

RESOLUTION NO. 960903

**AUTHORIZING THE MAYOR AND THE MEMBERS OF THE CITY COUNCIL FOR THE CITY OF SUNSET VALLEY, TEXAS TO SIGN A SETTLEMENT AGREEMENT WITH THE J.D. WEAVER FAMILY LIMITED PARTNERSHIP WHICH PROVIDES FOR (1) THE PROCESS THE CITY OF SUNSET VALLEY WILL FOLLOW IN MAKING ZONING AND PLANNING DECISIONS FOR THE ENTIRE PROPERTY OWNED BY THE J.D. WEAVER FAMILY LIMITED PARTNERSHIP; (2) VARIOUS PROPOSALS TO BE MADE BY THE J.D. WEAVER FAMILY LIMITED PARTNERHSIP FOR THE RE-ZONING, SUBDIVISION AND DEVELOPMENT OF THE ENTIRE PROPERTY, INCLUDING VARIANCES TO BE REQUESTED BY THE J.D. WEAVER FAMILY LIMITED PARTNERHSIP; (3) VARIOUS PORTIONS OF THE ENTIRE PROPERTY TO BE GIFTED OR DEDICATED TO THE CITY OF SUNSET VALLEY BY THE J.D. WEAVER FAMILY LIMITED PARTNERHSIP IN THE EVENT THE VARIOUS RE-ZONING AND SUBDIVISION PROPOSALS ARE ADOPTED BY THE CITY OF SUNSET VALLEY; (4) VARIOUS WATER QUALITY AND ROADWAY IMPROVEMENTS TO BE CONSTRUCTED IN CONNECTION WITH THE DEVELOPMENT OF THE ENTIRE PROPERTY; (5) THE "TABLING" OF THE CURRENT ZONING AND SUBDIVISION APPLICATIONS PENDING THE DECISION ON THE APPLICATIONS TO BE FILED PURSUANT TO THE SETTLEMENT AGREEMENT; AND, (6) AN EXCLUSIVE REMEDY IN THE EVENT EITHER THE CITY OR THE J.D. WEAVER FAMILY LIMITED PARTNERSHIP FAILS TO PERFORM ON ANY OF ITS OBLIGATIONS UNDER THE SETTLEMENT AGREEMENT.**

WHEREAS, the J.D. WEAVER FAMILY LIMITED PARTNERSHIP ("Weaver Family") has been attempting to re-zone and/or subdivide portions of a 280.5 acre tract of land ("the Entire Property") in the City of Sunset Valley ("City") which tract is out of and a part of the Theodore Bissell Survey No. 18, in Travis County, Texas, as more particularly described in Exhibit "A" to the Settlement Agreement ("Agreement"), a copy of which is attached to this Resolution; and,

WHEREAS, the City and the Weaver Family have concluded it is difficult to make zoning and planning decisions without an understanding of how the entire 280.5 acre tract is to be developed; and,

WHEREAS, the City acknowledges that the Weaver Family desires to develop as commercial retail the major portion of the Entire Property which fronts on Brodie Lane; and,

WHEREAS, the Weaver Family acknowledges that the City is concerned how the development of the property which fronts on Brodie Lane as commercial retail will affect the development of the remaining lands in the Entire Property and the existing single family residential areas of the City; and,

**WHEREAS, the City is concerned about the impact on the quality of the surface and subsurface waters from development activities on the various tracts of land in the Entire Property; and,**

**WHEREAS, the City is concerned about the impact of the development of the Entire Property on the existing and planned roadways in the City; and,**

**WHEREAS, the City desires to encourage the joint development of a portion of the Entire Property located at the intersection of Brodie Lane, Highway 290 and the existing Jones Road with a tract of land owned by the Miller Family, located across the existing Jones Road; and,**

**WHEREAS, the Weaver Family and the City desire to provide land for the future municipal, recreational and conservational needs of the citizens of the City; and,**

**WHEREAS, the City and the Weaver Family on August 17, 1996, entered into non-binding mediation in an effort to reach a better understanding of the overall desires of the Weaver Family and the City on the foregoing issues; and,**

**WHEREAS, a Memorandum of Understanding was entered into by the Weaver Family and the City at the conclusion of the mediation; and,**

**WHEREAS, the Weaver Family and the City have drafted the attached Settlement Agreement to reflect the understandings reached at the conclusion of the mediation; and,**

**WHEREAS, the Weaver Family acknowledges and understands that all of the foregoing issues under State law and the City's ordinances must be decided in the legislative process and that the Settlement Agreement attempts only to establish the procedures for making those decisions and sets forth the conditions under which the Weaver Family will gift and/or dedicate lands to the City;**

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF SUNSET VALLEY AS FOLLOWS:**

**1. The City Council authorizes its Mayor and individual City Council Members to sign the attached Agreement for the purposes and consideration therein expressed.**

**2. By signing the Agreement, the City Council is not granting any of the zoning, subdivision or variance requests that the Weaver Family is proposing in the Agreement.**

**3. By signing the Agreement, neither the City Council nor its individual members are promising to vote in favor of any of the zoning, subdivision or variance requests that may come before it which are reflected in the Agreement.**

**4. By signing the Agreement, neither the City Council nor its individual members are instructing the City's Zoning Commission or its Board of Adjustment to take any particular action or make any particular recommendation and/or decision on the matters which are reflected in the Agreement and which may come before those entities in the processing of the various**

applications and requests.

PASSED AND ADOPTED ON THE 3RD DAY OF SEPTEMBER, 1996.

  
\_\_\_\_\_  
Mayor Michael Francis

Attest:   
\_\_\_\_\_  
Jayme Foley, City Secretary

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is made on the 12th day of September, 1996, by and between the J.D. WEAVER FAMILY LIMITED PARTNERSHIP, a partnership organized and existing under the laws of the State of Texas with its principal place of business in Travis County, Texas ("Owner"), and the CITY OF SUNSET VALLEY, a municipal corporation organized and existing under the laws of the State of Texas ("City").

### ARTICLE I

#### STATEMENT OF FACTS

The parties stipulate and agree to the following summary of facts:

1.01 Description of Property. Owner owns an approximately 280 acre tract of land situated in the City of Sunset Valley, Travis County, Texas, such 280 acre tract being generally depicted on Exhibit "A" attached hereto, and more particularly described on Exhibit "B" attached hereto (the "Entire Property").

1.02 Status of Applications; Existing Zoning. Owner has filed with City the following applications which remain pending as of the date hereof:

(a) Four (4) preliminary plans (the "Existing Preliminary Plans") which, considered cumulatively, cover the Entire Property; and

(b) A zoning application (the "Existing 40 Acre Zoning Application") which requests that the zoning classification applicable to a 40.110 acre portion of the Entire Property (the "40 Acre Tract") be changed from "SF-Single Family Residential" to "R-2 — Retail-2 District (With Conditional Overlays)."

Additionally, pursuant to the action of the City Council of City on June 18, 1996, the zoning classification applicable to a 24.106 acre portion of the Entire Property (the "24 Acre Tract")

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was changed from "SF-Single Family Residential" to "R-2—Retail-2 District (With Conditional Overlays)." The zoning classification currently applicable to the Entire Property, but for the 24 Acre Tract (and without considering the Existing 40 Acre Zoning Application) is "SF-Single Family Residential."

1.03 Disputes. Bona fide disputes and controversies have existed between Owner and City, both as to fact and law, and as to the extent of liability, if any. Owner and City voluntarily entered into non-binding mediation and desire to enter into this Agreement to reflect the terms of compromise and settlement of such disputes and controversies. The parties recognize the legal limitations on City's authority to exercise its regulatory powers without complying with procedural requirements as mandated by state law. Consistent with those powers and requirements, as well as its duty to protect the health, safety and welfare of the community, the City Council approves this Agreement.

1.04 Limitations. This Agreement applies only to the Entire Property, and shall have no application to or precedential value for any other tract or parcel of land within the regulatory control of City.

## ARTICLE 2

### SETTLEMENT TERMS

In consideration of the mutual promises herein contained and in order to compromise and settle the disputes and controversies between Owner and City, the parties agree as follows:

2.01 Gift of 8.5 Acre Municipal Tract. Contemporaneously with City's approval of the applications described in Sections 2.03-2.05 (the "New Applications"), Owner shall execute and deliver to Heritage Title Company of Austin, Inc., 98 San Jacinto Blvd., Suite 400, Austin, Texas 78701 (the "Title Company"), in escrow a special warranty deed pursuant to the terms

of which Owner shall deed to City the approximately 8.5 acre tract situated adjacent to the northeastern boundary of the Entire Property, such 8.5 acre tract to be generally as shown as "Lot One of Block 'C'" on Exhibit "A" attached hereto (the "8.5 Acre Tract"). Pursuant to the terms of the escrow instructions, such deed shall be delivered to City upon receipt by the Title Company of a sworn affidavit executed by the Mayor of City stating that either (a) the re-zoning of the 47.26 Acre Tract and the 29.18 Acre Tract has been finally approved by the City Council consistent with the terms of Sections 2.03 and 2.04 hereof and the final subdivision plats for the Entire Property (less the 64.59 Acre Tract and the 8.5 Acre Tract) have been finally approved and filed of record in Travis County, Texas or (b) the 47.26 Acre Permit (as hereinafter defined) has been issued by City to Owner. The deed shall contain a restrictive covenant expressly restricting City's use of the 8.5 Acre Tract to "municipal purposes," excluding any activities of a temporary nature which generate anything more than incidental revenue or income to City and except for revenue and income to City from the rental or use of City-owned facilities [e.g., swimming pools, tennis courts and other recreational facilities (including associated eating facilities), civic meeting places, City-owned parking facilities, etc.].

2.02 Gift of 64.59 Acre Conservation Tract. Contemporaneously with City's approval of the New Applications, Owner shall execute and deliver to Title Company, in escrow, a special warranty deed pursuant to the terms of which Owner shall deed to City the approximately 64.59 acre tract situated between the southernmost boundary of the Entire Property and the northern boundary of the Critical Water Quality Zone applicable to the Main Branch of Williamson Creek, such 64.59 acre tract to be generally as shown as "Lot One of Block 'G'" on Exhibit "A" attached hereto (the "64.59 Acre Tract"). Pursuant to the terms of the escrow instructions, such deed shall be delivered to City upon receipt by the Title Company of a sworn

affidavit executed by the Mayor of City stating that either (a) the re-zoning of the 47.26 Acre Tract and the 29.18 Acre Tract has been finally approved by the City Council consistent with the terms of Sections 2.03 and 2.04 hereof and the final subdivision plats for the Entire Property (less the 64.59 Acre Tract and the 8.5 Acre Tract) have been finally approved and filed of record in Travis County, Texas or (b) the 47.26 Acre Permit has been issued by City to Owner. The deed shall contain a restrictive covenant expressly restricting City's use of the 64.59 Acre Tract to conservational or recreational purposes; provided, however, no lights or similar facilities may be placed on the 64.59 Acre Tract above five (5) feet in height, unless attached to a tree, and no activities may be conducted on the 64.59 Acre Tract which generate anything more than incidental revenue or income to City from the use of the land for conservational or recreational purposes.

