



Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road (972) 450-7000
FAX (972) 450-7043

AGENDA

APRIL 25, 2006

**WORK SESSION OF THE CITY COUNCIL
6:00 P.M.**

AND

**REGULAR MEETING OF THE CITY COUNCIL
7:30 P.M.**

**TOWN HALL
5300 BELT LINE ROAD**

WORK SESSION

Item #WS1 - Presentation and discussion of Town of Addison Special Events sponsorships.

Item #WS2 - Presentation of the 2006 Addison Citizen Survey.

REGULAR SESSION

Item #R1 - Consideration of Old Business.

Item #R2 - Consent Agenda.

CONSENT AGENDA

#2a - Approval of the Minutes for the April 11, 2006, Council Meeting.

#2b - Consideration and approval of a resolution amending the Second Supplemental Metrocrest Radio System Interlocal Agreement between the Town of Addison and the City of Carrollton to allow automatic renewals of additional one year terms of the service agreement for the maintenance of our Simulcast Radio System.

#2c - Consideration and approval of a resolution amending the Letter of Agreement between the Town of Addison and Affiliated Computer Services, Inc. (ACS), to allow automatic renewals of additional one year terms of the Letter of Agreement for the maintenance of our Simulcast Radio System.

#2d - Consideration and approval of a resolution to award bid to M&M Special Events in the amount of \$28,412 for miscellaneous rentals for the 2006 special event season with the option to renew for two additional years.

#2e - Consideration and approval of a resolution to award bid to National Construction Rentals in the amount of \$9,678.75 for temporary fence rentals for the 2006 special event season with the option to renew for two additional years.

#2f - Consideration and approval of a resolution to award bid to ACT Services in the amount of \$33,897.92 for trash clean up services for the 2006 special event season with the option to renew for two additional years.

#2g - Consideration and approval of a resolution to approve a License Agreement between the Town of Addison and Seven Owls L.P. for a vehicular and pedestrian access easement across the town's property on Landmark Boulevard, and to provide and install landscaping and irrigation on Addison's property in connection with the Licensee's development on Landmark Place.

Item #R3 -

Consideration and approval of an ordinance approving an amendment to an existing Planned Development district (085-047), in order to provide for residential (townhome) as an allowed use, and provide for revised development plans, located on 2.37 acres at the southeast corner of Montfort Road and Celestial Road, on application from Zachary Custom Builders, represented by Jones and Boyd, Inc.

Attachments:

1. Exhibit B Planned Development Regulations
2. Corporate Certificate of Stanford Court Homeowners Association, Inc.
3. Articles of Incorporation of Stanford Court Homeowner's Association, Inc.
4. Bylaws of Stanford Court Homeowner's Association, Inc.
5. Declaration of Covenants and Restrictions for Stanford Court
6. Construction Specifications for Stanford Court
7. Construction Schedule
8. Stanford Court Entry Wall Description/Cross Section (PDF)
9. Stanford Court Montfort/Celestial Typical Stone Wall Section (PDF)
10. Stanford Court Grading Plan with Pad Elevations and Retaining Wall Cross Section (PDF)
11. Stanford Court Landscape (PDF)
12. Stanford Court Construction Parking Exhibit (PDF)

Administrative Comment:

This item was tabled from the April 11, 2006 meeting. The public hearing was opened and then closed.

Administrative Recommendation:

Administration recommends approval.

Item #R4 -

Consideration and approval of a resolution approving Change Order #6 in the amount of \$44,688.62 and an extension of 28 calendar days for the construction of Arapaho Road Phase III from Surveyor Boulevard to Addison Road.

Attachments:

1. Council Agenda Item Overview
2. Change Order #6

Administrative Recommendation:

Administration recommends approval.

Item #R5 -

Consideration and approval of a resolution approving an amendment to the Engineering Services Agreement with HNTB Corporation in an amount not to exceed \$27,842, for additional inspection services on the Arapaho Road Phase III project.

Attachment:

1. Council Agenda Item Overview

Administrative Recommendation:

Administration recommends approval.

Item #R6 -

Consideration and approval of a resolution by the Town of Addison, Texas suspending the May 30, 2006, effective date of the proposal by Atmos Energy Corp., Mid-Tex Division to implement interim GRIP rate adjustments for gas utility investment in 2005; authorizing participation with the Gas Standing Steering Committee in a review and inquiry into the sufficiency of the filing and the basis and reasonableness of the proposed rate adjustments; authorizing intervention in administrative and court proceedings involving the proposed GRIP rate adjustments; requiring reimbursement of reasonable legal and consultant expenses; and requiring delivery of this resolution to the company and legal counsel.

Attachments:

1. Council Agenda Item Overview
2. Resolution

Administrative Recommendation:

Administration recommends approval.

Item #R7 -

PUBLIC HEARING regarding, and consideration of approval of, an ordinance finding that the existing natural gas distribution rates of Atmos Mid-Tex should be reduced; ordering Atmos energy Corp., Mid-Tex division, to reduce its existing rates within the city; adopting specific new rates R, T & C and ordering all rates, service charges and tariff language not inconsistent with Attachment 1 to remain operative except that all GRIP surcharges shall immediately cease; ordering Atmos Mid-Tex to reimburse the city for its reasonable costs incurred in this show cause and any related ratemaking proceedings or appeals of said proceedings; authorizing the Atmos Cities Steering Committee to act on behalf of city and intervene in any proceedings before administrative or judicial bodies; requiring delivery of this resolution to the company and legal counsel; and ordaining other provisions related to the subject matter hereof.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

Item #R8 -

Appointment of one member to the Planning and Zoning Commission.

Attachment:

1. List of Planning & Zoning Commissioners

Administrative Comment:

First term for Commissioner Chafin expired on April 13, 2006. (Niemann)

Item #R9 -

Appointment of one member to the Addison Board of Zoning Adjustment (BZA).

Attachment:

1. Citizens Academy List
-

Administrative Comment:

Boardmember Beverly Roberts has moved from the city. BZA appointments do not belong to individual Councilmembers.

