

1 **ORDINANCE NO.**

2
3 **AN ORDINANCE REZONING APPROXIMATELY 44.7**
4 **ACRE TRACT COMPRISING ALL OF LOT 33, BLOCK 1,**
5 **AND LOT 4, BLOCK 7, BAY RIDGE SUBDIVISION UNIT 2**
6 **FROM C-R, RETAIL COMMERCIAL DISTRICT, TO PUD,**
7 **PLANNED DEVELOPMENT DISTRICT, AT THE REQUEST**
8 **OF MCLEOD SEARS; PROVIDING FOR THE REPEAL OF**
9 **ORDINANCES IN CONFLICT HEREWITH; PROVIDING A**
10 **SEVERABILITY CLAUSE; ESTABLISHING A PENALTY**
11 **AND SPECIFICALLY NEGATING A REQUIREMENT OF A**
12 **CULPABLE MENTAL STATE; AND PROVIDING FOR**
13 **PUBLICATION AND AN EFFECTIVE DATE**
14

15 **WHEREAS** the owner of an approximately 44.7-acre tract comprising all of Lot
16 33, Block 1, and Lot 4, Block 7, Bay Ridge Subdivision Unit 2, as more particularly
17 described in Exhibit "A", (Berryman Investments, Inc., General Partner of Berryman
18 Properties, Ltd.,) has authorized McLeod Sears to request that the property be rezoned
19 from "C-R Retail Commercial District" to "PUD Planned Unit Development"; and,
20

21 **WHEREAS** the Planning and Zoning Commission has conducted a Public Hearing
22 according to law and recommended that the request be granted by the City Council with
23 conditions; and,
24

25 **WHEREAS** the City Council has conducted a Public Hearing according to law and
26 determined that the request meets the criteria for approval established by the Unified
27 Development Ordinance with conditions; and,
28

29 **WHEREAS** no formal written protest was filed by adjacent property owners and a
30 simple majority vote is required to approve both readings of this ordinance.
31

32 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF**
33 **PORTLAND, TEXAS:**
34

35 **SECTION 1. REZONING REQUEST GRANTED**
36

37 The request of McLeod Sears is hereby granted. The approximately 44.7-acre tract
38 comprising all of Lot 33, Block 1, and Lot 4, Block 7, Bay Ridge Subdivision Unit 2, as
39 more particularly described in Exhibit "A", is hereby rezoned from "C-R Retail
40 Commercial District" to "PUD Planned Unit Development". The request is granted with
41 the following conditions:
42

- 43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
1. All uses and development of the property shall generally conform to the following plans which are attached hereto and incorporated herein:
 - a. Exhibit “B” – Concept Site Plan
 - b. Exhibit “C” – Site Utility and Drainage Plan (schematic level)
 - c. Exhibit “D” – Landscape Plan

 2. The Anchor Store as depicted on Exhibit “B” shall generally conform to the following requirements:
 - a. The Anchor Store shall be a single-user occupant of approximately 125,000 square feet. The Anchor Store may not be decreased in gross floor area by more than ten (10) percent without amending this ordinance.
 - b. The Anchor Store may include within its footprint accessory uses such as coffee shops, cafés, banks, or similar uses typically located within a retail anchor store of similar size.
 - c. The building shall observe a minimum sixty (60) foot setback from the adjacent residential properties.
 - d. All driveways and parking lots shall be concrete.
 - e. All landscaping and buffering shall comply with City of Portland Unified Development Ordinance Section 709.
 - f. All exterior lighting shall comply with City of Portland Unified Development Ordinance Section 713 to minimize light pollution.

 3. The General Retail Areas as depicted on Exhibit “B” shall generally conform to the following requirements:
 - a. The General Retail Areas shall be defined as approximately 80,000 square feet of general retail and restaurant pad sites, medical, light office, and retail-like commercial uses as depicted on Exhibit “B”. Uses not permitted in the C-R Retail Commercial District are not permitted by this ordinance.
 - b. All driveways and parking lots shall be concrete.
 - c. All landscaping and buffering shall comply with City of Portland Unified Development Ordinance Section 709.
 - d. All exterior lighting shall comply with City of Portland Unified Development Ordinance Section 713 to minimize light pollution.

