

## DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

This Declaration of Covenants, Conditions, and Restrictions (this "Declaration") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2004, by the David K. Darr Family Limited Partnership III, a Texas limited partnership, commonly referred to as "The Place" ("Declarant").

### RECITALS

WHEREAS, Declarant has the contractual right to purchase the two tracts of land comprising approximately 2.885 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, the Property is zoned CS in part and SF-3 in part;

WHEREAS, Declarant currently intends to purchase the Property and develop a project (the "Project") thereon, 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, in consideration of support for the Zoning Case by the South Lamar Neighborhood Association ("SLNA"), Declarant has agreed to establish certain restrictive covenants, which are described herein, in connection with the development of the Property.

NOW, THEREFORE, for and in consideration of SLNA's support before the City of Austin City Council of the Zoning Case, and 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 Roadway Improvements. Subject to all of the terms and conditions of this Declaration, and subject to ultimate approval of such improvements by the relevant governmental entity as necessary, Declarant shall cause the following to occur in connection with development of the Project (the "Roadway Improvements") at Declarant's expense.

A. Bluebonnet Lane. 1. Subject to the willingness of the adjoining landowners to convey the same, Declarant shall obtain the additional area necessary to provide fifty-six feet (56') of right-of-way for that portion of Bluebonnet adjacent to the Property, as shown on the depiction of the Roadway Improvements attached hereto as Exhibit "B".

2. If allowed by the City of Austin, Declarant shall cause the following additional Roadway Improvements to be completed, as shown on Exhibit "B" hereto: expanded width of Bluebonnet pavement; dedicated left turn lanes for traffic eastbound and westbound on Bluebonnet; expanded width for right turns from Bluebonnet onto Lamar; and dual pedestrian sidewalks on Bluebonnet.

3. If allowed by the City of Austin, Declarant shall place a speed limit sign on Bluebonnet.

4. If allowed by the City of Austin, Declarant shall place street level reflectors in that portion of Bluebonnet adjacent to the Property, as depicted on Exhibit "B" attached hereto.

5. Subject to the willingness of the landowners along the south side of Bluebonnet between the Property and Del Curto Road to allow such construction and make such a dedication, and if allowed by the City of Austin, Declarant shall construct a public sidewalk along the south side of Bluebonnet between the Property and Del Curto Road as shown on Exhibit "E" hereto, which sidewalk will be dedicated to the City of Austin.

6. If allowed by the City of Austin, the driveway access from the Project onto Bluebonnet (the "Driveway Access") shall be designed and constructed as shown on Exhibit "F" hereto.

7. If allowed by the City of Austin, Declarant shall place a "No Through Trucks" sign on Bluebonnet.

B. South Lamar Boulevard. If allowed by the City of Austin, Declarant shall expand the width of the Lamar access point, as depicted on Exhibit "C" hereto.

1.2 Stormwater Detention. If allowed by the City of Austin, Declarant shall design the stormwater detention facilities on the Property in such a manner as to reduce the peak flow from a typical "10 year storm" to a level approximately fifty percent (50%) of the peak flow from the Property currently allowed pursuant to applicable City of Austin regulations. Additionally, if allowed by the City of Austin, Declarant shall reconstruct the inlet structures on Lamar which are directly adjacent to the Property.

1.3 Architectural Elements. If allowed by the City of Austin, development of the Project shall be subject to the following:

A. The surface behind the mortar and pestle symbol in the tower element of the building shall be a hammered metal finish;

B. The wainscoting along the front sides of the building shall be masonry up to at least three and one-half feet (3 ½') above the sidewalk level. Additionally, the exterior columns on the front sides of the building shall be painted a darker color than the walls;

C. The awnings on the building shall be an urban style; and

D. Exterior lighting standards for the Project parking lot and structure shall comply with those requirements of the City of Westlake Hills, Texas ordinances that are attached hereto as Exhibit "D" (which standards are applicable to that city's District B-2, which includes "pharmacy" as a permitted use).

1.4 Landscaping Requirements. If allowed by the City of Austin and any affected adjoining landowner, Declarant shall install plantings along the south side of Bluebonnet from the west edge of the Project driveway to the intersection with Lamar, provided, however, that the owner of such land shall maintain the plantings and Declarant shall have no responsibility therefor. Only natural vegetation and added landscaping shall be allowed in the twenty-five foot (25') setback area along the east side of the Property.