Item #R10 - Consideration and approval of an ordinance of the Town of Addison, Texas amending the Code of Ordinances of the City by amending Chapter 86, Vehicles For Hire thereof by adding a new Article III regarding non-motorized passenger transport service regulations and standards; Providing for certain administrative procedures; Providing guidelines for a non-motorized passenger transport service; Providing for fees for registering a non-motorized passenger transport service; Providing qualifications, standards, and regulations for a non-motorized transport driver's permit's; Providing for insurance requirements; Providing for other matters related to the use and operation of a non-motorized passenger transport service; Providing a savings clause; Providing a severability clause; Providing an effective date.

Attachments:

1. Council Agenda Item Overview
2. Ordinance

Administrative Recommendation:

Administration recommends approval.

Adjourn Meeting

Posted 5:00 p.m.
April 20, 2006
Carmen Moran
City Secretary

**THE TOWN OF ADDISON IS ACCESSIBLE TO PERSONS
WITH DISABILITIES. PLEASE CALL (972) 450-2819 AT LEAST
48 HOURS IN ADVANCE IF YOU NEED ASSISTANCE.**

Council Agenda Item: #WS1

There are no attachments for this item.

Council Agenda Item: #WS2

Attachments will be delivered separately.

OFFICIAL ACTIONS OF THE ADDISON CITY COUNCIL

April 11, 2006
6:00 p.m. - Council Chambers
5300 Belt Line Road

Present: Councilmembers Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Absent: Mayor Chow

Item #WS1 – Discussion and presentation of Policies and Strategies for Belt Line Road Redevelopment.

No action taken.

Item #WS2 – Discussion regarding the fuel license for the receipt, storage, and dispensing of fuel at Addison Airport.

No action taken.

Mayor Chow entered the Council Chambers.

Item #R1 - Consideration of Old Business.

The City Manager announced that visiting employees would be introduced later in the meeting.

Item #R2 - Consent Agenda.

Item #2a and Item #2b were considered separately.

#2c – Consideration and approval of a resolution to award bid to Dowager Construction, Inc., in the amount of \$105,000 for construction of the Chatham Court, Phase I, Water Service Replacement Project.

Councilmember Niemann moved to duly approve the above listed item.
Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

#2a – Approval of the Minutes for the March 28, 2006, Council Meeting.

Councilmember Mallory moved to duly approve the minutes for the March 28, 2006, Council Meeting subject to changes. Councilmember Hirsch seconded.
Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

#2b – Consideration and approval of a resolution authorizing the City Manager to enter into an agreement with NICE Systems, Inc., through Houston Galveston Area Cooperative (HGAC), in the amount of \$31,005, to replace and install the equipment used to record phone and radio traffic.

Councilmember Niemann moved to duly approve Resolution No. R06-035 authorizing the City Manager to enter into an agreement with NICE Systems, Inc., through Houston Galveston Area Cooperative (HGAC), in the amount of \$31,005, to replace and install the equipment used to record phone and radio traffic. Councilmember Hirsch seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R3 – Appointment of one member to the Planning and Zoning Commission

This item was tabled.

Item #R4 – Appointment of one member to the Addison Board of Zoning Adjustment (BZA).

Councilmember Mallory moved to reappoint Maggie McQuowan to the Addison Board of Zoning Adjustment (BZA). Councilmember Hirsch seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R6 was taken out of sequence.

Item #R6 – **PUBLIC HEARING** regarding, and consideration of approval of, an Ordinance approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located at 3716 Belt Line Road, on application from Quizno's Sub Shop represented by Mr. George Kriske of JKLA Architects, Inc.

Mayor Chow opened the meeting as a public hearing. There were no questions or comments. Mayor Chow closed the meeting as a public hearing.

Councilmember Braun moved to duly approve Ordinance No. 006-015 approving a Special Use Permit for a restaurant and a Special Use Permit for the sale of alcoholic beverages for on-premises consumption, located at 3716 Belt Line Road, on application from Quizno's Sub Shop represented by Mr. George Kriske of JKLA Architects, Inc., subject to the following condition. Councilmember Niemann seconded. Motion carried.

- All dead and missing landscape material shall be replaced on the site prior to the issuance of a Certificate of Occupancy for the space.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

Councilmember Kraft recused himself and left the Council Chambers.

Item #R5 – **PUBLIC HEARING** regarding, and consideration of approval of, an Ordinance approving an amendment to an existing Planned Development district (085-047), in order to provide for residential (townhome) as an allowed use, and provide for revised development plans, located on 2.37 acres at the southeast corner of Montfort Road and Celestial Road, on application from Zachary Custom Builders, represented by Jones and Boyd, Inc.

Mayor Chow opens the meeting as a public hearing.

The following persons spoke in opposition to the request:

Tom Hunse, 14784 Winnwood Road
Dorothy Singhal, 14678 Winnwood Road
John Branch, 15060 Winnwood
Blake Clemmons, 14754 Celestial Place
Ed Copeland, 5600 Celestial Road
Debbie Freed, 14932 Winnwood
Howard Freed, 14932 Winnwood
Ralph Matthews, 14804 Bellbrook Drive
Robert Weinstein, 14912 Havenshire Place
Cindy Brackensick, 15000 Winnwood
Lou Navias, 14900 Winnwood
Mike Emmett, 14530 Winnwood
Newt Singhal, 14678 Winnwood
Denise Hunse, 14784 Winnwood
Barbara Colegrove, 15022 Bellbrook
Steve Foote, 14924 Havenshire Place
Al Angel, 14540 Winnwood
Virginia Hinsley, 15016 Winnwood

Riccardo Bertocco, 14820 Bellbrook
Dallas Hinsley, 15016 Winnwood
T.R. Viswanathan, 14725 Celestial Place

The following persons spoke in favor of the request:

Micky Munir, 14929 Havenshire Place
Chris Mims, parent of student at Walden School
Justine Willardson, teacher at Walden School
Mike Irvine, 14819 Bellbrook Drive
John Stockton, 14745 Celestial Place
Lisa Cobol, parent of Walden School student
J.J. Horan, 14757 Celestial Place
Will Fulton, board member for Walden School
Pamela Ezell, director of Walden School
Chris Cobol, student of Walden School
Paul Wonderlich, parent of Walden School student
Earl Jones, 14750 Celestial Place

Mayor Chow closed the meeting as a public hearing.

