

22645

A/2476

WHEREAS, the City Council on October 11, 1989 passed Resolution No. 893244 providing for the acceptance of a deed restriction instrument submitted in conjunction with an application for a change of zoning to a GR General Retail Subdistrict within Planned Development District No. 193 on property on the southeast side of Inwood Road, northeast of Lemmon Avenue involving Zoning File No. Z889-153/4420-N; and

WHEREAS, application has been made to terminate the deed restrictions in conjunction with a request for a change of zoning to a Planned Development Subdistrict for Self Storage Uses within Planned Development District No. 193 on a 3.3833 acre portion of the property containing the original deed restrictions involving Zoning File No. Z956-107/4420-N; and

WHEREAS, new deed restrictions have been submitted in conjunction with the rezoning of the 3.3833 acre tract of land; and

WHEREAS, the City Council at a public hearing on January 10, 1996 approved the termination of the existing deed restrictions and further approved the acceptance of the new deed restrictions in accordance with the recommendation of the City Plan Commission; and

WHEREAS, an instrument providing for the termination of the existing deed restrictions and an instrument containing the new deed restrictions have been approved as to form; Now Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That the attached instrument providing for the termination of the existing deed restrictions be and is hereby accepted by the City Council of the City of Dallas, Texas.

Section 2. That the attached instrument providing for the new deed restrictions be and is hereby accepted by the City Council of the City of Dallas, Texas, to be used in conjunction with the development of property zoned as Planned Development Subdistrict No. 12 for Self Storage Uses within Planned Development District No. 193 as described in Ordinance No. 22645.

Section 3. That said instruments be filed in the Deed Records of Dallas County, Texas.

Section 4. That this resolution shall take effect from and after its passage in accordance with the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED BY
CITY COUNCIL

Approved as to form:
SAM LINDSAY, City Attorney

JAN 10 1996

By [Signature]
Assistant City Attorney

APPROVED [Signature]
HEAD OF DEPARTMENT

APPROVED [Signature]
DIRECTOR OF FINANCE
City Secretary

APPROVED _____
CITY MANAGER

DEED RESTRICTIONS

THE STATE OF TEXAS }

KNOW ALL PERSONS BY THESE PRESENTS:

COUNTY OF DALLAS }

I.

The undersigned, Texas Beverly Company, a Texas corporation, (the "OWNER"), is the owner of the following described property (the "PROPERTY"), situated in the City of Dallas ("City"), Dallas County, Texas, being described as Lot 1B and part of Lot 1C, Block A/2176, City of Dallas, Dallas County, Texas, Lemmonwood Shopping Center, an addition to the City of Dallas, Texas, according to the plat thereof recorded in Volume 93157, page 4041 of the Map Records of Dallas County, Texas, and being that land conveyed to Texas Beverly Company, by Harry Brown, by deed dated April 8, 1991 and recorded in Volume 90191, Page 3006, in the Deed Records of Dallas County, Texas, and being more particularly described in Exhibit "A," attached hereto and incorporated herein by referenced as if same were recited verbatim herein.

II.

The OWNER does hereby impress all of the PROPERTY with the following deed restrictions ("restrictions"), to wit:

1. Sexually oriented businesses as defined in Chapter 41A of the Dallas City Code, as amended, are prohibited on the PROPERTY.
2. No building may exceed thirty (30) feet in height. No building may exceed two (2) stories above grade. For purposes of this instrument, "story" means that portion of a building between two successive floors or between the top floor or the ceiling above it.

3. Drive-through restaurants are prohibited within the 100 foot wide buffer strip described in the attached Exhibit "B" incorporated herein by reference.

III.

These restrictions shall continue in full force and effect for a period of twenty (20) years from the date of execution, and shall automatically be extended for additional periods of ten (10) years unless amended or terminated in the manner specified in this document.

IV.

These restrictions may be amended or terminated only after a public hearing before the City Plan Commission and a public hearing before and approval by the City Council of the City. Notice of the public hearings must be given as would be required by law for a zoning change on the PROPERTY. The amending or terminating instrument must be approved as to form by the city attorney. If the City Council approves an amendment or termination of these restrictions, the OWNER must then file the amending or terminating instrument in the Deed Records of the county or counties where the PROPERTY is located at his or her sole cost and expense before the amendment or termination becomes effective.

V.

These restrictions are not intended to restrict the right of the City Council of the City to exercise its legislative duties and powers insofar as zoning of the PROPERTY is concerned.

VI.

The OWNER agrees that these restrictions inure to the benefit of the City. The OWNER hereby grants to the City the right to enforce these restrictions by any lawful means, including filing an action in a court of competent jurisdiction, at law or in equity, against the person violating or attempting to violate these restrictions, either to prevent the violation or to require its correction. If the City substantially prevails in a legal proceeding to enforce these restrictions, the OWNER agrees that the City shall be entitled to recover damages, reasonable attorney's fees, and court costs. For further remedy, the OWNER agrees that the City may withhold any certificate of occupancy or final inspection necessary for the lawful use of the PROPERTY until these restrictions are complied with. The right of the City to enforce these restrictions shall not be waived, expressly or otherwise.

VII.

The OWNER agrees to defend, indemnify, and hold harmless the City from and against all claims or liabilities arising out of or in connection with the provisions of this document.

VIII.

The provisions of this document are hereby declared covenants running with the land and are fully binding on all successors, heirs, and assigns of the OWNER who acquires any right, title, or interest in or to the PROPERTY, or any part thereof. Any person who acquires any right, title, or interest in or to the PROPERTY, or any part thereof, thereby agrees and covenants to abide by and fully perform the provisions of this document.

IX.

Unless stated otherwise in this document, the definitions and provisions of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, apply and are incorporated into this document as if recited in this document.

X.

The OWNER understands and agrees that this document shall be governed by the laws of the State of Texas.

XI.

The OWNER certifies and represents that there are no mortgages or liens, other than liens for ad valorem taxes, against the PROPERTY if there are no signatures of mortgages or lienholders subscribed below.

XII.

The invalidation of any provision of this instrument by any court shall in no way affect any other provision, which shall remain in full force and effect, and to this end the provisions are declared to be severable.

EXECUTED this the 3rd day of January, 1996.

Texas Beverly Company
By: [Signature]
Name: Peter C. Oberink
Title: Secy

CONSENT AND CONCURRENCE OF LIENHOLDER OR MORTGAGEE:

Property Lienholder or Mortgagee
By: _____
Title: _____

APPROVED AS TO FORM:
SAM A. LINDSAY, City Attorney

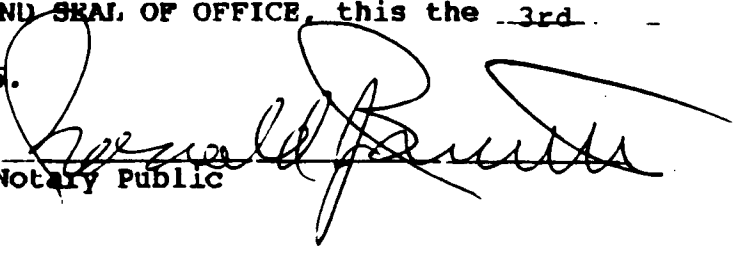
By: [Signature]
Assistant City Attorney

VERIFICATION

STATE OF New York }
~~COUNTY OF~~ Queens }

This instrument was acknowledged before me on
January 3 , 1996, by Peter C. Oberlink
Secretary of Texas Beverly Company, a
Texas corporation, on behalf of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 3rd
day of January , 1996.


Notary Public

My commission expires _____.

RONALD J. BENNETT
Notary Public, State of New York
No. 0248850
Qualified in Queens County
Commission Expires June 30, 1997

Exhibit "A"

960251

BEING all that certain lot, tract or parcel of land situated in the City of Dallas, Dallas County, Texas, and being known as Lot 1B and part of Lot 1C in Block A/2476 of LEMMONWOOD SHOPPING CENTER, an addition to the City of Dallas, Texas as recorded in Volume 93157 at Page 4041 of the Map Records of Dallas County, Texas, and being more particularly described by metes and bounds as follows

BEGINNING at a 5/8" iron rod set for the Southeast corner of said Lot 1C in Block A/2476 in the West line of a 20 foot alley, said point also being the Northeast corner of Lot 3B in Block A/2476;

THENCE North 45° 00' 00" West along the common line of Lot 1C and Lot 3B, a distance of 192.18 feet to a 5/8" iron rod set for the Northwest corner of said Lot 3B, said point being the beginning of a curve to the left having a central angle of 06° 36' 45" and a radius of 1038.50 feet whose center bears South 77° 03' 45" West, and whose chord bears North 16° 14' 36" West at 119.79 feet;

THENCE Northerly along said curve to the left an arc distance of 119.88 feet to a 5/8" iron rod set for corner, said point being the beginning of a curve to the left having a central angle of 21° 47' 15" and a radius of 210.0 feet whose center bears North 48° 39' 45" East and whose chord bears North 30° 28' 37" West ;

THENCE Northwesterly along said curve to the left an arc distance of 79.88 feet to a 5/8" iron rod set for corner, said point being in the common line of Lot 1C and Lot 1D in Block A/2476;

THENCE North 45° 00' 00" East along the common lines of Lot 1C and Lot 1D a distance of 9.39 to a 5/8" iron rod set for a common corner of said Lot 1C and Lot 1D;

THENCE North 45° 00' 00" West and continuing along the common line of Lot 1C and Lot 1D a distance of 41.00 feet to a 5/8" iron rod set for corner;

THENCE North 45° 00' 00" East and continuing along the common line of Lot 1C and Lot 1D a distance of 31.00 feet to a 5/8" iron rod set for corner;

THENCE North 45° 00' 00" West and continuing along the common line of Lot 1C and Lot 1D a distance of 226.33 feet to a 5/8" iron rod set for corner in the East line of Inwood Road, said point being in a curve to the left having a central angle of 8° 05' 52" and a radius of 720.54 feet whose center bears North 56° 45' 17" West, and whose chord bears North 28° 41' 47" East at 114.29 feet;

THENCE Northeasterly along the East line of said Inwood Road an arc distance of 114.41 feet to a 5/8" iron rod set for corner, said point being the Southwest corner of Lot 1A and the Northwest corner of Lot 1C;

THENCE South 45° 00' 00" East along the common line of Lot 1A and Lot 1D a distance of 223.68 feet to an "x" set in concrete for the Southeast corner of said Lot 1A;

THENCE North 45° 00' 00" East along the common line of Lot 1A and Lot 1B a distance of 183.00 feet to the Northwest corner of said Lot 1B, said point being in the Southwest line of a 20 foot alley;

THENCE South 45° 00' 00" East along the Southwest line of said 20 foot alley a distance of 110.96 feet to a 2" brass monument found for the beginning of a curve to the right having a central angle of 40° 00' 00" and a radius of 45.00 feet whose center bears South 45° 00' 00" West and whose chord bears South 25° 00' 00" East at 30.78 feet;

THENCE Southeasterly along said curve to the right and the Southwest line of said 20 foot alley a distance of 31.42 feet to a 2" brass monument found for corner;

THENCE South 5° 00' 00" East along the Southwest line of said 20 foot alley a distance of 383.53 feet to a 1/2" iron rod found for corner, said point being the beginning of a curve to the right having a central angle 50° 00' 06" and a radius of 45.00 feet whose center bears South 85° 00' 00" West and whose chord bears South 20° 00' 03" West at 38.03 feet;

THENCE Southwesterly along said curve to the right an arc distance of 39.27 feet to a 1/2" iron rod found for corner;

THENCE South 45° 00' 00" West along the Northwest line of said 20 foot alley a distance of 119.13 feet to the PLACE OF BEGINNING AND CONTAINING 3.3833 ACRES OF LAND, more or less.

EXHIBIT "B"

960251

Property Description
100 foot strip of Land, Blocks B-1/2477 & B-2/2477

BEING a tract of land situated in the Crawford Grigsby Survey, Abstract No. 532, and also being portions of Block B-1/2477 and B-2/2477 of the Resubdivision of part of Block B/2477, Winfield Plaza, an addition to the City of Dallas, Dallas County, Texas as recorded in Volume 35, Page 185 of the Map Records of Dallas County, Texas and being more particularly described as follows:

COMMENCING at an iron rod for the intersection of the southeasterly line of Inwood Road (100' R.O.W.) and the southwesterly line of Fairfax Ave. (50' R.O.W.); thence along the southwesterly line of Fairfax Ave., South 45 deg. 00 min. 00 sec. East, 159.44 feet to an iron pipe for the Point of Beginning;

THENCE continuing along said southwesterly line of said Fairfax Ave., North 42 deg. 41 min. 00 sec. East 30.02 feet to a P.K. Nail at the intersection of the southwesterly line of a 20 foot alley.

THENCE along the southwesterly line of said alley, South 45 deg. 00 min. 00 sec. East, 253.96 feet to a P.K. Nail for the beginning of a circular curve to the right having a central angle of 40 deg. 00 min. 00 sec., a radius of 45.00 feet and tangents of 16.38 feet;

THENCE continuing along said alley, along said circular curve to the right an arc distance of 31.42 feet to the point of tangency;

THENCE South 05 deg. 00 min. 00 sec. East, 383.54 feet to a P.K. Nail for the beginning of a circular curve to the right, having a central angle of 50 deg. 00 min. 00 sec., a radius of 45.00 feet and tangents of 20.98 feet;

THENCE along said circular curve to the right an arc distance of 39.27 feet to the point of tangency;

THENCE South 45 deg. 00 min. 00 sec. West, 139.19 feet to the intersection of the northeasterly line of a 20 foot alley;

THENCE along the northeasterly line of said alley, North 45 deg. 00 min. 00 sec. West, 100.00 feet;

THENCE departing said northeasterly line, North 45 deg. 00 min. 00 sec. East, 113.54 feet;

THENCE North 05 deg. 00 min. 00 sec. West, 339.87 feet;

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THENCE along said circular curve to the left an arc distance of 30.54 feet to the point of tangency;

THENCE North 05 deg. 00 min. 00 sec. West, 383.54 feet to the beginning of a circular curve to the left having a central angle of 40 deg. 00 min. 00 sec., a radius of 35.00 feet and tangents of 14.19 feet.

THENCE along said circular curve to the left an arc distance of 24.43 feet to the point of tangency;

THENCE North 45 deg. 00 min. 00 sec. West, 253.56 feet to the POINT OF BEGINNING and containing 0.1927 acres of land, more or less.