## II. Conditions on Effect; Amendment of Existing Declarations; Notice of C.O.

2.1 Zoning Case. Notwithstanding any other provision of this Declaration to the contrary, the agreements of Declarant reflected herein are conditioned upon (a) 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 and (b) Declarant's acquisition of fee simple title to the Property.

2.2 Notification Date. When Declarant receives a final certificate of occupancy for the pharmacy that Declarant intends to develop on the Property as part of the Project from the City of Austin, Declarant shall promptly notify SLNA thereof in writing (the date that such notice is delivered to SLNA is the "Notification Date" herein).

## III. Default and Remedies

3.1 Remedies. In the event of a breach or threatened breach of this Declaration, only Declarant, including its successors and assigns, and SLNA shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. If any party (a "Defaulting Party") shall fail to comply with any term, provision or covenant of this Declaration and shall not cure such failure within thirty (30) days after receipt of written notice (or if the default is of such character as to require more than thirty [30] days to cure and the Defaulting Party shall fail to commence to cure the same within such period or shall fail to use reasonable diligence in curing such default thereafter) from an entity with the right hereunder to seek relief for such breach (a "Non-Defaulting Party") to the Defaulting Party of such failure, the Non-Defaulting Party shall have the option of pursuing any remedy it may have at law or in equity, including without limitation specific performance or injunctive relief from a court of competent jurisdiction.

3.2 Security Deposit. As security for the performance of its obligations under this Declaration, as well as for the obligations of Declarant under that certain Declaration and Agreement Regarding Road Construction executed the same date as this Declaration and also pertaining to the Zoning Case (the "City Declaration"), Declarant, on the effective date of this

Declaration, has placed \$50,000 cash (the "Security Deposit") in an escrow account held by the Austin, Texas law firm of Drenner Stuart Wolff Metcalfe von Kreisler (the "Escrow Agent"). If, on or before the date that is eighteen (18) months after the Notification Date, as the result of a breach by Declarant hereunder or under the City Declaration, subject to applicable notice and cure periods, SLNA institutes legal proceedings to enforce its claim that Declarant is in breach hereunder or under the City Declaration and provides the Escrow Agent written notice thereof, then SLNA may draw on the Security Deposit from time to time thereafter to pay invoices for the actual out-of-pocket expenses it has incurred (but not required to be paid) as a direct result of instituting and pursuing such legal proceedings, including reasonable attorneys' and other consultants' fees and court costs by submitting a written request for reimbursement to the Escrow Agent along with copies of such invoices for such expenses (the amounts paid by the Escrow Agent to SLNA hereunder, the "Paid Costs"); provided, however, that if SLNA's claim that Declarant is in breach hereunder or under the City Declaration (as the case may be) is not successful in such legal proceedings, then SLNA must immediately upon demand reimburse Declarant for twenty-five percent (25%) of the amount of the Paid Costs plus statutory interest calculated from the date or dates such Paid Costs were paid to SLNA by the Escrow Agent. If SLNA has not instituted legal proceedings and given the Escrow Agent written notice thereof on or before the date that is eighteen (18) months after the Notification Date, then the provisions of this Section 3.2 shall automatically lapse and terminate, and the Security Deposit shall be returned to Declarant by the Escrow Agent.

#### IV. General Provisions

4.1 No Third-Party Beneficiary. The provisions of this Declaration are for the exclusive benefit of the parties hereto 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. It is expressly understood and agreed that the terms of this Declaration shall not be binding upon the current owner of the Property, Gene C. Payne, it being the intention of the parties that the terms of this Declaration are conditioned upon the occurrence of the events described in Section 2.1 above.

4.2 No Dedication. No provision of this Declaration shall ever be construed to grant or create any rights whatsoever in or to any portion of the Property other than the covenants, conditions, and restrictions specifically set forth herein. Nothing in this Declaration shall ever constitute or be construed as a dedication of any interest herein described to the public or give any member of the public any right whatsoever.