Councilmember Hirsch moved to table this item. Councilmember Braun seconded. Motion failed.

Voting Aye: Braun, Hirsch
Voting Nay: Chow, Mallory, Mellow, Niemann
Absent: None
Abstain: Kraft

Councilmember Hirsch moved again to table the item. Councilmember Braun seconded. Motion was not voted on.

Councilmember Niemann moved to table this item. Councilmember Mallory seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Mallory, Niemann
Voting Nay: Mellow
Absent: None
Abstain: Kraft

Councilmember Kraft returned to the Council Chambers.

Item #R7 – **PUBLIC HEARING** regarding, and consideration of approval of, an Ordinance approving development plans for a drive-through bank in a Planned Development district (093-018), located at 3790 Belt Line Road, on application

from Capital One Bank Corporation, represented by Mr. Michael Rosson of Levinson Associates, L.P.

Mayor Chow opened the meeting as a public hearing. There were no questions or comments. Mayor Chow closed the meeting as a public hearing.

Councilmember Hirsch moved to duly approve Ordinance No. 006-016 approving development plans for a drive-through bank in a Planned Development district (093-018), located at 3790 Belt Line Road, on application from Capital One Bank Corporation, represented by Mr. Michael Rosson of Levinson Associates, L.P., subject to the following conditions. Councilmember Mallory seconded. Motion carried.

- Staff recommends revising the tree planting alignment and sidewalk location along Belt Line to match as closely as possible to the goals established for the development of the concept plans. In addition, staff recommends revising the plans showing elimination of the shrub bed along the Belt Line frontage where no parking spaces are planned, which is also in keeping with the master plan to provide an open ground plane for visibility from the street into the site. Some of this proposed planting can be massed with the shrub bed shown on the northwest corner of the property.
- The massed trees shown on the northwest corner will need to be revised to avoid blocking the Kroger Center sign from view when looking toward the west on Belt Line Road.
- There is not adequate room for planting the proposed red oaks along the east end of the property. The existing row of live oaks addresses the tree planting requirement for this side of the property. One of the existing live oaks has declined to a point that it will need to be removed and replaced with a 5 inch caliper tree. This will need to be coordinated with the Kroger Center management since this area is a shared landscape buffer that falls on the edge of the retail center's property.
- The trees shown on the west side of the property are spaced too closely and should be spaced 35 feet apart.
- The final plan will need to show the total landscape area percentage versus the gross site area calculation.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R8 – Approval of a replat for one lot of 1.731 acres, located at 3790 Belt Line Road, on application from Capital One Bank Corporation, represented by Mr. Matthew Thomas of Carter Burgess, Inc.

Councilmember Braun moved to duly approve a replat for one lot of 1.731 acres, located at 3790 Belt Line Road, on application from Capital One Bank Corporation, represented by Mr. Matthew Thomas of Carter Burgess, Inc., subject to the following conditions. Councilmember Niemann seconded. Motion carried.

- Staff will provide plat boundary closure comments in the next seven days to the applicant's engineer.
- Engineering plans should be approved before plat is filed.
- Please provide a detail of what utility lines are in the easements proposed to be abandoned. Staff will okay the abandonment of the utility lines at time of engineering plan approval.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R9 – **PUBLIC HEARING** regarding, and in consideration of approval of, an Ordinance amending Chapter 14 (Aviation) of the Code of Ordinances by amending Article III (Municipal Airport) thereof by adding a new Division 2A regarding a fuel license for the receipt, storage and dispensing of fuel at Addison Airport, and deleting Division 4 (Airport Fuel Farm Facilities) from Article III, including Section 14-110 relating to fuel tank lease rates.

Mayor Chow opened the meeting as a courtesy public hearing.

The following spoke in opposition of the request:

Steve Wagner representing Ray Stern
Steve Whitlock, AirSure Limited
Bob Jacobi
Ken Horn Baker
Ray Stern, World Wide Jets

Mayor Chow closed the meeting as a public hearing.

Councilmember Niemann moved to duly approve Ordinance No. 006-017 amending Chapter 14 (Aviation) of the Code of Ordinances by amending Article III (Municipal Airport) thereof by adding a new Division 2A regarding a fuel license for the receipt, storage and dispensing of fuel at Addison Airport, and deleting Division 4 (Airport Fuel Farm Facilities) from Article III, including Section 14-110 relating to fuel tank lease rates, subject to revisions that were spelled out in a revised exhibit that was distributed to the Council during the meeting. Councilmember Hirsch seconded. Motion carried.

Voting Aye: Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: Chow
Absent: None

Item #R10 – Consideration and approval of an Ordinance granting meritorious exception to Sec. 62-123, Area, for AMF Fun Fest, located at 3805 Belt Line Road.

Councilmember Mallory moved to duly approve Ordinance No. 006-018 granting meritorious exception to Sec. 62-123, Area, for an attached sign on the southwest façade and an attached sign on the southeast façade, with a logo 5'3" in height, numerals 3'9" and 2'9" in height, and an area of 81.5 square feet, on application from AMF Fun Fest Lanes, located at 3805 Belt Line Road. Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow
Voting Nay: Niemann
Absent: None

Item #R11 – Consideration and approval of a resolution approving Change Order #6 in the amount of \$44,688.62 and an extension of 28 calendar days for the construction of Arapaho Road Phase III from Surveyor Boulevard to Addison Road.

Councilmember Niemann moved to table this item. Councilmember Braun seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R12 – Consideration and approval of a resolution authorizing the payment of utility billing refunds totaling \$2,702.37 and approving the waiver of \$49,831.31 in utility fees.

Councilmember Kraft moved to duly approve Resolution No. R06-037 authorizing the payment of utility billing refunds totaling \$2,702.37 and approving the waiver of \$49,831.31 in utility fees. Councilmember Mallory seconded. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

Item #R13 – Consideration and approval of an ordinance of the Town of Addison, Texas amending Chapter 82 of the Code of Ordinances of the Town by amending Section 82-79 Definitions; 82.79.5 Security Deposit Refunds; 82.80.1 Payment; 82.80.2 Billing Dispute; 82.80.3 Service Termination Procedures; 82.83.1 Miscellaneous Charges and Provisions; and 82-83.2 Discrepancies in Amount of Bill; Providing a savings clause; Providing a severability clause; Providing an effective date.

Councilmember Mallory moved to duly approve Ordinance No. 006-019 amending Chapter 82 of the Code of Ordinances of the Town by amending Section 82-79 Definitions; 82.79.5 Security Deposit Refunds; 82.80.1 Payment; 82.80.2 Billing Dispute; 82.80.3 Service Termination Procedures; 82.83.1 Miscellaneous Charges and Provisions; and 82-83.2 Discrepancies in Amount of Bill; Providing a savings clause; Providing a severability clause; Providing an effective date. Councilmember Hirsch seconded. Councilmember Niemann proposed an amendment to the motion extending the time that a bill is considered over-due from the 10th day after it is due to the 12th day after it is due. Councilmember Mallory accepted the amendment to the motion. Motion carried.

Voting Aye: Chow, Braun, Hirsch, Kraft, Mallory, Mellow, Niemann
Voting Nay: None
Absent: None

There being no further business before the Council, the meeting was adjourned.

Mayor

Attest:

City Secretary

Council Agenda Item: #2b

SUMMARY:

Council consideration is requested for a Resolution amending the Second Supplemental Metrocrest Radio System Interlocal Agreement between the Town of Addison and the City of Carrollton passed by council on September 11, 2004. The amendment is to allow automatic renewals of additional one year terms of the service agreement for the maintenance of our Simulcast Radio System.

FINANCIAL IMPACT:

There is no change to the financial impact of the service agreement between Addison and Carrollton which was approved by Council on September 11, 2004.

BACKGROUND:

On September 11, 2004 Council approved a resolution authorizing the City Manager to enter into an agreement with the City of Carrollton to provide service and maintenance on the Simulcast Radio System shared by the Town, Carrollton and Farmers Branch. The original agreement allowed for the agreement to expire on September 30, 2005. We are asking to modify the amendment so that: at the end of each applicable term, the agreement will automatically renew for an additional one (1) year term, unless at least 30 days prior to the then applicable expiration date one City gives notice to the other City of its intent to terminate the Agreement.

Recommendation:

Staff recommends approval.

STATE OF TEXAS §
 §
COUNTY OF DENTON §

**FIRST AMENDMENT
TO SECOND SUPPLEMENTAL METROCREST RADIO SYSTEM
INTERLOCAL AGREEMENT**

This First Amendment to Second Supplemental Metrocrest Radio System Interlocal Agreement ("First Amendment") is made and entered into is entered into this ____ day of _____, 2005 by and between the City of Carrollton, Texas ("Carrollton") and the Town of Addison, Texas ("Addison") (Carrollton and Addison are sometimes referred to herein together as the "Cities" and individually as a "City" or "Party").

Recitals:

WHEREAS, the Cities have heretofore entered into an agreement entitled Second Supplemental Metrocrest Radio System Interlocal Agreement (the "Interlocal Agreement") which provides for the maintenance by Carrollton for Addison of a four-site nine-channel 800 Mhz Trunked Simulcast Radio System (the "Trunked System"); and

WHEREAS, the term of the Interlocal Agreement is for a period of one year, which term expired on _____, 2005, and the Cities desire by this First Amendment to renew the Interlocal Agreement for an additional one year term, and to modify the same to provide for the automatic renewal thereof for additional one year terms, subject to the termination provisions of the Interlocal Agreement and as set forth herein.

NOW, THEREFORE, Carrollton and Addison, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), the mutual benefits and obligations set forth in this First Amendment and in the Agreement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, do agree as follows:

Section 1. Incorporation of Recitals. The above and foregoing recitals are true and correct and are incorporated into and made a part of this First Amendment.

Section 2. Renewal. The Second Supplemental Metrocrest Radio System Interlocal Agreement, which expired on September 30, 2005, is hereby renewed for an additional one year term, commencing October 1, 2005 and ending September30, 2006, on the same terms and conditions as set forth in the Interlocal Agreement, subject to the annual appropriation of funds by Addison to pay for the costs of the Interlocal Agreement.

Section 3. Amendment. The term of the Interlocal Agreement shall, at the end of each applicable term, automatically renew for an additional one (1) year term, unless, at least 30 days prior to the then applicable expiration date one City gives notice to the other City of its intent to terminate this Agreement at the end of the then current term; in such event, the Interlocal Agreement will terminate at the end of the then current term.

Section 4. No Other Amendments. Except to the extent modified or amended herein, all other terms, conditions, standards, and obligations of the Interlocal Agreement shall remain unchanged and in full force and effect.

Section 5. Authority to Execute. The undersigned officers and/or agents of the Cities are the properly authorized officials and have the necessary authority to execute this First Amendment on behalf of the Cities, and each Party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

Section 6. Effective Date. This First Amendment shall be deemed effective as of the date first set forth above.

IN WITNESS WHEREOF, the undersigned hereto have executed this First Amendment to Second Supplemental Metrocrest Radio System Interlocal Agreement as of the day and year first written above.

CITY OF CARROLLTON, TEXAS

TOWN OF ADDISON, TEXAS

By: _____
Name: _____
Title: _____

By: _____
Ron Whitehead, City Manager

ATTEST:

ATTEST:

By: _____
Name: _____
City Secretary

By: _____
Carmen Moran, City Secretary

Council Agenda Item: #2c

SUMMARY:

Council consideration is requested for a Resolution amending the Letter of Agreement between the Town of Addison and Affiliated Computer Services Inc. (ACS) passed by Council on September 21, 2004. The original agreement allowed ACS to provide work and services on the Mestrocrest Simulcast Radio System as a subcontractor for the City of Carrollton. The amendment is to allow automatic renewals of additional one year terms of the Letter of Agreement for the maintenance of our Simulcast Radio System.