2.03 Amendment to Existing 40 Acre Zoning Application. Owner shall amend the Existing 40 Acre Zoning Application as follows:

(a) The land covered by such Application shall be increased to 47.26 acres, such 47.26 acres to be generally as shown as "Lot Two of Block 'F'" and "Lot One of Block 'F'" on Exhibit "A" attached hereto (the "47.26 Acre Tract"); and

(b) The conditional overlays proposed as a part of the Existing 40 Acre Zoning Application shall be revised as shown on Exhibit "C" attached hereto.

The City Council of City shall remand the Existing 40 Acre Zoning Application, as amended, to the Zoning Commission and thereafter such Application shall be expeditiously processed and considered by City.

2.04 Expansion and Revision to 24 Acre Zoning. Owner shall amend the zoning and related conditional overlays governing the 24 Acre Tract as follows:

(f) The dedication of the Roadway B Right-of-Way shall be made by a separate special warranty deed containing the terms set forth in this Section 2.06, executed and delivered by Owner to City contemporaneously with City's approval of the New Applications;

(g) Vehicular access to and from Roadway B shall not be allowed from any residential area; and

(h) In the event that City does not complete construction of Roadway B on or before the date to be agreed to by City and Owner (which date will be established on or before City's approval of the New Applications), except due to acts of force majeure (which exclude financing of the costs of construction), the Roadway B Right-of-Way shall terminate and City shall have no further rights with respect thereto.

2.07 Development of 65.99 Acre Tract. The approximately 65.99 acre portion of the Entire Property generally situated between the southern boundary of the Critical Water Quality Zone applicable to the Sunset Valley Branch of Williamson Creek and the northern boundary of the Critical Water Quality Zone applicable to the Main Branch of Williamson Creek, such 65.99 acre tract to be generally as shown as "Lot One of Block 'D'" and "Lot One of Block 'E'" on Exhibit "A" attached hereto (and which, as shown on Exhibit "A," includes approximately 7.51 acres of roadway) (the "65.99 Acre Tract"), shall be developed for single-family purposes, subject to the following terms:

(a) The number of lots in the 65.99 Acre Tract shall not exceed one hundred (100) lots;

(b) Each lot in the 65.99 Acre Tract shall have a minimum size of three quarters of one acre (.75);

(b) City shall have the sole and exclusive responsibility, at its sole cost and expense, to construct and maintain the roadway (the road, including any bridge crossing the Sunset Valley Branch of Williamson Creek, shall be herein referred to together as "Roadway B") within the Roadway B Right-of-Way, as well as any desired hike and bike trail or related pedestrian walkway and landscaping adjacent to Roadway B; provided, however, Owner shall have the sole and exclusive responsibility, at its sole cost and expense, to construct adequate detention and water filtration systems to accommodate stormwater run-off from Roadway B;

(c) The Roadway B Right-of-Way shall be used solely for the construction of Roadway B, any required utilities and drainage structures and any hike and bike or related pedestrian walkways and landscaping adjacent to Roadway B, and upon termination of such use, or any attempted use for any other purpose, the Roadway B Right-of-Way shall revert to Owner, without compensation to City, and thereafter City shall have no further rights with respect to the Roadway B Right-of-Way;

(d) Roadway B shall be constructed and maintained by City to a standard consistent with the current standards of construction and maintenance of Henry Miller Drive between Jones Road and Highway 290 and in accordance with City's Land Development Code;

(e) No special assessments, other charges or taxes of any kind shall be levied against any portion of the Entire Property or Owner with respect to or in any way related to Roadway B, it being the intention of Owner and City that City bear the entire cost of constructing and maintaining Roadway B; provided, however, the foregoing shall not be deemed to include ad valorem and sales taxes applied throughout City;

(a) The land covered by the amended application shall be approximately 29.18 acres, such 29.18 acres to be generally as shown as "Lot One of Block 'A'" on Exhibit "A" attached hereto (the "29.18 Acre Tract"); and

(b) The amended application shall request that the zoning application applicable to the entire 29.18 Acre Tract be "R-2—Retail-2 District (With Conditional Overlays)"; and

(c) The conditional overlays applicable to the 29.18 Acre Tract shall be revised as shown on Exhibit "D" attached hereto.

Owner shall file the amended application to the Zoning Commission and thereafter such amended application shall be expeditiously processed and considered by City.

2.05 Filing of New Preliminary Plan. Owner will file with City a new preliminary plan (the "New Preliminary Plan") covering the Entire Property. The New Preliminary Plan shall reflect the land uses for the various tracts comprising the Entire Property shown on Exhibit "A" attached hereto.

2.06 Roadway B. The New Preliminary Plan shall reflect the roadway connecting Henry Miller Drive to Brodie Lane generally depicted on Exhibit "A" attached hereto ("Roadway B"). Owner and City agree as follows with respect to Roadway B:

(a) Contemporaneously with City's approval of the New Applications, Owner shall dedicate to City, for no compensation, the fee simple ownership to a one hundred ten (110) foot right-of-way for Roadway B (the "Roadway B Right-of-Way") generally in the configuration shown on Exhibit "A," subject to minor, reasonable changes thereto as may be suggested by City's engineer for valid engineering, traffic, tree protection or cost reasons, or as may be suggested by Owner and agreed to by City;

(c) Each lot in the 65.99 Acre Tract shall have a minimum of a four thousand (4,000) square feet of land in the Uplands Zone; and

(d) Concurrently with City's approval of the New Applications, Owner shall execute and file in the Deed Records of Travis County, Texas a restrictive covenant restricting use of the 65.99 Acre Tract to single-family development for a period of thirty (30) years from the date thereof.

2.08 Development of 37.04 Acre Tract. The approximately 37.04 acre portion of the Entire Property generally situated north of the northern boundary of the Critical Water Quality Zone applicable to the Sunset Valley Branch of Williamson Creek and south of Jones Road, such 37.04 acre tract to be generally as shown as "Block 'B'" on Exhibit "A" attached hereto (the "37.04 Acre Tract"), shall be developed for single-family purposes, subject to the following terms:

(a) The number of lots in the 37.04 Acre Tract shall not exceed forty-seven (47) lots;

(b) Notwithstanding any restrictions in City's Land Development Code, the lots in the 37.04 Acre Tract shall not be restricted in any manner with regard to configuration of such lots; and

(c) Concurrently with City's approval of the New Applications, Owner shall execute and file in the Deed Records of Travis County, Texas a restrictive covenant restricting use of the 37.04 Acre Tract to single-family development for a period of thirty (30) years from the date thereof.

2.09 Dedication of Critical Water Quality Zone Applicable to the Sunset Valley Branch of Williamson Creek. Pursuant to the terms of City's Land Development Code, Owner shall

dedicate to City, for no compensation, by special warranty deed, the Critical Water Quality Zone applicable to the Sunset Valley Branch of Williamson Creek; provided, however, such deed shall contain a restrictive covenant restricting use of the Critical Water Quality Zone for conservational and/or water quality purposes.

2.10 Detention and Water Quality Filtration Facilities. Owner shall construct, at Owner's sole cost, such detention and water quality filtration facilities on the Entire Property, including stormwater water run-off from Roadway B (less the 64.59 Acre Tract and the 8.5 Acre Tract), as are currently required by City's Land Development Code in connection with development of the Entire Property (less the 64.59 Acre Tract and the 8.5 Acre Tract), subject to the following:

(a) Owner agrees to cooperate with City with respect to the size and placement of such facilities to allow City to utilize such facilities for regional or centralized detention or water quality filtration purposes; provided, however, in connection therewith, Owner shall not be required to expend more money, incur more liability or dedicate more land than if Owner were constructing such facilities to handle run-off solely from the Entire Property (less the 64.59 Acre Tract and the 8.5 Acre Tract) and in compliance with City's Land Development Code; and

(b) Notwithstanding any restrictions in City's Land Development Code, Owner shall not be restricted in the placement of such facilities by lot lines, it being the intent hereof that such facilities shall be situated and configured according to sound engineering principles and in a manner designed to provide an effective and efficient detention and water quality filtration system, subject to the mutual approval of Owner's engineer and City's engineer.

2.11 Applicable Rules and Ordinances. City and Owner agree that the rezoning applications for Lot Two of Block "F", Lot One of Block "F" and Lot One of Block "A" are governed by City's Land Development Code in effect from September 20, 1994 to February 21, 1995.

2.12 Variances and Conditional Overlays. City acknowledges that Owner desires to obtain:

(a) Any variances expressly described herein, including those specified on Exhibit "E" attached hereto or otherwise required to allow development of the Entire Property (less the 64.59 Acre Tract and the 8.5 Acre Tract) consistent with the terms hereof (cumulatively, the "Variances"); and

(b) The terms of the conditional overlays applicable to the 47.26 Acre Tract and the 29.18 Acre Tract attached hereto as Exhibits "C" and "D," respectively.

2.13 Granting of Variances and Conditional Overlays. City and Owner acknowledge and agree as follows:

(a) The City Council does not have the power or authority to grant any of the Variances or conditional overlays pursuant to the terms of this Agreement, and no implication is intended hereby to such effect;

(b) All requests for Variances and conditional overlays will be processed in accordance with normal City procedural requirements;

(c) Owner believes that such Variances and conditional overlays are necessary for achievement of the development levels reflected in this Agreement; and

(d) All decisions to be made by City with respect to such Variances and conditional overlays are reserved until such Variances and conditional overlays are processed in accordance with normal City procedural requirements.

2.14 Restaurant Variance. Without in any way modifying the terms of Section 2.13 hereof, it is acknowledged by the parties that Owner shall request a variance from the terms of City's Land Development Code to allow construction of a dine-in, upscale restaurant building not to exceed four thousand five hundred (4,500) square feet, and parking related thereto, at the northeast corner of Brodie Lane and Roadway B (as such roadways are depicted on Exhibit "A" attached hereto), such construction to encroach into the Water Quality Transition Zone applicable to the Sunset Valley Branch of Williamson Creek. Without modifying any other terms herein, it is intended that the impervious coverage and building square footage associated with the foregoing shall be included in the limitations applicable to the 47.26 Acre Tract.

2.15 Existing Applications. With respect to the Existing Preliminary Plans and the Existing 40 Acre Zoning Application (together, the "Existing Applications"), Owner and City agree as follows:

(a) Until City's approval of the New Applications, the Existing Applications shall be considered tabled and held in abeyance by City, with no loss of rights or privileges thereunder; and

(b) Concurrently with City's approval of the New Applications, Owner shall withdraw the Existing Applications, subject to Owner's right to reinstate such Applications as contemplated in Section 3.02 hereof.

2.14 Gift of 2.81 Tract by Luker's Inc.. Upon execution of this Agreement, Luker's, Inc., a Texas corporation, shall convey to City by special warranty deed an approximately 2.81

acre tract of land in Travis County, Texas more particularly described on Exhibit "F" attached hereto. Such 2.81 acre tract adjoins City's existing conservation area, which abuts the 64.59 Acre Tract which, if the provisions of this Settlement Agreement are fulfilled, would result in a combined conservation area in excess of 100 acres.

### ARTICLE 3

#### CONDITIONS

3.01 Conditions to Owner's Gifting Obligations. Owner and City acknowledge and agree that City shall not receive title to the 8.5 Acre Tract and the 64.59 Acre Tract unless and until the earlier to occur of the following events: (a) City re-zones the 47.26 Acre Tract and the 29.18 Acre Tract in accordance with the terms of Sections 2.03 and 2.04 hereof and City approves the final subdivision plats for the Entire Property and such plats are filed of record in Travis County, Texas; and (b) City issues to Owner a site development permit for development of a 250,000 square foot retail project on the 47.26 Acre Tract, subject to such conditions and variances as may be acceptable to Owner (the "47.26 Acre Permit").

3.02 Reinstatement Right. In the event that City does not (a) re-zone the 47.26 Acre Tract and the 29.18 Acre Tract consistent with the terms of Sections 2.03 and 2.04 hereof and approve the final subdivision plats in accordance with the terms of this Agreement or (b) issue the 47.26 Acre Permit to Owner on or before ninety (90) days from the date of Owner's application therefor, Owner shall have the right to reinstate the Existing Applications and proceed immediately with a City Council vote thereon.

3.03 Remedies. In the event that City fails to perform any of its obligations under this Agreement, as its sole remedy, Owner shall have the right to reinstate the Existing Applications and proceed immediately with a City Council vote thereon and Owner shall not be required to

make any of the land transfers or dedications to City provided for in this Agreement. In the event Owner fails to perform any of its obligations under this Agreement, as its sole remedy, City may terminate this Agreement and proceed with performing its governmental functions in connection with zoning, subdivision, roadway and other development issues on the Entire Property.

#### ARTICLE 4

##### REPRESENTATIONS AND WARRANTIES

4.01 Representation and Warranty by Owner. Owner represents and warrants that it is the sole owner of fee simple title to the Entire Property, and that the authorized representative of Owner executing this Agreement has full authority to do so on behalf of Owner.

4.02 Representation and Warranty by City. City represents and warrants that this Agreement has been approved by the City Council after proper notice and compliance with all procedural requirements.

#### ARTICLE 5

##### GENERAL PROVISIONS

5.01 Effective Date. This Agreement shall take effect and become binding on Owner and City as of September 12, 1996.

5.02 No Waiver. No waiver of any of the terms of this Agreement shall be valid unless in writing and signed by all parties to this Agreement. No waiver of default of any terms of this Agreement shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

5.03 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

5.04 Venue. Any and all acts and obligations contemplated by this Agreement shall be performable and performed in Travis County, Texas.

5.05 Agreement Prepared Jointly By All Parties' Attorneys. This Agreement has been prepared by the joint efforts of the respective attorneys for Owner and City.

5.06 Acknowledgement of Entire Agreement. Owner and City, or the duly authorized representative of such parties, acknowledges that he or she has carefully read this instrument, including all documents or exhibits that it refers to; that this instrument expresses the entire agreement between the parties concerning the subject it purports to cover; and that each party has executed this Agreement freely and of his or her own accord and with full authority.

5.07 Partial Invalidity. If any provision of this Agreement is or may be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless survive and continue in full force and effect without being impaired or invalidate in any way.

5.08 Notice. Any notice to be given under the terms of this Agreement by any party to any other party shall be in writing and may be effected by personal delivery or registered or certified mail, return receipt requested. Each party, or the duly authorized representative of each party, may change his or her address for notice by giving notice of the change in accordance with the provisions of this Section.

5.09 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto, and their respective heirs, legal representatives, successors and assigns.

5.10 Definitions. Any terms used as defined terms herein, but without express definitions set forth herein, shall have the meanings given them in City's Land Development Code.

5.11 Multiple Originals. This instrument is executed in multiple originals.

5.12 Exhibits. The exhibits described below shall be attached to this Agreement and considered a part hereof for all purposes:

Exhibit "A" - Conceptual map of Entire Property, showing various tracts therein  
Exhibit "B" - Legal description of Entire Property  
Exhibit "C" - Conditional overlays proposed for 47.26 Acre Tract  
Exhibit "D" - Conditional overlays proposed for 29.18 Acre Tract  
Exhibit "E" - List of Anticipated Variances  
Exhibit "F" - Legal description of 2.81 Tract

EXECUTED as of the 12th day of September, 1996.

**OWNER:**

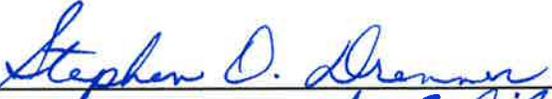
J. D. WEAVER FAMILY LIMITED  
PARTNERSHIP, a Texas limited partnership

By: Brodie-Weaver, Inc., a Texas corporation,  
its general partner

By: 

William S. Walters, III,  
as Attorney-in-Fact for  
Brodie-Weaver, Inc.

APPROVED AS TO FORM AND CONTENT:

  
Stephen O. Drenner *by C. Dickey*  
State Bar No. 06115800  
Drenner & Stuart, L.L.P.  
301 Congress Avenue, Suite 2100  
Austin, Texas 78701  
(512) 404-2200  
(512) 404-2244 - Facsimile  
Attorneys for J. D. Weaver Family Partnership

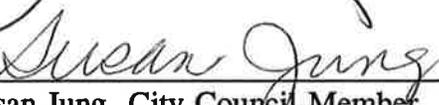
**CITY:**

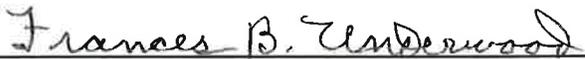
CITY OF SUNSET VALLEY, TEXAS

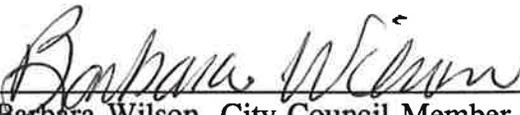
By:   
Michael C. Francis, Mayor

By: \_\_\_\_\_  
Mattie Adams, Mayor Pro Tem

By:   
Terry Cowan, City Council Member

By:   
Susan Jung, City Council Member

By:   
Frances Underwood, City Council Member

By:   
Barbara Wilson, City Council Member

By: Carol Knight  
Carol Knight, Zoning Commission Member

By: Karen Medicus  
Karen Medicus, Zoning Commission Member

By: Cynthia Nelson  
Cynthia Nelson, Zoning Commission Member

By: Robert Skewis  
Robert Skewis, Zoning Commission Member

By: Tom Trutna  
Tom Trutna, Zoning Commission Member

APPROVED AS TO FORM AND CONTENT:

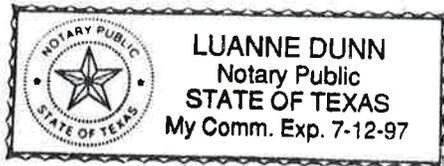
W. Thomas Buckle  
W. Thomas Buckle  
State Bar No. 03299000  
Scanlan Buckle & Young, P.C.  
602 W. 11th Street  
Austin, Texas 78701  
(512) 478-4651  
(512) 478-7750 - Facsimile  
Attorneys for CITY OF SUNSET VALLEY

LUKER'S, INC., a Texas corporation  
By: [Signature]  
William S. Walters, III, President  
(For the sole purpose of agreeing to the terms  
of Section 2.15 in the Settlement Agreement)

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared WILLIAM S. WALTERS III, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Brodie-Weaver, Inc., as general partner of the J. D. Weaver Family Partnership, a Texas limited partnership, and that he has executed the same as the act on behalf of such limited partnership for the purposes and consideration therein expressed, and in the capacity of Attorney-in-Fact as therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 12th day of September, 1996.

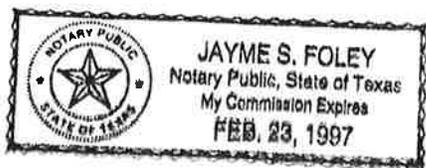


[Signature]  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared MICHAEL C. FRANCIS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sunset Valley, a municipal corporation, and that he has executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 17<sup>th</sup> day of September, 1996.



*Jayme S. Foley*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared MATTIE ADAMS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sunset Valley, a municipal corporation, and that she has executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

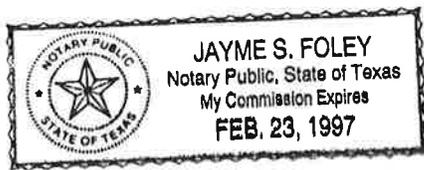
GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of September, 1996.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared TERRY COWAN, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sunset Valley, a municipal corporation, and that he has executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 17<sup>th</sup> day of September, 1996.

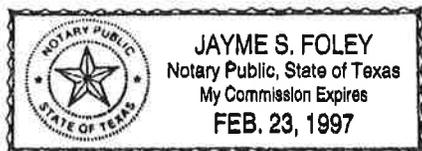


*Jayme S. Foley*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared SUSAN JUNG, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sunset Valley, a municipal corporation, and that she has executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 17<sup>th</sup> day of September, 1996.

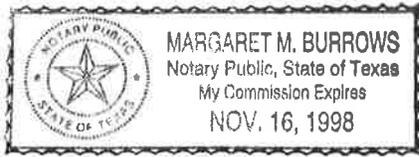


*Jayme S. Foley*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
                                      §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared FRANCES UNDERWOOD, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sunset Valley, a municipal corporation, and that she has executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 19<sup>th</sup> day of September, 1996.

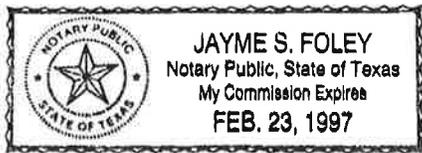


*Margaret M. Burrows*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
                                      §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared BARBARA WILSON, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sunset Valley, a municipal corporation, and that she has executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 17<sup>th</sup> day of September, 1996.

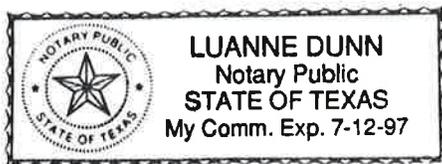


*Jayme S. Foley*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared WILLIAM S. WALTERS III, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Luker's, Inc., a Texas corporation, and that he has executed the same as the act on behalf of such corporation for the purposes and consideration therein expressed, and in the capacity as therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 12<sup>th</sup> day of September, 1996.

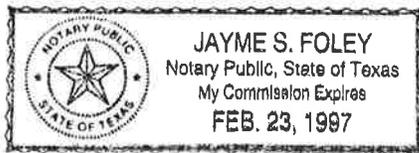


*Luanne Dunn*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared CAROL KNIGHT, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sunset Valley, a municipal corporation, and that she has executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27<sup>th</sup> day of September, 1996.

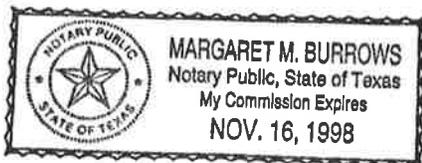


*Jayme S. Foley*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared KAREN MEDICUS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sunset Valley, a municipal corporation, and that she has executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 23<sup>rd</sup> day of September, 1996.

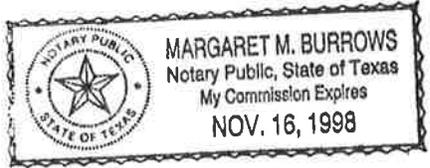


*Margaret M. Burrows*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared CYNTHIA NELSON, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sunset Valley, a municipal corporation, and that she has executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 23<sup>rd</sup> day of September, 1996.



*Margaret M. Burrows*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared ROBERT SKEWIS, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sunset Valley, a municipal corporation, and that he has executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 26<sup>th</sup> day of September, 1996.



*Margaret M. Burrows*  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

BEFORE ME, the undersigned, a Notary Public, on this day personally appeared TOM TRUTNA, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said City of Sunset Valley, a municipal corporation, and that he has executed the same as the act of such municipal corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 19<sup>th</sup> day of September, 1996.



*Margaret M. Burrows*  
\_\_\_\_\_  
Notary Public, State of Texas

## EXHIBIT B

280.5 ACRES  
CHARLOTTE WEAVER  
JOHN DALE WEAVER

FN. NO. 93-247 (PTR)  
JANUARY 4, 1994  
BPI JOB NO. 579-01.59

## DESCRIPTION

OF A 280.5 ACRE TRACT OR PARCEL OF LAND OUT OF AND PART OF THE THEODORE BISSELL SURVEY NO. 18, SITUATED IN THE CITY OF SUNSET VALLEY, TRAVIS COUNTY, TEXAS, BEING THE REMAINDER OF THAT CERTAIN 280 ACRES CONVEYED TO CHARLOTTE WEAVER BY DEED OF RECORD IN VOLUME 774, PAGE 569 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS AND THE REMAINDER OF 2.15 ACRES CONVEYED TO JOHN DALE WEAVER BY DEED OF RECORD IN VOLUME 1709, PAGE 1346 OF SAID REAL PROPERTY RECORDS, SAID 280.5 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at the most westerly northwest corner of said Charlotte Weaver tract, same being the intersection of the east line of Brodie Lane (R.O.W. varies) and the south line of U.S. Highway 290 (R.O.W. varies), for the most westerly, northwest corner of the herein described tract;

THENCE, N65°26'53"E, leaving the east line of Brodie Lane, along the south line of U.S. Highway 290, a distance of 89.20 feet to a 1/2 inch iron rod set at the intersection of the south line of U.S. Highway 290 and the south line of Jones Road (50' R.O.W.), same being the north line of said Charlotte Weaver tract, for the most easterly northwest corner of the herein described tract;

THENCE, along the south line of Jones Road, same being the north line of said Charlotte Weaver tract, the following three (3) courses and distances:

- 1) S61°26'36"E, a distance of 1984.36 feet to a fence post found for an angle point;
- 2) S56°23'13"E, a distance of 229.43 feet to a fence post found for an angle point;
- 3) S61°45'27"E, a distance of 610.56 feet to a 1/2 inch iron rod found for the northeasterly corner of said Charlotte Weaver Tract, same being the northwesterly corner of the 3.00 acre tract conveyed to the City of Sunset Valley by Deed of Record in Volume 1610, Page 589 of said Real Property Records;

THENCE, S27°57'11"W, leaving the south line of Jones Road, along the east line of said Charlotte Weaver Tract, same being the west line of said City of Sunset Valley Tract, a distance of 502.20 feet to a 1/2 inch iron rod found at the southwesterly corner of said City of Sunset Valley Tract, same being the northwesterly corner of Huebner Estates, a subdivision of record in Book 60, Page 6, of the Plat Records of Travis County, Texas;

THENCE, S26°02'41"W, continuing along the easterly line of said Charlotte Weaver Tract, same being the westerly line of said Huebner Estates, a distance of 342.17 feet to a 1/2 inch iron rod found at the southwesterly corner of said Huebner Estates, same being the northwesterly corner of Lot 1 Sunset Oaks, a subdivision of record in Book 85, Page 280 of said Plat Records;

THENCE, continuing along the easterly line of said Charlotte Weaver Tract, same being the westerly line of said Sunset Oaks, the following three (3) courses and distances:

- 1) S27°55'41"W, passing at a distance of 839.69 feet a 1/2 inch iron rod found for the southwesterly corner of Lot 7 Sunset Oaks, and continuing for a total distance of 999.69 feet to a 1/2 inch iron rod set for the southwesterly corner of Lot 8, Sunset Oaks;
- 2) S27°55'27"W, passing at a distance of 1115.59 feet a 60-d nail found in a tree stump, at the apparent southwesterly corner of Lot 15 Sunset Oaks, and continuing for a total distance of 1264.07 feet to a 1/2 inch iron rod found for an angle point of Lot 16, Sunset Oaks;

12345 1718

3) S27°50'34"W, a distance of 520.44 feet to a 1/2 inch iron rod found at the southwesterly corner of said Lot 16 for an interior ell corner hereof;

THENCE, S47°46'39"E, along the southerly line of said Lot 16, a distance of 199.91 feet to a 1/2 inch iron rod found for an angle point;

THENCE, S62°01'49"E, passing at a distance of 49.06 feet, a 1/2 inch iron rod found at the southeasterly corner of said Lot 16, same being the southwesterly corner of Long Oak Trail Right of Way, (55' R.O.W.), and continuing for a total distance of 144.59 feet to an iron pipe found in concrete in the southerly line of that certain tract conveyed to Anita Elizabeth Fowler by deed of record in Volume 10833, Page 19 of said Real Property Records, same being the northwesterly corner of that 45.299 acre tract conveyed to Scott Yong W. Choi and Yong B. Choi by Deed of Record in Volume 11812, Page 1665 of said Real Property Records;

THENCE, S42°13'56"W, along the westerly line of said 45.299 acre tract, same being the southernmost, easterly line of said Charlotte Weaver Tract, a distance of 454.40 feet to a 1/2 inch iron rod found for the southernmost, southeasterly corner of the herein described tract;

THENCE, N69°42'01"W, along the southerly line of said Charlotte Weaver Tract, same being the westerly, north line of said 45.299 acres and the northerly line of that 4.35 acres conveyed to Beverly Nance by Deed of Record in Volume 2404, Page 84 of said Real Property Records, for a distance of 359.24 feet to an iron pipe found in concrete at the northeasterly corner of that tract conveyed to Burford L. Westlund and wife, Dorothy Ann Westlund by Deed of Record in Volume 2433, Page 23 of said Real Property Records;

THENCE, N62°31'06"W, continuing along the southerly line of said Charlotte Weaver Tract, same being the northerly line of said Westlund Tract, a distance of 290.25 feet to a fence post found for the northwesterly corner of said Westlund Tract, same being the northeasterly corner of that 5.0 acre tract conveyed to Edgar Lind and wife, Ima Lee Lind by Deed of Record in Volume 995, Page 288 of said Real Property Records;

THENCE, N61°42'07"W, continuing along the southerly line of said Charlotte Weaver Tract, same being the northerly line of said Lind Tract, a distance of 251.24 feet to a 1/2 inch iron rod found at the northwesterly corner of said Lind Tract, same being the northeasterly corner of Lot 4 Follis Acres, a subdivision of record in Book 81, Page 177 of said Plat Records;

THENCE, N62°11'53"W, continuing along the southerly line of said Charlotte Weaver Tract, same being the north line of said Lot 4, a distance of 213.45 feet to a 1/2 inch iron rod found at the northwesterly corner of said Lot 4, same being the northeasterly corner of that 4.48 acres conveyed to Leah B. Kleas by Deed of Record in Volume 6463, Page 1365 of said Real Property Records;

THENCE, N62°06'46"W, continuing along the southerly line of said Charlotte Weaver Tract, same being the northerly line of said Leah B. Kleas Tract and also continuing along the northerly line of that 4.48 acre tract conveyed to Philip L. Kleas and wife, Leah B. Kleas by Deed of Record in Volume 5469, Page 1740 of said Real Property Records, a distance of 473.79 feet to a 1/2 inch iron rod found at the northwesterly corner of said Philip L. Kleas Tract, same being the northeasterly corner of that 3.363 acre tract conveyed to Michael Earl Warnken and wife, Carolyn Warnken by deed of Record in Volume 6059, Page 1544 of said Real Property Records;

THENCE, N63°16'27"W, continuing along the southerly line of said Charlotte Weaver Tract and also into the southerly line of said John Dale Weaver Tract, same being the northerly line of said

12345 1719

Warnken Tract, a distance of 436.46 feet to a fence post found for the northwesterly corner of said Warnken Tract, same being the northeasterly corner of that 7.45 acres conveyed to Earl R. Chase and wife, Eva K. Chase by Deed of Record in Volume 1537, Page 200 of said Real Property Records;

THENCE, along the southerly line of said John Dale Weaver Tract, same being the northerly line of said Chase Tract, the following two (2) courses and distances:

- 1) N60°03'02"W, a distance of 47.77 feet to a fence post found for an angle point;
- 2) N73°12'01"W, a distance of 243.84 feet to a 1/2 inch iron rod found in concrete for the northwesterly corner of said Chase Tract, same being the northeasterly corner of that 5.362 acre tract conveyed to the Behren's Family Trust by Deed of Record in Volume 10917, Page 197 of said Real Property Records;

THENCE, continuing along the southerly line of said John Dale Weaver Tract, same being the northerly line of said Behren's Family Tract, the following two (2) courses and distances: \_\_\_\_\_

- 1) N72°27'13"W, a distance of 136.65 feet to an elm tree found for an angle point;
- 2) N65°50'32"W, a distance of 699.64 feet to a fence post found in the easterly line of Brodie Lane, for the northwesterly corner of said Behren's Family Tract, same being the southwesterly corner of said John Dale Weaver Tract, also being the most southwesterly corner of the herein described tract;

THENCE, N28°28'47"E, along the easterly line of Brodie Lane, same being the westerly line of said John Dale Weaver Tract, passing at an approximate distance of 145 feet the apparent northerly deed line of said John Dale Weaver Tract, and continuing along the westerly line of said Charlotte Weaver Tract for a total distance of 1726.88 feet to a 1/2 inch iron rod found for an angle point;

THENCE, N28°59'31"E, continuing along the westerly line of said Charlotte Weaver Tract, same being the easterly line of Brodie Lane, a distance of 498.23 feet to the POINT OF BEGINNING, containing an area of 280.5 acres of land, more or less, within these metes and bounds.

STATE OF TEXAS  
COUNTY OF TRAVIS

§  
§  
§

KNOW ALL MEN BY THESE PRESENTS

THAT I, JOHN T. BILNOSKI, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE ABOVE DESCRIPTION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

WITNESS MY HAND AND SEAL AT AUSTIN, TRAVIS COUNTY, TEXAS THIS 4TH DAY OF JANUARY, 1994. A.D.

BURY & PITTMAN, INC.  
ENGINEERS-SURVEYORS  
3345 SEE CAVE ROAD, SUITE 200  
AUSTIN, TEXAS 78746

*John T. Bilnoski*  
JOHN T. BILNOSKI, R.  
NO. 4998  
STATE OF TEXAS



REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

12345 1720

EXHIBIT "C"

DRENNER & STUART, L.L.P.  
ATTORNEYS AT LAW

Revised to attach to  
Settlement Agreement  
(applicable only to  
50 Acre Tract)  
47.26  
March 11, 1996  
August 27

301 CONGRESS AVENUE  
SUITE 2100  
AUSTIN, TEXAS 78701  
(512) 404-2200  
FAX (512) 404-2244

WRITER'S DIRECT DIAL NUMBER:  
(512) 404-2201

STEPHEN O. DRENNER  
JOHN W. ELLIOTT  
MICHAEL L. ROBERTSON  
WALLACE M. SMITH  
DONALD L. STUART  
DAVID A. WOLFF

CHRISTOPHER K. BELL  
JENNIFER P. HAMMER  
R. KEMP KASLING  
STEVEN C. METCALFE  
PHILLIP H. SCHMANDT  
DAVID P. SMITH, JR.  
ALEXANDER N. VON KREISLER

By Fax No. 892-6108

Ms. Jayme S. Foley  
City Administrative Assistant  
City of Sunset Valley  
Municipal Building  
Jones Road and 2 Lone Oak Trail  
Austin, Texas 78745

Re: Zoning Applications for ~~24.106 Acre Tract~~ (the "~~24 Acre Tract~~") and for ~~40.110 Acre Tract~~ (the "~~40 Acre Tract~~")  
50  
47.26

Dear Jayme:

This letter shall supplement and modify my letter to you of ~~January 31, 1996~~ <sup>March 11</sup> with respect to the proposed conditional overlays for the zoning applications for the above-referenced tracts

I. 24 ACRE TRACT

A. Traffic

1. Only the Brodie Lane median breaks existing as of January 1, 1996 shall be utilized to service the 24 Acre Tract.
2. A maximum of three curb cuts for driveways will be constructed from the 24 Acre Tract onto Brodie Lane. Such curb cuts will comply with all applicable regulations of the City of Sunset Valley and TXDOT.
3. No driveway access shall be allowed to Jones Road as long as Jones Road remains closed to vehicular traffic between Henry Miller Drive and Brodie Lane.
4. No curb cuts, driveways or vehicular access shall be allowed to residential areas from the 24 Acre Tract.

DRAFT

Ms. Jayme Foley  
March 11, 1996  
Page 2

5. A strip of the 24 Acre Tract 15 feet in width and bordering the existing right-of-way for Brodie Lane shall be reserved for expansion of such right-of-way. Building setback requirements should be calculated from the eastern edge of such 15-foot strip.

B. Landscape

1. The 24 Acre Tract shall incorporate a minimum of a one hundred fifty foot (150 ft.) setback from any areas zoned for residential use. No improvements, other than those associated with landscaping needs, drainage facilities, water quality needs, pedestrian trails or paths or outdoor pedestrian courts, shall be permitted within the setback area.
2. A minimum of 6 hardwood trees, having a minimum of six inches in diameter, will be transplanted to the streetyard on the 24 Acre Tract from elsewhere on the 24 Acre Tract or the 40 Acre Tract. This requirement shall be in addition to plantings currently required by the LDC.
3. Visual screening requirements shall conform to the City's current requirements in the LDC. (Additionally, see Paragraph C.2 below with respect to masonry requirements).
4. Tenants occupying a minimum of 30,000 square feet are required to have a curb to building zone of a minimum of 25 feet to be used for sidewalks, landscape buffering and pedestrian spaces.
5. A minimum of one outdoor space with a minimum area of 1,600 square feet will be developed as a pedestrian court, and will be suitably furnished with benches, trash receptacles, planters and pedestrian-scale lighting, although this area does not have to utilize impervious materials (i.e., it may be pervious). Design of this space shall be architecturally compatible with the architectural character of the buildings.
6. A minimum of one pedestrian outdoor trail and two site access points will be established from the retail area to surrounding open spaces and public streets. Any such pedestrian outdoor trail and access points trail situated upon the 24 Acre Tract shall be completed prior to issuance of a building permit for any building situated upon the 24 Acre Tract. Additionally,

**DRENNER & STUART, L.L.P.**  
ATTORNEYS AT LAW

Ms. Jayme Foley  
March 11, 1996  
Page 3

one pedestrian walkway (utilizing pervious and/or impervious materials) and being a minimum of six feet (6') in width shall connect the 24 Acre Tract and the 40 Acre Tract.

7. Integrated Pest Management (IPM) techniques as currently established by the City of Austin will be used in landscape maintenance practices.
8. Landscape and irrigation design shall be prepared and installed using xeriscape water and energy saving techniques. The foregoing requirements are intended to be in addition to the City's landscape requirements.
9. Maximum impervious coverage on the 24 Acre Tract shall not exceed 45% (including transfer credits). Any buildings currently existing on the 24 Acre Tract shall not be counted for purposes of the foregoing limitation. Additionally, any land situated in the reserved area for expansion of Brodie Lane right-of-way, as described in Paragraph A.5 above, shall be included as part of the 24 Acre Tract for purposes of the foregoing limitation, but any impervious coverage constructed as part of any future expansion of Brodie Lane on such reserved area shall not be included for purposes of the foregoing limitation.
10. All detention and/or water quality ponds shall be screened in accordance with one of the following methods:
  - a. Berming may be installed in lieu of shrub massing. Berm heights should be at least three feet along its entire length and maximum side slopes should be no steeper than four feet horizontal for every one foot vertical. Berms should be placed so as to blend with natural surroundings on site.
  - b. If it can be demonstrated that the pond required to be screened may not be at all visible from the adjacent properties or roadways due to significant differences in elevation, this elevational difference may be accepted in lieu of vegetative screening. The applicant must illustrate the topographic differences in order to receive credit.

Ms. Jayme Foley  
March 11, 1996  
Page 4

- c. Existing vegetation may be used as screening if the following conditions are met:
- (1) The vegetation area is at least ten (10) feet wide and a limit of construction line is clearly marked on the plans.
  - (2) The area must contain the equivalent of one (1) large tree, two (2) small trees and six (6) understory shrubs per 20 linear feet of screen.

C. Architectural

1. Massing of buildings in the retail center shall be varied to provide both horizontal and vertical relief. Horizontal variation will be provided by use of setbacks along the front facade spaced a maximum of 150 feet apart, prohibition of building blocks in excess of 600 feet in length and providing at least one change in angle from 15 degrees to 90 degrees in building blocks in excess of 400 feet in length. Vertical variation will be provided by varying roof lines, in particular to emphasize major building entrances.
2. All facades are required to be 100% masonry construction in earth tone colors. As used herein, the term "masonry" shall mean "a building material on the exterior surfaces of the outside walls constructed of brick, tile, stone, stucco, adobe, marble, glass or combination of any of these materials or any veneer utilizing any of these materials."
3. Architectural character and style is required to be consistent and similar for each building in the development to create a unified, cohesive development.
4. City of Austin "Green Builder" concepts ("2 Star" level minimum) will be used to minimize energy consumption and to maximize energy conservation.
5. Buildings shall comply with the following maximum height limitations:  
(a) in-line buildings having less than 30,000 square feet—maximum height of 25 feet; (b) free standing buildings having less than 30,000 square

Ms. Jayme Foley  
March 11, 1996  
Page 5

feet—maximum height of 30 feet; and (c) all buildings having more than 30,000 square feet—maximum height of 40 feet. For purposes of the foregoing, building height shall be measured consistent with the definition of "height" attached hereto as Schedule 1, and such restrictions do not assume compliance with Sec. 1.022 and Sec. 2.237 of the current LDC.

6. Only one building may be in excess of 50,000 square feet, and such building may not exceed 85,000 square feet.
7. Maximum aggregate building square footage on the 24 Acre Tract shall not exceed 150,000 square feet. Any buildings currently existing on the 24 Acre Tract shall not be counted for purposes of the foregoing limitation.

D. Lighting

1. Light screening requirements as currently set forth in the LDC shall be required.
2. Exterior lighting shall be designed to minimize glare and light trespass to preserve the rural character of the City of Sunset Valley. Consistent with the requirements set forth herein, the exterior lighting layout for the 24 Acre Tract shall require City Council approval. Illumination levels for driveway, parking lot, and security lighting should not exceed 3 foot-candles, average maintained, measured horizontally at finished ground/pavement level.
3. 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 should conform to Illumination Engineering Society (IES) standards and Federal/State requirements. Commercial lighting other than that necessary for security should be turned off at the later of closing time or 11:00 PM. Lighted commercial signs should be turned off or reduced to half their original illumination after the later of closing time or 11:00 PM.

Ms. Jayme Foley  
March 11, 1996  
Page 6

4. Artificial lighting for parking areas should not exceed the following requirements:
  - (a) Free standing light fixtures should not exceed a height of 28 feet measured from the ground/pavement to the bottom base of the fixture;
  - (b) Fixture wattage shall not exceed 250 lamp watts.
  - (c) Fixtures shall be limited to 4 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. 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.
5. Landscaping 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. Uplighting using flood/well lights is prohibited except as provided in paragraph (b) below. 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 with an extending truncated shield to maximize cutoff.

Ms. Jayme Foley  
March 11, 1996  
Page 7

(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.

6. Fixture lamps shall be quartz halogen, fluorescent, metal halide, mercury vapor, high pressure sodium or other lamp typed approved by the City Council

E. Noise and Odor Mitigation

Noise and odor mitigation, as currently required in the LDC, shall be applicable.

II.

50 47.26  
40 ACRE TRACT

A. Traffic

1. Only the median breaks on Brodie Lane existing as of January 1, 1996 shall be utilized to service the 40 Acre Tract.

2. A maximum of six curb cuts for driveways will be constructed from the 40 Acre Tract onto Brodie Lane. Such curb cuts will comply with all applicable regulations of the City of Sunset Valley and TXDOT.

3. The developer will participate (to the extent of a maximum of 50%) in the installation of a signal located at the 3rd median break south of the existing signal when warranted.

4. No curb cuts, driveways or vehicular access shall be allowed to residential areas from the 40 Acre Tract.

5. A strip of the 40 Acre Tract 15 feet in width and bordering the existing right-of-way for Brodie Lane shall be reserved for expansion of such right-of-way. Building setback requirements shall be calculated from the eastern edge of such 15 foot strip.

*\* provided, however, at least one curb cut shall be allowed to Roadway B (as shown on Exhibit "A" attached to the Settlement Agreement) in a location to be agreed upon by the developer and the City of Sunset Valley;*

Ms. Jayme Foley  
March 11, 1996  
Page 8

B. Landscape

1. <sup>50 47.26</sup> The 40 Acre Tract shall incorporate a minimum of a ~~one hundred fifty foot (150 ft.) setback from any areas zoned for residential use; provided, however, such setback shall be a minimum of two hundred feet (200 ft.) in areas where the area zoned for commercial use directly abuts an area zoned for residential use without any intervening roadway.~~ <sup>ten (10) acre buffer along the western property line</sup> No improvements, other than those associated with landscaping needs, drainage facilities, water quality needs, pedestrian trails or paths or outdoor pedestrian courts, shall be permitted with the setback area. <sup>buffer</sup>
2. <sup>50 47.26</sup> A minimum of 10 hardwood trees, having a minimum of six inches in diameter, will be transplanted to the streetyard on the 40 Acre Tract from elsewhere on the 40 Acre Tract or the 24 Acre Tract. This requirement shall be in addition to plantings currently required by the LDC. <sup>50 47.26</sup>
3. Visual screening requirements shall conform to the City's current requirements in the LDC. (Additionally, see Paragraph C.2 below with respect to masonry requirements). <sup>29.18</sup>
4. Tenants occupying a minimum of 30,000 square feet are required to have a curb to building zone of a minimum of 25 feet to be used for sidewalks, landscape buffering and pedestrian spaces.
5. A minimum of two outdoor spaces with a minimum aggregate area of 2,500 square feet will be developed as pedestrian courts, and will be suitably furnished with benches, trash receptacles, planters and pedestrian-scale lighting, although this area does not have to utilize impervious materials (i.e., it may be pervious). Design of these spaces shall be architecturally compatible with the architectural character of the buildings.
6. A minimum of two pedestrian outdoor trails access points will be established from the retail area to surrounding open spaces and public streets. Any such pedestrian outdoor trails and access points situated upon the 40 Acre Tract shall be completed prior to issuance of a certificate of occupancy for any building situated upon the 40 Acre Tract. <sup>50 47.26</sup> Additionally, one pedestrian walkway (utilizing pervious and/or <sup>50 47.26</sup>

DRENNER & STUART, L.L.P.  
ATTORNEYS AT LAW

Ms. Jayme Foley  
March 11, 1996  
Page 9

impervious materials) and being a minimum of six feet (6') in width shall connect the ~~40~~ <sup>47.26</sup> Acre Tract and the ~~24~~ <sup>29.18</sup> Acre Tract.

7. Integrated Pest Management (IPM) techniques as currently established by the City of Austin will be used in landscape maintenance practices.

8. Landscape and irrigation design shall be prepared and installed using xeriscape water and energy saving techniques. The foregoing requirements are intended to be in addition to the City's landscape requirements as set forth in the LDC. → *Additionally,*

9. Maximum impervious coverage on the ~~40~~ <sup>50-47.26</sup> Acre Tract shall not exceed 45% ~~(including transfer credits)~~. *Any* land situated in the reserved area for expansion of Brodie Lane right-of-way, as described in Paragraph A.5 above, shall be included as part of the ~~40~~ <sup>50</sup> Acre Tract for purposes of the foregoing limitation, but any impervious coverage constructed within such reserved area as part of any future expansion of Brodie Lane shall not be included for purposes of the foregoing limitation. → *(50) 47.26*

*calculated on a "gross" basis, including land within the Water Quality Transition Zones for the Sunset Valley Branch of Williamson Creek and the Main Branch of Williamson Creek, as well as and ~~to~~ south of the centerline of the Sunset Valley Branch of Williamson Creek contained within the Critical Water Quality Zone for such Creek.*

All detention and water quality ponds shall be screened in accordance with one of the following methods:

a. Berming may be installed in lieu of shrub massing. Berm heights should be at least three feet along its entire length and maximum side slopes should be no steeper than four feet horizontal for every one foot vertical. Berms should be placed so as to blend with natural surroundings on site.

b. If it can be demonstrated that the pond required to be screened may not be at all visible from the adjacent properties or roadways due to significant differences in elevation, this elevational difference may be accepted in lieu of vegetative screening. The applicant must illustrate the topographic differences in order to receive credit.

c. Existing vegetation may be used as screening if the following conditions are met:

Ms. Jayme Foley  
March 11, 1996  
Page 10

- (1) The vegetation area is at least ten (10) feet wide and a limit of construction line is clearly marked on the plans.
- (2) The area must contain the equivalent of one (1) large tree, two (2) small trees and six (6) understory shrubs per 20 linear feet of screen.

C. Architectural

1. Massing of buildings in the retail center shall be varied to provide both horizontal and vertical relief. Horizontal variation will be provided by use of setbacks along the front facade spaced a maximum of 150 feet apart, prohibition of building blocks in excess of 600 feet in length and providing at least one change in angle from 15 degrees to 90 degrees in building blocks in excess of 400 feet in length; provided, however, any individual buildings with 80,000 or more square feet shall be excluded from the foregoing requirements. Vertical variation will be provided by varying roof lines, in particular to emphasize major building entrances.

2. All facades are required to be 100% masonry construction in earth tone colors. As used herein, the term "masonry" shall ~~have the same meaning as set forth in Paragraph C.2 under the conditional overlay provisions for the 24 Acre Tract described above~~

mean "a building material on the exterior surfaces of the outside walls constructed of brick, tile, stone, stucco, adobe, marble, glass or combination of any of these materials or any veneer utilizing any of these materials."

Architectural character and style is required to be consistent and similar for each building in the development to create a unified, cohesive development.

City of Austin "Green Builder" ("2 Star" level minimum) concepts will be used to minimize energy consumption and to maximize energy conservation.

Buildings shall comply with the following maximum height limitations: (a) in-line buildings having less than 30,000 square feet—maximum height of 25 feet; (b) free standing buildings having less than 30,000 square feet—maximum height of 30 feet; and (c) all buildings having more than 30,000 square feet—maximum height of 40 feet. For purposes of the foregoing, building height shall be measured consistent with the definition

DRENNER & STUART, L.L.P.  
ATTORNEYS AT LAW

Ms. Jayme Foley  
March 11, 1996  
Page 11

of "height" attached hereto as Schedule 1, and such restrictions do not assume compliance with Sec. 1.022 and Sec. 2.237 of the current LDC.

6. Only <sup>two</sup> ~~one~~ building <sup>(5)</sup> may be in excess of <sup>40,000</sup> ~~60,000~~ square feet, and such building may not exceed ~~150,000~~ square feet.

7. Maximum aggregate building square footage on the <sup>40</sup> Acre Tract shall not exceed 250,000 square feet. <sup>(50) 47.26</sup>

one of which may not be in excess of 50,000 square feet and the other of which may not be in excess of 95,000 square feet.

D. Lighting

1. Light screening requirements as currently set forth in the LDC shall be required.
2. Exterior lighting shall be designed to minimize glare and light trespass to preserve the rural character of the City of Sunset Valley. Consistent with the requirements set forth herein, the exterior lighting layout for the <sup>40</sup> ~~50~~ Acre Tract shall require City Council approval. Illumination levels for <sup>47.26</sup> driveway, parking lot, and security lighting should not exceed 3 foot-candles, average maintained, measured horizontally at finished ground/pavement level.
3. 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 should conform to Illumination Engineering Society (IES) standards and Federal/State requirements. Commercial lighting other than that necessary for security should be turned off at the later of closing time or 11:00 PM. Lighted commercial signs should be turned off or reduced to half their original illumination after the later of closing time or 11:00 PM.
4. Artificial lighting for parking areas should not exceed the following requirements:
  - (a) Free standing light fixtures should not exceed a height of 28 feet measured from the ground/pavement to the bottom base of the fixture;

Ms. Jayme Foley  
March 11, 1996  
Page 12

- (b) Fixture wattage shall not exceed 250 lamp watts.
- (c) Fixtures shall be limited to 4 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. 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.

5. Landscaping 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. Uplighting using flood/well lights is prohibited except as provided in paragraph (b) below. 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 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.

6. Fixture lamps shall be quartz halogen, fluorescent, metal halide, mercury vapor, high pressure sodium or other lamp typed approved by the City Council.

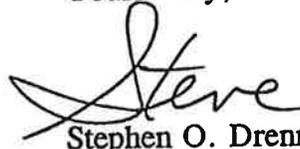
DRENNER & STUART, L.L.P.  
ATTORNEYS AT LAW

Ms. Jayme Foley  
March 11, 1996  
Page 13

E. Noise and Odor Mitigation

Noise and odor mitigation, as currently required in the LDC, shall be applicable.

Yours truly,

  
Stephen O. Drenner

SOD/cd  
Enclosures

cc: W. Thomas Buckle  
William S. Walters, III

EXHIBIT "D"  
~~29.18~~

Revised to attach to  
Settlement Agreement (applicable  
to 29.18 Acre Tract) — See Sec. 2

NO. \_\_\_\_\_

AN ORDINANCE REZONING A 24.106 ACRE TRACT OF LAND OWNED BY CHARLOTTE WEAVER FROM SF--SINGLE FAMILY RESIDENTIAL, TO R2--RETAIL-2, WITH CONDITIONAL OVERLAYS; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY.

WHEREAS, on October 10, 1994, Dr. John and Charlotte Weaver ("Applicants") filed an application to rezone the property described herein from SF--Single Family Residential, to R2--Retail-2 District;

WHEREAS, the application was duly considered by the Zoning Commission for the City of Sunset Valley;

WHEREAS, the Zoning Commission recommended that the application for rezoning be denied;

WHEREAS, the City Council, at the request of the Applicants, remanded the application to the Zoning Commission to reconsider the application with conditional overlays proposed by the Applicants;

WHEREAS, the Applicants amended the zoning application to propose conditional overlays;

WHEREAS, the Zoning Commission recommended that the amended application for rezoning be granted with conditional overlays;

WHEREAS, the City Council finds that the amended application, with the proposed conditional overlays, is consistent with the goals, standards, and policies of the current Comprehensive Land Use Plan for the City of Sunset Valley;

WHEREAS, the City Council finds that significant unanticipated changes have occurred that make development with the current land use maps unlikely and inappropriate;

WHEREAS, the current zoning classification deprives Applicants of the reasonable use of the property subject to this Ordinance;

WHEREAS, the zoning classification change requested is no greater than the minimum required to allow for reasonable use of the land;

WHEREAS, there is no reasonable alternative to the proposed zoning classification change;

WHEREAS, the proposed change in zoning classification is in the community's best interest in terms of the public health, safety, and welfare;

WHEREAS, development likely to occur as a result of the proposed change in zoning classification can be served adequately by utilities, water supply systems, waste water systems, and drainage facilities;

WHEREAS, development likely to occur as a result of the proposed change in zoning classification can be served adequately by the following services: police protection, fire protection, and emergency medical care;

WHEREAS, development likely to occur as a result of the proposed change in zoning classification will not result in traffic conditions or vehicular circulation that jeopardizes the City's public health, safety, welfare, environment, or the vehicular traffic goals, standards, and policies of the Comprehensive Land Use Plan;

WHEREAS, development likely to occur as a result of the proposed change in zoning classification will not disrupt the existing uses of land in the vicinity;

WHEREAS, the proposed change in zoning classification and development likely to occur as a result of the proposed change in zoning classification will not negatively affect the value of property and improvements in the vicinity;

WHEREAS, the City Council finds that the property should be rezoned with the conditional overlays set forth in this Ordinance;

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SUNSET VALLEY, TEXAS:**

#### **SECTION 1. PROPERTY SUBJECT TO THIS ORDINANCE**

The following property (the "Property") is affected by this Ordinance:

A 24.106 acre tract or parcel of land out of and part of the Theodore Bissell Survey No. 18, situated in the City of Sunset Valley, Travis County, Texas, being a portion of the remainder of that certain 280 acres conveyed to Charlotte Weaver by deed of record in Volume 774, Page 569 of the Real Property Records of Travis County, Texas, said 24.106 acres being more particularly described by metes and bounds in the attached Exhibit "A", which is hereby incorporated into this Ordinance for all purposes as if fully set forth herein.

#### **SECTION 2. PROPERTY REZONED**

- I. The Property, formerly zoned as SF--Single Family Residential District, is hereby rezoned to R2--Retail-2 District, with Conditional Overlays.
- II. The following Conditional Overlays shall apply to the Property:
  - A. Traffic
    1. Only the Brodie Lane median breaks existing as of January 1, 1996 shall be utilized to service the Property.
    2. A maximum of three curb cuts for driveways may be constructed from the Property onto Brodie Lane. Such curb cuts shall comply with all applicable regulations of the City of Sunset Valley and the Texas Department of Transportation.

3. No driveway access shall be allowed to Jones Road as long as Jones Road remains closed to vehicular traffic between Henry Miller Drive and Brodie Lane.
4. No curb cuts, driveways or vehicular access shall be allowed from the Property to residential areas.
5. A strip of the Property fifteen (15) feet in width and bordering the existing right-of-way for Brodie Lane shall be reserved for expansion of such right-of-way. Building setback requirements shall be calculated from the eastern edge of said 15-foot strip.

B. Landscape

a twelve and one-half (12.5) acre ~~setback~~ from any residential lot; provided, however, a) for purposes of satisfying such ~~setback~~ requirement, land adjacent to the Property which is dedicated to the City for right-of-way purposes shall be included in calculating the required ~~setback~~ and (b) a portion of the required ~~setback~~ may be located outside the boundaries of the Property if it is located between such dedicated right-of-way and any residential lot.

1. The Property shall incorporate a minimum of a ~~one hundred fifty foot (150 ft.) setback from any areas zoned for residential use.~~ No improvements, other than those associated with landscaping needs, drainage facilities, water quality needs, pedestrian trails or paths or outdoor pedestrian courts, shall be permitted within the ~~setback~~ buffer area.

A minimum of 6 hardwood trees, having a minimum of six inches in diameter, shall be transplanted to the streetyard on the Property from elsewhere on the Property or from property adjacent to the Property. This requirement shall be in addition to plantings currently required by the Land Development Code.

Visual screening requirements shall conform to the City's current requirements in the Land Development Code. (Additionally, see paragraph II.C.2 below with respect to masonry requirements).

4. Tenants occupying a minimum of 30,000 square feet shall have a curb-to-building zone of at least 25 feet to be used for sidewalks, landscape buffering and pedestrian spaces.

A minimum of one outdoor space with a minimum area of 1,600 square feet shall be developed as a pedestrian court, and shall be suitably furnished with benches, trash receptacles, planters and pedestrian-scale lighting, although it shall not be necessary to utilize impervious materials in this area. Design of this space shall be architecturally compatible with the architectural character of the buildings.

~~A minimum of one pedestrian outdoor trail and two site access points shall be established from the retail area to surrounding open spaces and public streets. Any such pedestrian outdoor trail and access points trail situated upon the Property shall be completed prior to issuance of a building permit for any building situated upon the Property. Additionally, one pedestrian walkway (utilizing pervious and/or impervious materials) of a minimum of six feet (6') in width shall connect the Property and the property adjacent to and immediately to the southwest of the Property.~~

(1) ~~setback~~ buffer  
 (2) ~~setback~~

7. Integrated Pest Management (IPM) techniques as currently established by the City of Austin shall be used in landscape maintenance practices.
8. Landscape and irrigation design shall be prepared and installed using xeriscape water and energy saving techniques. The foregoing requirements are in addition to the City's landscape requirements.

9. Maximum impervious coverage on the Property shall not exceed 45% ~~including transfer credits~~. Any buildings currently existing on the Property shall not be counted for purposes of the foregoing limitation. Additionally, any land situated in the reserved area for expansion of Brodie Lane right-of-way, as described in Paragraph II.A.5 above, shall be included as part of the Property for purposes of the foregoing limitation, but any impervious coverage constructed as part of any future expansion of Brodie Lane on such reserved area shall not be included for purposes of the foregoing limitation.

10. All detention and/or water quality ponds shall be screened in accordance with one of the following methods:

- a. Berming may be installed in lieu of shrub massing. Berm heights shall be at least three feet along the entire length of the berm and maximum side slopes shall be no steeper than four feet horizontal for every one foot vertical. Berms shall be placed so as to blend with natural surroundings on site.
- b. If it can be demonstrated that the pond required to be screened may not be visible at all from adjacent properties or roadways because of significant differences in elevation, this elevational difference may be acceptable in lieu of vegetative screening. An applicant must illustrate the topographic differences in order to receive credit for the elevational difference.
- c. Existing vegetation may be used as screening if the following conditions are met:
  - (1) The vegetation area is at least ten (10) feet wide and a limit of construction line is clearly marked on the plans.
  - (2) The area must contain the equivalent of one (1) large tree, two (2) small trees and six (6) understory shrubs per 20 linear feet of screen.

C. Architectural

1. Massing of buildings in the retail center shall be varied to provide both horizontal and vertical relief. Horizontal variation shall be provided by use of setbacks along the front facade spaced a maximum of 150 feet apart, prohibition of building blocks in excess of 600 feet in length and providing at least one change in angle from 15 degrees to 90 degrees in building blocks

calculated on a gross basis, including land within the Water Quality Transition Zone for the Sunset Valley Branch of Williamson Creek, as well as land north of the centerline of such Creek and contained within the Critical Water Quality Zone for such Creek

in excess of 400 feet in length. Vertical variation shall be provided by varying roof lines, in particular to emphasize major building entrances.

2. All facades are required to be 100% masonry construction in earth tone colors. As used herein, the term "masonry" shall mean "a building material on the exterior surfaces of the outside walls constructed of brick, tile, stone, stucco, adobe, marble, glass or combination of any of these materials or any veneer utilizing any of these materials.
3. Architectural character and style shall be consistent and similar for each building in the development to create a unified, cohesive development.
4. City of Austin "Green Builder" concepts ("2 Star" level minimum) shall be used to minimize energy consumption and to maximize energy conservation.
5. Buildings shall comply with the following maximum height limitations: (a) in-line buildings having less than 30,000 square feet--maximum height of 25 feet; (b) free standing buildings having less than 30,000 square feet--maximum height of 30 feet; and (c) all buildings having more than 30,000 square feet--maximum height of 40 feet. For purposes of the foregoing, the "height" of a building shall be defined as the vertical distance from the average of the highest and lowest grades adjacent to the building to:
  - a. the highest point of the coping of a flat roof;
  - b. to the deck line of a mansard roof;
  - c. to the average height of the highest gable on a pitched or hipped roof; or
  - d. if none of the preceding, then to the highest point of a structure.

Such restrictions are not meant to and do not conform to the requirements of the Land Development Code in effect on the date of this Ordinance.

6. Only one building on the Property may be in excess of 50,000 square feet, and such building may not exceed 85,000 square feet.
7. Maximum aggregate building square footage on the Property shall not exceed 175,000 ~~150,000~~ square feet. Any buildings currently existing on the Property as of the date of this Ordinance shall not be counted for purposes of the foregoing limitation.

D. Lighting

1. Light screening requirements as set forth in the Land Development Code on the date of this Ordinance shall be required.
2. Exterior lighting shall be designed to minimize glare and light trespass to preserve the rural character of the City of sunset Valley. Consistent with the

requirements set forth herein, the exterior lighting layout for the Property shall require City Council approval. Illumination levels for driveway, parking lot, and security lighting shall not exceed 3 foot-candles, average maintained, measured horizontally at finished ground/pavement level.

3. 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 shall conform to Illumination Engineering Society (IES) standards and Federal/State requirements. Commercial lighting other than that necessary for security shall be turned off at the later of closing time or 11:00 P.M. Lighted commercial signs shall be turned off or reduced to half their original illumination at the later of closing time or 11:00 P.M.
4. Artificial lighting for parking areas shall not exceed the following requirements:
  - a. Free standing light fixtures shall not exceed a height of 28 feet measured from the ground/pavement to the bottom base of the fixture;
  - b. Fixture wattage shall not exceed 250 lamp watts.
  - c. Fixtures shall be limited to 4 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 shall 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, and 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. 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.
5. Landscaping 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. Uplighting using flood/well lights is prohibited except as provided in paragraph II.D.5.b below. 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 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.

6. Fixture lamps shall be quartz halogen, fluorescent, metal halide, mercury vapor, high pressure sodium or other lamp typed approved by the City Council.

E. Noise and Odor Mitigation

1. Noise and odor mitigation, as required in the Land Development Code on the date of this Ordinance, shall be applicable.

III. In all other respects, the Property shall be regulated by the City of Sunset Valley Zoning Ordinance in effect on October 10, 1994 and by any later-adopted amendments; regulations, or ordinances which lawfully may be applied to the Property.

**SECTION 3. SEVERABILITY**

If any portion of this Ordinance or the application of this Ordinance to any person or set of circumstances is held to be invalid or unenforceable for any reason, then that holding shall not be construed to affect the validity of any other portion of this Ordinance, and all other portions shall remain in full force and effect. All provisions of this Ordinance are declared severable for that purpose.

**SECTION 4. EFFECTIVE DATE**

The provisions of this Ordinance shall be effective from the date of its adoption.

