

AGENDA
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
4:00 P.M., WEDNESDAY, MARCH 5, 2014
CITY COUNCIL CHAMBERS, 2ND FLOOR OF CITY HALL
823 ROSENBERG, GALVESTON, TEXAS

A. Attendance

B. Conflict of Interest

C. Approval of Minutes: February 5, 2014

D. Old Business and Associated Public Hearing

13Z-43 (3821 Ave Q 1/2)

Request for variances from the Galveston Zoning Standards Section 29-65 regarding side setback requirements. Property is legally described as North part of lots 2 & 3 & South 1/2 of Adjacent Avenue Q 1/2 (2002-1) South-West Block 110 Galveston Outlots, in the City and County of Galveston, Texas.

Applicant and Property Owner: Santos Vargas

Documents: [13Z-43 MEMO2.PDF](#)

E. New Business and Associated Public Hearing

14Z-02 (1909 and 1911 25th/Rosenberg)

Request for a variance from the Galveston Zoning Standards Section 29-65 regarding the lot area/lot width requirements within the One Family-Four (1F-4) zoning district. Property is legally described as South 1/2 of Lots 6 & 7 (1006-1) Northeast Block 91 Galveston Outlots, in the City and County of Galveston, Texas.

Applicant & Property Owner: Michael R. Piana

Documents: [14Z-02 STF.PDF](#)

14Z-05 (1018 Sealy)

Request for a variance from the Galveston Zoning Standards Section 29-65 regarding side yard setback requirements within the Multi-Family-One, Historical (MF-1-H) zoning district. Property is legally described as Lot 12 and the East 1.83 Feet of Lot 13, Block 250, in the City and County of Galveston, Texas.

Applicant and Property Owner: Jose Ortiz

Documents: [14Z-05 STF.PDF](#)

14Z-06 (1305 Harbor View Drive)

Request for a variance from the Galveston Zoning Standards Section 29-65(d) regarding front yard setback. Property is legally described as Lot 7, Section 1, and 1/13 Undivided Interest of Tract 150, Harbor View, a subdivision in the City and County of Galveston, Texas.

Applicant: Al Fichera Builders

Property Owners: Ryanne Duzich and Thomas Culberson

Documents: [14Z-06 STF.PDF](#)

14Z-07 (2107 Seawall Boulevard)

Request for a Special Exception from the Galveston Zoning Standards Section 29-67 (c)(8) regarding commercial parking requirements in a Resort, Seawall Development Zone (RES-SDZ-2) zoning district. Property is legally described as Lot 7, Northeast Block 118, Northwest Block 119, Southwest Block 119, and Adjacent Street (119-0-1), Galveston Outlots, a subdivision in the City and County of Galveston.

Applicant: Michael Gaertner

Property Owner: Texas General Land Office

Documents: [14Z-07 STF.PDF](#)

F. Adjournment

Prepared By: _____
Athena Petty, Planning Assistant

Date Prepared: February 25, 2014

IN ACCORDANCE WITH THE PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT (ADA), PERSONS IN NEED OF A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHALL, WITHIN THREE (3) DAYS PRIOR TO ANY PROCEEDING, CONTACT THE CITY SECRETARY'S OFFICE, SUITE 201, 823 ROSENBERG, GALVESTON, TEXAS 77550 (409-797-3510).

MEMBERS OF CITY COUNCIL MAY BE ATTENDING AND PARTICIPATING IN THIS MEETING.

MEMORANDUM

TO: William Clement, Chairperson and Zoning Board of Adjustment Members

FROM: Pete Milburn, Senior Planner
Planning Department 

DATE: February 25, 2014

RE: **13Z-43 (3821 Ave Q 1/2)** Request for variances from the Galveston Zoning Standards Section 29-65 regarding side setback requirements. Property is legally described as North part of lots 2 & 3 & South 1/2 of Adjacent Avenue Q 1/2 (2002-1) South-West Block 110 Galveston Outlots, in the City and County of Galveston, Texas.
Applicant and Property Owner: Santos Vargas

The Zoning Board of Adjustment at their regular meeting of February 5, 2014, voted to continue the above referenced case until the March 6, 2014 regular meeting.

February 6, 2014, in a meeting with Staff the applicant requested this case be continued to the April 9, 2014 meeting due to the applicant's unavailability as a result of work related travel out of the country.

The following events have taken place since the ZBA meeting of November 6, 2013:

- January 21, 2014 – Applicant met with the Building Department to discuss options to remediate the construction. The Applicant informed the Building Department that he would be removing the structure.
- January 27, 2014 – Planning Staff called the applicant for an update to this case. The applicant informed Staff that he would be removing the wall and roof structure from within the setback requirement and submitting an application for a fence.
- February 5, 2014 – ZBA vote to continue the case to the March 6, 2014 regular meeting.
- February 6, 2014 – Applicant meet with Staff and request the case be continued to the April 9, 2014 meeting.

This is the second continuance of this case and there are no additional costs associated with the continuance.

xc: Rick Vasquez, Director
Planning Department

14Z-02 (1909 and 1911 25th/Rosenberg) Request for a variance from the Galveston Zoning Standards Section 29-65 regarding the lot area/lot width requirements within the One Family-Four (1F-4) zoning district. Property is legally described as South 1/2 of Lots 6 & 7 (1006-1) Northeast Block 91 Galveston Outlots, in the City and County of Galveston, Texas.

Applicant & Property Owner: Michael R. Piana

Case Manager: Ian Knox, Planner I

Existing Zoning and Land Use:

Zoning	One Family-Four (1F-4)
Land Use	Residential

Surrounding Zoning and Land Use:

	North	South	East	West
Zoning	One Family-Four (1F-4)	One Family-Four (1F-4)	Retail (R)	One Family-Four (1F-4)
Land Use	Residential	Residential	Commercial	Residential

Property Owner Notification as of March 6, 2013:

Sent	Returned	In Favor	In Opposition	No Comment
23				

Advertisement Date: February 21, 2014

City Department Notifications:

Airport: Pending
 Building Department: Pending
 Fire Chief: Pending
 Fire Marshal: Pending
 Police Department: Pending
 Public Works: Pending

Private Utility Notifications:

AT&T: Pending
 Center Point Energy: Pending
 Comcast: Pending
 Texas Gas Service: Pending

ANALYSIS

The applicant is proposing to replat the property by dividing the one residential lot into two lots. The property currently consists of three structures, two primary structures, both single family residences and a residential accessory structure. As proposed, the replat will result in a non-conformance in the City's lot area and lot width requirements by both new lots.

The following variances are being requested for 1909 Rosenberg Street:

Lot Area, Section 29-65 (a) – from 2,500 sq-ft to 2,300 sq-ft
 Lot Width, Section 29-65 (b) – from 40' to 30'

The following variances are being requested for 1911 Rosenberg Street:

Lot Width, Section 29-65 (b) – from 40' to 29'

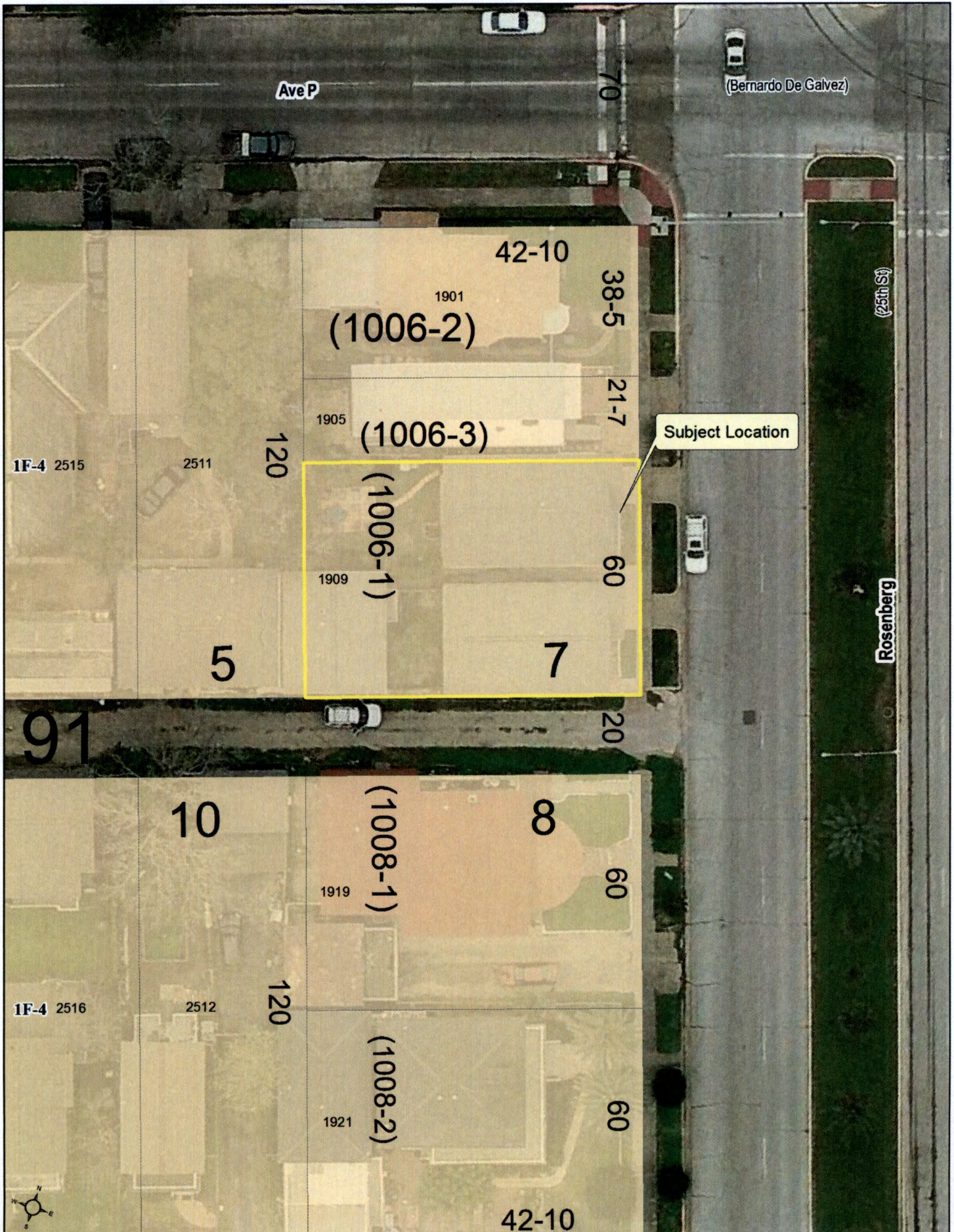
CONDITIONS FOR A VARIANCE

The Board of Adjustment may grant a variance under this Section only if the variance is not prohibited by Section 14.401.C. in Article 14, Administrative Bodies, and if the Board makes a determination in writing that all of the following are demonstrated:

1. The request for the variance is rooted in special conditions of the applicant's property that do not generally exist on other properties in the same zoning district.
2. Due to said special conditions, the literal enforcement of the strict terms of these Land Development Regulations would impose an unnecessary hardship on the applicant.
3. The variance is not contrary to the public interest, in that:
 - i. It does not allow applicants to impair the application of these regulations for:
 - a. Self-imposed hardships;
 - b. Hardships based solely on financial considerations, convenience or inconvenience; or
 - c. Conditions that are alleged to be "special," but that are actually common to many properties within the same zoning district.
 - ii. The variance will not have a detrimental impact upon:
 - a. The current or future use of adjacent properties for purposes for which they are zoned;
 - b. Public infrastructure or services; and
 - c. Public health, safety, morals and general welfare of the community.
4. The degree of variance allowed from these Land Development Regulations is the least that is necessary to grant relief from the identified unnecessary hardship.
5. The variance shall not be used to circumvent other procedures and standards of these Land Development Regulations that could be used for the same or comparable effect (*e.g.*, if alternative development patterns, alternative development standards, or other flexible measures in these regulations are available that would avoid or mitigate hardship without using a variance, then they must be used).
6. By granting the variance, the spirit of these Land Development Regulations is observed and substantial justice is done.

ATTACHMENTS

- "A" – Zoning Map
- "B" – Aerial Map
- "C" – Survey
- "D" – Replat



1909 and 1911 Rosenberg

Map prepared by the City of Galveston Planning Department (knoxian) - 2/12/2014

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

0 15 30 60 Feet

The data presented on these pages is not legally binding on the City of Galveston or any of its departments. These maps and the associated data are representations ONLY and may contain errors in the databases. Therefore, the information presented on this map is for informational purposes only and should not be construed to be legally binding.





1909 and 1911 Rosenberg

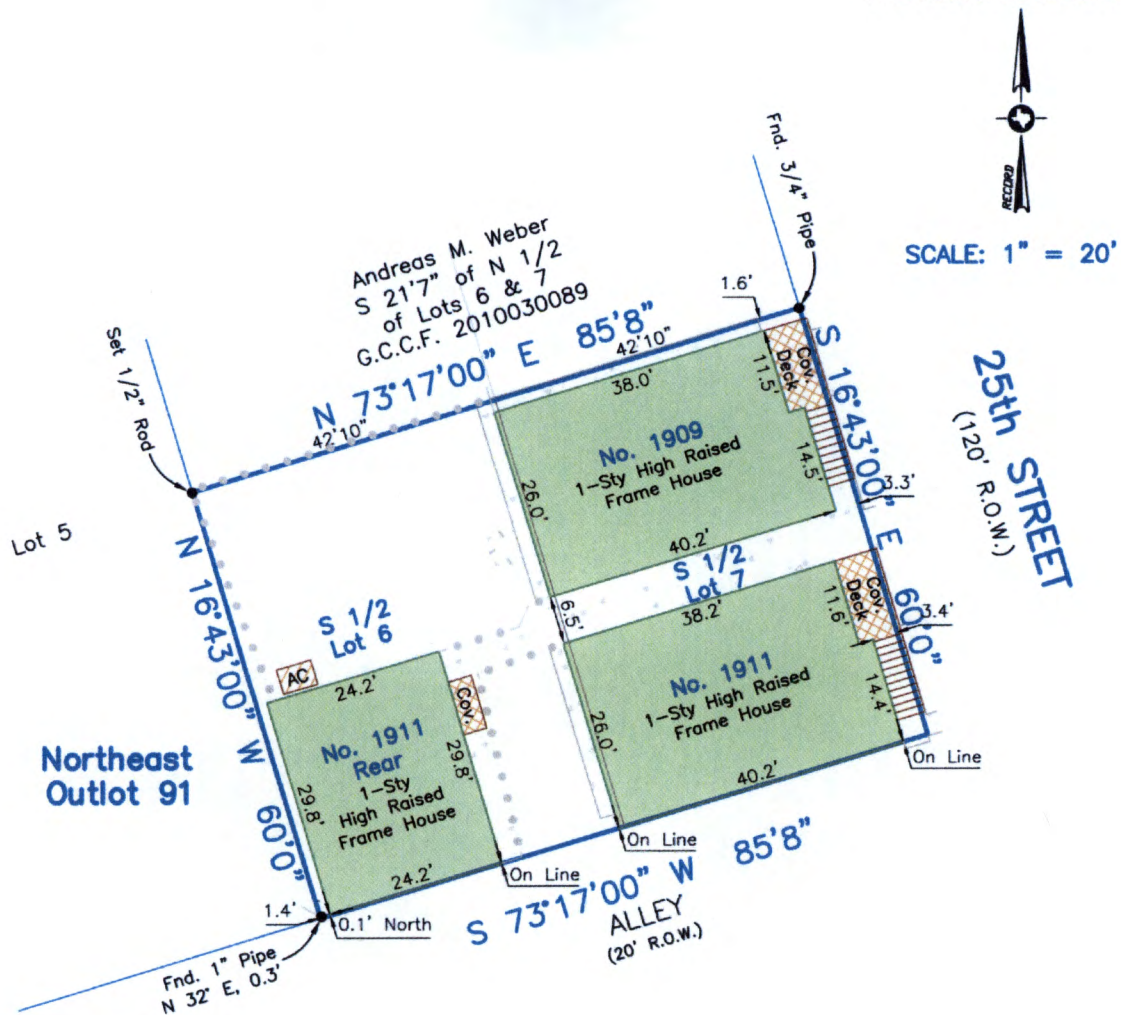
Map prepared by the City of Galveston Planning Department (knoxian) - 2/12/2014

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Survey of the South 1/2 of Lots Six (6) and Seven (7), of the Northeast Block of GALVESTON OUTLOT 91, in the City of Galveston, Galveston County, Texas, according to the map of the City of Galveston in common use.

