pertain to any enforcement of this Deed of Trust.

34. **VENDOR'S LIEN:** The Note hereby secured is given as a part of the purchase price of the herein described real property, and this Deed of Trust is in addition to the Vendor's Lien retained in a Deed this day given by **LANCE EVAN POSPISIL** and **KATHLEEN POSPISIL WHITLOCK** formerly known as **KATHLEEN POSPISIL LAWRIE** to **CCM SAN MARCOS LLC**, a Texas limited liability company, securing the payment of the Indebtedness described herein; and it is expressly agreed that the same shall not operate as a waiver of the lien created by this Deed of Trust, it being agreed that said lien and rights created by this instrument shall be cumulative and in addition to said Vendor's Lien above mentioned, and that the owner or holder of the above described Indebtedness may foreclose under either or both of said liens, as he or it may elect, without waiving the other said deed above mentioned, together with its record, being here referred to and made a part of this instrument.

35. **JURY WAIVER:** Every party to this Deed of Trust hereby expressly waives any right to trial by jury of any claim, demand, action, or cause of action (a) arising under this Deed of Trust or any other instrument, document, or agreement executed or delivered in connection herewith; or (b) in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to this Deed of Trust or any other instrument, document, or agreement executed or delivered in connection herewith, or the transactions related hereto or thereto, in each case whether now existing or hereafter arising and whether sounding in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand, action, or cause of action shall be decided by court trial without a jury, and that any party to this Deed of Trust may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties hereto to the waiver of their right to trial by jury.

36. **ELECTRONIC SIGNATURES:** The parties hereto agree that, at Beneficiary's sole, subjective discretion, electronic or digital signatures may be utilized on documents related to the subject transaction.

EXECUTED this the 10 day of November, 2021.

CCM SAN MARCOS LLC, a Texas limited liability company

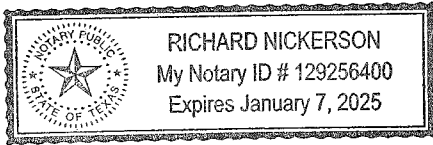


ALP TEKIN YILMAZ, SOLE MEMBER AND MANAGER



THE STATE OF TEXAS                   §  
   §  
COUNTY OF HARRIS                   §

This instrument was acknowledged before me on the 10<sup>th</sup> day of November, 2021, by ALP TEKIN YILMAZ, SOLE MEMBER AND MANAGER of CCM SAN MARCOS LLC, a Texas limited liability company, in the capacity therein stated and on behalf of said company.



Richard Nickerson  
NOTARY PUBLIC, STATE OF TEXAS

**EXHIBIT "A"**

A TRACT OR PARCEL CONTAINING 35.249 ACRES OR 1,535,432 SQUARE FEET OF LAND BEING OUT OF AND A PART OF A CALLED 88.25 ACRE TRACT OF LAND DESCRIBED IN DEED TO LANCE EVAN POSPISIL AND KATHLEEN POSPISIL WHITLOCK, AS RECORDED UNDER DOC. NO. 19015232, OFFICIAL PUBLIC RECORDS HAYS COUNTY TEXAS (O.P.R.H.C.T) SITUATED IN THE W.H. VAN HORN SURVEY, ABSTRACT NO. 464, HAYS COUNTY, TEXAS, WITH SAID 35.249 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, WITH ALL BEARINGS BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (NAD 83):

BEGINNING AT A 3/8 INCH IRON PIPE FOUND FOR THE WEST CORNER OF A CALLED 52.93 ACRE TRACT DESCRIBED IN DEED TO BOBBIE POLLARD GILBERT, AS RECORDED UNDER DOC. NO. 06005849 (VOL. 2872, PG. 852) O.P.R.H.C.T., AND THE NORTH CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 46 DEG. 15 MIN. 40 SEC. EAST, ALONG THE SOUTHWEST LINE OF SAID 52.93 ACRE TRACT, A DISTANCE OF 2,341.28 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET ON THE NORTHWEST RIGHT-OF-WAY (R.O.W.) LINE OF INTERSTATE HIGHWAY NO. 35 FOR THE SOUTH CORNER OF SAID 52.93 ACRE TRACT AND THE EAST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, SOUTH 43 DEG. 32 MIN. 37 SEC. WEST, ALONG THE NORTHWEST R.O.W. LINE OF SAID INTERSTATE HIGHWAY NO. 35, A DISTANCE OF 670.52 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE" SET FOR THE SOUTH CORNER OF HEREIN DESCRIBED TRACT;