4.3 Notice. All notices required or permitted to be given hereunder, or 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 and SLNA may change their respective addresses for notices by giving five (5) days' advance written notice to the other in the manner provided for

herein. Until changed in the manner provided herein, the Declarant's address for notice is as follows, and SLNA's is as set out by its signature below:

Declarant:

The Place

12050 Vance Jackson, Suite 102

San Antonio, Texas 78230

Attn: David Darr

Telecopy: (512) 366-0571

Telephone: (512) 525-0131

with a copy to:

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

4.4 Attorneys' Fees. Each party shall pay its own attorneys' fees, subject to SLNA's rights under Section 3.2 hereof.

4.5 Entire Declaration. This Declaration constitutes the entire agreement between the parties hereto regarding the matters set forth herein. The parties do not rely upon any statement, promise or representation with respect to the matters set forth herein that is not herein expressed, and this Declaration once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

4.6 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.

4.7 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.

4.8 No Merger. It is expressly understood and agreed that the parties hereto do not intend that there be, and there shall in no event be, a merger of the dominant and servient tenements in the Property by virtue of the present or future ownership of any portion of said tenements being vested in the same person(s) or entity, but instead intend that the easement servitudes shall not be extinguished thereby and that said dominant and servient tenements be kept separate.

4.9 Estoppel Certificates. Any party (or any mortgagee holding a first lien security interest in any portion of the Property) may, at any time and from time to time, in connection with the leasing, sale or transfer of its tract, or in connection with the financing or refinancing of its tract by any bona fide mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver a written notice to any other party requesting that such party execute a certificate, in a form reasonably acceptable to such party, certifying that, to such party's then current actual (not constructive) knowledge, (i) the other parties are not in default in the performance of their obligations to or affecting such party under this Declaration, or, if in default, describing the nature and amount or degree of such default and (ii) such other information regarding the status of the obligations under this Declaration as may be reasonably requested. A party shall execute and return such certificate within twenty (20) days following its receipt of a request therefor.

4.10 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.

4.11 Modification and Cancellation. Any changes to the standards and requirements of this Declaration must be approved in writing executed by a minimum of two (2) officers in SLNA.

4.12 Exculpation. Any person or entity subsequently acquiring fee or leasehold title to any portion of the Property shall be bound by this Declaration only as to the portion acquired by such person or entity and such person or entity shall not be liable for violations occurring on any portion of the Property which it does not own. Such person or entity shall be bound by this Declaration only during the period such person or entity is the fee or leasehold owner of such portion, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons or entities may be released under this Section 4.12, the covenants, conditions, and restrictions in this Declaration shall continue to be benefits and servitudes upon the Property running with the land.

**DECLARANT**

David K. Darr Family Limited Partnership III,  
a Texas limited partnership

By: Limestone Commercial, LLC,  
a Texas limited liability company,  
its general partner

By: 

Name: David K. Darr

Title: Managing Member

Date: 11/12/04

STATE OF TEXAS

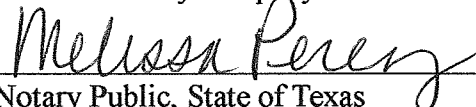
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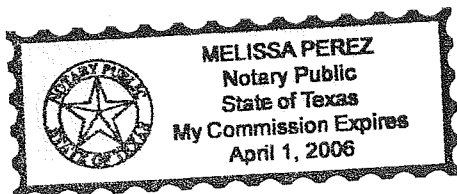
COUNTY OF Bexar

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This instrument was acknowledged before me this 12<sup>th</sup> day of November, 2004, by David K. Darr, the managing member of Limestone Commercial, LLC, a Texas limited liability company, general partner of David K. Darr Family Limited Partnership III, a Texas limited partnership, on behalf of the limited partnership and limited liability company.

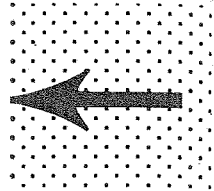
  
Notary Public, State of Texas



AGREED TO AND ACCEPTED:

SOUTH LAMAR NEIGHBORHOOD ASSOCIATION

By: Kevin Lewis  
Name: Kevin Lewis  
Title: President  
Date: 12/20/2004



HERE

STATE OF TEXAS

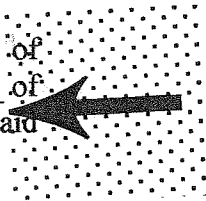
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COUNTY OF TRAVIS

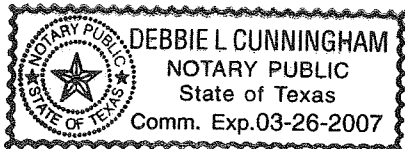
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This instrument was acknowledged before me on this the 20 day of December, 2004, by Kevin Lewis, as President of the South Lamar Neighborhood Association, a ~~Texas nonprofit corporation~~, on behalf of said ~~corporation~~ association.