I hereby certify that on the below date, the herein described property, together with improvements located thereon, was surveyed on the ground and under my direction, and that this map, together with dimensions as shown hereon, accurately represents the facts as found on the ground this date.

Stephen C. Blaskey

Stephen C. Blaskey
Registered Professional
Land Surveyor No. 5856



8017 HARBORSIDE DRIVE
P.O. BOX 16142 (mailing)
GALVESTON, TX 77552
ph (409) 740-1517

Registration Number: 10193855
www.hightidelandsurveying.com

SURVEY DATE: DECEMBER 10, 2013
FILE No.: 3510-0091-1006-001
DRAFTING: bsh
JOB No.: 13-0672

NOTES:

- 1) This property does lie within the 100 Year Flood Plain as established by the Federal Emergency Management Agency.
- 2) This property is subject to any restrictions of record and may be subject to setbacks from power lines as established by OSHA (call your power company).
- 3) Bearings based on Monumentation, of East R.O.W. line of 25th Street, being a found 3/4 inch pipe at the Southeast corner of the North 1/2 of Lot 7, and a found 1/2 inch rod at the Southeast corner of Lot 8.
- 4) Surveyed without benefit of a Title Report.



VICINITY MAP

BEING the South 1/2 of Lots Six (6) and Seven (7), of the Northeast Block of GALVESTON OUTLOT 91, in the City of Galveston, Galveston County, Texas, according to the map of the City of Galveston in common use, and being more particularly described by metes and bounds as follows:

COMMENCING at the Northeast corner of said GALVESTON OUTLOT 91, said corner being the intersection of the South line of Avenue P, a 70 foot wide alley, in Galveston County Clerk's File No. 2010030089, and 25th Street, a 120 foot right-of-way also known as Rosenberg, said point having a found 1/2 inch rod bearing North 06° West a distance of 0.3 feet;

THENCE South 16°43'00" East, along said West line of 25th Street, a distance of 80.00 feet, to the Southeast corner of a tract conveyed to Andreas M. Weber in Galveston County Clerk's File No. 2010030089, and the West line of said tract, a 120 foot right-of-way, said point being marked by a found 3/4 inch pipe;

THENCE South 16°43'00" East, continuing along said West line of 25th Street, a distance of 60 feet, to the Northwest corner of said Weber tract, said point being marked by a found 60;

THENCE South 73°17'00" West, along the North line of said alley, a distance of 85 feet 8 inches to the Southeast corner of Lot 18, a solid Northeast Block of GALVESTON OUTLOT 91, said point having a found 1 inch pipe bear North 32° East, 0.3 feet;

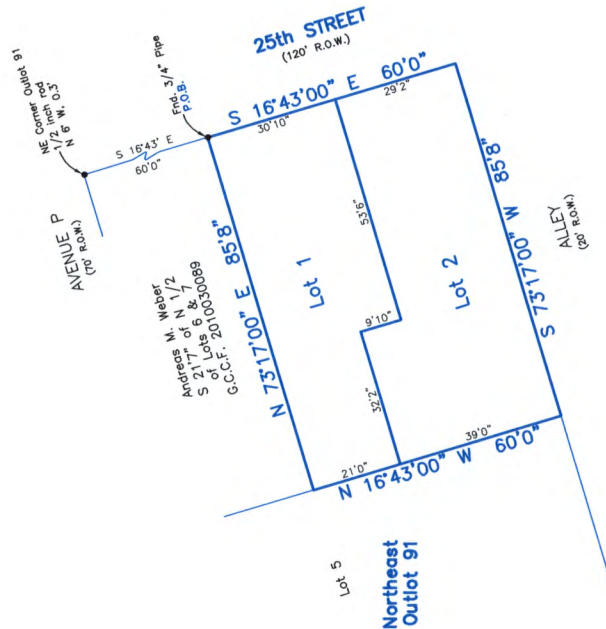
THENCE North 16°43'00" West, along the East line of said Lot 5, a distance of 60 feet, to the Southwest corner of said Weber tract;

THENCE North 73°17'00" East, along the South line of said Weber tract, a distance of 85 feet 8 inches to the POINT OF BEGINNING, and containing 0.118 acres (5,140 square feet) more or less.

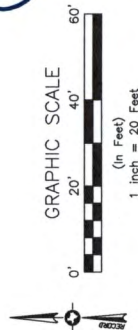
Lot	AREA	ADDRESS
Lot 1	2,325 SQ. FT.	1909
Lot 2	2,615 SQ. FT.	1911 & 1911-R

MORTVILLE
BEING A REPLAT OF
the South 1/2 of Lots Six (6) and Seven (7), of the Northeast Block of GALVESTON OUTLOT 91, in the City of Galveston, Galveston County, Texas, according to the map of the City of Galveston in common use.

0.118 ACRES (5,140 SQ. FT.)
JANUARY, 2014



8017 HARBORSIDE DRIVE
P.O. BOX 16142 (mailing)
GALVESTON, TX 77552
Registration Number: 10163855
www.hightidelandsurveying.com



STATE OF TEXAS
COUNTY OF GALVESTON
I, MICHAEL R. PIANA, owner of that certain tract or parcel of land, lying and being situated in the City of Galveston, Galveston County, Texas, and being the same as shown on the foregoing plat do hereby make replat of said property according to the lines and lots shown thereon, and designate said replat "MORTVILLE" in the City of Galveston, Galveston County, Texas.

MICHAEL R. PIANA - Owner

STATE OF TEXAS
COUNTY OF GALVESTON
Before me, on this day _____, 2013, personally appeared MICHAEL R. PIANA, known to me to be the person whose name is subscribed to the foregoing instrument.

Notary Public, State of Texas

This is to certify that I, Stephen C. Blaskey, A Registered Professional Land Surveyor of the State of Texas, have plotted the above subdivision from an actual survey on the ground, and that said subdivision and property marked and that this plat correctly represents that survey made under my direction.

PRELIMINARY
NOT TO BE RECORDED
FOR ANY PURPOSE

Stephen C. Blaskey
Registered Professional Land Surveyor No. 8856

STATE OF TEXAS
COUNTY OF GALVESTON

This Replat in the City of Galveston, Galveston County, Texas, as set forth on this plat, has been approved by the Galveston Planning Commission on this _____ day of _____, 2013.

Secretary
Galveston Planning Commission

Chairman
Galveston Planning Commission

STATE OF TEXAS
COUNTY OF GALVESTON

I, DWIGHT D. SULLIVAN, County Clerk, Galveston County, Texas, do hereby certify that the written instrument was filed for record in my office on _____, 2013, at _____ O'Clock, _____ M., and duly recorded on _____, 2013, at _____ O'Clock, _____ M., in

Plat Record _____, Map Number _____, Galveston County Map Records.
Witness my hand and seal of office, at Galveston, Texas, the day and date last above written.

DWIGHT D. SULLIVAN, County Clerk,
Galveston County, Texas

By _____, Deputy

SURVEY DATE: DECEMBER 10, 2013
FILE NO.: 3510-0091-1006-001
PLAT NO.: 13-0710

25th STREET
(120' R.O.W.)



**8017 HARBORSIDE DRIVE
P.O. BOX 16142 (mailing)
GALVESTON, TX 77552
ph (409) 740-1517
Registration Number: 10193855
www.hightidelandsurveying.com**

14Z-05 (1018 Sealy/Rear) Request for a variance from the Galveston Zoning Standards Section 29-65 regarding side yard setback requirements within the Multi-Family-One, Historical (MF-1-H) zoning district. Property is legally described as Lot 12 and the East 1.83 Feet of Lot 13, Block 250, in the City and County of Galveston, Texas.

Applicant and Property Owner: Jose Ortiz

Case Manager: Janice Norman, Planner II/Zoning Administrator

Existing Zoning and Land Use:

Zoning	Multi Family One , Historic (MF-1-H)
Land Use	Single-Family Residential

Surrounding Zoning and Land Use:

	North	South	East	West
Zoning	Multi Family One , Historic (MF-1-H)	Multi Family One , Historic (MF-1-H)	Multi Family One , Historic (MF-1-H)	Multi Family One , Historic (MF-1-H)
Land Use	Residential	Residential	Residential	Residential

Property Owner Notification as of March 5, 2014:

Sent	Returned	In Favor	In Opposition	No Comment
28				

Advertisement Date: February 21, 2014

City Department Notifications:

Airport: Pending
 Building Department: Pending
 Fire Chief: Pending
 Fire Marshal: Pending
 Police Department: Pending
 Public Works: Pending

Private Utility Notifications:

A T & T: Pending
 CenterPoint Energy: Pending
 Comcast: Pending
 Texas Gas Service: Pending

ANALYSIS

The applicant is requesting a variance from Section 29-65 regarding side yard setback requirements for a garage apartment that was constructed one-foot into the side yard setback along the west side of the property located at 1018 Sealy in the rear. The encroachment into the required side yard setback was discovered by staff when the final survey was submitted with the request for the Certificate of Occupancy. Please see Attachment "B" for the existing conditions of the site.

1. Variance regarding setbacks in the Multi-Family-One, Historical (MF-1-H)

Please reference the table below for the required setback for accessory structures in the Multi-Family-One with a Historical Overlay (MF-1-H) zoning district, per Section 29-65 (h), (5) and (g) (f). The setbacks for the new construction are also shown below:

Setback	Rear Yard
Required	3'
Requesting	2'

Variance(s) Requested - the applicant is requesting a variance from the following:

- Side yard setback – from 3' to 2';

LANDMARK COMMISSION

Due to the fact that the property is located in a Historic District, the Landmark Commission at their regular meeting on March 3, 2014 will hear the variance case (14LC-03) and will make a recommendation to the Zoning Board of Adjustment.

CONDITIONS FOR A VARIANCE

The Board of Adjustment may grant a variance under this Section only if the variance is not prohibited by Section 14.401.C. in Article 14, Administrative Bodies, and if the Board makes a determination in writing that all of the following are demonstrated:

1. The request for the variance is rooted in special conditions of the applicant's property that do not generally exist on other properties in the same zoning district.
2. Due to said special conditions, the literal enforcement of the strict terms of these Land Development Regulations would impose an unnecessary hardship on the applicant.
3. The variance is not contrary to the public interest, in that:
 - i. It does not allow applicants to impair the application of these regulations for:
 - a. Self-imposed hardships;
 - b. Hardships based solely on financial considerations, convenience or inconvenience; or
 - c. Conditions that are alleged to be "special," but that are actually common to many properties within the same zoning district.
 - ii. The variance will not have a detrimental impact upon:
 - a. The current or future use of adjacent properties for purposes for which they are zoned;
 - b. Public infrastructure or services; and
 - c. Public health, safety, morals and general welfare of the community.
4. The degree of variance allowed from these Land Development Regulations is the least that is necessary to grant relief from the identified unnecessary hardship.
5. The variance shall not be used to circumvent other procedures and standards of these Land Development Regulations that could be used for the same or comparable effect (e.g., if alternative development patterns, alternative development standards, or other flexible measures in these regulations are available that would avoid or mitigate hardship without using a variance, then they must be used).

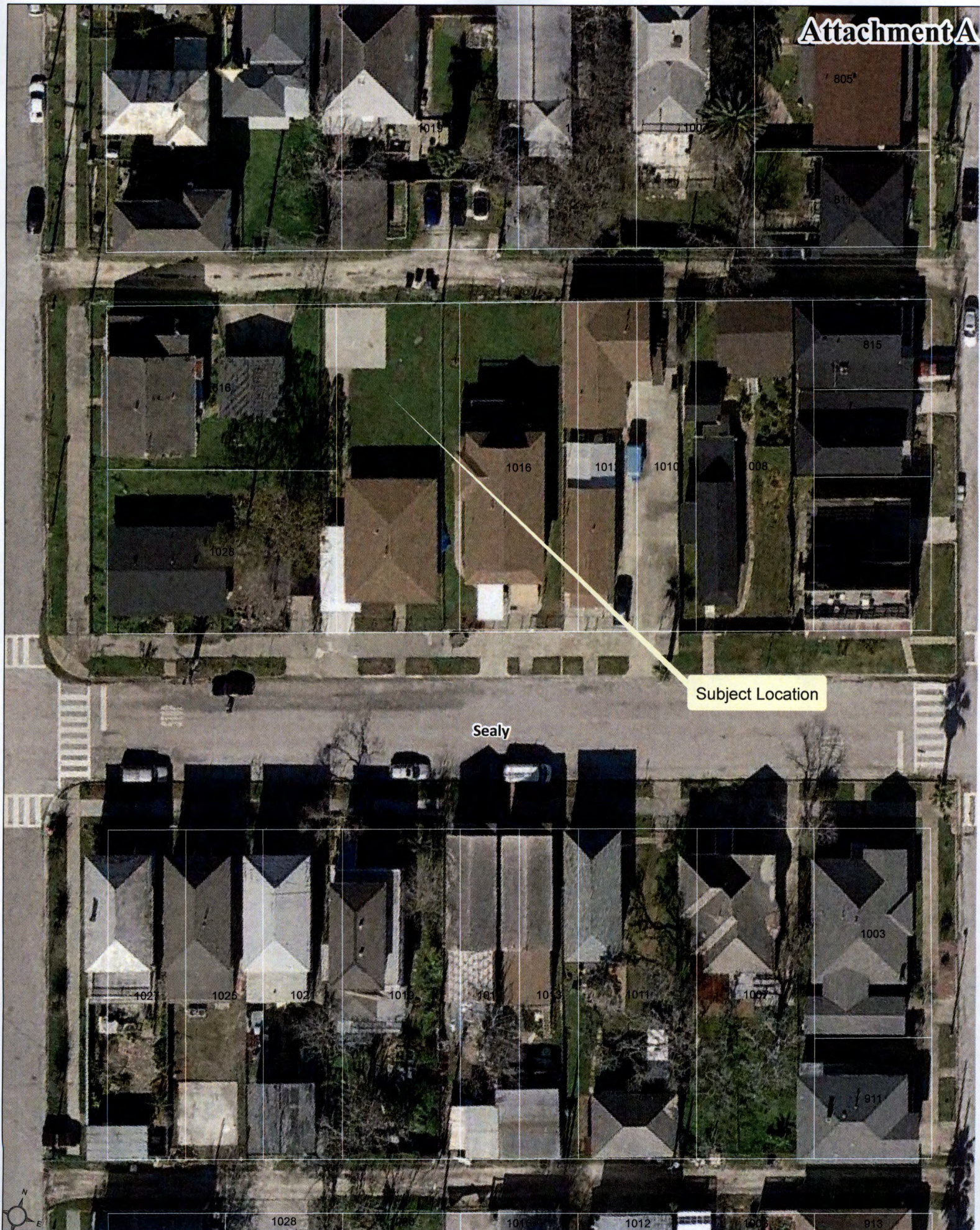
6. By granting the variance, the spirit of these Land Development Regulations is observed and substantial justice is done.

APPEAL FROM DECISION OF BOARD

In accordance with Section 29-112, any person aggrieved by any decision of the Board, or any officer, department or other Board of the City, may appeal the decision or action of the Board by filing a petition for the same in a court of competent jurisdiction, setting forth that such decision is illegal in whole or in part, and specifying the grounds for the alleged illegality. Such petition shall be filed with the Court within ten (10) days from the day the Board renders its decision, and not thereafter. The time period set forth herein shall be deemed jurisdictional.

ATTACHMENTS

- “A” – Zoning Map
- “B” – Survey
- “C” – Site Plan
- “D”- Original Survey



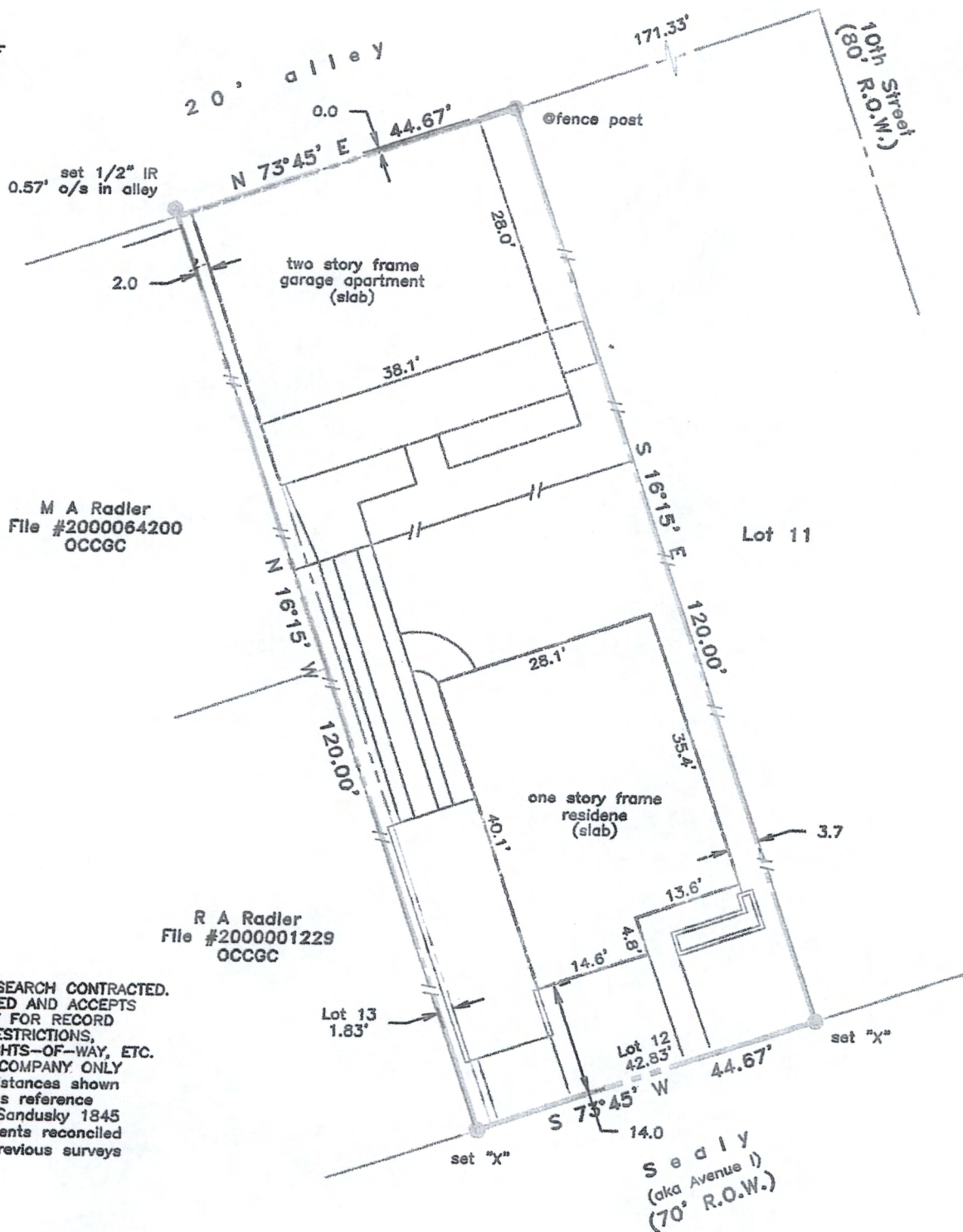
1018 Sealy

Map prepared by the Department of Planning and Community Development (normanjan) - 2/19/2014
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 It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

0 25 50 100 Feet

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NATIONAL FLOOD INSURANCE PROGRAM
FIRM Zone AE
Panel 0026-E
Community #485469
December 6, 2002



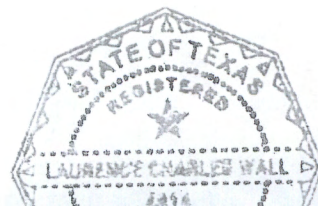
NOTES:

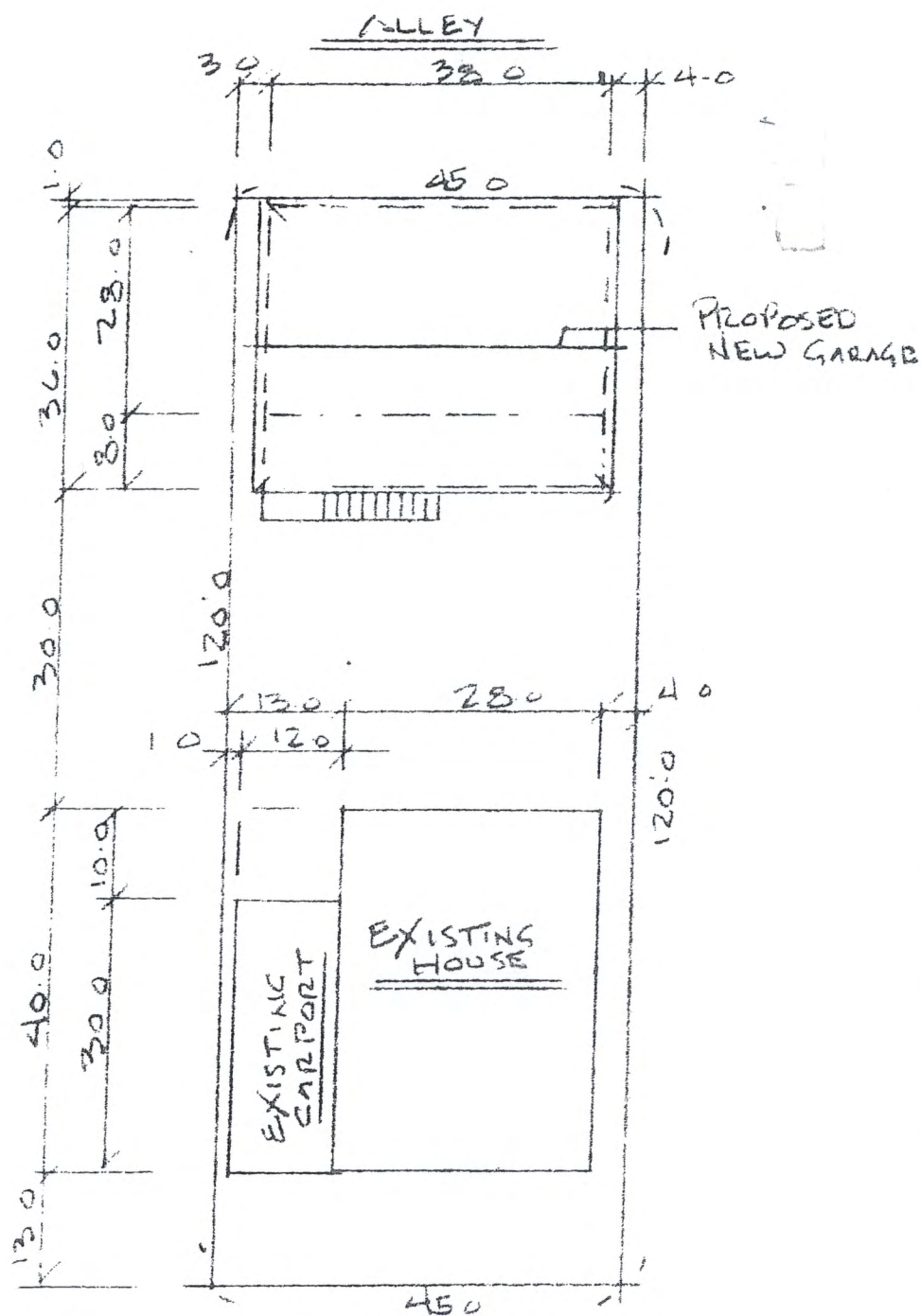
- NO RECORDS SEARCH CONTRACTED. CLIENT PROVIDED AND ACCEPTS RESPONSIBILITY FOR RECORD EASEMENTS, RESTRICTIONS, ROADWAYS, RIGHTS-OF-WAY, ETC. AS PER TITLE COMPANY ONLY
- True ground distances shown
- Plat & bearings reference Plan of COG, Sandusky 1845
- Survey monuments reconciled w/numerous previous surveys

Scale: 1" = 20'

10 Feet 0 10 20 30

LAND TITLE SURVEY OF A TRACT OF LAND
being Lot 12 and the East 1.83 feet of





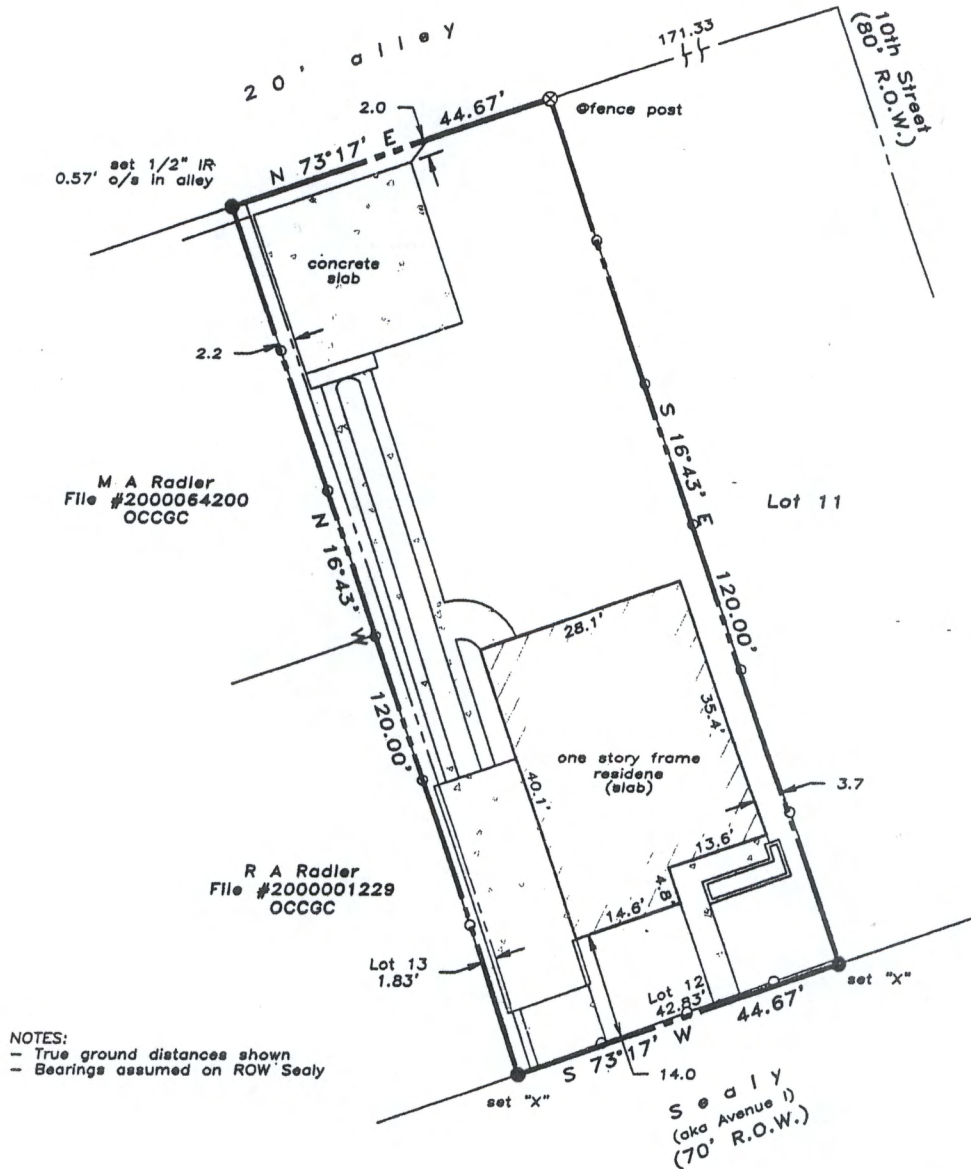
1018 SEALY

PLOT PLAN

SCALE 1" = 20.0

JOB No 1064

This property is within the 100-Year Special Flood Hazard Area & is designated to be w/in FIRM Zone AE, located on Panel 0026-E, Community #485469, December 6, 2002.



LAND TITLE SURVEY OF A TRACT OF LAND being Lot 12 and the East 1.83 feet of Lot 13, in Block 250, in the City and County of Galveston, Texas.

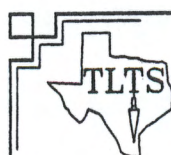
Subject property: 1018 Sealy
Galveston County, Texas

To Jose Ortiz;

I hereby certify that this survey was made on the ground under my direct supervision and that this plat correctly represents the facts found at the time of the survey.



Laurence C. Wall
RPLS #4814
May 8, 2010



TLTS, Inc.
TEXAS LAND TITLE SURVEYORS
1801 Moody Avenue
Galveston, Texas 77550
(409) 765-8883

14Z-06 (1305 Harbor View Drive) Request for a variance from the Galveston Zoning Standards Section 29-65(d) regarding front yard setback. Property is legally described as Lot 7, Section 1, and 1/13 Undivided Interest of Tract 150, Harbor View, a subdivision in the City and County of Galveston, Texas.

Applicant: Al Fichera Builders

Property Owners: Ryanne Duzich and Thomas Culberson

Case Manager: Adriel Montalvan, Urban Planner I

Existing Zoning and Land Use:

Zoning	One Family-One (1F-1)
Land Use	Residential

Surrounding Zoning and Land Use:

	North	South	East	West
Zoning	Water (W)	One Family-One (1F-1)	One Family-One (1F-1)	One Family-One (1F-1)
Land Use	Ship Channel	Residential	Residential	Residential

Property Owner Notification as of March 5, 2014:

Sent	Returned	In Favor	In Opposition	No Comment
18				

Advertisement Date: February 21, 2014

City Department Notifications:

Airport:	Pending
Building Department:	Pending
Fire Chief:	Pending
Fire Marshal:	Pending
Police Department:	Pending
Public Works:	Pending

Private Utility Notifications:

A T & T:	Pending
CenterPoint Energy:	Pending
Comcast:	Pending
Texas Gas Service:	Pending

ANALYSIS

The applicant is proposing to construct a garage addition, in which the southeast corner of the garage will encroach five (5) feet into the required front yard setback. According to Section 29-65 of the Galveston Zoning Standards the One Family-One (1F-1) zoning district requires a minimum front yard setback of 20 feet.

Requested Variances

Front yard setback: from 20 feet to 15 feet

Applicant's Justification

"Need the 5-foot variance on one side in order to build a 2 car garage to pull in for safety and for my handicap grandparents."

CONDITIONS FOR A VARIANCE

The Board of Adjustment may grant a variance under this Section only if the variance is not prohibited by Section 14.401.C. in Article 14, Administrative Bodies, and if the Board makes a determination in writing that all of the following are demonstrated:

1. The request for the variance is rooted in special conditions of the applicant's property that do not generally exist on other properties in the same zoning district.
2. Due to said special conditions, the literal enforcement of the strict terms of these Land Development Regulations would impose an unnecessary hardship on the applicant.
3. The variance is not contrary to the public interest, in that:
 - i. It does not allow applicants to impair the application of these regulations for:
 - a. Self-imposed hardships;
 - b. Hardships based solely on financial considerations, convenience or inconvenience; or
 - c. Conditions that are alleged to be "special," but that are actually common to many properties within the same zoning district.
 - ii. The variance will not have a detrimental impact upon:
 - a. The current or future use of adjacent properties for purposes for which they are zoned;
 - b. Public infrastructure or services; and
 - c. Public health, safety, morals and general welfare of the community.
4. The degree of variance allowed from these Land Development Regulations is the least that is necessary to grant relief from the identified unnecessary hardship.
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6. By granting the variance, the spirit of these Land Development Regulations is observed and substantial justice is done.

APPEAL FROM DECISION OF BOARD

In accordance with Section 29-112, any person aggrieved by any decision of the Board, or any officer, department or other Board of the City, may appeal the decision or action of the Board by filing a petition for the same in a court of competent jurisdiction, setting forth that such decision is illegal in whole or in part, and specifying the grounds for the alleged illegality. Such petition shall be filed with the Court within ten (10) days from the day the Board renders its decision, and not thereafter. The time period set forth herein shall be deemed jurisdictional.

ATTACHMENTS

"A" – Aerial Map

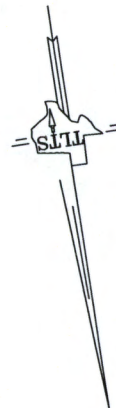
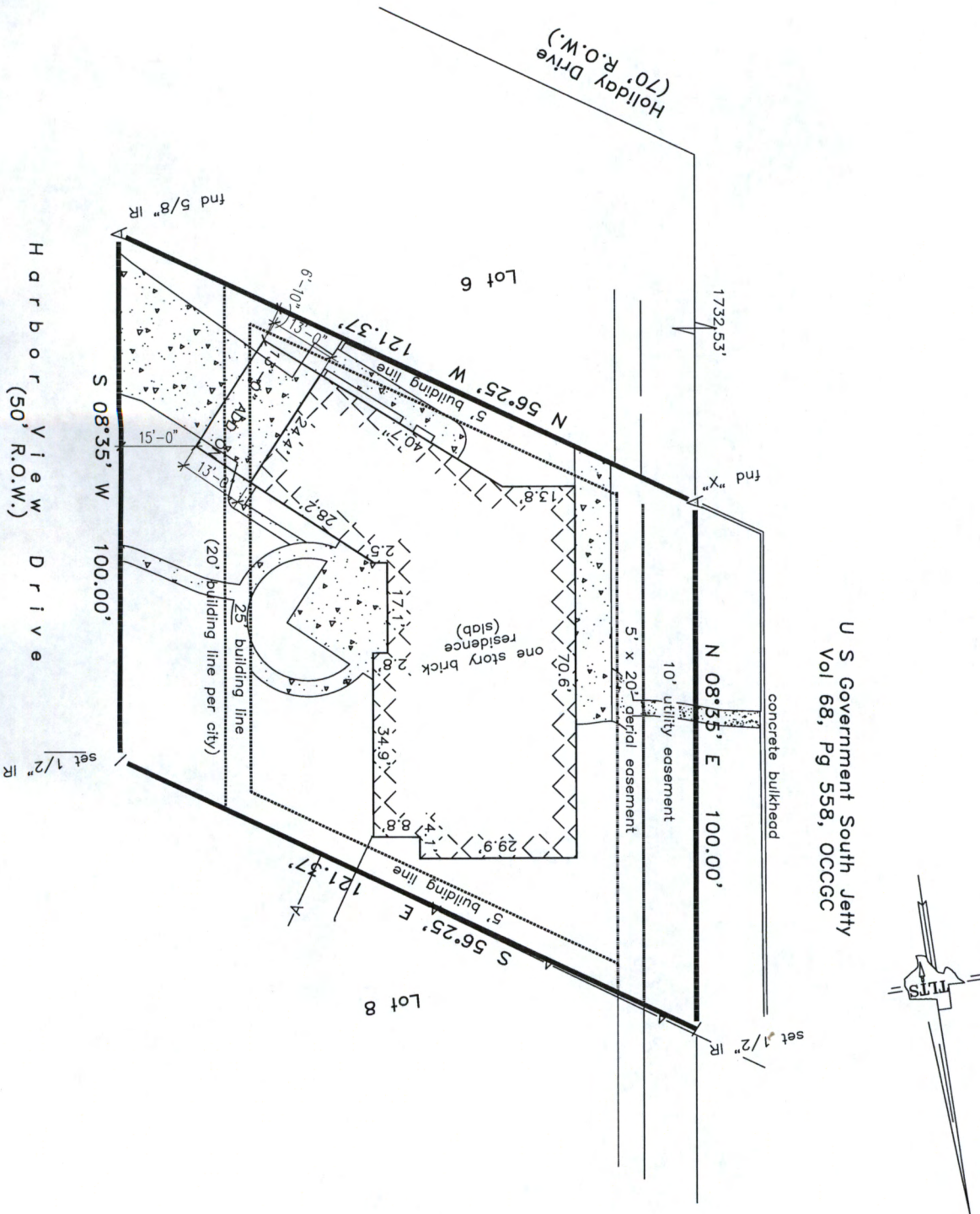
"B" – Site Plan

"C" – Applicant's Exhibits



14Z-06 (1305 Harbor View Drive)
 Map prepared by the Department of Planning and Community Development (montalvanadr) - 2/19/2014
 This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes.
 It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries

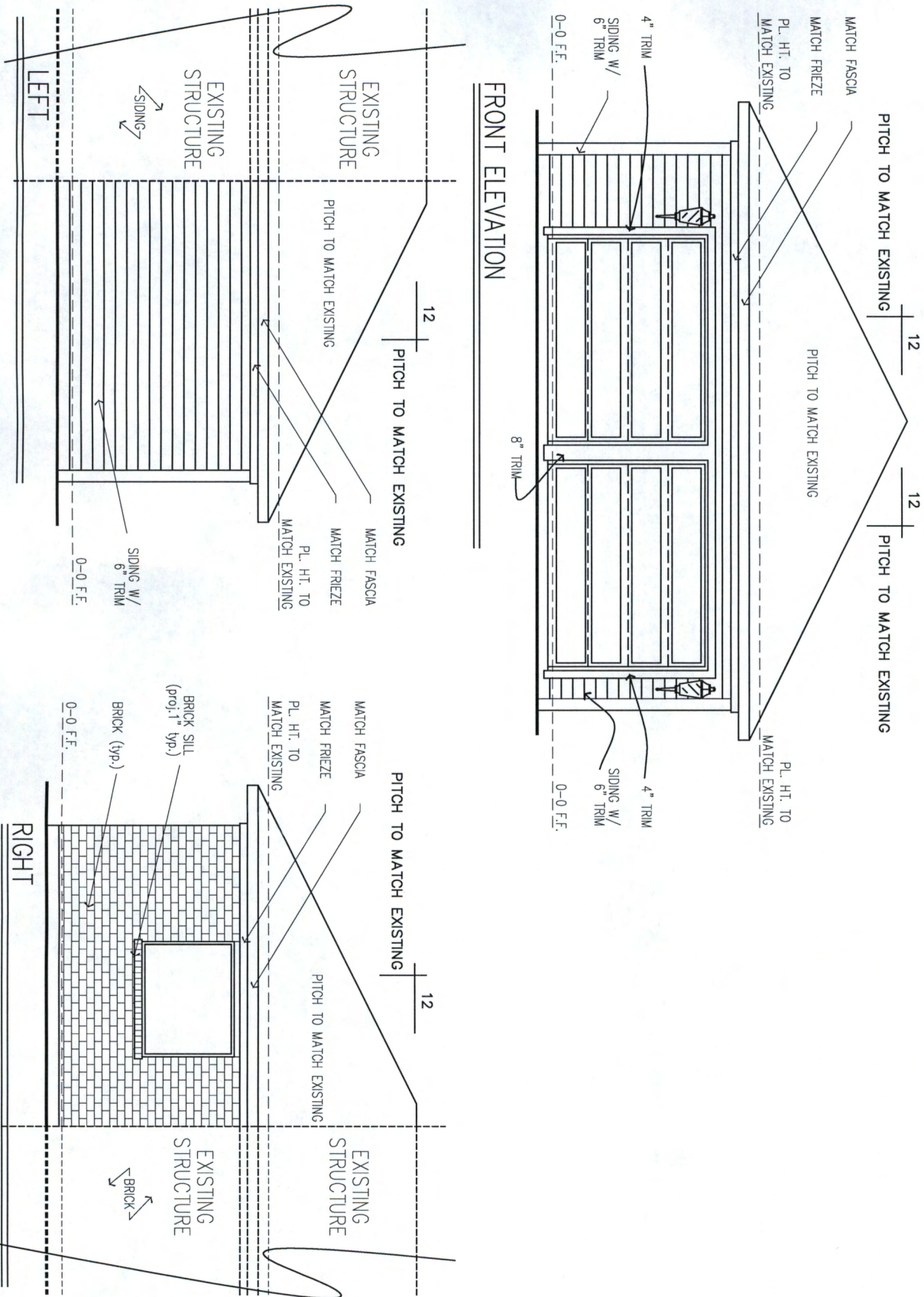
0 75 150 300
 The data presented on these maps is not binding on the City of Galveston or any of its departments. These maps and the associated data are representations of the City of Galveston and may contain errors in the data. Therefore, the information presented on this map is for informational purposes only and should not be construed to be legally binding.



ELV-1 RYAN GALVESTON	HARBOR VIEW 1305 HARBORVIEW GALVESTON, TX 77550	Proj. No.: 0001	Lot: 7	© 2014 The measurements, dimensions, and other specifications, shown on this document, are guidelines for construction use only. The actual specifications of the finished structure may vary. This document may not be relied on as a representation of what the completed structure will look like.
		Job No.: 0022	Blk: Sect:	

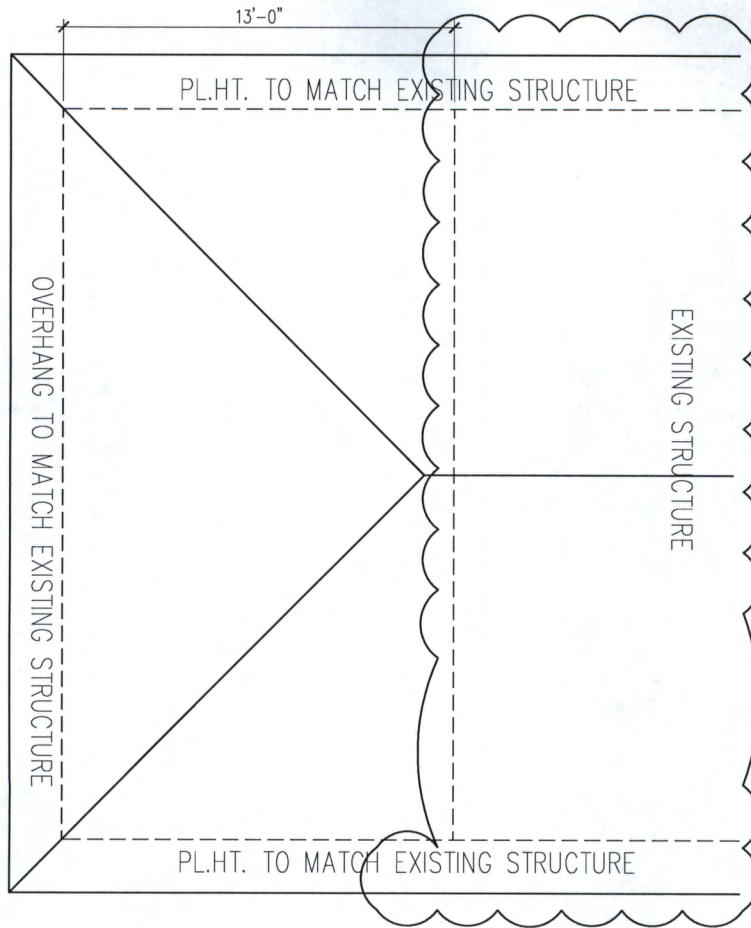
RRB
 Date: **01/22/14**

CAD Designs
 Scale: **1" = 20'**
 Rev:

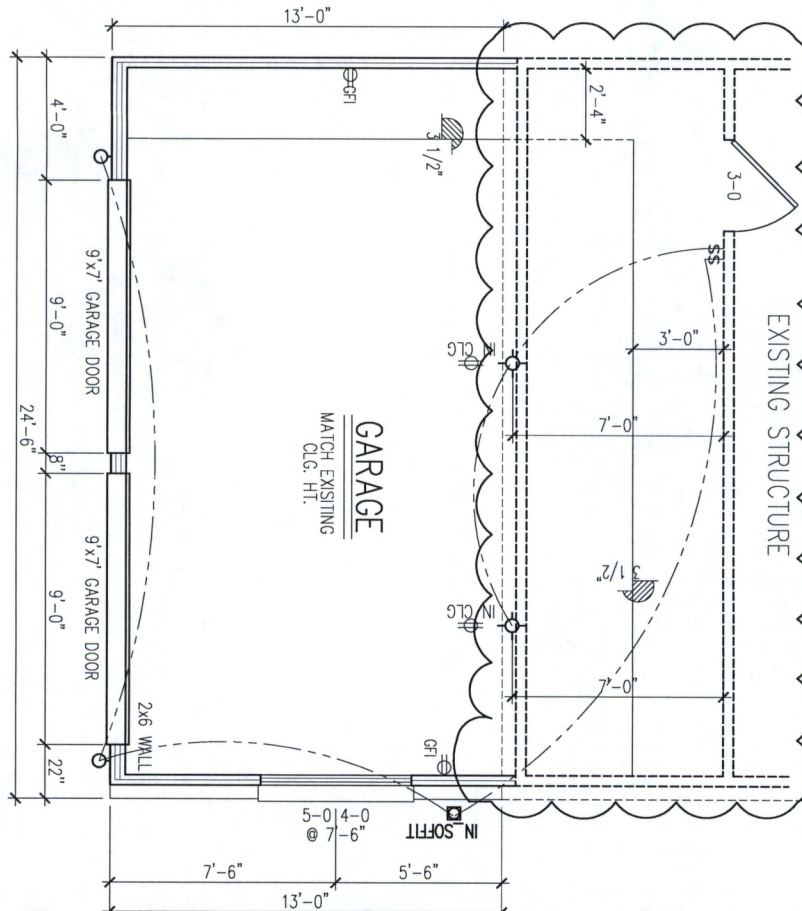


ELV-1 RYAN GALVESTON	HARBOR VIEW 1305 HARBORVIEW GALVESTON, TX 77550	Proj. No.: 0001	Lot: 7	CAD Designs	© 2014 The measurements, dimensions, and other specifications, shown on this document, are guidelines for construction use only. The actual specifications of the finished structure may vary. This document may not be relied on as a representation of what the completed structure will look like.
		Job No.: 0022	Blk: Sect:		

ROOF PLAN



FLOOR PLAN



PLAN/ROOF
RYAN
GALVESTON

HARBOR VIEW
1305 HARBORVIEW
GALVESTON, TX 77550

Proj. No.: 0001	Lot: 7
Job No.: 0022	Blk:
	Sect:

CAD Designs	
FRB	Scale: 1/4" = 1'-0"
Date: 01/22/14	Rev:

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The measurements, dimensions, and other specifications, shown on this document, are guidelines for construction use only. The actual specifications of the finished structure may vary. This document may not be relied on as a representation of what the completed structure will look like.

14Z-07 (2107 Seawall Boulevard) Request for a Special Exception from the Galveston Zoning Standards Section 29-67(c)(8) regarding commercial parking requirements in a Resort, Seawall Development Zone (RES-SDZ-2) zoning district. Property is legally described as Lot 7, Northeast Block 118, Northwest Block 119, Southwest Block 119, and Adjacent Street (119-0-1), Galveston Outlots, a subdivision in the City and County of Galveston.

Applicant: Michael Gaertner

Property Owner: Texas General Land Office

Case Manager: Adriel Montalvan, Urban Planner I

Existing Zoning and Land Use:

Zoning	Resort / Seawall Development Zone, Zone 2 (RES-SDZ-2)
Land Use	Vacant / Beach

Surrounding Zoning and Land Use:

	North	South	East	West
Zoning	Retail / Height Density Development Zone, Zone 3 (R-HDDZ-3)	Water (W)	Water (W) and Resort / Seawall Development Zone, Zone 2 (RES-SDZ-2)	Resort / Seawall Development Zone, Zone 2 (RES-SDZ-2)
Land Use	Vacant	Gulf of Mexico	Beach	Beach

Property Owner Notification as of March 5, 2014:

Sent	Returned	In Favor	In Opposition	No Comment
9				

Advertisement Date: February 21, 2014

City Department Notifications:

Airport Pending
 Building Division: Pending
 Fire Chief: Pending
 Fire Marshal: Pending
 Police Department: Pending
 Public Works Department: Pending

Private Utility Company Notifications:

AT&T: Pending
 CenterPoint Energy: Pending
 Comcast: Pending
 Texas Gas Service: Pending

Background

The subject site was formerly known as Galveston's Balinese Room, which existed on the island for sixty-six years. In 2008, the Balinese Room could not survive Hurricane Ike, and the lot remained vacant as a result. The Structure was in existence prior to the adoption of Section 29-67 of the Galveston Zoning Standards, therefore the parking had been legally non-conforming. The parking has since lost the legally non-conforming status, and thus the request requires review by the Zoning Board of Adjustment.

The Zoning Board of Adjustment at the regular meeting of November 9, 2011, heard a similar request for the development of Jimmy's on the Pier (11Z-95).

ANALYSIS

The applicant is requesting a Special Exception from Section 29-67 (c)(8) of the Galveston Zoning Standards to eliminate the parking space requirement defined below:

- **Commercial Recreational and Amusement Establishments (other than listed)** – *One (1) space for every two hundred (200) square feet involved in such use.*

The applicant has not provided any specific information regarding the proposed land use. Hence, the total number of parking spaces to be exempt is unknown.

APPLICANT'S JUSTIFICATION

"Parking cannot be provided on the site or within a reasonable distance of the site, the site is mostly over submerged land. New FEMA requirements require buildings to be elevated higher than previous requirements."

CONDITIONS FOR A SPECIAL EXCEPTION

A Special Exception may be granted from the parking requirements of the Zoning Standards when the Zoning Board of Adjustment finds that:

1. No adverse affect to the value and use of adjacent and neighboring property, or be contrary to the public interest;
2. The parking and loading requirements are unnecessary for the proposed use of the building or structure; and,
3. On-street parking is available and may be counted toward the parking requirement. Such special exception shall extend only to that linear street frontage of the property in question which is lawfully available for parking, and each 22 feet shall be counted as space for one car.

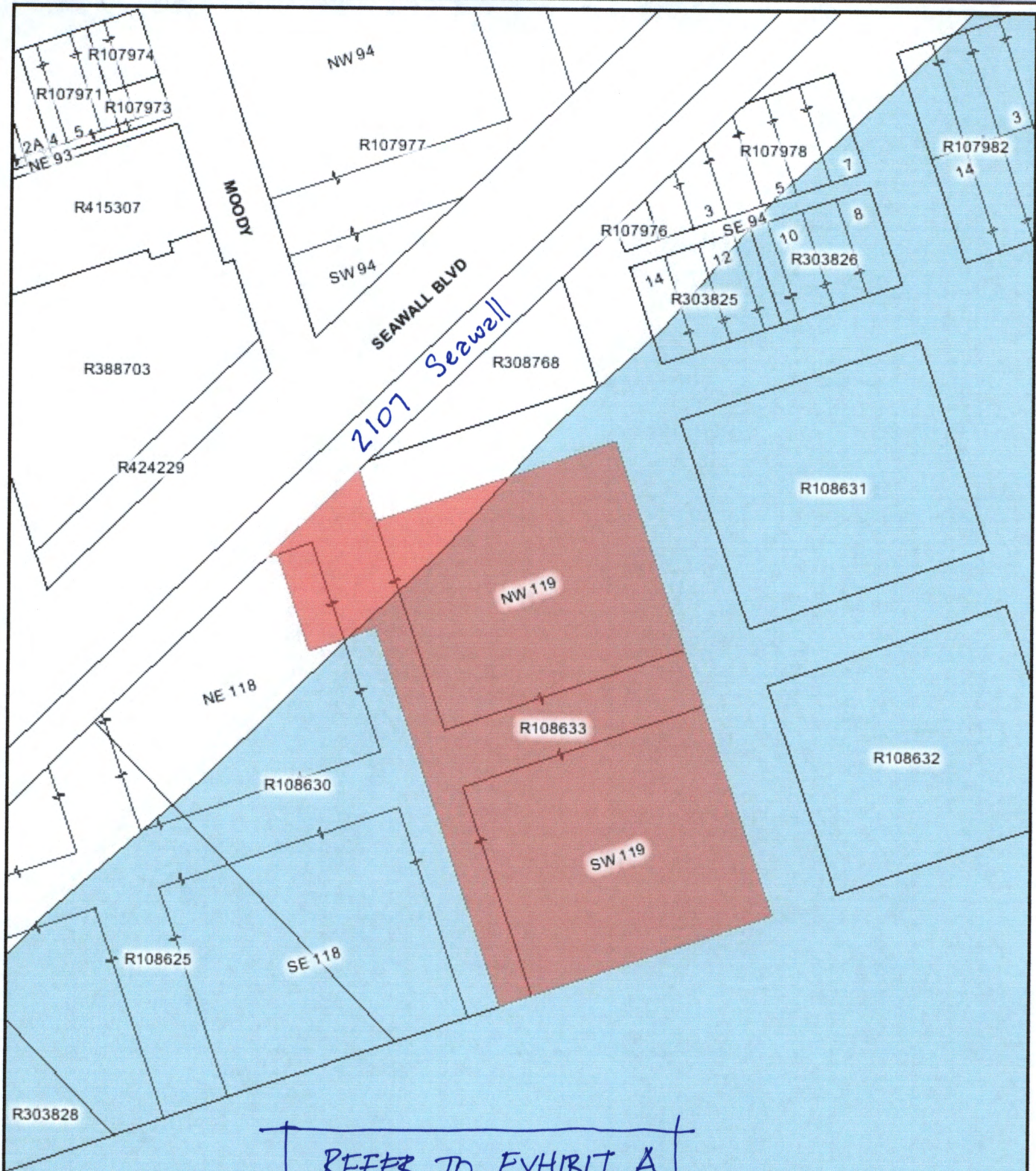
APPEAL FROM DECISION OF BOARD

Any person aggrieved by any decision of the Board, or any officer, department or other Board of the City, may appeal the decision or action of the Board by filing a petition for the same in court of competent jurisdiction, setting forth that such decision is illegal in whole or in part, and specifying the grounds for the alleged illegality. Such petition shall be filed with the District Court within ten (10) days from the day the Board renders its decision, and not thereafter. The time period set forth herein shall be deemed jurisdictional.

ATTACHMENTS

- "A" - Aerial Map
- "B" - Site Plan
- "C" - Applicant's Narrative





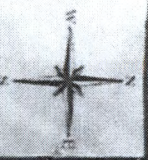
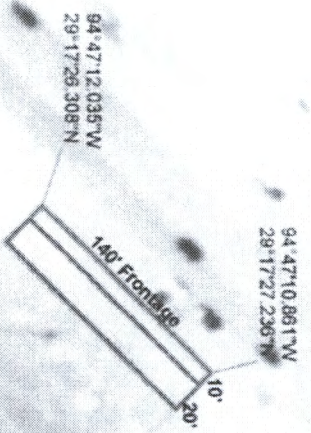
REFER TO EXHIBIT A
OF SL 20100028
(attached)

SITE PLAN



6010

-  Two 20-foot wide stair entrances
-  Two 14-foot wide handicap accessible entrance ramps
-  Two 20-foot by 30-foot enclosed approaches (included in the maximum buildable area)
-  Building Envelope- Maximum of 27,000 square feet of buildable area



1:1,200

SL 20100028 - Exhibit A

TEXAS GENERAL LAND OFFICE



AMENDMENT AND RESTATEMENT OF SURFACE LEASE NO. SL20100028

STATE OF TEXAS

§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF GALVESTON §

This Commercial Lease No SL20100028 (hereinafter the "Lease") is granted by virtue of the authority granted by Chapter 51, TEX. NAT. RES. CODE and all amendments thereto; 31 Texas Administrative Code Chapter 13 and all other applicable statutes and rules, as the same may be promulgated and/or amended from time to time; and subject to all rules and regulations promulgated by the Commissioner of the Texas General Land Office and/or the School Land Board Pursuant thereto and all other applicable statutes.

Article I. Leased Premises

1.01. In consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the State of Texas, acting by and through Jerry E. Patterson, Commissioner of the General Land Office, on behalf of the Permanent School Fund (the "State") does hereby grant to Arnold Properties, Inc. whose address is 310 Main Street, Suite 200, Houston, Texas 77002 ("Lessee") the right to use the surface of certain Permanent School Fund land (the "Leased Premises") for the purposes identified in Article V below. The Leased Premises, a tract of State-owned submerged land located immediately seaward of the Galveston Seawall, in State Tract No. 222S. Gulf of Mexico, Galveston, Galveston County, Texas, are more particularly described by Exhibit A, attached hereto and incorporated herein by reference for all purposes. The State and Lessee acknowledge and agree that Lessee's right to use the Leased Premises is exclusive as to the improvements located or to be located thereon, and non-exclusive as to the remainder.

1.02. LESSEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE LEASED PREMISES AND ACCEPTS SAME "AS IS" IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. LESSEE IS NOT RELYING ON ANY REPRESENTATION OR WARRANTY OF THE STATE REGARDING ANY ASPECT OF THE PREMISES, BUT IS RELYING ON GRANTEE'S OWN INSPECTION OF THE PREMISES. THE STATE DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER EXPRESS OR IMPLIED WARRANTY NOT EXPRESSLY SET FORTH IN THIS LEASE. THE STATE AND LESSEE HEREBY AGREE AND ACKNOWLEDGE THAT THE USE OF THE TERM "GRANT" AND/OR THE TERM "CONVEY" IN NO WAY IMPLIES THAT THIS LEASE IS FREE OF LIENS, ENCUMBRANCES AND/OR PRIOR RIGHTS. LESSEE IS HEREBY PUT ON NOTICE THAT ANY PRIOR GRANT AND/OR ENCUMBRANCE MAY BE OF RECORD AND LESSEE IS ADVISED TO EXAMINE IN THE ARCHIVES AND RECORDS DIVISION OF THE GENERAL LAND OFFICE, 1700 NORTH CONGRESS AVENUE, AUSTIN, TEXAS, 78701 AND ALL OTHER LAND TITLE RECORDS IN WHICH THE LEASED PREMISES ARE LOCATED.