THENCE, NORTH 46 DEG. 00 MIN. 29 SEC. WEST, DEPARTING THE NORTHWEST R.O.W. LINE OF SAID INTERSTATE HIGHWAY NO. 35, A DISTANCE OF 2,278.54 FEET TO A 3 INCH IRON PIPE FOUND ON THE SOUTHEAST R.O.W. LINE OF UNION PACIFIC RAILROAD FOR THE WEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, WITH A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1,684.58 FEET, A CENTRAL ANGLE OF 11 DEG. 28 MIN. 19 SEC., AN ARC LENGTH OF 337.29 FEET AND A CHORD BEARING AND DISTANCE OF NORTH 37 DEG. 57 MIN. 55 SEC. EAST - 336.73 FEET TO A CAPPED 5/8 INCH IRON ROD STAMPED "WINDROSE " SET FOR A POINT OF TANGENCY;

THENCE, NORTH 38 DEG. 16 MIN. 01 SEC. EAST, ALONG THE SOUTHEAST LINE OF SAID UNION PACIFIC RAILROAD, A DISTANCE OF 326.92 FEET TO THE PLACE OF BEGINNING AND CONTAINING 35.249 ACRES OR 1,535,432 SQUARE FEET OF LAND, AS SHOWN ON JOB NO. 56955-ADD, PREPARED BY WINDROSE LAND SERVICES.

**THE STATE OF TEXAS  
COUNTY OF HAYS**

I hereby certify that this instrument was FILED on the date and the time stamped hereon by me and was duly RECORDED in the Records of Hays County, Texas.

21062928 DEEDOFTRUST  
11/15/2021 01:13:42 PM Total Fees: \$74.00

Elaine H. Cárdenas, MBA, PhD, County Clerk  
Hays County, Texas





Pamela Madere  
(512) 236-2048 (Direct Dial)  
(512) 236-2002 (Direct Fax)  
pmadere@jw.com

April 15, 2022

Shannon Mattingly, Director  
Planning and Development Services Department  
City of San Marcos  
630 E. Hopkins Street  
San Marcos, TX 78666

Re: Zoning Application for 72.932 acres in the Van Horn One-Third League,  
Abstract No. 464, Hays County, Texas (*the "Property"*)

Dear Ms. Mattingly:

As authorized by San Marcos Hampton LLC and CCM San Marcos LLC (*collectively, the "Owner"*), we are submitting this zoning application for Heavy Industrial "HI" for 7.3 acres, "LI" Light Industrial for 54.1 acres and Heavy Commercial "HC" zoning for 11.6 acres in order to develop the Property for an industrial park with commercial use along the IH 35 frontage road.

Approximately 3.5 acres along the IH 35 frontage road is currently in the City Limits and is zoned Agricultural Ranch "AR" zoning district; the remainder of the Property, or 69.4 acres is outside the City Limits. An annexation application is also being filed concurrently with the zoning request in order to include the entire Property within the City Limits.