NOTARIZE



Debbie K

Notary Public, State of Texas



### Description of Property



TITLE SURVEY  
1.117 ACRES  
PROPOSED LOT 1  
BLUEBONNET TACO SUBDIVISION  
AUSTIN, TRAVIS COUNTY, TEXAS

DESCRIPTION OF A 1.117 ACRE TRACT OF LAND OUT OF THE ISAAC DECKER LEAGUE AND THE HENRY P. HILL LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS AND SAME BEING A PORTION OF A TRACT OF LAND DESCRIBED IN A DEED TO GENE CHARLESWORTH PAYNE OF RECORD IN VOL. 12881, PG. 515 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS (R.P.R.T.C.T.) AND BEING A PORTION OF LOT 6, THEODORE LOW HEIGHTS, A SUBDIVISION OF RECORD IN VOLUME 445, PAGE 581 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS (R.P.R.T.C.T.). SAID 1.117 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½ inch iron rod found in the southerly right-of-way line of South Lamar Boulevard, a variable width right-of-way, for the westerly common corner of said Payne Tract of record in Volume 12881, Page 515 and Lot 2 of El Rancho Subdivision, as recorded in Book 86, Page 182, P.R.T.C.T. for the southwest corner of the herein described tract;

THENCE, with the common line of said Payne Tract and said South Lamar Boulevard, North 52°00'11" East 140.04 feet to a ½-inch iron rod set with cap stamped "Meenach 4335" for the most northerly corner of the herein described tract, from which a disturbed and reset ½-inch iron rod found for the northwesterly common corner of said Payne Tract and a 6,750 square feet tract of land described in a deed to W.O. Harper of record in Volume 1452, Page 308 of the Deed Records Travis County, Texas bears North 52°00'11" East 216.29 feet;

THENCE, departing the common line of said Payne Tract and said South Lamar Boulevard, crossing said Payne Tract the following three (3) courses and distances numbered one (1) through three (3);

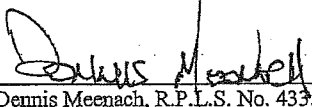
1. South 37°50'52" East 273.49 feet, to a ½-inch iron rod set with cap stamped "Meenach 4335" for the most easterly corner of the herein described tract,
2. South 52°00'11" West 15.11 feet to a ½-inch iron rod set with cap stamped "Meenach 4335" for an angle point for the herein described tract, and
3. South 29°17'24" West 274.20 feet to a ½-inch iron rod set with cap stamped "Meenach 4335" in the common dividing line of Lot 1 of El Rancho Subdivision, as recorded in Book 89, Page 376, P.R.T.C.T. and said Payne Tract, same being the southerly line of said Lot 6, from which a ½-inch bolt found for the southerly common corner of a 1.1556 acre tract of land described in a deed to Gene Charlesworth Payne of record in Volume

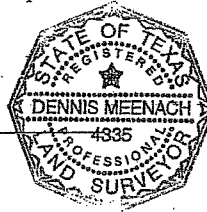
9178, Page 206 R.P.R.T.C.T. and a 2.739 acre tract of land described in a deed to Linda Wong Luther, and Ellen Kay Wong of record in Volume 13187, Page 699, R.P.R.T.C.T., bears South 59°43'39" East 160.50 feet;

THENCE, with the common line of said Lot 1, El Rancho Subdivision and said Payne Tract, North 59°43'39" West 98.10 feet to a ½-inch iron pipe found for the most southerly southwest corner of the herein described tract, same being a point for the southwesterly corner of said Lot 6, Theodore Low Heights Subdivision;

THENCE, with the common line of said Lot 6, said Payne Tract and said Lots 1 & 2, North 29°17'24" East 262.07 to a ½-inch iron pipe found for northeasterly corner of said Lot 2, and an interior ell corner of the herein described tract of land;

THENCE, departing the westerly line of said Lot 6, continuing with the common dividing line of said Lot 2 and said Payne Tract, North 60°17'48" West 202.16 feet to the **POINT OF BEGINNING** and containing 1.117 acre of land within these metes and bounds, as shown on the attached plat and made a part of this description.

