GF #495725-N ff $19.00

BUILDING AND USE RESTRICTIONS

STATE OF TEXAS
COUNTY OF TARRANT

That, the undersigned, EMBER CREEK JOINT VENTURE hereinafter called "Declarant " being the owners of property described as EMBER CREEK, SECTION 2 an addition to the City of Mansfield, Texas. do hereby restrict said property as hereinafter set out which restrictions shall be binding upon the owners or any purchasers of said lots, their heirs, administrators, or assigns, and said restrictions shall be covenants running with the land, to wit:

1. The plat for said property will comply with City zoning and houses will be located not less than the distance from the front property lines to building lines therein established for the individually numbered lot and block therein. The minimum setback line for each corner lot from the side street shall be the distance therein established for the corner lots likewise shown in the recorded plat.

2 There shall not be erected on any lot designated on said plat, except as hereinafter provided, more than one private dwelling house, garage, servant house, and necessary outbuildings and said property shall be occupied by one family only, except in the case of servants living in servant quarters on the premises.

3. No dwelling shall be erected on any lot of Materials other than brick, stone, or other masonry materials unless the above named materials constitute at least sixty-five percent (65%) of the total outside wall area exclusive of window and door openings up to the top plate line of the first story, .- - 4 "•.

4. Each residence as erected on Lots 1-14, Block 9, Ember Creek, Section 2 shall have a minimum gross living area of 1,600 square feet exclusive of breezeways, garages, porches, carports, and balconies. Each residence as erected on all remaining lots in Ember Creek, Section 2 shall have a minimum gross living area of 1,200 square feet exclusive of breezeways, garages, porches, carports, and balconies.

5. The easements shown on EMBER CREEK, SECTION 2 final plat, as filed on record, are reserved for the mutual use and accommodations of garbage collection agencies and all public utilities desiring to use same. Any public utility shall have the right to remove and keep all or part of any buildings, fences, trees, shrubs, or other improvements or growths which in any way endanger or interfere with the construction, maintenance, or efficiency of Its respective system on any of these easement strips, and any public utility shall, at all times, have the right of egress and ingress to and from and upon said easements strips for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining, and adding to or removing all or any part of its respective system without the necessity at any time of procuring permission of anyone.

6. No noxious or offensive trade or activity shall be carried on upon any lot, or shall anything be done thereon which may be *or* become annoyance or nuisance to the neighborhood.

7. No trailer, basement, tent, shack, barn, garage, or other outbuilding erected In the tract shall at any time be used as residence temporarily or permanently, nor shall any structure of a temporary character be permitted as a residence. Sales and construction trailers used during the construction and/or marketing period shall be allowed for sales and construction purposes only.

8. No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Affected Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Affected Lot,

No derrick or other structure designed for use in boring for oil or natural gas or other minerals shall be erected, maintained or permitted upon any Affected Lot.

9. No fence shall be permitted to extend nearer to any street than the front line of the improvement as herein provided; no fence shall exceed eight (8) feet in height or the city requirements, whichever is less.

10. No person owning any lot or lots shall keep domestic animals in a number of excess of that which he may use for the purpose of companionship of the private family, it being the purpose and Intention hereof to restrict the ownership of domestic animals against any; commercial purposes of any kind or character and to restrict the use of said property so that no person shall quarter on the premises either horses or cows. By agreement of the parties hereto, the term "domestic" animals specifically excludes horses, cows, hogs, sheep, goats, guinea fowls, ducks, chickens or turkeys or other animals that may interfere with the quietude, health or safety of the community.

11. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for storage or disposal of such materials shall be kept in a clean and sanitary condition.

12. The foregoing buildings and use restrictions which are made hereby conditions subsequent running with the land, shall remain In force and effect for thirty (30) years from the date of this instrument at which time the same shall be automatically extended for successive periods of ten (10) years unless a majority vote of the then property owners of the lots In said subdivision shall then agree In writing to change said conditions, covenants and in whole or in part.

13. If the parties hereto or any of them or their heirs or assigns shall violate or Attempt to violate any of the covenants herein, it shall be lawful for any person or persons owning any real property situated in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violation,

14. Invalidation of any one of these covenants by judgement or court order shall in no way affect any of the provisions which shall remain in full force and effect.

15. Violation or failure to comply with the foregoing restrictions, covenants, and conditions shall in no way affect the validity of any mortgage, loan or bona fide lien which may, In good faith, be then existing on the above property,

16. No building shall be erected, placed or altered on any building plot in this subdivision until the building plans, specifications and plot plan showing the location of such building have bean approved in writing as to conformity and harmony of external design with existing structures In the subdivision and as to location of the building with respect to topography by Declarant or it's authorized representatives.

In the event the Declarant or its authorized representatives fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have bean submitted to It or, in any event if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with.