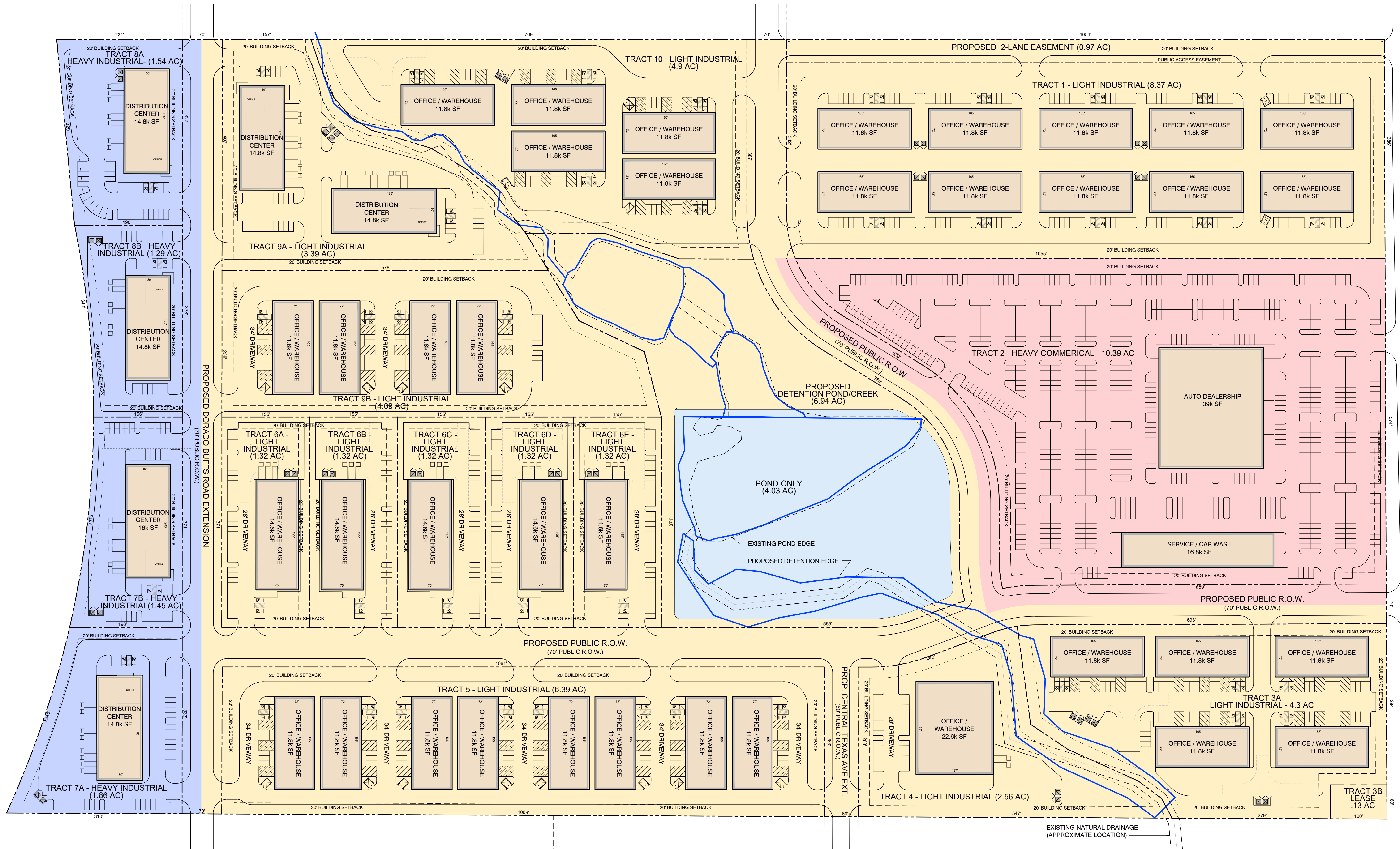
The Property is currently undeveloped; the Comprehensive Plan shows the Property as Preferred Scenario/Employment Center.

Please contact me should you have any questions regarding this zoning request.

Sincerely,

A handwritten signature in blue ink that reads 'Pam Madere' in a cursive, flowing script.

Pamela Madere

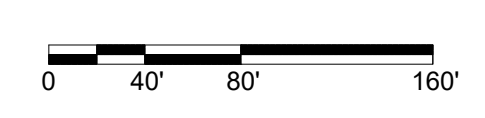


**LEGEND:**

<span style="display: inline-block; width: 20px; height: 20px; background-color: #ADD8E6; border: 1px solid black; margin-right: 5px;"></span> HEAVY INDUSTRIAL	<span style="display: inline-block; width: 20px; height: 20px; background-color: #FFFF00; border: 1px solid black; margin-right: 5px;"></span> LIGHT INDUSTRIAL	<span style="display: inline-block; width: 20px; height: 20px; background-color: #FFB6C1; border: 1px solid black; margin-right: 5px;"></span> HEAVY COMMERCIAL
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ZONING PLAN

Scale: 1" = 80'-0"



**identity**ARCHITECTS

111 Travis Street, Houston, Texas 77002  
www.identityarchitects.com 713.595.2150

**COMMERCIAL DEVELOPMENT**

April 8, 2022

INTERSTATE HIGHWAY 35 @ POSEY RD  
SAN MARCOS, TX  
21050-01\_SITE\_22.04.05

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