



**DECLARATION AND AGREEMENT
REGARDING ROAD CONSTRUCTION**

12

This Declaration and Agreement Regarding Road Construction (this "Declaration") is entered into as of the 30th day of SEPTEMBER 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 (Neighborhood Commercial) and LO (Limited Office) 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"); 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

C14-04-0060 #93

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 Remedies. In the event of a breach or threatened breach of this Declaration by Declarant, the City 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 No Third-Party Beneficiary. The provisions of this Declaration are for the exclusive benefit of Declarant and the City 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 the City 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

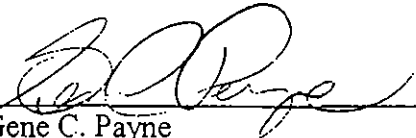
4.3 Severability. If any provision of this Declaration shall be declared invalid, illegal or unenforceable in any respect under any applicable law by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. It 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.

4.4 Rights of Successors. 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.

4.5 Counterparts; Multiple Originals. 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.

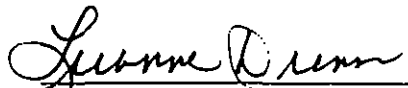
4.6 Modification and Cancellation. Any changes to the standards and requirements of this Declaration must be approved in writing by the Director of the City of Austin Watershed Protection and Development Review Department (or successor department).

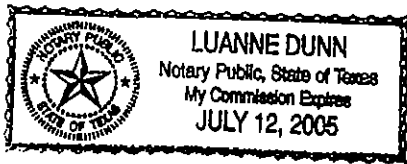
DECLARANT


Gene C. Payne


STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me this 30th day of September 2004, by Gene C. Payne.

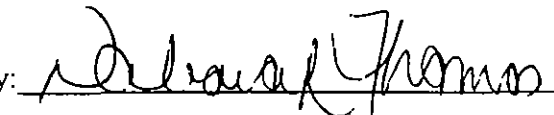

Notary Public, State of Texas



ACCEPTED: CITY OF AUSTIN

By: 
Name: TAMMIE H. WILLIAMSON
Title: ASSISTANT DIRECTOR - WATERBODIED PROTECTION

APPROVED AS TO FORM:

By: 

Please return to:
LAW DEPARTMENT
CITY OF AUSTIN
P.O. BOX 1088
AUSTIN, TEXAS 78767
attn. D. Minter

EXHIBIT "A"

Description of Property

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

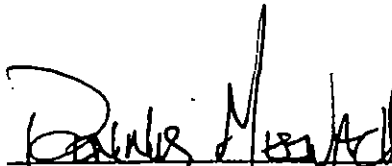
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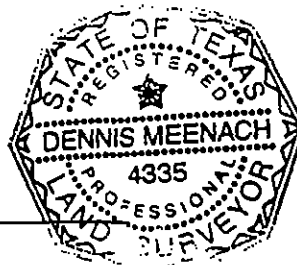
DESCRIPTION OF A TRACT OF LAND CONTAINING 0.69 ACRES OF LAND BEING OUT OF THE ISAAC DECKER LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS. SAID TRACT OF LAND ALSO BEING A PORTION OF LOTS 4 AND 6, THEODORE LOW HEIGHTS, A SUBDIVISION OF RECORD IN VOLUME 445, PAGE 581 OF THE DEED RECORDS OF TRAVIS COUNTY, 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 1/2" 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



4-13-04
Date

EXHIBIT A

Page 1 of 1

TOTAL 2
"LO"

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,

EXHIBIT B

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;

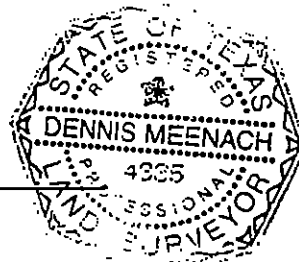
THENCE, South 61°44'22" East 72.35 feet to a point;

THENCE, South 55°32'15" East ^{99.83}~~95.83~~ 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;