FINANCIAL IMPACT:

There is no change to the financial impact of the Letter of Agreement between Addison and ACS which was approved by Council on September 21, 2004.

BACKGROUND:

On September 21, 2004 Council approved a resolution authorizing the City Manager to enter into a Letter of Agreement with ACS to serve as a subcontractor for the City of Carrollton to provide service and maintenance on the Simulcast Radio System shared by the Town, Carrollton and Farmers Branch. The original agreement allowed for the agreement to expire on September 30, 2005. We are asking to modify the amendment so that: at the end of each applicable term, the agreement will automatically renew for an additional one (1) year term till such time that the City of Carrollton ends its agreement with ACS as a subcontractor.

RECOMMENDATION:

Staff recommends approval.

On ACS Letterhead

April 25, 2006

Mr. Ron Whitehead
City Manager
Town of Addison, Texas
5300 Belt Line Road
Addison, Texas 75001

Re: Second Supplemental Metrocrest Radio System Interlocal Agreement Dated September 21, 2004 Made By and Between the City of Carrollton, Texas and the Town of Addison, Texas

Dear Mr. Whitehead:

The City of Carrollton, Texas ("Carrollton") and the Town of Addison, Texas ("Addison") have previously entered into an agreement entitled Second Supplemental Metrocrest Radio System Interlocal Agreement (the "Second Supplemental Agreement"), which supplements the Metrocrest Radio System Interlocal Agreement executed on September 11, 2001 by and between Carrollton, Addison, and the City of Farmers Branch, Texas. Under the Second Supplemental Agreement, Carrollton maintains at certain times a nine-channel 800MHz Trunked Simulcast Radio Site at the locations described in the Second Supplemental Agreement.

In order to provide the work and services (or a portion thereof) described in the Second Supplemental Agreement, Carrollton, with the consent of Addison, retained the services of our company, ACS State & Local Solutions, Inc. ("ACS") as a subcontractor to provide certain work and services (the "ACS Work"). Pursuant to the Second Supplemental Agreement, Addison and ACS entered into a letter agreement dated September 21, 2004 (the "Letter Agreement", a true and correct copy of which is attached) regarding insurance, indemnification, warranties, and service matters in connection with the ACS Work. The ACS Work is described in the Letter Agreement.

ACS has learned that Carrollton and Addison have renewed the Second Supplemental Agreement for an additional one year period, commencing October 1, 2005 and ending September 30, 2006, and have agreed that, at the end of the said one year period, the Second Supplemental Agreement will be automatically renewed for successive one year periods, subject to termination as set forth therein. For the said additional one year period of time and for such additional one year periods as may thereafter occur, Carrollton has retained the services of ACS as a subcontractor to continue to provide the ACS Work. In connection therewith, and for and in consideration of Addison's continued consent to Carrollton's utilization of ACS as a subcontractor, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the sufficiency of which is hereby acknowledged and agreed, ACS desires and

agrees that the terms and conditions of the Letter Agreement shall be renewed and extended for and shall be applicable in all respects to such additional one year period and any successive time periods of the Second Supplemental Agreement.

If the above reflects your understanding of our arrangement, please indicate so by signing on behalf of the Town of Addison in the space provided below.

Very truly yours,

ACS State & Local Solutions, Inc.

By: _____
Title: _____

Accepted and Agreed to:

Town of Addison, Texas

By: _____
Ron Whitehead, City Manager

Date: _____



November 11, 2004

Mr. Ron Whitehead
City Manager
Town of Addison, Texas
5300 Belt Line Road
Addison, Texas 75001

Re: Second Supplemental Metrocrest Radio System Interlocal Agreement Dated September 21, 2004 Made By and Between the City of Carrollton, Texas and the Town of Addison, Texas

Dear Mr. Whitehead:

The City of Carrollton, Texas ("Carrollton") and the Town of Addison, Texas ("Addison") have entered into or intend to enter into an agreement entitled Second Supplemental Metrocrest Radio System Interlocal Agreement (the "Second Supplemental Agreement"). The Second Supplemental Agreement supplements the Metrocrest Radio System Interlocal Agreement executed on September 11, 2001 by and between the Carrollton, Addison, and the City of Farmers Branch, Texas. For emergency and other communication purposes, these three cities have used a single-site nine-channel 800MHz Trunked Radio system, and that system has now been upgraded to be a four-site nine-channel 800Mhz Trunked Simulcast Radio System. Under the Second Supplemental Agreement and as described therein, Carrollton will maintain at certain times the nine-channel 800MHz Trunked Simulcast Radio Site at the locations described in the Second Supplemental Agreement.

In order to provide the work and services (or a portion thereof) described in the Second Supplemental Agreement, Carrollton, with the consent of Addison, has retained the services of our company, ACS State & Local Solutions, Inc., a New York corporation ("ACS"), and a wholly-owned subsidiary of Affiliated Computer Services, Inc. as a subcontractor. ACS is duly authorized to conduct business in Texas, and will be performing that work and those services described in Attachment A ("Service Agreement Maintenance Plan") attached to this letter and incorporated herein (the "ACS Work"). Under and pursuant to the Second Supplemental Agreement, Addison is authorized to obtain agreements from ACS regarding insurance, indemnification, warranties, and service matters in connection with the ACS Work. For and in consideration of Addison's consent to Carrollton's utilization of ACS as a subcontractor, the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the sufficiency of which is hereby acknowledged and agreed, ACS agrees to provide the following in connection with the ACS Work:

- A. ACS will provide and maintain the minimum insurance coverages set forth below during all times material to the ACS Work, but in any event at least during the term of the Second Supplemental Agreement:

1. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/ completed operations aggregate), contractual liability and XCU (Explosion, Collapse, Underground) hazards related to the ACS Work. Coverage for products/completed operations must be maintained for at least two (2) years after the work described herein has been completed.
2. Workers Compensation insurance at statutory limits, including Employers Liability coverage at minimum limits of \$1,000,000 each accident/\$1,000,000 by disease each-employee/\$1,000,000 by disease – policy limit.
3. Business Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-accident for bodily injury and property damage, including ACS' owned, non-owned, and hired car coverage.
4. All Risk Property Insurance or Installation floater covering the full replacement cost for personal property in ACS' care, custody, or control, being installed by ACS prior to and during installation and until such time as the installation has been accepted by Addison.

