



Zoning Case No. C14-99-2024

RESTRICTIVE COVENANT

OWNER: HOME DEPOT U.S.A., INC., a Delaware corporation

ADDRESS: 2800 Forest Lane, Dallas, Texas 75234, Attention: Legal Department

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

PROPERTY: Approximately 17 acres of land out of Lots 2 and 3, Block "A", Assumption Cemetery Subdivision; said tract of land being more particularly described by metes and bounds in Exhibits "A-C" attached and incorporated into this covenant.

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

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

1. Once a construction sales and services use, plant nursery use, or a home improvement center is constructed and opens for business on the Property, but thereafter ceases to operate for 90 consecutive days, the Owner will not object to the City of Austin rezoning the Property to Community Commercial (GR) district as defined in Chapter 25-2 of the City Code. Normal, seasonal cessation of a use, or temporary discontinuance of the operation of a construction sales and services use, plant or nursery use, or home improvement center due to (i) strikes, lockouts or other labor difficulties, acts of God, the requirements of any local, state or federal law, rule or regulation, fire or other casualty, condemnation, war, riot, insurrection or any other reason beyond the reasonable control of the operator of such business, including, without limitation, force majeure, or (ii) the restoration, construction, expansion, alteration, modification or remodeling of the building or other improvements shall not be included in calculating the period of discontinuance.
2. The owner shall provide access to Assumption Cemetery through the driveway from Woodward Street.
3. Notwithstanding any other provision of the City Code applicable to the Property on the effective date of this restrictive covenant or at the time an application for approval of a site plan or building permit is submitted, no site plan for development of the Property or any portion of the Property shall be approved or released, and no building permit for construction of a building on the Property, shall be issued if the completed development or uses authorized by the proposed site plan or building permit, considered cumulatively with all existing or previously authorized development and uses of the Property, generates traffic exceeding the total traffic generation for the Property as specified in that certain Traffic Impact Analysis ("TIA") prepared by WHM Transportation Engineering Consultants, Inc. dated August 1999, and updated May 2000. All development on the Property is subject to the recommendations contained in a memorandum from the Transportation Review

Section of the Development Review and Inspection Department, dated January 7, 2000. The TIA shall be kept on file at the Development Review and Inspection Department.

At the request of the Owner of the affected Property, an updated or amended TIA may be approved administratively by the Director of the Development Review and Inspection Department.

4. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant to prevent the person or entity from such actions, and to collect damages for such actions.
5. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.
6. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
7. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED this the 19<sup>th</sup> day of July, 2000.

**OWNER:**

*Handwritten initials*

**HOME DEPOT U.S.A., INC.,**  
a Delaware corporation

By: *[Signature]*  
Printed Name: L. A. Smith  
Title: SR. V.P. Corp. Secretary

**JUL 19 2000**

APPROVED AS TO FORM:

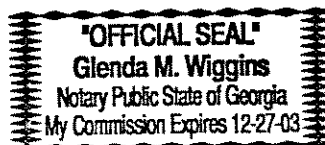
*[Signature: Deborah Thomas]*  
Assistant City Attorney  
City of Austin

Georgia  
THE STATE OF TEXAS §  
Cobb  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 19th day of July, 2000, by  
Laery A. Smith, Sr. V.P. / Corp. Secretary of HOME DEPOT U.S.A., INC. a  
Delaware corporation, on behalf of said corporation.

Glenda H. Wiggins  
Notary Public, State of ~~Texas~~ Georgia

After Recording, Please Return to:  
City of Austin  
Department of Law  
P.O. Box 1546  
Austin, Texas 78767-1546  
Attention: Diana Minter, Legal Assistant



TRACT 1 - 4.547 ACRES  
PORTION OF LOTS 2-3, BLOCK "A"  
ASSUMPTION CEMETERY

FN. NO. 00-157(MTH)  
MAY 26, 2000  
BPI JOB NO. 948-03.09

### DESCRIPTION

OF 4.547 ACRES OF LAND SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOTS 2 AND 3, BLOCK "A" ASSUMPTION CEMETERY SUBDIVISION, OF RECORD IN BOOK 96, PAGE 86 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS; SAID 4.547 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING**, at a concrete highway monument found being the northeasterly corner of said Lot 1, Block "A", of said Assumption Cemetery Subdivision and the southeasterly corner of said Lot 2, Block "A";