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



11-08-01  
Date



**TITLE SURVEY  
1.768 ACRES  
PROPOSED LOT 2  
BLUEBONNET TACO SUBDIVISION  
AUSTIN, TRAVIS COUNTY, TEXAS**

DESCRIPTION OF A 1.768 ACRE TRACT OF LAND OUT OF THE ISAAC DECKER LEAGUE AND THE HENRY P. HILL LEAGUE IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, SAME BEING A PORTION OF A TRACT OF LAND DESCRIBED IN A DEED TO GENE CHARLESWORTH PAYNE OF RECORD IN VOLUME 12881, PAGE 515 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, (R.P.R.T.C.T.) AND A PORTION OF A 1.1556 ACRE TRACT OF LAND DESCRIBED IN A DEED TO GENE CHARLESWORTH PAYNE OF RECORD IN VOLUME 9178, PAGE 206, R.P.R.T.C.T., AND BEING A PORTION OF LOT 4 AND 6 OF THE THEODORE LOW HEIGHTS, A SUBDIVISION OF RECORD IN VOLUME 445, PAGE 581 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS (R.P.R.T.C.T.). SAID 1.768 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** at a ½ inch iron rod set in the southerly right-of-way line of South Lamar Boulevard, a variable width right-of-way, same being the westerly corner of said Payne tract (12881/515), for the westerly corner of the herein described tract;

**THENCE**, with the common line of said Payne tract (12881/515) and said South Lamar Boulevard, North 52°00'11" East 216.29 feet to a ½-inch iron rod found disturbed and reset for the westerly common corner of said Payne Tract (12881/515) and a called 6,750 square feet tract of land described in a deed to W.O. Harper of record in Volume 1452, Page 308 of the (R.P.R.T.C.T.), for the most northerly corner of the herein described tract;

**THENCE**, departing South Lamar Boulevard, with the common line of said Payne Tract (12881/515) and said 6,750 square feet of land tract, South 61°44'42" East 122.35 feet to a 1-inch iron pipe found for a northeasterly angle point of said Payne Tract (12881/515) and the herein described tract, same being the southerly common corner of said 6,750 square feet of land and a 0.27 acre Tract of land described in a deed to W.O. Harper, and wife Ester C. Harper, of record in Volume 1233, Page 550, R.P.R.T.C.T.;

**THENCE**, with the common line of said Payne Tract (12881/515) and said 0.27 acre Tract South 55°32'15" East 99.83 feet to a ¾-inch iron rod found at the common corner of said Payne Tract (12881/515), said 0.27 acre Tract and said 1.1556 acre Payne Tract (9178/206), for an interior ell corner of the herein described tract;

THENCE, with the common line of said 0.27 acre Tract, and said 1.1556 acre Payne Tract, (9178/206) North 48°21'28" East 60.48' to a ½-inch iron rod found with cap stamped "Meenach 4335" for the most northerly corner of the herein described tract, and from which point a ½ inch iron rod found in the southwesterly line of said Bluebonnet Lane bears, North 48°21'28" East 10.39 feet;

THENCE, crossing said Payne Tract (9178/206), South 26°15'30" East 71.63 feet to a ½-inch iron rod set with cap stamped "Meenach 4335" for the northeast corner of the herein described tract, from which point a ½-inch iron rod set with cap stamped "Meenach 4335" set in the common line of said 1.1556 acre Payne Tract and a 2.739 acre tract of land described in a deed to Linda Wong Luther, and Ellen K. Wong of record in Volume 13187, Page 699, R.P.R.T.C.T. bears, South 26°15'30" East 105.25 feet;

THENCE, from said Northeast corner, crossing through the interior of said 1.1556 acre Payne Tract (9178/206) and said Payne Tract (12881/515) the following two (2) courses and distance numbered one (1) and two (2),

1. South 52°00'11" West 342.13 feet, to a ½-inch iron rod set with cap stamped "Meenach 4335" for the southerly most corner of the herein described tract, and
2. North 37°50'52" West 273.49 feet to the **POINT OF BEGINNING** and containing 1.768 acres of land within these metes and bounds, as shown on the attached plat and made a part of this description.

