Agenda Hem# Z-13

Zoning Case No. C14-04-0060

RESTRICTIVE COVENANT

OWNER:

Gene Charlesworth Payne

ADDRESS:

809 Newport Avenue, Austin, TX 78753

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and

sufficiency of which is acknowledged.

PROPERTY:

Tract One: A 0.69 acre tract of land, more or less, out of the Isaac Decker League, in Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this covenant, and

Tract Two: A 1.49 acre tract of land, more or less, out of the Isaac Decker League, in Travis County, the tract of land being more particularly described by metes and bounds in Exhibit "B" incorporated into this covenant, and

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

- 1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds the total traffic generation for the Property as specified in that certain Neighborhood Traffic Analysis ("NTA") prepared by John F. Hickman and Associates, dated June 2004, or as amended and approved by the Director of the Watershed Protection and Development Review Department. All development on the Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Watershed Protection and Development Review Department, dated July 26, 2004. The NTA shall be kept on file at the Watershed Protection and Development Review Department.
- 2. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
- 3. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.

- 4. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
- 5. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the 28th day of July , 2004.

OWNER:

Gene Charlesworth Payne

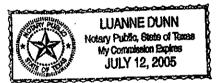
APPROVED AS TO FORM:

Assistant City Attorney
City of Austin

THE STATE OF TEXAS

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 28 day of young, 2004 by Gene Charlesworth Payne.



Notary Public, State of Texas

After Recording, Please Return to: City of Austin Department of Law P. O. Box 1088 Austin, Texas 78767 Attention: Diana Minter, Legal Assistant 0.69 Acres
Zoning Description (LR)
Bluebonnet & S. Lamar

EXHIBIT A

DESCRIPTION OF A TRACT OF LAND CONTAINING 0.69 ACRES OF LAND BEING OUT OF THE ISAAC DECKER LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS. SAID TRACT OF LAND ALSO BEING A PORTION OF LOTS 4 AND 6, THEODORE LOW HEIGHTS, A SUBDIVISION OF RECORD IN VOLUME 445, PAGE 581 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID TRACT ALSO BEING A PORTION OF THAT CERTAIN TRACT CALLED TO CONTAIN 4.38 ACRES DESCRIBED IN A DEED TO LLOYD W. PAYNE OF RECORD IN VOLUME 1208, PAGE 347 AND ALSO DESCRIBED IN VOLUME 1301, PAGE 305 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND ALSO BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO GENE CHARLESWORTH PAYNE OF RECORD IN VOLUME 9178 PAGE 206 DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID 0.69 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

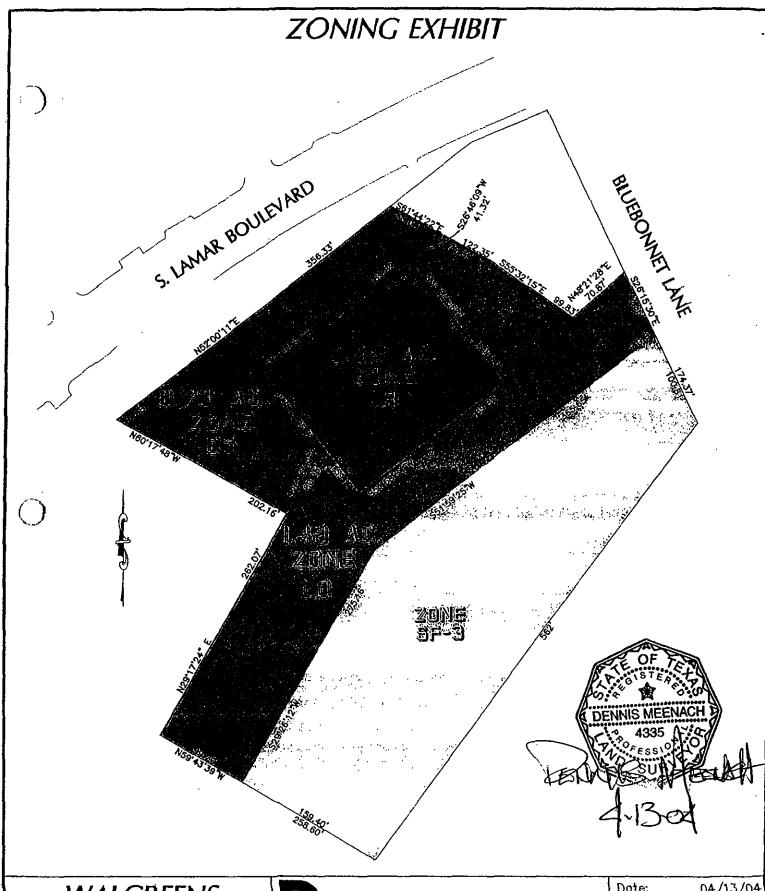
BEGINNING at a point for the northeast corner of the herein described tract and from said point a ½" iron rod found for the northeast corner of said Gene Charlesworth Payne Tract bears, South 38°01′06" East 6.01 feet, North 26°46′09" East 41.32 feet and North 61°44′22" West 50.00 feet;