 4. The Multifamily Tract as depicted on Exhibit “B” shall generally conform to the following specifications:
 - a. Apartment units shall be consistent with that of a Class A multifamily apartment project.
 - b. The maximum building height shall be three (3) stories. The maximum building height shall be two (2) stories for any building located closer than sixty (60) feet from the adjacent residential property line.

- 87 c. The maximum density shall be thirty (30) units per acre.
88 d. All driveways and parking lots shall be concrete.
89 e. The Multifamily Tract shall be fenced and gated.
90 f. All exterior facades shall be made of Class A materials such as
91 James Hardie Board siding or stucco. There shall be a minimum of
92 10% masonry other than James Hardie Board siding or stucco on
93 exterior facades.
94 g. The common area amenities shall be of a Class A nature and
95 include a pool, clubhouse, fitness center, dog park, resident
96 lounge, package lockers, outdoor kitchen, and outdoor gathering
97 spaces.
98 h. A minimum of two (2) parking spaces for each 2-bedroom unit
99 and one (1) parking space for each 1-bedroom unit shall be
100 provided.
101 i. All landscaping and buffering shall comply with City of Portland
102 Unified Development Ordinance Section 709.
103 j. All exterior lighting shall comply with City of Portland Unified
104 Development Ordinance Section 713 to minimize light pollution.
105 k. Uses permitted in the C-R Retail Commercial District are
106 permitted in lieu of the construction of multifamily units without
107 amending this ordinance.
108
109 5. Prior to obtaining a building permit for any building, McLeod Sears shall submit
110 payment for its proportional share of off-site traffic improvements as specified in
111 the Traffic Analysis Report prepared by Traffic Engineers, Inc., and approved by
112 the City Council on November 16, 2021.
113
114 6. Construction timelines for Planned Unit Developments required by City of
115 Portland Unified Development Ordinance Section 316.G are superseded by this
116 ordinance:
117 a. This ordinance shall become null and void if construction of the Anchor
118 Store has not commenced within forty-eight (48) months of the effective
119 date of this ordinance.
120 b. This ordinance shall become null and void if the Anchor Store has not
121 obtained a certificate of occupancy within sixty-six (66) months of the
122 effective date of this ordinance.
123
124 7. Vertical building construction must be commenced for the Anchor Store and
125 construction must be completed for the General Retail Areas interior access
126 drives prior to the issuance of a certificate of occupancy for the Multifamily
127 Tract.
128
129 8. This Planned Unit Development approval runs with the land and applies to all
130 successors in title, lessees, and tenants.

131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174

SECTION 2. OFFICIAL ZONING MAP AMENDED

The Official Zoning Map is hereby amended to reflect that the approximately 44.7-acre tract comprising all of Lot 33, Block 1, and Lot 4, Block 7, Bay Ridge Subdivision Unit 2, as more particularly described in Exhibit "A", is hereby rezoned from "C-R Retail Commercial District" to "PUD Planned Unit Development".

SECTION 3. REPEALER

All previously adopted rules, regulations, policies, and ordinances in conflict with this Ordinance are hereby repealed.

SECTION 4. SEVERABILITY

If any provision, section, clause or phrase of this Ordinance, or the application of same to any person or set of circumstances is, for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof, or provisions or regulations contained herein, shall become inoperative or fail by reason of any unconstitutionality of any other portion hereof, and all provisions of this Ordinance are declared severable for that purpose.

SECTION 5. PENALTY

Any person who violates this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine not exceeding two thousand dollars (\$2,000.00). Each and every day that a violation of this Ordinance occurs shall constitute a separate offense. The culpable mental state required by Chapter 6.02, Texas Penal Code, is specifically negated and dispensed with and a violation is a strict liability offense.

SECTION 6. PUBLICATION AND EFFECTIVE DATE

This Ordinance shall be published after second reading hereof by publishing the caption thereof in the official newspaper with a statement the public may view the Ordinance in the Office of the City Secretary. This Ordinance shall take effect January 1, 2022.

PASSED and **APPROVED** on second reading this ____ of _____, 2021.

175
176
177
178
179
180
181
182
183
184
185
186
187

CITY OF PORTLAND

Cathy Skurow
Mayor

ATTEST:

Annette Hall
City Secretary

DRAFT