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



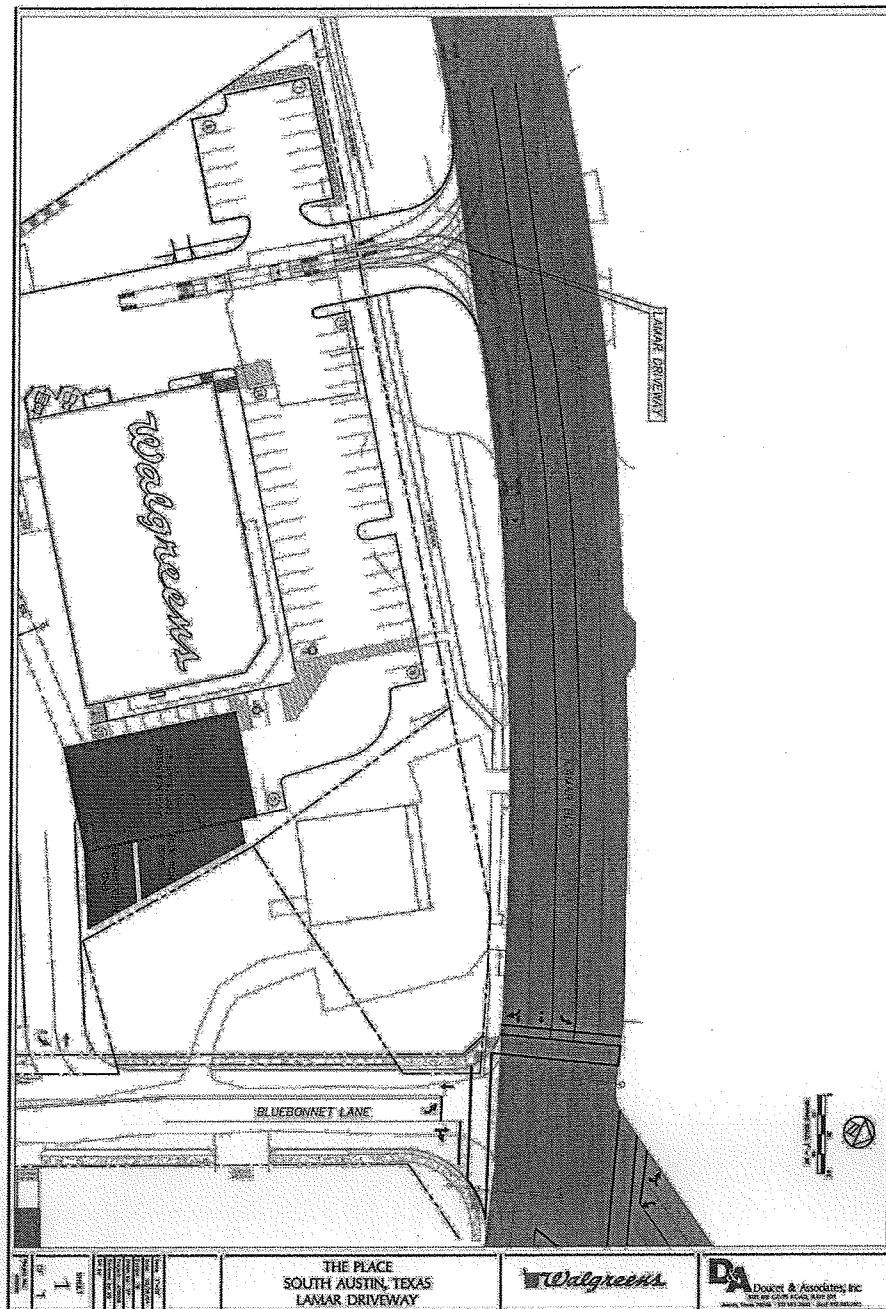
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## Roadway Improvements – Bluebonnet Lane



EXHIBIT "C"

Roadway Improvements – South Lamar Boulevard





## EXHIBIT "D"

### City of Westlake Hills parking lot lighting requirements

NextPage LivePublish

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#### **Sec. 34-91. Exterior lighting standards.**

(a) All exterior lighting in all districts shall be hooded, diffused or otherwise designed and arranged to avoid glare on adjacent properties and public streets, and to prevent the light source from being directly visible from adjacent property and public streets.

(b) All lighting used to illuminate any off-street parking or loading areas shall be so designed and arranged as to be confined within and directed onto the parking or loading area only.