THENCE, crossing said Gene Charlesworth Payne and said Lloyd W. Payne Tracts the following four (4) courses;

- 1) South 38°01′06″ East 159.14 feet to an angle point of the herein described tract;
- 2) South 51°58′54" West 189.82 feet to an angle point of the herein described tract;
- 3) North 38°01′06″ West 159.14 feet to an angle point of the herein described tract;
- 4) North 51°58′54″ East 189.82 feet to the point of beginning and containing 0.69 acres of land as shown on the attached plat and made a part of this description.

Dennis Meenach, R.P.L.S. No. 4335

DENNIS MEENACH DENNIS MEENACH DESCRIPTION DESCRIPTION



WALGREENS

BLUEBONNET AT S. LAMAR Doucet & Associates, Inc.

7401 B West Highway 71, Suite 160 Austin, TX 78735 Phone: (512) 583-2600 Fax: 583-2601

Austin, TX Easthampton, MA Sacramento, CA www.doucetandassociates.com

Date:	04/13/04
Scale:	1" = 100'
Drawn by:	NH
Reviewed by:	DM
Project No.:	402-006

1 of 1.

Sheet:

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1.49 Acres Zoning Description (LO) Bluebonnet & S. Lamar



DESCRIPTION OF A TRACT OF LAND CONTAINING 1.49 ACRES OF LAND BEING OUT OF THE ISAAC DECKER LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS. SAID TRACT OF LAND ALSO BEING A PORTION OF LOTS 4 AND 6, THEODORE LOW HEIGHTS, A SUBDIVISION OF RECORD IN VOLUME 445, PAGE 581 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID TRACT ALSO BEING A PORTION OF THAT CERTAIN TRACT CALLED TO CONTAIN 4.38 ACRES DESCRIBED IN A DEED TO LLOYD W. PAYNE OF RECORD IN VOLUME 1208, PAGE 347 AND ALSO DESCRIBED IN VOLUME 1301, PAGE 305 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND ALSO BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO GENE CHARLESWORTH PAYNE OF RECORD IN VOLUME 9178 PAGE 206 DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID 1.49 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a point for the most easterly corner of the herein described tract, said point being in the easterly line of said Gene Charlesworth Payne Tract and the westerly line of Bluebonnet Lane and from said point the southeast corner of said Gene Charlesworth Payne Tract bears, South 26°15′30″ East 100.81 feet;

THENCE, crossing said Gene Charlesworth Payne and said Lloyd W. Payne Tracts the following two (2) courses;

- 1) South 51°59′25″ West 365.65 feet to an angle point of the herein described tract;
- 2) South 29°26′12″ West 275.16 feet to a point on the westerly line of said Lloyd W. Payne Tract same being the westerly line of said Lot 6;