PASSED AND APPROVED this \_\_\_ day of \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
Michael Francis, Mayor

ATTEST:

\_\_\_\_\_  
Jayme Foley, City Secretary  
City of Sunset Valley, Texas

**EXHIBIT "E"**  
**LIST OF ANTICIPATED VARIANCES**

City of Sunset Valley  
Code Reference

**29.18 ACRE TRACT**

*(Block A, Lot 1)*

- |  |   |
|--|---|
| § 6.110(f)   | 25 foot vegetative setback from all Right-of-Way                                      |
| § 2.351(d)   | Construction of parking with the Water Quality Transition Zone                        |
| § 2.371  | Impervious cover requirements and calculations  |
| § 13.200 & § 13.201 from City of Sunset Valley Code last revised 4/3/96 (the "Current Code") | General landscaping requirements; landscape material quality and species requirements |
| § 2.1306 of the Current Code   | Construction requirements for exterior surfaces of buildings                          |

**47.26 ACRE TRACT**

*(Block F, Lot 1 and Lot 2)*

- |   |   |
|---|---|
| § 6.110(f)                              | 25 foot vegetative setback from all Right-of-Way  |
| § 2.351(d)                              | Construction of parking within the Water Quality Transition Zone  |
| § 2.371                                 | Impervious cover requirements and calculations  |
| § 13.200 & § 13.201 of the Current Code | General landscaping requirements; landscape material quality and species requirements   |
| § 2.1306 of the Current Code            | Construction requirements for exterior surfaces of buildings  |
| § 2.370(c)(f)                           | Inadequate building site within the Water Quality Transition Zone and building setbacks <i>(for Block F, Lot 2 only - pertaining to construction of restaurant)</i> |

City of Sunset Valley  
Code Reference

**37.04 ACRE TRACT**

*(Block B, Lot 1)*

- § 2.351(C) Minimum lot size 1.0 acre exclusive of all land within the 25 year floodplain
- § 2.352(c) Minimum lot size 1.0 acre of land within the uplands
- § 2.370/2.371(d) Adequate building size and 4,000 square feet of impervious cover
- § 2.296(c) Minimum street frontage of 100 feet and 60 feet on a cul-de-sac
- § 2.296(e)(f)(g) Minimum building setbacks: Front = 50 feet  
Side = 15 feet  
Rear = 30 feet
- § 2.248 Schedule of lot requirements (only part of the requirements)

**65.99 ACRE TRACT**

*(Block D, Lot 1 and Block E, Lot 1)*

- § 2.351(c) Minimum Lot size 1.0 acre exclusive of all land within the 25 year floodplain
- § 2.352(c) Minimum lot size 1.0 acre of land within the uplands
- § 2.296(e)(f)(g) Minimum building setbacks: Front - 50 feet  
Side = 15 feet  
Back - 30 feet
- § 2.248 Schedule of lot requirements (only part of the requirements)

EXHIBIT <sup>F</sup>

Beginning at the most southerly point of that certain 2.81 acre tract which was conveyed unto C. R. Mulholland and wife, Bernice Mulholland by Warranty Deed dated August 28, 1950, of record in Volume 1023, Page 530, of the Deed Records of Travis County, Texas:

THENCE N 38 deg. 00' E 90.00 feet to a point:

THENCE N 49 deg. 00' E 48.00 feet to a point:

THENCE N 59 deg. 00' E 61.00 feet to a point:

THENCE N 69 deg. 00' E 63.00 feet to a point:

THENCE N 76 deg. 00' E 64.00 feet to a point:

THENCE S 74 deg. 30' E 165.00 feet to a point:

THENCE S 82 deg. 00' E 148.00 feet to a point:

THENCE S 75 deg. 00' E 93.00 feet to a point:

THENCE S 80 deg. 38' E 185.70 feet to a point:

THENCE S 63 deg. 15' E 202.00 feet to a point:

THENCE S 63 deg. 30' E 315.18 feet to a point along center of Williamson Creek:

THENCE S 68 deg. 09' W 48.78 feet to a point:

THENCE S 70 deg. 53' W 27.78 feet to a point:

THENCE S 69 deg. 43' W 72.50 feet to a point:

THENCE N 87 deg. 42' W 103.59 feet to a point:

THENCE N 62 deg. 17' W 221.62 feet to a point:

THENCE N 32 deg. 11' 30" W 137.52 feet to a point:

THENCE N 75 deg. 47' 30" W 112.50 feet to a point:

THENCE N 79 deg. 17' 30" W 366.10 feet to a point:

THENCE S 87 deg. 32' 30" W 92.46 feet to a point:

THENCE S 47 deg. 52' 30" W 154.75 feet to a point:

THENCE S 14 deg. 37' 30" W 57.80 feet to a point:

THENCE S 41 deg. 41' 30" W to a point in the center of Williamson Creek:

THENCE N 40 deg. 00' W to point of BEGINNING.

## SCHEDULE 1

to Exhibit "C"

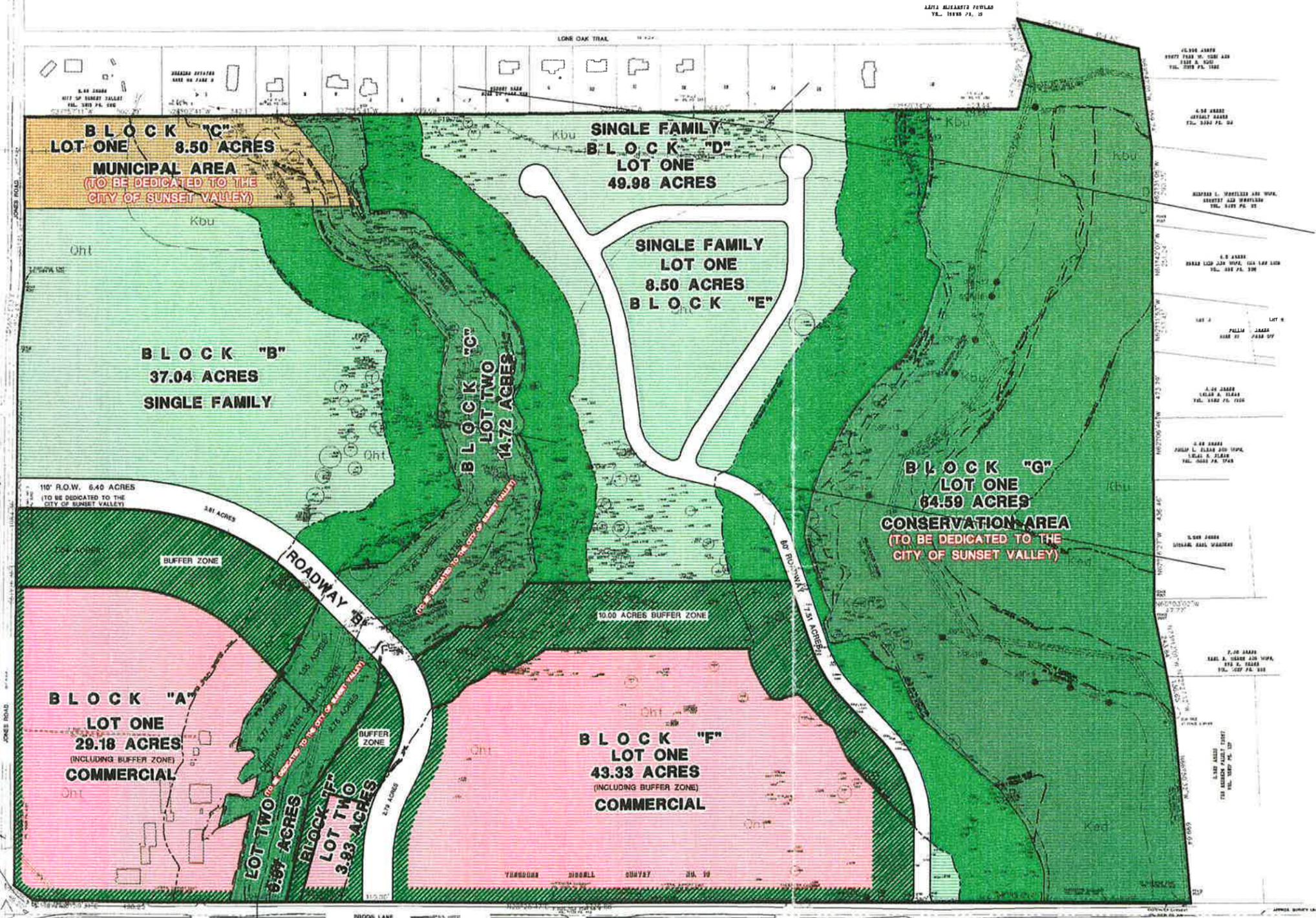
"Height" of a building shall be defined as the vertical distance from the average of the highest and lowest grades adjacent to the building to:

- a. the highest point of the coping of a flat roof;
- b. to the deck line of a mansard roof;
- c. to the average height of the highest gable on a pitched or hipped roof; or
- d. if none of the preceding, then to the highest point of the structure.



**LEGEND**

- CONSERVATION EASEMENT
- LANDSCAPE BUFFER
- CRITICAL WATER QUALITY ZONE
- WATER QUALITY TRANSITION ZONE
- BLOCK/LOT LINE



**SUMMARY**

BLOCK	LOT	ACREAGE
A	1	29.18
	2	6.87
B	1	37.04
C	1	8.50
	2	14.72
D	1	49.98
E	1	8.50
F	1	43.33
	2	3.93
G	1	64.59
RIGHT-OF-WAY	110'	6.40
SINGLE FAMILY ROADWAY	60'	7.51
		<b>280.55</b>

**DEDICATED PROPERTY**

PROPERTY	ACREAGE
CONSERVATION AREA	64.59
CRITICAL WATER QUALITY ZONE	21.59
MUNICIPAL AREA	8.50
110' RIGHT-OF-WAY, ROADWAY "B"	6.40
	<b>101.08</b>

**RESTRICTED USE AREAS**

AREA	ACREAGE
WATER QUALITY TRANSITION ZONE	44.15
BUFFER ZONE	17.54
	<b>61.69</b>

**UPLANDS AREA**

AREA	ACREAGE
COMMERCIAL	50.34
SINGLE FAMILY	67.44
	<b>117.78</b>

FOR THE PURPOSES OF IMPERVIOUS COVER CALCULATIONS THE BOUNDARY OF THE CRITICAL WATER QUALITY ZONE SHALL BE USED IN THE GROSS LAND AREA FOR EACH ADJACENT LOT.

**SUNSET VALLEY RANCH SETTLEMENT AGREEMENT EXHIBIT "A"**

PLOTTING SCALE: 1" = 200'  
 DATE PLOTTED: 08/25/98  
 FILE: WATER\WAP\BPRASE.DWG  
 DRAWN BY: R.B.  
 DESIGNED BY: A.C.H.  
 REVIEWED BY: J.R.K.  
 PROJECT NO.: 579-01.45