Neither the Declarant nor its authorized representatives shall be entitled to any compensation for service performed pursuant to this covenant. The powers and duties of the Declarant and of its authorized representatives shall cease on and after January 1, 2010. Thereafter, the approval described In this covenant shall not be required unless prior to said date and effective thereon, a written instrument shall be executed by the then record owners of a majority of the lots in this subdivision and duly recorded

appointing a representative, or representatives who shall thereafter exercise the same powers previously exercised by the Declarant.

17. These restrictions shall not extend to or cover any portion of the above named subdivision or addition upon which no private dwelling is constructed wrthin five (5) years of the date hereof and which property is hereafter, at any time, rezoned by the city government in which the property is located with a classification other than single-family residential.

18. EMBER CREEK JOINT VENTURE, the Declarant, reserves the right, so long as it is owner of any residential lot in the addition, to amend, revise, or abolish any one or more of the foregoing restrictions and to revise the plat of such addition by instrument duly executed and acknowledged by it as the Declarant and in the Deed Records of Tarrant County, Texas.

19. Declarant has, using best efforts and all due diligence, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration Is, for any reason whatsoever, unenforceable by an Owner (or any other person) In a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceabilily, and each and every Owner, by acceptance of a deed conveying a Lot, acknowledges that Declarant shall have ho such liability.

20. EMBER GREEK COMMON IMPROVEMENTS ASSOCIATION PROVISIONS - See ADDENDUM-

21. EMBER CREEK JOINTVENTURE, the Declarant, reserves the right to convey and assign to others, its rights and *powers as* outlined in items 1 through 20 above.

EXECUTED this the 28 day of December ,1998.

ATTEST:

By: _____

/ EMBER CREEK JOINT VENTURE

STATE OF TEXAS .

COUNTY OF *Tarrant*

BEFORE ME. the undersigned, a Notary Public In for said County and State, on this day personally appeared Harold D. Dixaon of Ember Creek Joint Venture 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 said Ember Creek Joint Venture, a Texas Joint Venture, and that he executed the same as the act of such joint venture for the purpose and consideration therein expressed, and in the capacity therein states.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 28th day of December , 1998

_____

Notary Public

COMMON IMPROVEMENTS MAINTENANCE ASSOCIATION PROVISIONS ADDENDUM

1. The Declarant and every other Owner shall be a member of a Common Improvements Maintenance Association to be called the EMBER CREEK COMMON IMPROVEMENTS MAINTENANCE ASSOCIATION or as otherwise determined by Declarant. Membership shall be appurtenant to and shall not be separated from ownership of a Lot. There shall be two classes of membership as hereafter described.

2. Each Owner of a Lot, by acceptance of a deed, covenants and agrees to pay lo the Association (I) annual assessments and charges and (II) special assessments for capital improvements to the Common Improvements. The annual and special assessments, together with interest, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each assessment, Interest, costs and attorney fees shall be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to the successor in title of such Owner unless expressly assumed by them in writing.

3. Each Lot is subject to an initial annual assessment of $60.00 per annum, for the purpose of establishing a maintenance fund. Such assessment shall be paid annually in advance, commencing as to each Lot upon the sale of the Lot. The assessment is due and payable on January 1 of each year with the assessment for the year in which a Lot is sold to be prorated and to be due and payable upon such occupancy or sale. The rate at which each Lot shall be assessed and whether such assessment shall be paid monthly, quarterly, semi-annually or annually, shall be determined by the Board of Directors of the Association from time to time. The Association shall, upon written demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether or not the assessment has been paid for the assessment period.

4. Delcarant shall be exempt from the annual assessment charged to Owners so long as there is a Class B membership as hereafter provided. Declarant will forever be exempt from any special assessments. Declarant covenants and agrees that until December 31, 2002 in the event the annual assessment are Insufficient to pay the operating expenses of the Association, Delcarant shall provide the funds necessary to make up the deficit. There after all Class A members shall share and pay the deficit pro rata. If the deficit is due to the failure of an Owner or Owners to pay their annual assessment, the Association shall diligently pursue all available remedies against such defaulting Owners, including Institution of litigation to recover the assessment and shall reimburse Declarant the amounts, if any. so collected. Alternatively, Delcarant shall have the right to pay full Class A membership assessment on its Lots without relinquishing its Class B membership status and shall be excused from payment of any budget deficits.

. 5. The Association shall establish a maintenance fund from the annual assessments to be used to provide for normal, recurring maintenance of the Common Improvements and otherwise for the use and benefit of the members of the Association. By way of clarification and limitation, the maintenance fund may be used for (I) maintenance of and Improvements to all landscaping, (II) maintenance of and improvements to walls, grounds, lights, Irrigation, electricity, medians, signage, etc. (III) payment of cost and expenses in connection with enforcement of recorded covenants, conditions and restrictions affecting the Property, (iv) payment of costs and expenses in connection with collection and administration of the assessment and maintenance fund, and (v) any other things necessary or desirable, in the opinion of the Board of Directors of the Association, to keep the Common Improvements neat, attractive and In good order, or

which is considered of general benefit to the Owners, it being understood that the judgement of the Board of Directors in the expenditure of said funds shall be final and conclusive so long as such judgement is exercised in good faith. The Association may also establish and maintain a separate reserve fund for the replacement of the Common improvements, which fund shall be established and maintained out of regular annual assessments.