THENCE, with the westerly and northerly lines of said Lloyd W. Payne Tract, same being the westerly and northerly lines of said Lot 6, North 59°43′39″ West 99.20 feet to the northwest corner of said Lloyd W. Payne Tract;

THENCE, North 29°17′24" East 262.07 feet to a point;

THENCE, North 26°46'09" East 80.25 feet to a point;

THENCE crossing said Lloyd W. Payne Tract the following three (3) courses;

- 1) South 38°01′06" East 63.75 feet,
- 2) North 51°58′54″ East 189.82 feet,

3) North 38°01′06″ West 153.13 feet to a point;

THENCE, North 26°46'09" East 41.32 feet to a point in the west line of a tract of land described in a deed to W.O. Harper of record in Volume 1452, Page 308, Deed Records of Travis County, Texas;

THENCE, South 61°44'22" East 72.35 feet to a point;

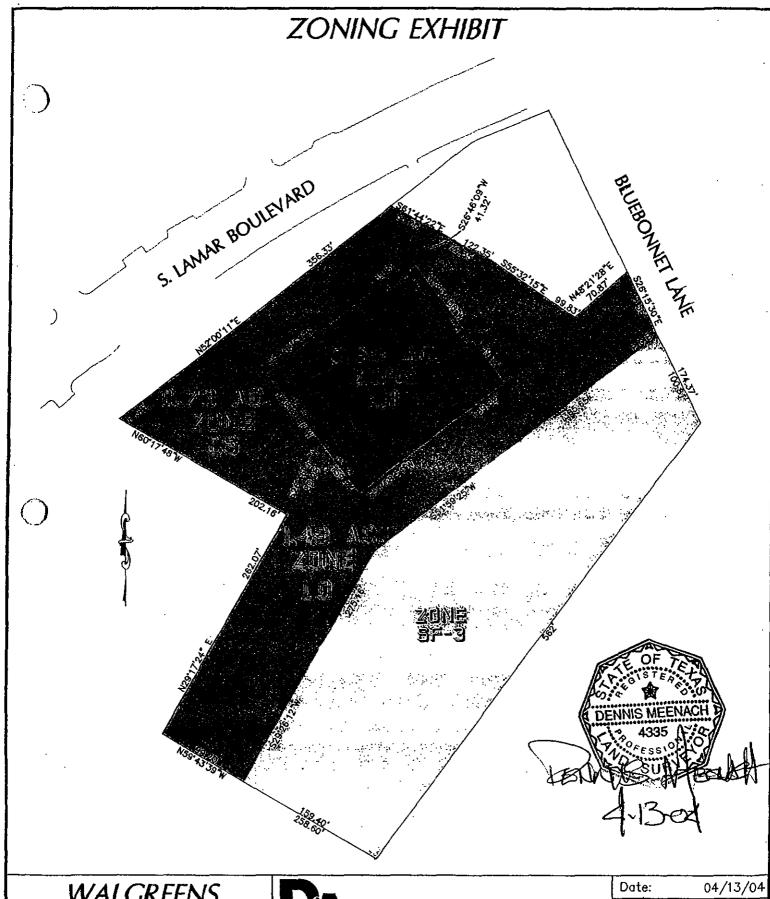
THENCE, South 55°32'15" East 99.83 feet to a 1" pipe found;

THENCE, North 48°21′28″ East 70.87 feet to a ½ inch iron rod found for the northeast corner of the herein described tract, same being the southeast corner of said W. O. Harper Tract, same being a point in the westerly line of Bluebonnet Lane;

THENCE, with the easterly line of the herein described tract, same being the westerly line of said Bluebonnet Lane, South 26°15′30″ East 73.56 feet to the point of beginning and containing 1.49 acres of land as shown on the attached plat and made a part of this description.