With reference to the foregoing insurance requirement, ACS shall include a provision or specifically endorse applicable insurance policies as follows:

1. The Town of Addison, Texas shall be named as an additional insured with respect to General Liability and Automobile Liability.
2. All liability policies shall contain no cross liability exclusions.
3. A waiver of subrogation in favor of the Town of Addison, Texas shall be contained in the Workers Compensation, and the Commercial General Liability insurance policies.
4. All insurance policies shall include a provision or be endorsed to require the insurer to provide at least thirty (30) days notice to the Town of Addison prior to any material change in the insurance coverage.
5. All insurance policies shall include a provision or be endorsed to the effect that the Town of Addison will receive at least thirty (30) days notice prior to cancellation or non-renewal of the insurance.
6. The Commercial General Liability and Business Automobile Liability insurance policies, which name The Town of Addison as an additional insured, shall include a

provision or be endorsed to read as primary coverage regardless of the application of other insurance.

7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.

8. ACS' insurance shall be primary. ACS shall be responsible in full for any deductible in place with its applicable insurance policies.

9. Insurance must be purchased from insurers that are financially acceptable to the Town of Addison and authorized to do business in the State of Texas.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Standard Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, shall be delivered by ACS prior to the effective date of this letter agreement (and updated from time to time as appropriate), and shall contain the following provisions:

1. Standard additional insured wording and primary insurance wording.
2. Standard cancellation or termination provision, in accordance with the requirements and instructions contained herein.
3. Provisions stating that property coverage extends to the installation of property of others while being installed by the named insured and in the care, custody, or control of the named insured.

Upon request, ACS agrees to furnish the Town of Addison with standard certificates of insurance.

B. (1) IN CONSIDERATION OF THIS AGREEMENT, ACS AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS ADDISON, ITS, OFFICERS, AGENTS AND EMPLOYEES (EACH AN "INDEMNITEE") FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, JUDGMENTS, LIABILITIES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (TOGETHER, "DAMAGES") ARISING OUT OF OR IN CONNECTION WITH ACS' PERFORMANCE OF THE ACS WORK, INCLUDING DAMAGES CAUSED BY THE INDEMNITEE'S OWN NEGLIGENCE, OR GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES EXPOSE AN INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY, EXCEPT AS SPECIFICALLY LIMITED HEREIN.

(2) WITH RESPECT TO ACS' INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A), ACS SHALL HAVE NO DUTY TO INDEMNIFY AN

INDEMNITEE FOR ANY DAMAGES CAUSED BY THE SOLE NEGLIGENCE OF THE INDEMNITEE, OR SOLE GROSS NEGLIGENCE OF THE INDEMNITEE, OR SOLE CONDUCT OF THE INDEMNITEE THAT MAY OR DOES EXPOSE THE INDEMNITEE TO STRICT LIABILITY UNDER ANY LEGAL THEORY.

(3) IF AN INDEMNITEE SUFFERS DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE, OR CONDUCT THAT MAY OR DOES RESULT IN EXPOSURE TO STRICT LIABILITY, OF BOTH ACS AND THE INDEMNITEE, ACS' INDEMNITY OBLIGATION SET FORTH IN SUBSECTION (A) WILL BE LIMITED TO A FRACTION OF THE TOTAL DAMAGES EQUIVALENT TO ACS' OWN PERCENTAGE OF RESPONSIBILITY.

(4) WITH RESPECT TO ACS' DUTY TO INDEMNIFY SET FORTH HEREIN IN SUBSECTION (A), ACS SHALL HAVE THE DUTY, AT ITS SOLE COST AND EXPENSE, THROUGH COUNSEL OF ITS CHOICE, TO LITIGATE, DEFEND, SETTLE OR OTHERWISE ATTEMPT TO RESOLVE ANY CLAIM, LAWSUIT, CAUSE OF ACTION, OR JUDGMENT ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. ACS WILL HAVE SOLE CONTROL OVER THE DEFENSE AND SETTLEMENT OF SUCH CLAIM; PROVIDED, HOWEVER THAT (I) THE INDEMNITEE WILL BE ENTITLED TO PARTICIPATE IN THE DEFENSE OF SUCH CLAIM AND TO EMPLOY COUNSEL AT ITS OWN EXPENSE TO ASSIST IN THE HANDLING OF SUCH CLAIM, AND (II) THE INDEMNITOR WILL OBTAIN PRIOR WRITTEN APPROVAL BEFORE ENTERING INTO ANY SETTLEMENT OF SUCH CLAIM OR CEASING TO DEFEND AGAINST SUCH CLAIM. ACS WILL NOT BE REQUIRED TO INDEMNIFY THE INDEMNITEE FOR ANY AMOUNT PAID BY THE INDEMNITEE IN THE SETTLEMENT OF ANY CLAIM FOR WHICH THE AMOUNT WAS AGREED TO WITHOUT NOTICE TO, AND PRIOR APPROVAL OF, ACS.

(5) IN THE EVENT THAT ACS FAILS OR REFUSES TO PROVIDE A DEFENSE TO ANY CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION ARISING OUT OF OR IN CONNECTION WITH THE ACS WORK, ADDISON SHALL HAVE THE RIGHT TO UNDERTAKE THE DEFENSE, COMPROMISE, OR SETTLEMENT OF ANY SUCH CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION, THROUGH COUNSEL OF ITS OWN CHOICE, ON BEHALF OF AND FOR THE ACCOUNT OF, AND AT THE RISK OF ACS, AND ACS SHALL BE OBLIGATED TO PAY THE REASONABLE AND NECESSARY COSTS, EXPENSES AND ATTORNEYS' FEES INCURRED BY ADDISON IN CONNECTION WITH HANDLING THE PROSECUTION OR DEFENSE AND ANY APPEAL(S) RELATED TO SUCH CLAIM, LAWSUIT, JUDGMENT, OR CAUSE OF ACTION.

(6) THE PROVISIONS OF THIS INDEMNITY OBLIGATION SET FORTH IN THIS PARAGRAPH B SHALL SURVIVE THE TERMINATION OR CANCELATION OF THIS LETTER AGREEMENT.

- C. ACS represents and warrants that (i) it has the skills, qualifications, expertise and experience necessary to perform the ACS Work with a high degree of quality and responsiveness, and that (ii) its services will be provided in a professional, good and workmanlike manner, consistent with commercially accepted best practices and standards within the Dallas/Fort Worth Metroplex area as of the time the services are provided, and with a high degree of quality and responsiveness.
- D. ACS warrants to Addison that the ACS Work will be free from defects not inherent in the quality required or permitted, and that the ACS Work will conform to the requirements of the Second Supplemental Agreement. ACS Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. ACS' warranty excludes remedy for damage or for defect caused by (i) modifications not executed by ACS, (ii) failure of Addison, its employees or agents, to operate the System in accordance with the operating instructions of the manufacturer, or (iii) exposure to unusual physical or electrical stress not caused by ACS or its officers, employees, agents, or representatives.
- E. If, within one year after the date of acceptance by Addison of the work and services provided by Carrollton under the Second Supplemental Agreement (including, without limitation, the ACS Work) or by ACS hereunder, any of the ACS Work is found to be not in accordance with the requirements of the Second Supplemental Agreement or this letter agreement, ACS shall correct it promptly after receipt of written notice from Addison requesting such correction. This obligation shall survive acceptance of the work and services under the Second Supplemental Agreement and termination thereof for a period not to exceed one year. Addison shall give such notice promptly after discovery of the condition.
- F. The limited warranty set forth herein is made to the City of Addison exclusively, and is in lieu of all other warranties. ACS MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE ACS WORK, IN WHOLE OR IN PART. ACS EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ACS EXPRESSLY DOES NOT WARRANT THAT THE SYSTEM, IN WHOLE OR IN PART, WILL BE ERROR FREE, OR WILL OPERATE WITHOUT INTERRUPTION.
- G. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES. ACS' TOTAL, AGGREGATE LIABILITY HEREUNDER SHALL NOT EXCEED THE SUM OF \$500,000.00, EXCLUSIVE OF APPLICABLE INSURANCE COVERAGE.

G. Nothing in this letter agreement shall be construed to relieve Carrollton in any way from any of its obligations, duties, responsibilities, and liabilities under the Second Supplemental Agreement or otherwise.

H. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Agreement will not be affected or impaired thereby.

I. In the event of any action under this Agreement, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this letter agreement; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this Contract.

J. This letter agreement is solely for the benefit of the parties hereto and is not intended to create or grant any rights, contractual or otherwise, to any third person or entity. Neither party shall have the right to, nor shall, assign, transfer, or otherwise convey this letter agreement without the prior written consent of the other party.

K. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this letter agreement on behalf of the parties hereto.

L. Either party may terminate this letter agreement upon at least 10 days written notice to the other party.

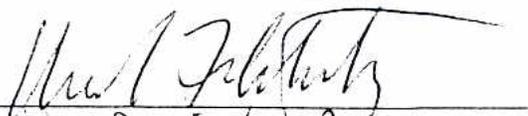
If the above reflects your understanding of our arrangement, please indicate so by signing on behalf of the Town of Addison in the space provided below.

Very truly yours,

ACS State & Local Solutions, Inc.

By:

Title:


Vice President ACS

Mr. Ron Whitehead
November 11, 2004
Page 7

Accepted and Agreed to:

Town of Addison, Texas

By: 
Ron Whitehead, City Manager

Date: Nov 29, 2004

Attachment A: Service Agreement Maintenance Plan

Town of Addison staff will contact the ACS Help Desk at 972-466-3280 to request service on fixed equipment. In addition to the terms, conditions, and standards set forth herein and in the letter agreement to which this Attachment A is attached, maintenance of the Equipment by ACS shall be in accordance and comply with the terms, conditions, and standards set forth in that Second Supplemental Metrocrest Radio System Agreement between the City of Carrollton, Texas and the Town of Addison, Texas dated October 19, 2004.

Repair of Equipment

Repair shall be defined as the best-effort required to restore to normal operating condition any equipment covered under this Contract which is in disrepair (not functioning in a normal fashion) or has become defective through normal wear and usage ("defective equipment"). Repair shall consist of the labor, supervision, transportation and parts required to restore defective equipment to normal operation

Field Replaceable Units (FRUs)

Equipment components will be replaced wherever possible with FRU's or spare equipment in an effort to restore the System to proper operation in the least amount of time. The exact quantity of spare equipment and FRU's inventory will be determined based on facility location and equipment priority should changes to equipment quantities, type, etc occur.

Hours of Service

Fixed equipment shall be repaired on a twenty-four hour per day, seven days per week basis for major failures. Minor fixed equipment failures will be serviced during normal working hours.

Response times

ACS maintenance personnel shall respond within one (1) hour of notification from the City that any piece of Public Safety fixed equipment is in disrepair or is defective and within four (4) hours of notification from the City that any piece of non-Public Safety fixed equipment is in disrepair or is defective.

Restoration times

Restoration for all reported failures of fixed equipment will be modeled after the chart below. All non-critical equipment shall be restored on a "best effort" basis. This requirement may be met by temporary or permanent repairs or temporary or permanent equipment replacement and is subject to the local availability of a FRU or spare unit or sub assembly.

SEVERITY RESPONSE AND RESTORAL REQUIREMENTS

SEVERITY	RESPONSE TIME	RESTORE TIME
Severity One: System Down or Degraded > 60%	2 Hours	4 Hours
Severity Two: System < 60% Degraded,	4 Hours	12 Hours

Non-Public Safety Users Affected		
Severity Three: Non-Emergency Or Technical Questions	Best Effort	Best Effort

Test Equipment and Tools

All test equipment and tools required for proper service of Town of Addison Systems will be provided by ACS or its subcontractors who have been approved by the Town of Addison ("authorized subcontractors").