6. The Association may levy special assessments against Class A members for the purpose of defraying all or part of the cost of non-recurring maintenance, reconstruction, repair or replacement of the Common Improvements and such funds shall be used solely for such purpose.

7. Both Annual and Special Assessments must be fixed at a uniform rate for all Owners.

8. Assessments not paid within ten (10) days after the date due shall bear interest from the date due to the date paid at the highest non usurious rate of interest allowed by Texas law from time to time. The Association may institute litigation or foreclose the liens herein retained to recover any assessments not paid when due. No Owner may waive or escape liability for the assessments provided for holder by non use of the Common improvements or abandonment of such Owner's Lot.

9. To secure payment of any annual or special assessments provided for herein, there is retained a lien for the benefit of the Association. Such lien is secondary, subordinate and Inferior to all liens, present and future, securing monies advanced for the purchase price and/or for the Improvement of any such Lot. As a condition to enforcing such assessment lien upon any Lot against which there Is a valid prior lien as described above, the Association shall give the holder of said first lien sixty (60) days prior written notice of such proposed action setting out the amount of the delinquent assessments and interest. Sale of any Lot shall not affect the assessment lien, but foreclosure of any valid prior lien as described above shall extinguish the assessment lien as to assessments due prior to such foreclosure.

10. The assessment lien herein retained is a contract lien and may be enforced as provided in Chapter 51 of the Texas Property Code, as amended from time to time or its successor statute.

11. Class A members are all of the Owners except Declarant and each shall be entitled to one (1) vote for each Lot owned and in no event shall more than one vote be cast with respect to any Lot. The Class B member Is Declarant and It shall be entitled to nine (9) votes for each Lot owned by it. The Class B membership shall cease upon the earlier of ten (10) years from the date of conveyance of the first Lot by Declarant or when the Declarant no longer owns a Lot. The Declarant shall have the right to annex additional land to this Declaration and Class B membership shall be reinstated at any lime prior to the expiration of said ten (10) years If additional Lots owned by Declarant are annexed to this Declaration, but any such reinstatement shall terminate upon the events set forth above.

12. The first annual meeting of members shall be held at a time determined by the initial Board of the Association, in its discretion.

13. The voting rights of an Owner shall be suspended during any period such Owner is in default under this Declaration or delinquent In the payment of any assessment. Voting by any Owner may not be by proxy, but may only be in person.

14. The "Common Improvements", as used herein is the screening wall, landscaping and

parkway between said wall and the curb or street pavement along the Walnut Creek Street ROW and at the Coal Creek Drive entrance to the subdivision. These Common improvements are for the use and benefit of the members and the Association shall assume all maintenance obligations with respect to such Common Improvements. Also, the Association may elect to maintain certain other areas of the Property and any improvements thereon, though not owned by it, and such areas shall also be referred to as "Common Improvements".

15. Declarant does hereby, GRANT AND CONVEY to the Association a perpetual non-exclusive private easement, as shown on the Final Plat, for the purposes of maintaining and repairing the masonry fence and landscaping built on Lots backing or siding to the Walnut Creek Street ROW (hereinafter described as the "Fence and Landscaping Easement).

16. The Association and the Declarant and its employees, agents, successors and assigns, shall have the right at all reasonable times to enter upon all parts of each Easement Areas for any of the purposes for which Easement Area is reserved, without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes, provided the same are done in accordance with the Provisions of this Addendum. The Association and the Declarant and its employees, agents, successors and assigns shall be responsible for leaving each LOT in good condition and repair following any work or activity undertaken in an Easement Area pursuant to the provisions of this Addendum.

17. The Association shall indemnify every officer and director against any and all expenses, including counsel fees reasonably incurred by or imposed upon any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being, or having been, an officer or director. The officers and directors shall not be liable for any mistake of judgement, negligent or otherwise, except for their own individual willful misfeasance, malfeasance misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment.

18. Each Owner shall be liable to the Association for any damage to the Common improvements of any type or to any equipment thereon which may be sustained by reason of the negligence of said Owner, his tenants, employees, agents customers guests or invitees, to the extent that any such damage shall not be covered by insurance,

19. Other City of Mansfield Required Disclosure – Maintenance Responsibility
Nothing to the contrary herein withstanding, it is acknowledged and agreed that this is a mandatory common improvement maintenance association, which shall be responsible for maintaining the screening wall and the parkway between said wall and the curb or street pavement. The screening wall is privately owned and maintained by the Association.

The City of Mansfield has no obligation to maintain the screening wall. In the event the Association fails to maintain said screening wall and parkway, the City of Mansfield shall have the right to levy an assessment for the expense of the needed repairs or maintenance. Said assessment shall constitute as a lien upon each Lot against which the assessment is made. The City of Mansfield shall be the sole judge of whether repair or maintenance Is needed.