Dennis Meenach, R.P.L.S. No. 4335

DENNIS MEENACH D



WALGREENS

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1" = 100 Scale: Drawn by: Reviewed by: DM

Project No.: 402-006 Sheet: 1 of 1

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(512) 404-2201 sod@lawdsw.com

July 29, 2004

Ms. Alice Glasco
Neighborhood Planning and Zoning Department
City of Austin
505 Barton Springs Road
Austin, TX 78704

<u>VIA HAND DELIVERY</u>

RE:

Walgreen's Zoning Application; 2.18 acres located at 2409 South Lamar Boulevard and Bluebonnet Lane ("Property"); Proposed Zoning from SF-3, Single-Family Residence District and CS, General Commercial Services zoning to LR, Neighborhood Commercial District zoning and LO, Limited Office District zoning.

Dear Alice:

As representatives of the prospective owner of the above stated Property, we respectfully submit the enclosed Declaration and Agreement Regarding Road Construction. This Declaration is offered in support of the owner's desire to post fiscal for, and pay 100% of, and construct the road improvements and signal modifications described in the Declaration, as well as in the memorandum dated July 19, 2004, prepared by Emily Barron, Transportation Reviewer. The owner desires to pay 100% of this amount, notwithstanding that the City has allocated only seventeen percent (17%) and four percent (4%), respectively, of such costs as owner's pro rata share of the construction and signal modifications.

Neither the owner nor his successors or assigns will not seek a certificate of occupancy for the intended project unless and until the construction and signal modifications are completed. For his own reasons, constituting good and valuable consideration, including, without limitation, in order to keep a promise made to the South Lamar Neighborhood Association, the owner or his successors and assigns will post fiscal for and pay one hundred percent (100%) of the cost of the modifications. In this regard, the owner recognizes that the City has not required the owner to post or pay for more than 17% of such construction costs or 4% of such signal modification costs, that the City has not required the owner to pay 100% of such costs, that such additional payment by the owner or his successors and assigns is voluntary, and that the City has not required the owner or his successors and assigns to construct the improvements or signal modifications. Further, the owner covenants and agrees that the owner shall not bring suit against the City under any theory of law regarding the amount or extent of fiscal posted for the construction or the signal modifications. The terms of this letter shall be binding upon the owner and his successors and assigns.

Ms. Alice Glasco July ____, 2004 Page 2



The current owner, Gene C. Payne, and my client, the applicant/prospective owner, have indicated their agreement with this letter, and the enclosed Declaration, by signing this letter.

Please let me know if you or your team members require additional information or have any questions. Thank you for your time and attention to this project.

V Z 1

Stephen Ø. Drenne

Enclosure

cc: Wendy Walsh, Neighborhood Planning and Zoning Department (via electronic mail)

Deborah Thomas, Law Department (via electronic mail)

David Darr, The Place (via electronic mail)

Jason Linahan, The Place (via electronic mail)

Jon Aune, (via electronic mail)

Michele Haussmann

"The Place "

David K. Darr Family Limited

Partnership III

By: Limestone Commercial, LLC,

its general partner

David K. Darr, managing member

DECLARATION AND AGREEMENT REGARDING ROAD CONSTRUCTION

This Declaration and Agreement Regarding Road Construction (this "Declaration") is entered into as of the day of July, 2004, by and between Gene C. Payne ("Declarant") and the City of Austin (the "City").

RECITALS

WHEREAS, Declarant is the owner of two tracts of land totaling approximately 2.18-acres located at 2409 South Lamar Boulevard at or near the southeast corner of South Lamar Boulevard ("Lamar") and Bluebonnet Lane ("Bluebonnet"), Austin, Texas, and more particularly described on Exhibit "A" attached hereto (the "Property");

WHEREAS, Declarant or Declarant's successor currently intends to develop a project (the "Project") on the Property, and is seeking or has obtained LR and LO zoning from the City of Austin for such development pursuant to City of Austin Zoning Case No. C14-04-0060 (the "Zoning Case");

WHEREAS, to address the concerns of the South Lamar Neighborhood Association ("SLNA"), Declarant has agreed to design, construct, and pay for (i) certain construction, restriping, and other improvements on Lamar and Bluebonnet, as described on Exhibit "B" hereto (collectively, the "Construction"), and (ii) certain signal modifications, also as described on Exhibit "B" hereto (the "Modifications");