(c) Exterior lighting shall be designed to minimize glare and light trespass to preserve the rural character of the city. Nonresidential lighting systems require city council approval. Residential lighting requires approval of the city administrator or city inspector/building official. Driveway, parking lot and security lighting may be of multiple types from multiple sources. Illumination levels for driveway, parking lot, and security lighting shall not exceed three foot-candles, average maintained, measured horizontally at finished ground/pavement level.

(Ord. No. 1554, § 1010, 3-28-90; Ord. of 2-22-95, § 1)

**Sec. 34-92. Exterior lighting (all districts).**

- (a) *Exterior lighting throughout all districts.* Exterior lights shall not be permitted to shine directly into the eyes of any occupant of any vehicle on any public or private road, onto adjacent property, or where the illumination interferes with the visibility or readability of any traffic signs or devices. Lighting levels for non-residential districts shall conform to Illumination Engineering Society (IES) standards and federal/state requirements (see Exhibit 1). Except for the lighting of businesses which remain open 24 hours a day, commercial lighting other than that necessary for security will be turned off at the later of closing time or 11:00 p.m. Lighted commercial signs may be left on at half their original illumination after the later of closing time or 11:00 p.m. provided the city inspector deems that such lighted signs do not constitute a light trespass or interfere with the reasonable use and enjoyment of adjacent properties.
- (b) *Holiday lighting.*
- (1) Exterior lights intended as holiday decorations are exempt from the restrictions of this ordinance between Thanksgiving Day and New Year's Day provided the city inspector deems that such lights do not constitute a light trespass or interfere with the reasonable use and enjoyment of adjacent properties.
  - (2) Ground mounted floodlights are permitted if they are shielded/hooded and lamp wattage does not exceed 100 watts.
- (c) *Street lighting.* The city discourages street lighting in residential districts. Street lighting must be authorized by the city council and shall be properly shielded from adjacent private and public property.
- (d) *Height limit for residential lighting.* Light fixtures in residential districts shall not exceed a height of 25 feet measured from the ground/pavement to the bottom/base of the fixture.
- (e) *Perimeter lighting in residential districts.* Light sources are permitted on lot lines adjacent to a public street provided:
- (1) Fixture wattage does not exceed 50 lamp watts.
  - (2) Light fixtures are limited to two on either side of two driveways per lot and no other perimeter light sources exist or are planned.
  - (3) All light sources are shielded by translucent materials so that no light is emitted above the horizontal plane.
  - (4) All light sources are focused so the light shines toward the ground.
- (f) *Private walkway lighting in residential districts.* Private walkway lights are limited to 50 watt lamps and shall be focused so the light shines toward the ground.
- (g) *Floodlights in residential and nonresidential districts other than B-3.* Floodlights on all structures shall be shielded so that the light source is not visible from adjacent property. Lamp wattage shall not exceed 200 watts. Sport court lighting of not more than 1,500 watts per hooded/shielded fixture requires approval by the city administrator in advance of construction.
- (h) *Yard lighting in residential and nonresidential districts other than B-3.* Light source fixtures for illuminating the canopies or bases of trees shall not be visible from adjacent properties nor be illuminated after 11:00 p.m. Fixture wattage shall not exceed 200 lamp watts. All tree and yard floodlights require city administrator approval before installation.
- (i) *Artificial lighting for parking lots in O, GUI, B-1, and B-2 districts.* Light source fixtures for parking lots in these districts shall conform to the following:
- (1) Light fixtures shall not exceed a height of 25 feet measured from the ground/pavement to the bottom/base of the fixture.
  - (2) Fixtures shall be limited to two per pole.

- (3) Fixture wattage shall not exceed 200 lamp watts;
- (4) Fixture lamps shall be quartz halogen, fluorescent, metal halide, mercury vapor, high pressure sodium or other lamp types approved by the city council;
- (5) Light sources shall be housed/enclosed in fixtures so that light sources are masked and not visible from public streets or adjacent private property. Fixtures shall be configured so that light is not emitted above the horizontal plane.

(j) Artificial lighting in B-3 districts.

(1) Driveway, parking lot and security lighting.