**THENCE**, S19°08'55"E, over and across said Lot 2, Block "A", a distance of 59.30 feet to the **POINT OF BEGINNING**, being the southeasterly corner hereof;

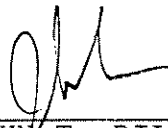
**THENCE**, continuing over and across said Lot 2, Block "A", the following eight (8) courses and distances:

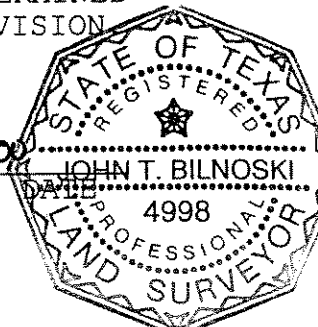
- 1) N59°59'51"W, a distance of 616.48 feet to the southwesterly corner thereof;
- 2) N30°00'09"E, a distance of 310.33 feet to the northwesterly corner thereof;
- 3) S59°59'51"E, a distance of 421.03 feet to an angle point;
- 4) N30°00'09"E, a distance of 49.41 feet to an angle point;
- 5) S59°59'51"E, a distance of 137.00 feet to an angle point;
- 6) S30°00'09"W, a distance of 49.41 feet to an angle point;
- 7) S59°59'51"E, a distance of 58.45 feet to the northeasterly corner thereof;
- 8) S30°00'09"W, a distance of 310.32 feet to the **POINT OF BEGINNING**, containing an area of 4.547 acres (198,078 sq. ft.) of land, more or less, within these metes and bounds.

I, JOHN T. BILNOSKI, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

EXHIBIT A

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

  
JOHN T. BILNOSKI  
R.P.L.S. NO. 4998  
STATE OF TEXAS



TRACT 2 - 9.727 ACRES  
PORTION OF LOTS 2-3, BLOCK "A"  
ASSUMPTION CEMETERY

FN. NO. 00-156(MTH)  
MAY 26, 2000  
BPI JOB NO. 948-03.09

#### DESCRIPTION

OF 9.727 ACRES OF LAND SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOTS 2 AND 3, BLOCK "A" ASSUMPTION CEMETERY SUBDIVISION, OF RECORD IN BOOK 96, PAGE 86 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS; SAID 9.727 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING**, at a 3/4 inch iron rod found in concrete in the southerly line of Woodward Street (90' R.O.W.), being the northeasterly corner of Tract A, S.A.C. Addition, a subdivision of record in Book 69, Page 88 of said Plat Records and the northwesterly corner of said Lot 2, Block "A", for the northwesterly corner hereof;

**THENCE**, leaving the northeasterly corner of said Tract A, along the southerly line of Woodward Street, being the northerly line of said Lot 2, Block "A" and the northerly line hereof, the following two (2) courses and distances:

- 1) S60°29'18"E, a distance of 101.71 feet to a 1/2 inch iron rod found for an angle point hereof;
- 2) S64°31'33"E, a distance of 27.28 feet to an angle point hereof;

**THENCE**, leaving the southerly line of Woodward Street, over and across said Lots 2 and 3, Block "A", along the northeasterly line hereof, the following five (5) courses and distances:

- 1) S12°57'00"E, a distance of 73.50 feet to an angle point;
- 2) S38°30'00"E, a distance of 150.00 feet to an angle point;
- 3) S20°00'00"E, a distance of 165.00 feet to an angle point;
- 4) S25°15'00"E, a distance of 380.00 feet to an angle point;
- 5) S39°13'00"E, a distance of 150.00 feet to a point in the westerly line of Interstate Highway 35 South (R.O.W. varies), being the easterly line of said Lot 3, Block "A" and the northeasterly corner hereof;

**THENCE**, S28°51'00"W, along the westerly line of Interstate Highway 35 South, being the easterly line of said Lots 2 and 3, Block "A" and the easterly line hereof, a distance of 464.17 feet to a concrete highway monument found being the northeasterly corner of Lot 1, Block "A", of said Assumption Cemetery Subdivision and the southeasterly corner of said Lot 2, Block "A", for the southeasterly corner hereof;

*EXHIBIT B*

**THENCE**, leaving the westerly line of Interstate Highway 35 South, along the northerly line of said Lot 1, Block "A" and in part along the northerly line of Assumption Cemetery Section 6, 7 and 24A, a subdivision of record in Book 97, Page 325 of said Plat Records, being the irregular southerly line of said Lot 2, Block "A" and the southerly line hereof, the following three (3) courses and distances:

- 1) N61°08'32"W, a distance of 721.09 feet to a 1/2 inch iron pipe found for an angle point hereof;
- 2) N34°28'20"E, a distance of 212.32 feet to a 1/2 inch iron pipe found for an angle point hereof;
- 3) N59°59'51"W, a distance of 202.31 feet to a 1/2 inch iron pipe found in the easterly line of Lot 2, Resubdivision of a Portion of Tract 2 Penick Subdivision, a subdivision of record in Book 101, Page 41 of said Plat Records, being the northwesterly corner of said Lot 1, Block "A", the westernmost southwest corner of said Lot 2, Block "A" and the westernmost southwest corner hereof;

**THENCE**, N29°59'50"E, along the easterly line of said Tract A and in part along the easterly line of said Lot 2, Resubdivision of a Portion of Tract 2 Penick Subdivision, being the westerly line of said Lot 2, Block "A" and the westerly line hereof, a distance of 748.41 feet to the **POINT OF BEGINNING**, containing an area of 14.274 acres (621,770 sq. ft.) of land, more or less, within these metes and bounds. **SAVE AND EXCEPT**, therefrom the following 4.547 acre tract described by metes and bounds as follows:

**COMMENCING**, at a concrete highway monument found being the northeasterly corner of said Lot 1, Block "A", of said Assumption Cemetery Subdivision and the southeasterly corner of said Lot 2, Block "A";

**THENCE**, S19°08'55"E, over and across said Lot 2, Block "A", a distance of 59.30 feet to the **POINT OF BEGINNING**, being the southeasterly corner hereof;

**THENCE**, continuing over and across said Lot 2, Block "A", the following eight (8) courses and distances:

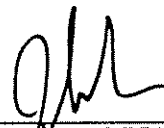
- 1) N59°59'51"W, a distance of 616.48 feet to the southwesterly corner thereof;

FN. NO. 00-156 (MTH)  
MAY 26, 2000  
PAGE 3 of 3

- 2) N30°00'09"E, a distance of 310.33 feet to the northwesterly corner thereof;
- 3) S59°59'51"E, a distance of 421.03 feet to an angle point;
- 4) N30°00'09"E, a distance of 49.41 feet to an angle point;
- 5) S59°59'51"E, a distance of 137.00 feet to an angle point;
- 6) S30°00'09"W, a distance of 49.41 feet to an angle point;
- 7) S59°59'51"E, a distance of 58.45 feet to the northeasterly corner thereof;
- 8) S30°00'09"W, a distance of 310.32 feet to the **POINT OF BEGINNING**, containing an area of 4.547 acres (198,078 sq. ft.) of land, more or less, **LEAVING A NET AREA** of 9.727 acres of land, more or less, within these metes and bounds.

I, JOHN T. BILNOSKI, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

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

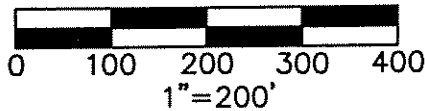
  
\_\_\_\_\_  
JOHN T. BILNOSKI  
R.P.L.S. NO. 4998  
STATE OF TEXAS

5/26/00  
\_\_\_\_\_  
DATE

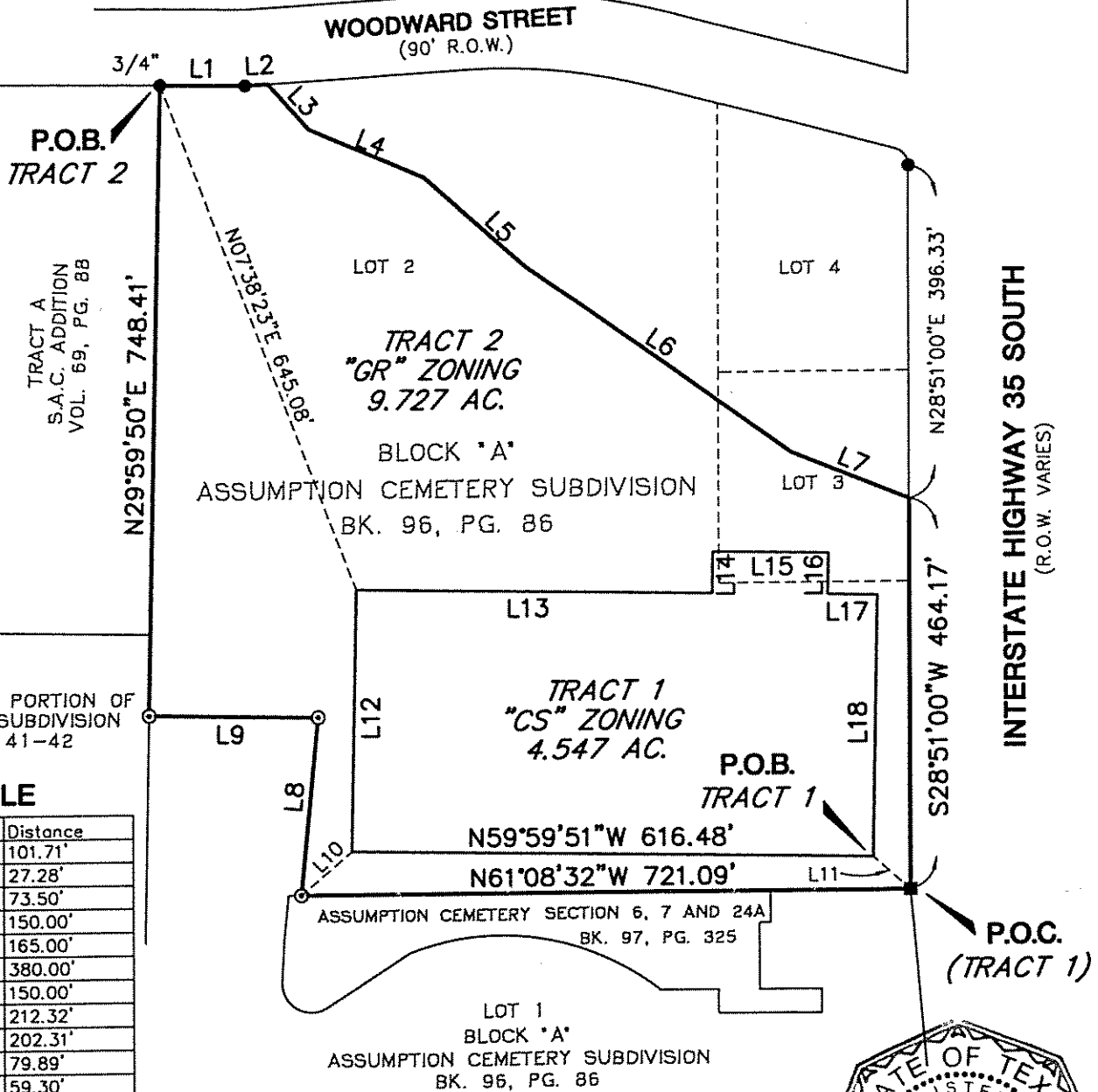


# LEGEND

- 1/2" IRON ROD FOUND (UNLESS NOTED)
- ⊙ IRON PIPE FOUND
- CONCRETE MONUMENT FOUND
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT



ST. EDWARDS UNIVERSITY  
VOL. 2939, PAGE 1322



## LINE TABLE

No.	Bearing	Distance
L1	S60°29'18"E	101.71'
L2	S64°31'33"E	27.28'
L3	S12°57'00"E	73.50'
L4	S38°30'00"E	150.00'
L5	S20°00'00"E	165.00'
L6	S25°15'00"E	380.00'
L7	S39°13'00"E	150.00'
L8	N34°28'20"E	212.32'
L9	N59°59'51"W	202.31'
L10	S78°15'20"W	79.89'
L11	S19°08'55"E	59.30'
L12	N30°00'09"E	310.33'
L13	S59°59'51"E	421.03'
L14	N30°00'09"E	49.41'
L15	S59°59'51"E	137.00'
L16	S30°00'09"W	49.41'
L17	S59°59'51"E	58.45'
L18	S30°00'09"W	310.32'

## BEARING BASIS:

THE BEARING BASIS OF THE SURVEY SHOWN HEREON IS THE EASTERLY LINE OF LOT 2, 3 AND 4 BLOCK "A" ASSUMPTION CEMETERY SUBDIVISION OF RECORD IN VOLUME 96, PAGE 86 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS. AS FOUND MONUMENTED ON THE GROUND AT THE TIME OF THIS SURVEY.

## SKETCH TO ACCOMPANY DESCRIPTION

OF LAND BEING A PORTION OF LOTS 2-4,  
BLOCK "A" ASSUMPTION CEMETERY SUBDIVISION, OF  
RECORD IN BOOK 96, PAGE 86 OF THE PLAT  
RECORDS OF TRAVIS COUNTY, TEXAS.

**HOME  
DEPOT**

**Bury+Partners, Inc.**  
Consulting Engineers and Surveyors  
Austin, Texas Tel 512/328-0011 Fax 512/328-0325  
© Copyright 2000 Bury+Partners, Inc.

DATE: 5/26/00

FILE: H:\930\02\94803EX2.dwg

FN No.: FN00-156(MTH)  
FN No.: FN00-157(MTH)

DRAWN BY: MTH

PROJ. No: 948-03.09



TRACT 3 - 2.884 ACRES  
PORTION OF LOTS 2 AND 3, BLOCK "A"  
ASSUMPTION CEMETERY

FN. NO. 00-163(MTH)  
MAY 26, 2000  
BPI JOB NO. 948-03.09

#### DESCRIPTION

OF 2.884 ACRES OF LAND SITUATED IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS, BEING A PORTION OF LOTS 2 AND 3 BLOCK "A" ASSUMPTION CEMETERY SUBDIVISION, OF RECORD IN BOOK 96, PAGE 86 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS; SAID 2.884 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**COMMENCING**, at a 3/4 inch iron rod found in concrete in the southerly line of Woodward Street (90' R.O.W.), being the northeasterly corner of Tract A, S.A.C. Addition, a subdivision of record in Book 69, Page 88 of said Plat Records and the northwesterly corner of said Lot 2, Block "A";

**THENCE**, leaving the easterly line of said Tract A, along the southerly line of Woodward Street, being the northerly line of said Lot 2, Block "A", the following two (2) courses and distances:

- 1) S60°29'18"E, a distance of 101.71 feet to a 1/2 inch iron rod found;
- 2) S64°31'33"E, a distance of 27.28 feet to the **POINT OF BEGINNING** and the northwesterly corner hereof;

**THENCE**, continuing along the southerly line of Woodward Street, along the northerly line of said Lot 2, the following three (3) courses and distances:

- 1) S64°31'33"E, a distance of 242.48 feet to a 1/2 inch iron rod found and the beginning of a non-tangent curve to the right;
- 2) Along a said non-tangent curve to the right having a radius of 671.81 feet, a central angle of 18°20'21", an arc length of 215.03 feet, and a chord which bear S55°22'03"E, a distance of 214.11 feet to a 1/2 inch iron pipe found for the end of said curve;
- 3) S46°12'47"E, a distance of 81.26 feet to a 1/2 inch iron rod found at the common northerly corner of said Lot 2 and Lot 4, Block "A" of said Assumption Cemetery Subdivision;

**THENCE**, S61°09'00"E, leaving the southerly line of Woodward Street, a distance of 225.03 feet to a point in the easterly line of said Lot 2, Block "A", being the common westerly corner of said Lot 4 and Lot 3, Block "A";

**THENCE**, S28°51'00"W, along the common line of said Lots 3 and 4, a distance of 151.72 feet to a point in the westerly right-of-way of Interstate Highway 35 South (R.O.W. Varies), same being the common easterly corner of said Lot 3 and Lot 4, Block "A";

*EXHIBIT C*

FN. NO. 00-163 (MTH)  
MAY 26, 2000  
PAGE 2 of 2


**THENCE**, S28°51'00"W, along the westerly line of Interstate Highway 35 South, being the easterly line of said Lot 3, Block "A" and the easterly line hereof, a distance of 151.72 feet to a point in the easterly line of said Lot 3, Block "A" for the southeasterly corner hereof, from which a concrete highway monument found at the southeasterly corner of said Lot 2 bears S28°51'00"W, a distance of 464.17 feet;

**THENCE**, leaving the westerly line of Interstate Highway 35 South, over and across said Lots 2 and 3, Block "A", being the irregular southerly line hereof, the following five (5) courses and distance:

- 1) N39°13'00"W, a distance of 150.00 feet to an angle point;
- 2) N25°15'00"W, a distance of 380.00 feet to an angle point;
- 3) N20°00'00"W, a distance of 165.00 feet to an angle point;
- 4) N38°30'00"W, a distance of 150.00 feet to an angle point;
- 5) N12°57'00"W, a distance of 73.50 feet to the **POINT OF BEGINNING**, containing an area of 2.884 acres (125,623 sq. ft.) of land, more or less, within these metes and bounds.

I, JOHN T. BILNOSKI, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

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

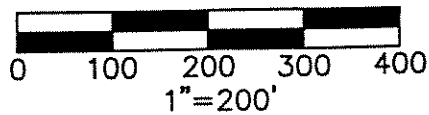
  
\_\_\_\_\_  
JOHN T. BILNOSKI  
R.P.L.S. NO. 4998  
STATE OF TEXAS

5/26/00  
\_\_\_\_\_  
DATE



# LEGEND

- 1/2" IRON ROD FOUND
- ⊙ 1/2" IRON PIPE FOUND IN CONCRETE
- CONCRETE MONUMENT SET
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCEMENT



ST. EDWARDS UNIVERSITY  
VOL. 2939, PAGE 1322

WOODWARD STREET

P.O.C.

P.O.B.

TRACT 3  
"RR" ZONING

LOT 2

BLOCK "A"

ASSUMPTION CEMETERY SUBDIVISION

BK. 96, PG. 86

LOT 4

L4

LOT 3

L6

INTERSTATE HIGHWAY 35 SOUTH  
(R.O.W. VARIES)

ASSUMPTION CEMETERY SECTION 6, 7 AND 24A  
BK. 97, PG. 325

LOT 1  
BLOCK "A"  
ASSUMPTION CEMETERY SUBDIVISION  
BK. 96, PG. 86

## BEARING BASIS:

THE BEARING BASIS OF THE SURVEY SHOWN HEREON IS THE EASTERLY LINE OF LOT 2, 3 AND 4 BLOCK "A" ASSUMPTION CEMETERY SUBDIVISION OF RECORD IN VOLUME 96, PAGE 86 OF THE PLAT RECORDS OF TRAVIS COUNTY, TEXAS, AS FOUND MONUMENTED ON THE GROUND AT THE TIME OF THIS SURVEY.

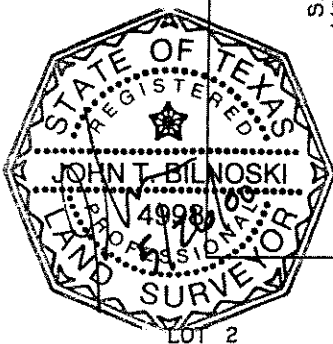
## CURVE TABLE

No.	Delta	Radius	Arc Length	Chord Length	Chord Bearing
C1	18°20'21"	671.81	215.03	214.11	S55°22'03"E

## LINE TABLE

No.	Bearing	Distance
L1	S64°31'33"E	242.48'
L2	S46°12'47"E	81.26'
L3	S28°51'00"W	320.03'
L4	S61°09'00"E	225.03'
L5	S28°51'00"W	151.72'
L6	N39°13'00"W	150.00'
L7	N25°15'00"W	380.00'
L8	N20°00'00"W	165.00'
L9	N38°30'00"W	150.00'
L10	N12°57'00"W	73.50'
L11	S64°31'33"E	27.28'
L12	S60°29'18"E	101.71'

RESUBDIVISION OF A PORTION OF  
TRACT 2 PENICK SUBDIVISION  
BK. 101, PG. 41-42



TRACT A  
S.A.C. ADDITION  
VOL. 69, PG. 88

## SKETCH TO ACCOMPANY DESCRIPTION

OF 2.884 ACRES OF LAND BEING A PORTION OF LOTS 2-3,  
BLOCK "A" ASSUMPTION CEMETERY SUBDIVISION, OF  
RECORD IN BOOK 96, PAGE 86 OF THE PLAT  
RECORDS OF TRAVIS COUNTY, TEXAS.

HOME  
DEPOT

**Bury+Partners, Inc.**  
Consulting Engineers and Surveyors  
Austin, Texas Tel 512/328-0011 Fax 512/328-0325  
© Copyright 2000 Bury+Partners, Inc.

# FILED AND RECORDED

OFFICIAL PUBLIC RECORDS



08-01-2000 12:57 PM 2000120724  
RYCZEKD \$31.00  
DANA DEBEAUVOIR, COUNTY CLERK  
TRAVIS COUNTY, TEXAS

**Recorders Memorandum**-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.