WHEREAS, contemporaneously herewith, Declarant is executing and recording a Declaration of Covenants, Conditions, and Restrictions that also pertains to certain described "Roadway Improvements" at the corner of South Lamar Boulevard and Bluebonnet Lane, some of which Roadway Improvements are the same as the Construction and Modifications that Declarant covenants to design, construct, and pay for pursuant to this Declaration; and

WHEREAS, pursuant to all of the terms and conditions of this Declaration, Declarant shall not seek a certificate of occupancy for the Project unless and until the Construction and Modifications are completed,

NOW, THEREFORE, to address the concerns of the SLNA, in order to promote the health, safety and welfare of the public, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned agrees to hold, sell and convey the Property subject to the following covenants, conditions, and restrictions, which are impressed upon the Property by this Declaration.

DECLARATION

I. Covenants, Conditions, and Restrictions

1.1 Construction and Modifications. Declarant acknowledges and agrees that the City of Austin (the "City") has determined that Declarant's pro rata share of the estimated cost of designing and constructing (i) the Construction is seventeen percent (17%), and (ii) the Modifications is four percent (4%) (collectively, "Declarant's Proportionate Share"). The City requires that Declarant's Proportionate Share of the cost of the Construction and Modifications be posted as fiscal surety as a condition precedent to issuance by the City of a certificate of occupancy for the Project. For his own reasons, constituting good and valuable consideration, including, without limitation, in order to keep a promise made to SLNA, Declarant or his successors and assigns will post fiscal for and pay one hundred percent (100%) of the cost of the Construction and Modifications, and complete the Construction and Modifications, prior to requesting a certificate of occupancy for the Project. In this regard, Declarant recognizes that it is not required by the City to post or pay for more than Declarant's Proportionate Share of such costs, that the City has not required Declarant or his successors and assigns to pay 100% of such costs or to complete the Construction or Modifications, and that such additional payment by Declarant or his successors and assigns is voluntary. Further, neither Declarant nor his successors and assigns shall bring suit against the City under any theory of law regarding the amount or extent of fiscal posted for the Construction and Modifications.

II. Conditions on Effect; Amendment of Existing Declarations

2.1 Zoning Case. Notwithstanding any other provision of this Declaration to the contrary, the agreements of Declarant reflected herein are conditioned upon final approval (i.e., third reading) of the Zoning Case by the City of Austin City Council (and no subsequent appeal) in a form acceptable to Declarant, such acceptance to be deemed if the Zoning Case is finally approved without changes from the last application by Declarant presented to the City Council.

III. Default and Remedies

3.1 <u>Remedies</u>. In the event of a breach or threatened breach of this Declaration by Declarant, SLNA shall be entitled to institute proceedings at law or in equity in a court of competent jurisdiction for full and adequate relief from the consequences of said breach or threatened breach.

IV. General Provisions

4.1 <u>No Third-Party Beneficiary</u>. The provisions of this Declaration are for the exclusive benefit of Declarant and SNLA and their successors and assigns, and not for

the benefit of any third person, nor shall this Declaration be deemed to have conferred any rights, express or implied, upon any third person or the public.

4.2 Notice. All notices given in regard to this Declaration shall be in writing and the same shall be given and be deemed to have been served, given and received (a) one (1) business day after being placed in a prepaid package with a national, reputable overnight courier addressed to the other party at the address hereinafter specified; or (b) if mailed, three (3) business days following the date placed in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address hereinafter specified. Declarant may change its address for notices by giving five (5) days' advance written notice to SNLA in the manner provided for herein. Until changed in the manner provided herein, the Declarant's address for notice is as follows:

Declarant: Gene C. Payne 809 Newport Avenue Austin, Texas 78753

with a copy to:

The Place Attn.: David Darr 12050 Vance Jackson, Suite 102 San Antonio, Texas 78230 Telecopy: (210) 525-0131 Telephone: (210) 366-0571

and

Drenner Stuart Wolff Metcalfe von Kreisler, LLP 301 Congress Avenue, Suite 1200 Austin, Texas 78701 Attn: Stephen O. Drenner Telecopy: (512) 404-2244 Telephone: (512) 404-2200

- 4.3 Attorneys' Fees. The unsuccessful party in any action brought to enforce this Declaration shall pay to the prevailing party a reasonable sum for costs incurred by the prevailing party in enforcing this Declaration, including attorneys' fees and court costs.
- 4.4 <u>Severability</u>. If any provision of this Declaration shall be declared invalid, illegal or unenforceable in any respect under any applicable law by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. It is the further intention of the parties that in lieu of each covenant, provision, or agreement of this instrument that is held invalid, illegal or

unenforceable, that be added as a part hereof a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may possible and be legal, valid, and enforceable.

- 4.5 <u>Rights of Successors</u>. The restrictions, benefits and obligations hereunder shall create benefits and servitudes running with the land. Subject to the other provisions hereto, this Declaration shall bind and inure to the benefit of the parties and their respective heirs, representatives, lessees, successors and assigns. Reference to "Declarant" includes the future owners of their respective portions of the Property, including any portions of the Property that may in the future be created as separate tracts pursuant to a resubdivision of any portion of the Property. The singular number includes the plural and the masculine gender includes the feminine and neuter.
- 4.6 <u>Counterparts</u>; <u>Multiple Originals</u>. This Declaration may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- 4.7 <u>Modification and Cancellation</u>. Any changes to the standards and requirements of this Declaration must be approved in writing by both (i) SLNA and (ii) the Director of the City of Austin Watershed Protection and Development Review Department (or successor department).

DECLARANT

	Gene C. Payne
STATE OF TEXAS	\$ \$
COUNTY OF TRAVIS	§ § §
This instrument was 2004, by Gene C. Payne.	acknowledged before me this 28th day of July
LUANNE DUNN Notary Public, State of Teleas My Commission Bepires JULY 12, 2005	Notary Public, State of Texas
ACCEPTED: CITY OF A	USTIN
Ву:	
Name:	·
APPROVED AS TO FORM	
D	

Description of Property

0.69 Acres Zoning Description (LR) Bluebonnet & S. Lamar

DESCRIPTION OF A TRACT OF LAND CONTAINING 0.69 ACRES OF LAND BEING OUT OF THE ISAAC DECKER LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS. SAID TRACT OF LAND ALSO BEING A PORTION OF LOTS 4 AND 6, THEODORE LOW HEIGHTS, A SUBDIVISION OF RECORD IN VOLUME 445, PAGE 581 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID TRACT ALSO BEING A PORTION OF THAT CERTAIN TRACT CALLED TO CONTAIN 4.38 ACRES DESCRIBED IN A DEED TO LLOYD W. PAYNE OF RECORD IN VOLUME 1208, PAGE 347 AND ALSO DESCRIBED IN VOLUME 1301, PAGE 305 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS, AND ALSO BEING A PORTION OF THAT CERTAIN TRACT OF LAND DESCRIBED IN A DEED TO GENE CHARLESWORTH PAYNE OF RECORD IN VOLUME 9178 PAGE 206 DEED RECORDS OF TRAVIS COUNTY, TEXAS. SAID 0.69 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

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THENCE, crossing said Gene Charlesworth Payne and said Lloyd W. Payne Tracts the following four (4) courses;

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Dennis Meenach, R.P.L.S. No. 4335

DENNIS MEENACH

1.49 Acres
Zoning Description (LO)
Bluebonnet & S. Lamar

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THENCE, crossing said Gene Charlesworth Payne and said Lloyd W. Payne Tracts the following two (2) courses;

- 1) South 51°59′25″ West 365.65 feet to an angle point of the herein described tract;
- 2) South 29°26′12″ West 275.16 feet to a point on the westerly line of said Lloyd W. Payne Tract same being the westerly line of said Lot 6;