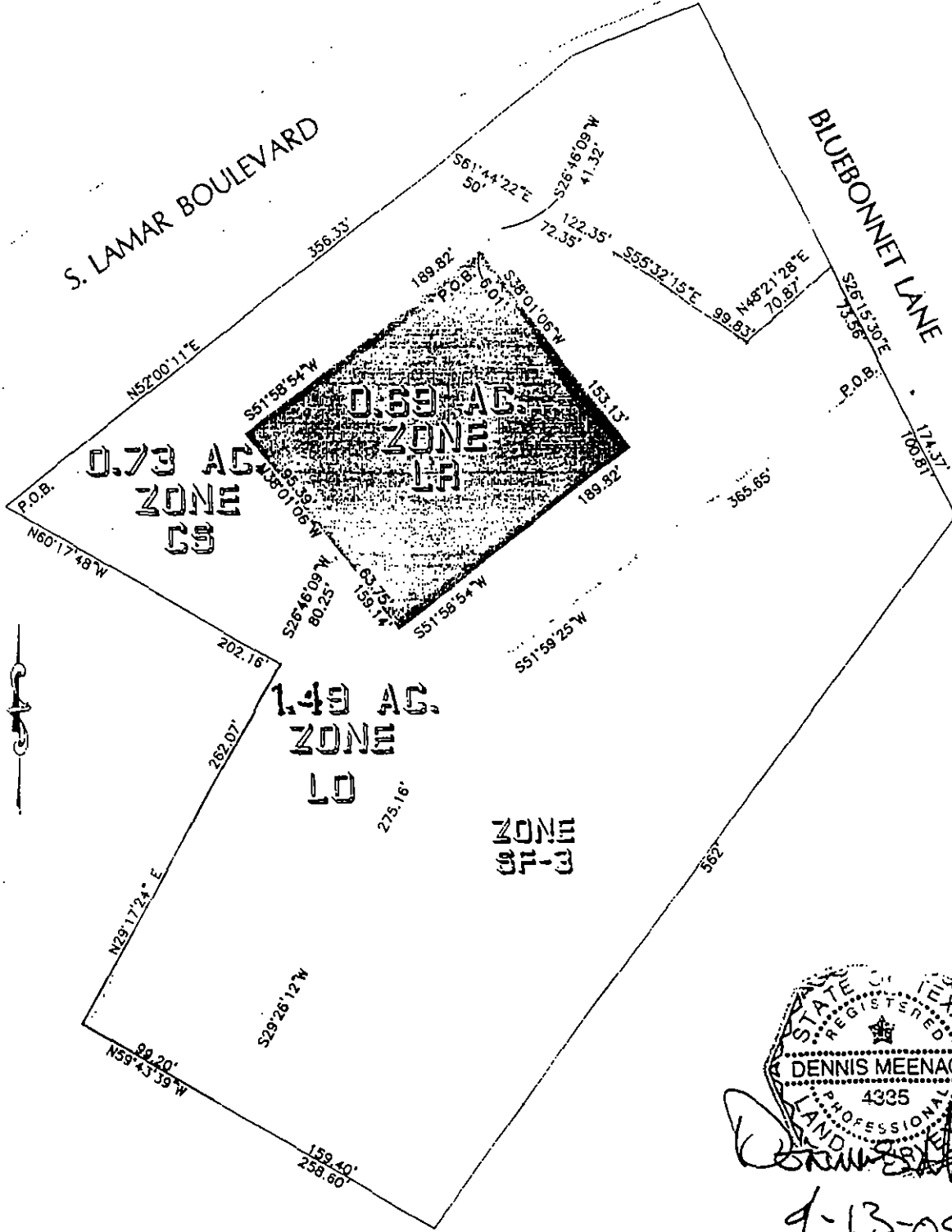
THENCE, with the easterly line of the herein described tract, same being the westerly line of said Bluebonnet Lane, South 26°15'30" East 73.56 feet to the point of beginning and containing 1.49 acres of land as shown on the attached plat and made a part of this description.

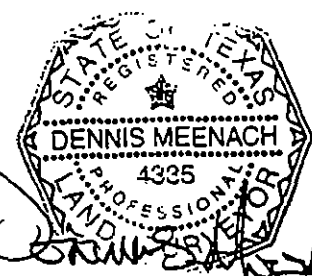

Dennis Meenach, R.P.L.S. No. 4335



4-13-04
Date

ZONING EXHIBIT




 DENNIS MEENACH
 4335
 PROFESSIONAL LAND SURVEYOR
Dennis Meenach
 4-13-04

WALGREENS

**BLUEBONNET
AT S. LAMAR**

D&A 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
Sheet:	1 of 1

EXHIBIT "B"

Road Construction and Signal Modifications

MODIFICATIONS

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

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.

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2004 Oct 22 03:30 PM 2004200908

BENAVIDESV \$38.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS