ADDENDUM “C”

ZONING VARIANCE

In accordance with City Code Section 134-6.7.7, a zoning variance may only be approved when the variance will not be contrary to the public interest, and where owing to special conditions a literal enforcement of the regulations of this chapter will result in unnecessary hardship, and so that the spirit of this chapter shall be observed and substantial justice done. A zoning variance further may not be approved unless the board of adjustment determines that all of the following facts have been established by the applicant:

Please state how your request satisfies each requirement:

1. The subject property cannot yield a reasonable return from any use permitted by the subject zoning regulations. Failure to yield a reasonable return may only be shown by proof that the owner has been deprived of all beneficial or productive use of the subject property. It is not sufficient to merely show that the value of the land has been depreciated by the regulations or that a zoning variance would permit the owner to maintain a more profitable use;

2. The plight of the owner is due to unique circumstances not of the owner's own making, which unique circumstances must relate specifically to the subject property and not to general conditions in the neighborhood; and

3. The use or construction to be authorized by the zoning variance will not alter the essential character of the area in which the subject property is located.

City Code Section 6.7.8: FILING AND EFFECT OF DECISIONS

A. Written decisions of the board of adjustment must be filed promptly following the board's action and be open to public inspection. Written decisions must describe the action taken, the vote of each board member participating and the reasons for such action.

B. Except as expressly stated in paragraph C of this section 134-6.7.8 of this article, the board of adjustment's decision on a zoning variance becomes final and effective after the board's written decision is filed in the board office.

C. A decision of the board of adjustment to grant a zoning use variance or variance from any separation distance requirement must be referred to the city council for review. The city council must then review the board of adjustment's decision within 30 days after the decision is signed and filed. Following the city council's review, the council may remand the decision to the board of adjustment for further study. If the city council does not act to review the decision within 30 days after it is signed and filed, the board of adjustment's decision becomes effective on the 31st day. If the city council declines to remand a decision, the board of adjustment's decision becomes final and effective on the date of the council's action to decline remand. If the city council remands a decision to the board of adjustment, the effective date of the board's decision is delayed for 30 days from the date of city council remand.

D. Upon remand of a decision from the city council, the board of adjustment must conduct a rehearing on the matter for further study and action at a regularly scheduled or special-called board meeting held during the 30-day delay period. Following the close of the rehearing, the board of adjustment must act to either affirm its initial decision on the zoning use variance or variance from any separation distance requirement or withdraw its initial decision and issue a new decision on the applicable variance. Upon completion of the rehearing process, the board of adjustment's decision is not subject to review by the city council and becomes final and effective upon filing.
City Code Section 134-6.7.9: LAPSE OF APPROVAL

A. All activity authorized by an approved zoning variance must be completed within two years of the date of filing of the board's decision, or less time if ordered by board decision, or the approval lapses and is of no further effect.
B. If any use of land or structure approved as a zoning variance is discontinued for a period of one year or more, the approved zoning variance lapses and is of no further effect.
C. If any use or structure approved as a zoning variance is damaged or destroyed by any means, including damage or destruction by repair, alteration, replacement or upgrade to an extent of 50% or more of its replacement cost at the time of damage or destruction, the approved zoning variance lapses and is of no further effect.
D. Once a zoning variance lapses, any subsequent use of such land or structure must conform to the regulations of the subject zoning district.

City Code Section 6.7.10: TRANSFERABILITY

Approved zoning variances run with the land and are not affected by changes of tenancy, ownership, or management, except as provided in this article or by conditions of approval.

City Code Section 6.7.11: AMENDMENTS

A request for changes in the specific nature of an approved zoning variance or revisions to any conditions attached to an approved zoning variance must be processed as a new zoning variance application, including all requirements for fees, notices and public hearings.

City Code Section 6.7.12 APPEALS

Appeals of board of adjustment decisions are taken to district court pursuant to section 134-8.1.2.G of this chapter.

City Code Section 6.7.13: SUCCESSIVE APPLICATIONS

If a zoning variance request has been denied by the board of adjustment, a new zoning variance request seeking the same relief may not be considered by the board of adjustment for at least two years from the date of final action by the board of adjustment unless the board first finds that conditions have changed. A change in conditions present at the time of the board's prior decision may be such as:

A. When the appellant or applicant proves the consent of owners who previously objected to the relief sought at the earlier hearing;
B. When the appellant or applicant proves that land adjacent to the subject property is no longer subject to restrictive covenants that were in effect at the time of the earlier hearing;
C. When the appellant or applicant presents a new plan that involves substantially greater limitations on the use of the property; and
D. When the appellant or applicant presents evidence showing that the vicinity of the proposed variance has undergone a material and substantial change since the earlier decision was rendered.

City Code Section 6.7.14: RECONSIDERATION OF USE VARIANCE

If the zoning enforcement officer determines at any time that the operation of the property exhibits a pattern of violating the conditions set forth in the use variance, the zoning enforcement officer may apply to the board to reconsider the issuance of the use variance for such property. A copy of such application and notice of the hearing before the board on such application shall be provided to the owner of such property and any other applicable party at least 30 days in advance and shall also be provided to all owners of record of property within 250 feet of the subject property. If the board finds that the operation of such property exhibits a pattern of violating the conditions set forth in the use variance, the board shall have the authority to amend or revoke the use variance.