THENCE, with the westerly and northerly lines of said Lloyd W. Payne Tract, same being the westerly and northerly lines of said Lot 6, North 59°43′39″ West 99.20 feet to the northwest corner of said Lloyd W. Payne Tract;

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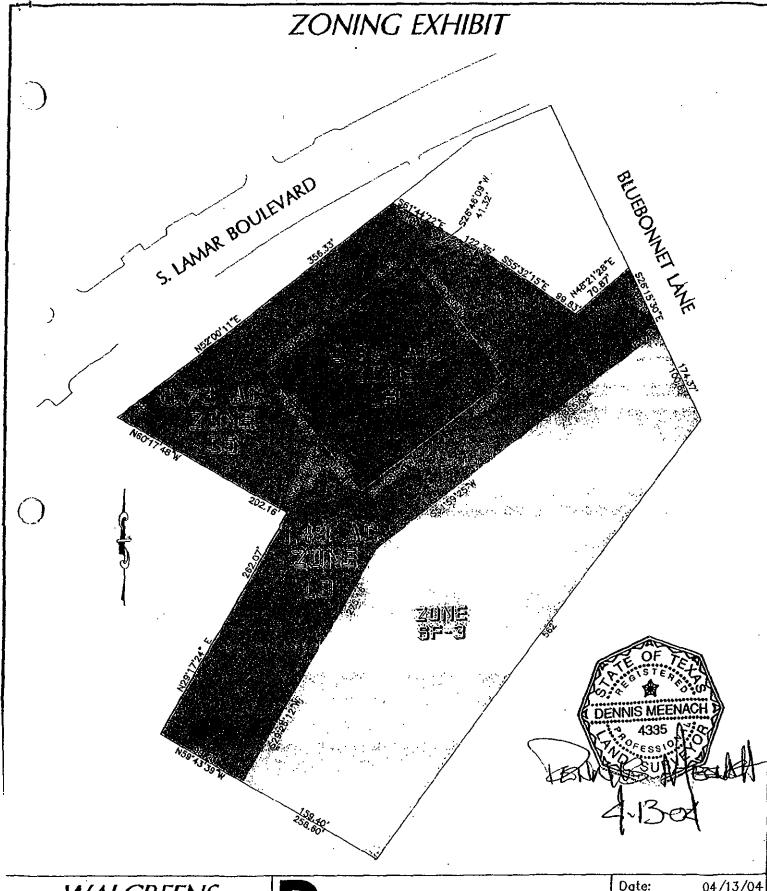
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Dennis Meenach, R.P.L.S. No. 4335

DENNIS MEENACH 1



WALGREENS

BLUEBONNET AT S. LAMAR

Doucet & Associates, Inc.

7401 B West Highway 71, Suite 160 Austin, TX 78735 Phone: (512) 583-2600 Fax: 583-2601 Austin, TX Easthampton, MA Sacramento, CA

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EXHIBIT "B"

Road Construction and Signal Modifications

MODIFICATIONS

	Intersection	Improvement
Bluebonnet Land and Lamar Boulevard		Signal Modifications
		including design and
		construction (above and below
		ground)

CONSTRUCTION

CONSTRUCTION			
Intersection/Street	Improvement		
Bluebonnet Lane (East)	Installation of sidewalks along both sides of Bluebonnet Lane for the length of the upgrade on Bluebonnet Lane.		
	Increase of pavement width from 20' to 40' from Lamar Boulevard to the site driveway; the street will then be transitioned east from the site driveway to the existing pavement width.		
Bluebonnet Lane (West)	Re-striping Bluebonnet west of Lamar to match the eastbound striping with the new westbound striping pattern (an exclusive left-turn lane and a shared through/right-turn lane).		
Bluebonnet Lane (East) @ Lamar Boulevard	Provide for 1 Eastbound lane, 1 Westbound left turn lane, and 1 Westbound shared through/right turn lane.		
Lamar Boulevard	Remove on street parking to improve site distance and overall safety along Lamar Boulevard.		