Article II. Term

2.01. This Agreement is for a period of Thirty (30) years, beginning on June 30, 2010 ("Effective Date") and ending on December 31, 2039, unless renewed or terminated as provided herein. Not later than 180 days prior to the expiration of this Lease, the Lessee may advise the Lessor of its desire to obtain an extension of the Lease for a ten-year period. A subsequent ten-year extension may be requested not later than 180 days prior to the expiration of the first extension.

Article III. Consideration

3.01. A. As consideration ("Consideration") for the granting of this Lease, Lessee shall pay rent ("Rent") to the State (payable to the Commissioner of the General Land Office at Austin, Texas) as set forth below and subject to provisions of Section 3.02.

- B. The Base Rent shall be calculated by multiplying the square footage of the Improvements, as more fully described in Article VI, by the price per square foot amount as set forth in Subpart C below. As any additional Improvements are constructed on the Leased Premises in accordance with Article VI, the Base Rent shall be calculated by multiplying the sum of all Improvements by the price per square foot amount as set forth in Subpart C below. After the Effective Date but prior to the initial construction of any Improvements on the Leased Premises, the Lessee shall not be required to pay any sum as Base Rent, but shall only be required to pay an Option Fee, as set forth in Subpart D below.
- C. Consideration for the Base Rent of Improvements shall be payable in thirty (30) annual installments, in advance of each Lease Year as set forth in Subparts 1 and 2 below.

For so long as the total area of Improvements is less than 9,000 square feet, Base Rent shall be calculated as follows:

- 1) For each of the Lease Years 1 through 3, the sum of \$1.41 per square foot ("psf") of improvements constructed on the Leased Premises;
- 2) For the Lease Year 4, the sum \$1.56 psf of improvements constructed on the Leased Premises;
- 3) For the Lease Year 5, the sum \$1.72 psf of improvements constructed on the Leased Premises;
- 4) For each of the Lease Years 6 through 10, the sum \$1.88 psf of improvements constructed on the Leased Premises;
- 5) For each of the Lease Years 11 through 15, the sum of \$2.16 psf of improvements constructed on the Leased Premises;
- 6) For each of the Lease Years 16 through 20, the sum of \$2.49 psf of improvements constructed on the Leased Premises;
- 7) For each of the Lease Years 21 through 25, the sum of \$2.86 psf of improvements constructed on the Leased Premises;
- 8) For each of the Lease Years 26 through 30, the sum of \$3.29 psf of improvements constructed on the Leased Premises.

At such time that the total area of Improvements exceeds 9,000 square feet, Base Rent from that point forward shall be calculated as follows:

- 1) For each of the Lease Years 1 through 3, the sum of \$1.27 per square foot ("psf") of improvements constructed on the Leased Premises;
- 2) For the Lease Year 4, the sum \$1.40 psf of improvements constructed on the Leased Premises;
- 3) For the Lease Year 5, the sum \$1.55 psf of improvements constructed on the Leased Premises;
- 4) For each of the Lease Years 6 through 10, the sum \$1.69 psf of improvements constructed on the Leased Premises;
- 5) For each of the Lease Years 11 through 15, the sum of \$1.94 psf of improvements constructed on the Leased Premises;
- 6) For each of the Lease Years 16 through 20, the sum of \$2.24 psf of improvements constructed on the Leased Premises;
- 7) For each of the Lease Years 21 through 25, the sum of \$2.57 psf of improvements constructed on the Leased Premises;
- 8) For each of the Lease Years 26 through 30, the sum of \$2.96 psf of improvements constructed on the Leased Premises.

- D. In addition to the Consideration for the Base Rent stated in Subpart C, above, the Lessee shall pay on an annual basis an Option Fee. The Option Fee shall be calculated by subtracting the total square footage of any Improvements constructed on the Leased Premises from the maximum allowable square footage of 27,000 square feet and then multiplying that amount by the Option Fee amount of \$0.20 per square foot. The Option Fee will commence on the Effective Date of this Lease and continue throughout the Lease Term. The Option Fee shall remain in effect until the maximum square footage of Improvements is constructed on the Leased Premises.
- E. The first annual installment shall be made upon the execution hereof and subsequent annual installments are to be made on or before each anniversary of the Effective Date hereof.
- F. Base Rent for the each extension of the original lease term shall be calculated by applying a 15% increase from rental amount in effect at the time the extension is requested. The Base Rent will be increased an additional 15% after the fifth year of each extension, if such extension(s) are exercised.

3.02. All Rent and any other sums hereunder provided to be paid by Lessee shall be due and payable by Lessee without demand, deduction, and abatement or off-set. Past due Rent and other past due payments shall bear interest from maturity at the rate of ten percent (10%) per annum from the date when due until actually paid, as provided in Section 51.301, TEX. NAT. RES. CODE ANN. Failure of Lessee to make a payment on or before the date the same becomes due shall, at the option of the State, make all payments due and payable immediately.

Article IV. Taxes

4.01. Lessee shall, as further consideration for this Lease, pay and discharge "Taxes" (as hereinafter defined) each calendar year (or portion thereof) of this Lease. For the purposes of this Lease, the term "Taxes" shall mean and refer to all taxes, assessments, impositions, levies, charges, excises, fees, licenses and other sums (whether now existing or hereafter arising, whether foreseen or unforeseen and whether under the present system of real estate taxation or some other system), which during the term of this Lease may be levied, assessed, charged or imposed by any governmental authority or other taxing authority or accrue on the Leased Premises and any improvements or other property thereon, whether belonging to the State or Lessee, or to which either of them may become liable in relation thereto. The term "Taxes" shall also include all penalties, interest and other charges payable by reason of any delay or failure or refusal of Lessee to make timely payments as required pursuant to this Section 4.01.

4.02. Lessee agrees to and shall protect and hold harmless the State and the Leased Premises from liability for any and all Taxes, together with any interest, penalties or other sums thereby imposed, and from any sale or other proceeding to enforce payment thereof.

4.03. Lessee agrees to pay all Taxes directly to the applicable taxing authority not less than fifteen (15) days prior to the date of delinquency thereof.

Article V. Use of Leased Premises

5.01. Lessee shall have the right to use the Leased Premises for a restaurant, museum, nightclub, gift shop, entertainment arcade, retail sales, office space and a fishing pier ("Permitted Land Uses"). Subject to Article VI below, the State has reviewed and agrees that the "America's Icehouse" concept, as previously described to the State is a Permitted Land Use under this Lease. Any other proposed uses require the written consent of the State, which shall not be unreasonably withheld. Any adult or sexually oriented businesses are strictly prohibited. Lessee shall notify Lessor in writing of any proposed new or change in the use of the Leased Premises. If Lessor does not object or respond to the new or change in the proposed use of the Leased Premises within fourteen (14) days of the receipt of such notice by Lessor, then the proposed use shall be deemed to be agreed to by the Lessor. Lessee is not authorized by way of this Lease to engage in any of the Permitted Land Uses or other commercial activities on the public beach.

5.02. Lessee, at its own expense, will comply with all federal, state, municipal and other laws, codes, ordinances, rules and regulations applicable to the Leased Premises. Lessee will install, remove and alter such equipment and facilities in, and make such alterations to the Leased Premises as may be necessary to comply; and Lessee will comply with such regulations as the State may promulgate regarding sanitation, cleanliness and other health, safety and environmental matters, including, without limitation, removal of garbage, trash and other waste. Lessee will not make any unlawful use of the Leased Premises or permit any unlawful use thereof and, will not commit, or permit anyone else to commit any act which is a nuisance or annoyance to the State or adjacent property owners or tenants, or which might, in the reasonable judgment of the State, appreciably damage the State's goodwill or reputation, or tend to injure or depreciate

5.03. Lessee shall use the highest degree of care and all proper safeguards to prevent pollution of air and water in and around the Leased Premises. In the event of pollution, Lessee shall use all means at its disposal to recapture all pollutants which are released and shall be responsible for all damage and injury to public and private property and natural resources caused thereby.

5.05. LESSEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966, (PB-89-66, 80 STATUTE 915; 16 U.S.C.A. §470) AND THE ANTIQUITIES CODE OF TEXAS, CHAPTER 191, TEX. NAT. RES. CODE ANN. (VERNON 2000 SUPP.). IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT, OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL OR HISTORIC INTEREST IS ENCOUNTERED DURING THE ACTIVITIES AUTHORIZED BY THIS LEASE, LESSEE WILL IMMEDIATELY CEASE SUCH ACTIVITIES AND WILL IMMEDIATELY NOTIFY THE STATE AND THE TEXAS HISTORICAL COMMISSION, P.O. BOX 12276, AUSTIN, TEXAS 78711, SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS. AS APPROPRIATE.

Article VI. Construction by Lessee

Article VII. Repair and Maintenance

SL20100028
Milemnds

7.02. All damage to Improvements placed at the Leased Premises and constituting any part thereof (including Improvements approved in writing by the State and constructed by or on behalf of Lessee) will be repaired and all maintenance thereon will be performed and replacements and renewals thereof will be made by Lessee at Lessee's cost and expense; and Lessee will perform all maintenance and make all repairs, renewals and replacements at the Leased Premises. Lessee shall be responsible for the disposal of all trash at the Leased Premises (whether or not such trash is generated by Lessee or its customers and invitees).

7.03. If the State considers necessary any repairs, maintenance, renewals or replacements as required by the provisions of this Lease to be made or provided by Lessee, the State may request such repairs, maintenance, renewal or replacements. If, upon Lessee's failure or refusal to perform or provide such repairs, maintenance, renewal or replacements promptly, and in any event in case of an emergency irrespective of whether the State shall have requested or obtained Lessee's prior consent, the State shall have the right, but not the obligation, either through itself or through a third party contractor, to make such repair, perform such maintenance or provide such renewal or replacement. Lessee hereby waiving any damage caused thereby including, without limitation, any damage caused by any such third party contractors engaged by the State to perform such work; thereupon Lessee will, at the State's election, on demand pay, or reimburse the State for, the cost thereby incurred by the State. In addition, Lessee shall pay the State upon demand interest at the then highest lawful contract rate which Lessee is authorized to pay under the laws of the State of Texas. An "emergency" shall be deemed to exist if, in the good faith judgment of the State, prompt action is needed in order to prevent death, bodily injury or property damage. Any such sum, which Lessee becomes liable to pay or to reimburse the State, shall be paid by Lessee within five (5) days following any such notice from the State. Any failure of Lessee to make such payment to the State may be treated by the State as an event of default by Lessee in the payment of Rent required to be paid by Lessee. If the State, or any third party contractor, makes any such repairs, performs any such maintenance, or provides any such renewal or replacement, THEN THE STATE SHALL NOT BE LIABLE TO LESSEE AND LESSEE SHALL INDEMNIFY AND HOLD THE STATE HARMLESS WITH RESPECT TO ALL LOSS OR DAMAGE THAT MAY OCCUR TO ANY IMPROVEMENTS TO THE LEASED PREMISES AND ANY MERCHANDISE, FIXTURES OR OTHER PROPERTY THEREON AND TO ANY BUSINESS INCIDENT TO SUCH ACTION BY THE STATE.

7.04. The State will have a right to enter the Leased Premises at any reasonable time (including during Lessee's business hours) to inspect the condition thereof to make any necessary repairs and improvements, and for any other lawful purposes. The State will endeavor to notify the Lessee prior to entry onto the premises, however, the State is not required to notify Lessee, and failure to notify shall not constitute grounds for Lessee to contest the State's right to enter the Leased Premises.

Article VIII. Assignment and Sublease

8.01. Lessee shall not assign or otherwise dispose of any interest in this Lease or the Leased Premises or any part thereof, or mortgage, pledge or hypothecate its Lease interest or grant any concession or license within the Leased Premises without the express prior written consent of the State, which consent will not be unreasonably withheld. Any attempt to do any of the foregoing shall be void and of no effect. In the event of any such attempted assignment or disposition, or should Lessee permit or attempt to permit anyone to occupy the Leased Premises, or any portion thereof, the State shall thereupon have the right and option, but not the obligation, to cancel and terminate this Lease effective upon fifteen (15) days written notice to Lessee. The State may cancel and terminate this Lease as to the entire Leased Premises or as to only the portion of the Leased Premises which Lessee attempted to assign or dispose of or otherwise permit some other party's occupancy. If the State elects to cancel and terminate this Lease as to a portion of the Leased Premises, then the Rent as to the remainder of the Leased Premises shall thereafter be reduced. This prohibition against assigning or disposition shall be construed to include a prohibition against any assignment or disposition by operation of law. Notwithstanding the limitations for the assignment of the Lease contained in this section, the Lessee may sublease all or part of the Leased Premises upon the prior written consent of the Lessor, which shall not be unreasonably withheld. . If Lessor does not object or respond to the proposed sublease of all or part of the Leased Premises within fourteen (14) days of the receipt of such notice by Lessor, then the proposed sublease shall be deemed to be agreed to by the Lessor. However, under any such sublease, the Lessee shall remain fully liable for compliance with all terms of this Lease.

8.02. If this Lease is assigned or if an interest in this Lease or the Leased Premises is disposed of, in whole or in part, or in the event of the mortgage, pledge or hypothecation of the Lease interest or grant of any concession or license within the Leased Premises or if the Leased Premises is occupied in whole or in part by anyone other than Lessee, the State may nevertheless collect rent from the assignee, mortgagee, pledgee, party to whom the Lease interest was transferred, concessionee, licensee or any other occupant, and apply the net amount collected to the Rent payable hereunder. No such transaction or collection of rent or application thereof by the State shall be deemed a waiver of these provisions or a release of Lessee from the further performance by Lessee of its covenants, duties and obligations hereunder. However, the State will release Lessee from further obligation under this Lease, in writing, if the State, in its reasonable discretion, receives adequate assurances that the assignee can and is able to successfully perform all the covenants, duties, and obligations of this Lease.

8.03. Notwithstanding the provisions contained in Section 8.01, the Lessee is not required to obtain the prior consent of the State to sublease any part of the Leased Premises, provided that each individual sublease encompasses less than 2,000 square feet of the Leased Premises and such sublease is only for Permitted Land Uses as set forth herein.

Article IX. Utilities

9.1. Lessee shall at its own cost and expense pay all charges for delivery and use of water, sanitary sewer, electricity, gas and all other utilities used on the Leased Premises, including any connection charges, and shall save and hold the State harmless from any charge or liability for same. All such charges are to be paid by Lessee directly to the utility company or municipality furnishing the same before the same shall become delinquent.