- a. Light fixtures shall not exceed a height of 28 feet measured from the ground/pavement to the bottom of the fixture (see Exhibit 2).
- b. Fixture wattage shall not exceed 250 lamp watts.
- c. Fixtures shall be limited to four per pole, shall have no uplight, nor lamps/light-refracting lenses extending below the plane of the lowest point of the fixture housing, and be of an IES controlled distribution of type 2, 3, 4 or 5. Fixtures will provide a cutoff not to exceed 90 degrees from nadir so that light is not emitted above the horizontal plane.
- d. Building-mounted wall packs shall not exceed a lamp wattage of 250 watts, shall be mounted no higher than 28 feet from the ground/pavement to the bottom of the fixture. Wall packs shall be configured with a full front metal shield with a sharp cutoff of 85 degrees or better to block the lamp source from line of sight view (see Exhibit 3). Open faced wall packs of any wattage or size are prohibited.
- e. Floodlights, not to exceed a lamp wattage of 100 watts, may be used if ground mounted and shielded/hooded. Other floodlights and dusk-to-dawn fixtures of any wattage or size are prohibited.

(2) Landscape lighting.

- a. Landscape lighting such as tree lighting shall be achieved using the "moon lighting" method whereby the light source is located above and not on the ground (see Exhibit 4). Uplighting using flood/well lights is prohibited except as provided in subsection b. of this subsection. Fixtures shall be no higher than 28 feet measured from the ground to the bottom of the fixture. Fixture wattage shall not exceed 250 lamp watts. Lamps shall be housed in bullet style enclosures (see Exhibit 5) with an extending truncated shield to maximize cutoff.
- b. Floodlights, not to exceed a lamp wattage of 100 watts, may be used if ground mounted and shielded/hooded. Other floodlights and dusk-to-dawn fixtures of any wattage or size are prohibited.

- (3) Fixture lamps shall be quartz halogen, fluorescent, metal halide, mercury vapor, high pressure sodium or other lamp types approved by the city council.

(Ord. No. 155-1, § 1101, 3-28-90; Ord. of 2-22-95, § 2)

**Sec. 34-93. Prohibitions.**

- (a) The installation of streetlights other than quartz halogen, fluorescent, metal halide, mercury vapor, high pressure sodium or other lamp types approved by the city council is prohibited.
- (b) The installation of dusk-to-dawn security lights other than quartz halogen, fluorescent, metal halide, mercury vapor, high pressure sodium or other lamp types approved by the city council is prohibited.
- (c) The installation of parking and walkway lighting other than quartz halogen, fluorescent, metal halide, mercury vapor, high pressure sodium or other lamp types approved by the city council is prohibited.
- (d) Any illumination device energized between 11:00 p.m. and sunrise which emits light above a horizontal plane is prohibited.
- (e) The operation of searchlights and lasers for advertising purposes between 11:00 p.m. and sunrise is prohibited.
- (f) All outdoor illumination of any building and/or surrounding landscape, public or private, between 11:00 p.m. and sunrise is prohibited. Security lighting is excluded from this prohibition.
- (g) The illumination of any sport or recreational facility, public or private, between 11:00 p.m. and sunrise except to complete a specific organized activity or event already in progress at 11:00 p.m. is prohibited.
- (h) The installation of streetlights which exceed by more than ten percent federal and state minimums for total luminous output and peak luminous flux at ground level is prohibited.
- (i) The replacement, enlargement, alteration, repair or improvement of any existing outdoor lighting equipment which becomes damaged or inoperable with equipment which does not conform with this article is prohibited. This prohibition applies to all fixtures exempted in section 34-95(a).
- (j) The illumination of any billboard or advertising sign, whether on premises or off premises, between 11:00 p.m. and sunrise is prohibited, except instances that meet one of the following criteria:
  - (1) On-premises signs may remain illuminated between 11:00 p.m. and sunrise only while the business is open to the public; and
  - (2) On- or off-premises signs may remain illuminated between 11:00 p.m. and sunrise only if no light is emitted above a horizontal plane and the light emitted does not constitute light trespass.
- (k) Any illumination device energized between 11:00 p.m. and sunrise, except those exempted by section 34-95, which constitutes light trespass is prohibited.
- (l) Any illumination device not exempted by section 34-95 which emits energy in wavelengths not visible to the human eye is prohibited. Prohibited wavelength emissions are those shorter than 350 nanometers (ultraviolet). This prohibition is not intended to restrict the use of any equipment other than that used for visible lighting. Incandescent lights of 100 watts or less and fluorescent lights of 20 watts or less are exempted from this prohibition.

(Ord. No. 297, § 1, 2-22-95)

Sidewalk – South side of Bluebonnet



### Driveway Access