9.2. No interruption or malfunction of any utility service (including, without limitation, interruption of such utilities as a result of the enactment or promulgation, regardless of the ultimate validity or enforceability thereof, of any federal, state or local law, statute, ordinance, decree, order, guideline or regulation now or hereafter enacted or promulgated by any governmental, quasi-governmental, regulatory or executive authority) shall constitute an eviction or disturbance of Lessee's use and possession of the Leased Premises or a breach by the State of any of its obligations hereunder or render the State liable for any damages (including, without limitation, consequential or special damages) or entitle Lessee to be relieved from any obligations hereunder, including the obligation to pay Rent, or grant Lessee any right of set-off or recoupment.

Article X. Indemnity and Insurance

10.01. EXCEPT FOR MONETARY DAMAGES FOR INJURY, DEATH OR PROPERTY DAMAGE DIRECTLY OR PROXIMATELY CAUSED SOLELY BY THE NEGLIGENCE OF THE STATE FOR WHICH THE STATE IS LEGALLY LIABLE, LESSEE AGREES TO INDEMNIFY AND HOLD THE STATE AND THE STATES AUTHORIZED REPRESENTATIVES, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES AND LIABILITY (INCLUDING COSTS AND EXPENSES OF DEFENDING AGAINST ALL OF THE AFORESAID, AND SPECIFICALLY INCLUDING COURT COSTS AND REASONABLE ATTORNEY'S FEES), INCLUDING STRICT LIABILITY CLAIMS, ARISING (OR ALLEGED TO ARISE) IN CONNECTION WITH THIS LEASE OR THE USE AND OCCUPANCY OF THE LEASED PREMISES, INCLUDING, WITHOUT LIMITATION, FROM ANY ACT OR OMISSION OF LESSEE OR LESSEE'S AUTHORIZED REPRESENTATIVES, AGENTS, EMPLOYEES, ASSIGNEES, SUBLESSEES, CONTRACTORS, CUSTOMERS OR INVITEES TAKEN OR NOT TAKEN IN CONNECTION WITH THE LEASED PREMISES OR THIS LEASE, OR ARISING FROM ANY INJURY TO OR DEATH OF ANY PERSON OR FROM DAMAGE TO OR DESTRUCTION OF ANY PROPERTY OCCURRING IN, ON OR ABOUT THE LEASED PREMISES, AND LESSEE ASSUMES RESPONSIBILITY FOR THE CONDITION OF THE LEASED PREMISES. LESSEE AGREES TO USE AND OCCUPY THE LEASED PREMISES AND PLACE ITS IMPROVEMENTS, FIXTURES, EQUIPMENT, MERCHANDISE AND OTHER PROPERTY THEREIN AND THEREON AT ITS OWN RISK, AND HEREBY RELEASES THE STATE AND ITS AGENTS FROM ALL CLAIMS FOR ANY DAMAGE OR INJURY TO THE FULL EXTENT PERMITTED BY LAW. LESSEE SHALL BE RESPONSIBLE FOR THE SAFETY AND WELL BEING OF LESSEE'S EMPLOYEES, CUSTOMERS AND INVITEES, AND LESSEE AGREES TO INDEMNIFY AND HOLD THE STATE HARMLESS FROM ALL LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES AND LIABILITIES, INCLUDING CLAIMS OF STRICT LIABILITY, (INCLUDING COSTS AND EXPENSES OF DEFENDING AGAINST THE AFORESAID) ARISING (OR ALLEGED TO ARISE) FROM ANY INJURY, DEATH OR DAMAGE OR LOSS OF LESSEE, ITS EMPLOYEES, CUSTOMERS AND INVITEES EXCEPT AS SET FORTH ABOVE.

10.02. A. Lessee will purchase and maintain a policy providing commercial general liability insurance coverage in a minimum amount of One Million and NO/100 Dollars (\$1,000,000.00) combined single limit, which policy shall insure against bodily injury, death and property damage and shall include coverage for Leased Premises and operations. Such policy shall name the State, and any of its successors and assigns designated by the State, as an additional insured and shall include a waiver of subrogation in favor of the State.

B. Lessee further agrees to purchase and maintain at all times during the Lease term a policy of fire, extended coverage, vandalism and malicious mischief (or "all risk") specifically including hurricane, windstorm and flood insurance coverage on all real property situated at the Leased Premises, including, without limitation, any structures, improvements, alterations, and additions which are a part thereof. Such Property shall at a minimum be insured to fully cover the costs of demolition and debris removal from the Leased Premises should any of the above referenced structures or improvements be damaged or destroyed and Lessee shall satisfy any and all co insurance requirements. The amount of coverage provided under such policy shall be modified at least every five years so that the amount of such coverage is at all times one hundred percent (100%) of the cost of demolition and debris removal, including, without limitation, such added demolition and debris removal costs as may result by reason of any change or changes in applicable ordinances or building codes. Such policy shall name Lessee as the named insured and the State, and any of its successors and assigns designated by the State, as an additional insured, and the proceeds thereof shall be payable

C. If Lessee is engaged in any way in the sale of alcoholic beverages, either for consumption of alcoholic beverages on the Leased Premises or off the Leased Premises, Lessee will also maintain liquor liability insurance with the limits of not less than One Million and NO/100 Dollars (\$1,000,000.00) each common cause and One Million and NO/100 Dollars (\$1,000,000.00) aggregate. If written on a separate policy from the comprehensive general liability policy, such policy shall name the State, and any of its successors and assigns designated by the State, as an additional insured.

ARTICLE XI. Damage or Destruction of Leased Premises

11.02. In the event any building or improvement constructed on the Leased Premises is damaged or destroyed by fire or other casualty, all insurance proceeds shall be paid directly to Lessee and used for repairs or removal as required by Section 11.01.

12.01. A. If during the term of this Lease, all of the Leased Premises is taken by any authority having the power of eminent domain (the "Condemning Authority"), then and in that event, the term of this Lease shall cease and terminate, and the date of such termination shall be, at the State's election, the earlier of either the date upon which possession shall be tendered to such authority by the State or the date upon which possession is taken by such authority. If a lesser part of the Leased Premises should be so taken, then the State may elect to terminate this Lease or to continue this Lease in effect. If this Lease is terminated pursuant to the provisions of this Section 12.01, the duties of Lessee relative to

B. Immediately upon the taking of possession of the portion of the Leased Premises taken by the Condemning Authority, if this Lease is not terminated as set forth in the preceding paragraph, the Rent shall be reduced in proportion to the area of the Leased Premises so taken. When any such reduction in Rent has been computed by the State, the State shall notify Lessee as to the amount of such Rent and such sum shall be due and payable by Lessee to the State in accordance with the provisions of Article 111 relating to the time and manner of Lessee's payment of Rent. At the request of the State, Lessee will execute a letter or other memorandum setting forth the amount of such Rent payable by Lessee.

D. The restoration work, if any, by Lessee with respect to the Leased Premises shall not constitute an eviction or disturbance of Lessee's use and possession of the Leased Premises or a breach by the State of any of its obligations hereunder or render the State liable for damages or entitle Lessee to be relieved from any of its obligations hereunder (with the exception of the aforesaid proportionate reduction in Rent) or grant Lessee any right of offset or recoupment.

12.03. In connection with any such taking or conveyance of any portion of the improvements constructed at the Leased Premises Lessee shall promptly take such action as is necessary to clean up and remove all debris and place the Leased Premises in a neat and sanitary condition. Such action shall be taken by Lessee with due diligence as soon as is practicable and at Lessee's sole cost and expense.

13.01. Except as set forth in Article VIII above, nothing contained herein shall be deemed to restrict Lessee's right to mortgage its interest created hereunder and Lessee may mortgage its interest, at any time, and from time to time, by mortgage or trust deed, provided that no mortgagee or trustee, or anyone claiming by, through or under such mortgage or trust deed shall by virtue thereof acquire any greater interest in the Leased Premises and in any building or improvements constituting a part thereof, than Lessee then has under this Lease, and provided further, that such mortgage or trust deed shall be subject to all the conditions, covenants and obligations of this Lease and to the State's rights hereunder. The mortgagee or trustee in any such mortgage or trust deed, and the holders or owners of the indebtedness secured by said mortgage or trust deed, shall not become personally liable on the obligations of this Lease, unless and until they or their successors or assigns shall become the owners of the interest created herein. Lessee shall remain liable on all of its obligations hereunder, notwithstanding any such mortgage, and default thereunder, or any foreclosure thereof. A mortgagee or trustee may sell and assign the Lessee's rights hereunder to a third party, either at a foreclosure sale or thereafter; upon a conveyance by the mortgagee or trustee to a third party, such mortgagee or trustee shall have no obligations under this instrument.

(1) No voluntary termination by Lessee of the Lease shall be effective unless consented to in writing by such Leasehold Mortgagee; and any material amendment or material modification of the Lease or the exercise by Lessee of any option to terminate the Lease without the written consent of such Leasehold Mortgagee shall be voidable as against such Leasehold Mortgagee at its option. If any Leasehold Mortgagee shall fail to respond to any request for written consent under this paragraph within thirty (30) days after the receipt by such Leasehold Mortgagee of such written request, the Leasehold Mortgagee shall be deemed to have granted its consent to such request;

(2) The State shall give any and all notices (as hereinafter defined) given to Lessee hereunder simultaneously to any such Leasehold Mortgagee at the address of such Leasehold Mortgagee provided to the State, and no such notice shall be effective as to such Leasehold Mortgagee unless and until a copy thereof has been given to such Leasehold Mortgagee. In the event the State sends Lessee a notice of default, from and after the time that such notice has been delivered to such Leasehold Mortgagee, such Leasehold Mortgagee shall have a period equal to the period granted to the Lessee plus, with respect to monetary defaults only, an additional ten (10) business days in which to effect a cure, and with respect to non-monetary defaults only, an additional thirty (30) days in which to effect a cure of any default by Lessee under this Lease (provided, however, that if such cure is of a nature that it cannot be effected within such a period of time, no default shall have been deemed to have occurred hereunder as long as such Leasehold Mortgagee shall have commenced to cure such default within such period and shall thereafter be taking diligent steps to effect the same). The State shall accept performance of any and all of Lessee's obligations hereunder including the obligations to pay rent, from any such Leasehold Mortgagee and the performance of such obligation by such Leasehold Mortgagee shall be deemed to have been a cure effected by Lessee.

(3) If Leasehold Mortgagee shall have obtained possession or be proceeding to obtain possession of the Leased Premises, and if there has been a default by Lessee under this Lease, then the State shall not commence any proceeding or action to terminate the term of this Lease if the rent shall be paid and all other provisions and requirements of this Lease which are capable of being observed and performed without obtaining possession of the Leased Premises are so observed and performed. Nothing herein contained shall be deemed to require the Leasehold Mortgagee to initiate any foreclosure or other proceedings, or, in the event such Leasehold Mortgagee shall otherwise acquire possession of the Leased Premises, to continue such possession, if the default in respect to which the State shall have given the notice shall be remedied;

(4) The State agrees that in the event any Leasehold Mortgagee or its nominee, shall acquire possession of the Leased Premises by reason of foreclosure or should Leasehold Mortgagee or its nominee otherwise acquire possession of the Leased Premises, ("Successor in Interest") then, upon execution and delivery to the State of a recordable instrument of assumption wherein such Successor in Interest shall assume and agree to perform and observe the covenants and conditions in this Lease contained on Lessee's part to be performed and observed, Leasehold Mortgagee or its nominee shall succeed to Lessee's interest hereunder.

(a) The State agrees that in the event of the termination of this Lease by reason of any uncured default by Lessee, the State will reinstate the Lease of the Leased Premises with any Leasehold Mortgagee or its nominee upon request by Leasehold Mortgagee, for what would have been the remainder of the term of this Lease, effective as of the date of such termination, at the rent and upon the terms, options, provisions, covenants and agreements as contained in this Lease.

(b) A Leasehold Mortgagee shall be entitled to such reinstated lease without further qualification and without change in terms. However, in the event of lease termination, a nominee of a Leasehold Mortgagee shall be subject to the approval of the State, which approval shall not be unreasonably withheld or delayed, provided in each case of a terminated lease:

(c) Such Leasehold Mortgagee shall make written request upon the State for such reinstated lease prior to or within sixty (60) days after the date of such termination and such written request is accompanied by payment to the State of all sums then due to the State hereunder (State will advise of amount due upon request by Leasehold Mortgagee); and

(d) Such Leasehold Mortgagee or its nominee shall pay to the State at the time of the execution and delivery of said reinstated lease any and all sums which would at that time be due hereunder but for such termination, together with any expenses, including reasonable attorney's fees, incurred by the State as a result of such termination, ;

(5) No Leasehold Mortgagee shall become liable under the agreements, terms, covenants or conditions of this Lease unless and until it becomes the owner of the leasehold estate. Any assignment of the entire interest in this Lease by any owner of the leasehold estate whose interest shall have been acquired by, through or under any Leasehold Mortgage or from any holder thereof, shall be subject to Article VIII of this Lease. However, the State may release the assignor from further obligation under this Lease, in writing, if the State, in its discretion, receives adequate assurances that the assignee can and is able to successfully perform all the covenants, duties, and obligations of this Lease and provided that the assignee shall execute and deliver to the State a recordable instrument of assumption wherein such assignee shall assume and agree to perform and observe the covenants and conditions in this Lease contained on Lessee's part to be performed and observed. Consent by the State to such release of liability shall not be unreasonably withheld or delayed

(6) Nothing herein contained shall require any Leasehold Mortgagee or its nominee to cure any default by Lessee hereunder, unless and until it becomes the owner of the leasehold estate.

(7) As long as any Leasehold Mortgage is in effect, the State agrees that all casualty insurance proceeds payable with respect to the Improvements (whether constructed prior to this date or hereafter) shall be paid directly to the Lessee or to Leasehold Mortgagee pursuant to agreement between Leasehold Mortgagee and Lessee, and applied toward removal, repair or rebuilding of the Improvements in accordance with Article 11.02 of this Lease, and no further approval by the State of such payment to Lessee shall be required under Article 11.02 or otherwise.

13.2. The Leased Premises shall not be deemed in any way pledged or mortgaged by this Lease, and the State of Texas, by execution of this Lease, shall not in any manner lend its credit to any private corporation, association, partnership or other person in connection with the execution of this Lease.

13.3. The State, by approval of this Lease, does not bind itself or its successors or assigns to accept or assume any liability with respect to any indebtedness which may exist now or arise in the future with respect to any action of Lessee required by this Lease, or by Lease mortgagee or contractor.

13.4. Lessee and its successors hereunder warrant and covenant that at the expiration of this Lease there will be no statutory, contractual or other lien existing as to the improvements constructed on the Leased Premises by Lessee.

Article XIV. Default and Remedies

14.01 Each of the following acts or omissions of Lessee or occurrences shall constitute an "Event of Default":

- (a) Failure or refusal by Lessee to timely pay Rent or any other sum when due hereunder;
- (b) Failure or refusal by Lessee to comply with the obligations of Lessee set forth in Article V of this Lease;
- (c) Failure or refusal by Lessee to timely perform or observe any other covenant, duty or obligation of Lessee under this Lease; provided, however, notwithstanding the occurrence of such Event of Default, the State shall not be entitled to exercise any of the remedies provided for in this Lease or by law unless such Event of Default continues beyond the expiration of thirty (30) days following notice to Lessee of such Event of Default;
- (d) Abandonment or vacating of the Leased Premises or any significant portion thereof;
- (e) The entry of a decree or order for relief by a court having jurisdiction over Lessee or any guarantor of Lessee's obligations hereunder in an involuntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or State bankruptcy, insolvency or other similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Lessee or any guarantor of Lessee's obligation hereunder or for any substantial part of either of said parties' property, or ordering the winding-up or liquidation of either of said parties' affairs;
- (f) The commencement by Lessee or any guarantor of Lessee's obligations hereunder of a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by either of said parties to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of any substantial part of the property of Lessee or any guarantor of Lessee's obligations hereunder, or to the taking possession of any such property by any such functionary or the making of any assignment for the benefit of creditors by either Lessee or any guarantor of Lessee's obligations hereunder, or the failure of Lessee or any guarantor of Lessee's obligations hereunder generally to pay its debts as such debts become due, or the taking of corporate action by any corporate Lessee or any corporate guarantor of Lessee's obligations hereunder in furtherance of any of the foregoing.

14.02. A. This Lease and the term and estate hereby granted and the demise hereby made are subject to the limitation that if and whenever any Event of Default shall occur, after such notice, if any, as is provided in Section 14.01, the State may, at its option, in addition to all other rights and remedies provided hereunder or in law or equity, do any one or more of the following:

- (a) forfeit this Lease by sending written notice of such forfeiture by United States Mail to the last known address of Lessee in the files of the Asset Inspections Division of the General Land Office, in which event, this Lease shall terminate and Lessee shall immediately surrender possession of the Leased Premises to the State (and termination shall not prejudice the rights of the State for any claim of payments due);
- (b) enter upon and take possession of the Leased Premises and expel or remove Lessee and any other occupant therefrom, with or without having terminated the Lease; or



(c) alter locks and other security devices, if any, at the Leased Premises.

B. Exercise by the State of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Leased Premises by Lessee, whether by agreement or by operation of law, it being understood that such surrender can be effected only by the written agreement of the State and Lessee. In the event the State exercises its rights to alter the locks at the Leased Premises, the State shall only be required to provide Lessee with a new key during the State's regular business hours, provided that in no event shall the State be required to provide Lessee a new key until such time as Lessee cures all Events of Default under the Lease. To the extent provided by law, Lessee hereby waives any and all notices otherwise required under common law or under Chapters 24 or 93 of the Texas Property Code, as same presently exist or may be hereafter amended, or any subsequent similar statute relating to notice prior to instituting such action or proceeding. To the extent of any inconsistency between this Lease and provisions of Chapter 93 of the Texas Property Code (as same presently exists or may hereafter be amended), it is the agreement of the parties that this Lease shall prevail. No such alteration of locks or other security devices and no removal or other exercise of dominion by the State over the property of Lessee or others at the Leased Premises shall be deemed unauthorized or constitute a conversion, Lessee hereby consenting, after any Event of Default, to the aforesaid exercise of dominion over Lessee's property within the Leased Premises. All claims for damages by reason of such re-entry and/or repossession and/or alteration of locks or other security devices are hereby waived, as are all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings or other legal process. Lessee agrees that any re-entry by the State may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings as the State may elect, and the State shall not be liable in trespass or otherwise.

C. Notwithstanding any provision to the contrary contained herein, upon the occurrence of an Event of Default in payment of Rent, the State shall not be obligated to give any notice, written or oral, to vacate the Leased Premises prior to the State's instituting proceedings in Forcible Entry or Detainer, Lessee hereby waiving (to the extent legally permissible) any and all notices to vacate, and/or demand for possession, required under common law or TEX. PROP. CODE ANN. Chapter 24, as same presently exists or may be hereafter amended (or any subsequent similar statute relating to notice prior to instituting such proceedings). Lessee hereby agreeing that such proceedings in forcible Entry or Detainer may be instituted by the State at any time a default in payment of Rent remains uncured.

D. If Lessee should fail to make any payment or cure any Event of Default within the time herein permitted, the State, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account of Lessee, and enter the Leased Premises for such purpose, and thereupon Lessee shall be obligated to pay the State, upon demand, all costs, expenses and disbursements incurred by the State in taking such remedial action.

E. In the event of termination of this Lease or of Lessee's right to possession of the Leased Premises or repossession of the Leased Premises for an Event of Default, the State shall not have any obligation to seek a new use for the Leased Premises, or any portion thereof, or to collect rental for a new use (if any); but the State shall have the option to seek a new use for the Leased Premises, and in the event of a new use, the State may grant and Lease across or otherwise dispose of an interest in the whole or any portion of the Leased Premises for any period, to any Lessee, and for any use and purpose.

14.03. In the event the State elects to terminate the Lease by reason of an Event of Default, or in the event the State elects to terminate Lessee's right to possession of the Leased Premises without terminating the Lease, the State may instead hold Lessee liable for all Rent, minimum rent and other indebtedness accrued to the date of such termination.

Lessee shall also be liable for such Rent, and other indebtedness as would otherwise have been required to be paid by Lessee to the State during the period following termination of the Lease term, measured from the date of such termination by the State until the date which would have been the date of expiration of the term as stated in Article II, had the State not elected to terminate the Lease or Lessee's right to possession on account of an Event of Default. Such Rent shall be diminished by any net sums thereafter received by the State through disposition of an interest in the Leased Premises during said period, after deducting expenses incurred by the State as provided in the succeeding paragraph. Actions to collect amounts due by Lessee provided for in Section 14.03 may be brought from time to time by the State during the aforesaid period, on one or more occasions, without the necessity of the State's waiting until expiration of such period. In no event shall Lessee be entitled to any excess of rent, or rent plus other sums, obtained by the State over and above the Rent herein reserved.

14.04. In the event of any default by the State, prior to taking any action. Lessee will give the State written notice specifying such default with particularity, and the State shall thereupon have a reasonable period, but in no event less than thirty (30) days, in which to commence to cure any such default. Unless and until the State fails so to commence to cure any Event of Default after



"herein," "hereunder," "hereinafter" and the like refer to this entire instrument, not just to the specific article, section or paragraph in which such words appear.

18.3. In any circumstances where the State is permitted to enter upon the Leased Premises during the Lease term, whether for the purpose of curing any Event of Default of Lessee, repairing damage resulting from fire or other casualty or an eminent domain taking or is otherwise permitted hereunder or by law to go upon the Leased Premises, no such entry shall constitute an eviction or disturbance of Lessee's use and possession of the Leased Premises or a breach by the State of any of its obligations hereunder or render the State liable for damages for loss of business or otherwise or entitle Lessee to be relieved from any of its obligations hereunder or grant Lessee any right of off-set or recoupment or other remedy; and in connection with any such entry incident to performance of repairs, replacements, maintenance or construction, all of the aforesaid provisions shall be applicable notwithstanding that the State may elect to take building materials in, to or upon the Leased Premises that may be required or utilized in connection with such entry by the State.

18.4. Neither the provisions for Rent nor any other provision of this Lease shall be construed in such a way as to constitute the State and Lessee joint venturers or co-partners or to make the Lessee the agent of the State or make the State liable for the debts of Lessee.

18.5. In all instances where Lessee is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

18.6. The obligation of Lessee to pay all Rent and other sums hereunder provided to be paid by Lessee and the obligation of Lessee to perform Lessee's other covenants and duties hereunder constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is hereinabove expressly provided for and not otherwise. Lessee waives and relinquishes all rights, which Lessee might have to claim any nature of lien against, or withhold or deduct from or off-set against, any Rent and other sums provided hereunder to be paid the State by Lessee. Lessee waives and relinquishes any right to assert, either as a claim or as a defense, that the State is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of the State not expressly herein set forth. The provisions of this Section 18.06 are subject to provisions of Section 22.01.

18.7. Under no circumstances whatsoever shall the State ever be liable hereunder for consequential damages or special damages. The term the "State" shall mean only the owner, for the time being of the Leased Premises, and in the event of the transfer by such owner of its interest in the Leased Premises, such owner shall thereupon be released and discharged from all covenants and obligations of the State thereafter accruing, but such covenants and obligations shall be binding during the Lease term upon each new owner for the duration of such owner's ownership.

18.8. All monetary obligations of the State and Lessee (including, without limitation, any monetary obligation of the State or Lessee for damages for any breach of the respective covenants, duties or obligations of the State or Lessee hereunder) are performable exclusively in Austin, Travis County, Texas.

18.9. Lessee hereby acknowledges that late payment by Lessee to the State of Rent or any other sums due under this Lease will cause the State to incur various expenses not contemplated by this Lease, the exact amount of which are presently difficult to ascertain. Accordingly, if any payment of Rent, or any other sum due from Lessee under this Lease shall not be received by the State when due, then, in addition to such required payment, Lessee shall also pay to the State a "Late Charge" equal to ten cents (\$.10) for each One Dollar (\$1.00) so past due. The State and Lessee agree that such Late Charge represents a fair and reasonable estimate of the expenses that the State will incur by reason of such late payment by Lessee. Acceptance of such Late Charge by the State shall not constitute a waiver of Lessee's default with respect to any such past due amounts, nor prevent the State from exercising any other rights and remedies granted to the State under this Lease or at law or in equity. Such Late Charge shall constitute additional rental payable by Lessee under this Lease and is in addition to, and separate from, the Rent and other charges payable under this Lease by Lessee.

18.10. IN ANY INSTANCE IN WHICH LESSEE IS REQUIRED TO INDEMNIFY THE STATE FOR ACTS OR OMISSIONS OF LESSEE PURSUANT TO A PROVISION OF THIS LEASE, SUCH INDEMNITY SHALL NOT OPERATE TO RENDER LESSEE LIABLE FOR THE NEGLIGENCE OF THE STATE, ITS AGENTS, CONTRACTORS OR EMPLOYEES.

18.11. Lessee shall, prior to the expiration of thirty (30) days after the date of this Lease, record in Galveston County, Texas at Lessee's sole cost and expense, and return a file-marked copy of the separately executed Memorandum of Lease. In the event Lessee fails to do so prior to the expiration of such thirty (30) day period, the State shall have the right, at its option, to declare such failure an "Event of Default", without the necessity of notice to Lessee, or execute a Memorandum of Lease setting forth the terms and provisions of the Lease and record same at Lessee's cost and expense. In the event the State elects to record a Memorandum of Lease, the cost of recording same shall be deemed "Rent".

18.12 In the event any provision of this Agreement is more restrictive than any administrative rule promulgated by the General Land Office and/or School Land Board, this Agreement shall control.

Article XIX. Lessee's Bankruptcy

19.01. The State and Lessee agree that if Lessee ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar type proceeding under the Federal Bankruptcy Laws, as now enacted or hereafter amended, then "adequate protection" of the State's interest in the Leased Premises pursuant to the provisions of Sections 361 and 363 (or their successor sections) of the Bankruptcy Code, 11 U.S.C. Paragraph 101, et seq. (such Bankruptcy Codes as amended from time to time being herein referred to as the "Bankruptcy Code") prior to assumption and/or assignment of the Lease by Lessee shall include, but not be limited to all (or any part) of the following:

- (a) The continued payment by Lessee of all Rent and all other sums due and owing under this Lease;
- (b) The hiring of security guards to protect the Leased Premises if Lessee abandons and/or ceases operations; such obligation of Lessee only to be effective so long as Lessee remains in possession and control of the Leased Premises to the exclusion of the State; and,
- (c) The furnishing of a security deposit by Lessee in the amount of three (3) times the Rent payable during the immediately preceding Lease Year.

19.2. The State and Lessee agree that if Lessee ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition, or other similar type proceeding under the Federal bankruptcy laws, as now enacted or hereafter amended, then "adequate assurance of future performance" by Lessee and/or any assignee of Lessee pursuant to Bankruptcy Code Section 365 (or its successor section) will include (but not be limited to) payment of a security deposit in the amount of three (3) times the Rent paid during the immediately preceding Lease Year.

19.3. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations of Lessee arising under this Lease on and after the effective date of such assignment. Any such assignee shall, upon demand by the State, execute and deliver to the State an instrument confirming such assumption of liability.

19.4. Notwithstanding anything in this Lease to the contrary, all amounts payable by Lessee to or on behalf of the State under this Lease, whether or not expressly denominated as "Rent", shall constitute "rent" for the purposes of Section 502(b)(6) of the Bankruptcy Code.

19.5. If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to the State, shall be and remain the exclusive property of the State and shall not constitute property of Lessee or the Estate of Lessee within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting the State's property under the preceding sentence not paid or delivered to the State shall be held in trust by Lessee for the benefit of the State and shall be promptly paid to or turned over to the State.

19.6. If Lessee assumes this Lease and proposes to assign the same pursuant to the provisions of the Bankruptcy Code (the "Bankruptcy Code") to any person or entity who shall have made a bona fide offer to accept an assignment of this Lease on terms acceptable to the Lessee, then notice of such proposed offer/assignment, setting forth (i) the name and address of such person or entity, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided the State to assure such person's or entity's future performance under this Lease, including, without limitation, the assurance referred to in Section 365(b)(3) of the Bankruptcy Code, shall be given to the State by Lessee no later than twenty (20) days after receipt by Lessee, but in any event no later than ten (10) days prior to the date that Lessee shall make application to a court of competent jurisdiction for authority and approval to enter into such assumption and assignment, and the State shall thereupon have the prior right and option, to be exercised by notice to Lessee given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such persons or entity, less any brokerage commissions which may be payable out of the consideration to be paid by such person for the assignment of this Lease.

19.7. The State and Lessee agree that, if Lessee ever becomes the subject of a voluntary or involuntary bankruptcy, reorganization, composition or other similar type proceeding under the Federal bankruptcy laws, as now enacted or hereafter amended, this Lease shall constitute an unexpired Lease or lease of non-residential real property pursuant to Section 365 of the

IN TESTIMONY WHEREOF, witness my hand and the Seal of Office.

STATE:
THE STATE OF TEXAS

By:

Jerry E. Patterson
JERRY E. PATTERSON
Commissioner, General Land Office
Chairman, School Land Board

Date: 6/30/10

LESSEE:
Arnold Properties, Inc.

By:

Scott Arnold
(Signature)
Scott Arnold
(Printed Name)
President
(Title)

Date: 6-23-10

APPROVED:

Contents: MB
Legal: DW
Deputy: AT
Executive: see by la

ACKNOWLEDGMENT

STATE OF Texas §
COUNTY OF Harris §

This instrument was acknowledged before me on the 23rd day of June
2010, by Scott Arnold.
(Grantee representing the signing this document)

Helen Ann Grych
(Notary Signature)

Notary Stamp

Notary Public, State of Texas

My commission expires:



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