Preventive Maintenance

A Preventive Maintenance inspection shall include but is not limited to:

- Transmitter power output
- Reflected power
- Frequency
- Modulation level
- Coded Squelch frequency and modulation level
- Receiver sensitivity
- Power supply voltages

Checklists will be followed for fixed equipment and Systems. This information will be kept on file for quality control purposes.

ACS will perform preventive maintenance on a periodic basis Preventive maintenance service that would result in a Severity One failure condition will be performed at mutually agreed times to be negotiated prior to the performance of the service.

UPS & Battery Systems

ACS or its authorized subcontractor will provide services in reference to the UPS and battery Systems on a semi-annual basis. The inspections will be reported to ACS for action and logged on a semi-annual UPS and battery inspection report.

Attachment B: Equipment List

Spectrum Center Equipment

Quantity	Description
9	Quantar Repeaters
1	Channel Bank with Cards
1	7 KVA UPS System
1	Receiver Multicoupler
1	Transmitter Combiner
1	Rubidium Atomic Standard w/GPS
1	Simulcast Remote Site Controller

Dispatch Center Equipment

Quantity	Description
	<u>Fire Department</u>
2	Console Operator Positions (with CEB)
2	TDN8503 Modem
3	DSFE1400VA UPS
1	BDN6767 Call Check Ups
3	L99ZX Control Station
1	L99ZX Spectra VHF Control Station
1	MSR2000 Base Station
3	Spectra Control Stations
2	Tone Decoder II
	<u>Police Department</u>
2	Syntor 9000 Control Stations
3	Console Operator Positions (with CEB)
3	TDN8503 Modem
4	DSFE1400VA UPS
1	SIP Terminal with CPU

Attachment C: Definitions and Acronyms

Definitions

Contract: Defined as this Service Agreement Maintenance Plan, together with the letter of agreement between ACS and the Town of Addison to which it is attached.

Normal Wear and Usage: Normal wear and usage is defined as the gradual deterioration of components that affects the normal operation of the equipment.

Response Time or "respond": defined as the time from the receipt by ACS or its authorized representative of a Town of Addison or other request for service until an ACS Service Technician arrives on site and begins diagnostic procedures by any means available on the equipment identified to be in disrepair or defective.

Service: any system support service provided by ACS pursuant to this Contract.

System: shall be defined as the Town of Addison Trunked Radio System.

Acronyms:

FRU: Field Replacement Unit

Council Agenda Item: #2d

SUMMARY:

Consideration of a resolution to award the bid for **miscellaneous rentals to M & M Special Events** in the amount of **\$28,412** for the 2006 special event season with the option to renew for two additional years.

FINANCIAL IMPACT:

Budgeted Amount: \$25,697

Cost: \$28,412

While the contract is \$2,715 more than the budget (based on 2005 expenditures), this amount can be accommodated within the existing budget.

BACKGROUND:

See attached memorandum from Barbara Kovacevich.

RECOMMENDATION:

Staff recommends approval as outlined in the attached memorandum.



MEMORANDUM

P.O. Box 9010 • 16801 Westgrove Drive • Addison, TX 75001-9010 • 972-450-6221 • 972-450-2834FAX

DATE: April 14, 2006

TO: Chris Terry, Assistant City Manager

FROM: Barbara Kovacevich, Special Event Manager

RE: Bids for **Miscellaneous Rentals** for the 2006 Special Events

CC: Shanna Sims, Budget and Procurement Manager
Sara Bosquez, Special Event Coordinator

We would like to place an agenda item on the April 25, 2006 City Council Agenda to award the bid for **miscellaneous rentals** to **M&M Special Events** for the 2006 special event season with the option to renew for the 2007 and 2008 event seasons.

Background: M & M Special Events was the low bidder for the 2005 special event season and had the option to renew their contract; however, they requested the opportunity to re-bid the project. Request for bids were sent out to 8 companies and was advertised on Demand Star and in the Dallas Morning News. Bidders submitted a bid for a total quantity of miscellaneous rentals on an annual basis with the option to renew for two additional years.

Recommendation: The following chart summarizes the bids that were received along with staff's recommendation for approval of **M&M Special Events** (highlighted in yellow). M&M Special Events provided great service in 2005 and they offer quality products at competitive prices.

MISCELLANEOUS RENTALS		
COMPANY	BID \$	COMMENTS
M&M Special Events	\$28,412.00	Lowest and most qualified bid
Ducky Bob's Party & Tent Rentals	\$47,715.10	

Budget: Proposed bid is \$28,412 which is \$2,715 (10%) more than was spent in 2005; however, this amount can be accommodated within the existing budget.

Council Agenda Item: #2e

SUMMARY:

Consideration of a resolution to award the bid for **temporary fence rentals** to **National Construction Rentals** in the amount of **\$9,678.75** for the 2006 special event season with the option to renew for two additional years.

FINANCIAL IMPACT:

Budgeted Amount: \$17,781.48

Cost: \$9,678.75

BACKGROUND:

See attached memorandum from Barbara Kovacevich.

RECOMMENDATION:

Staff recommends approval as outlined in the attached memorandum.



MEMORANDUM

P.O. Box 9010 • 16801 Westgrove Drive • Addison, TX 75001-9010 • 972-450-6221 • 972-450-2834FAX

DATE: April 14, 2006
TO: Chris Terry, Assistant City Manager
FROM: Barbara Kovacevich, Special Event Manager
RE: Bids for **Temporary Fence Rentals** for the 2006 Special Events
CC: Shanna Sims, Budget and Procurement Manager
Sara Bosquez, Special Event Coordinator

We would like to place an agenda item on the April 25, 2006 City Council Agenda to award the bid for **temporary fence rentals** to **National Construction Rentals** for the 2006 special event season with the option to renew for the 2007 and 2008 event seasons.

Background: National Construction Rentals was the low bidder for the 2005 special event season and had the option to renew their contract; however, they requested the opportunity to re-bid the project due to the increase cost of the product. We also installed the permanent chain link fence on about half of the field south of Festival Way, which greatly reduces the amount of temporary fence we need to rent. Request for bids were advertised on Demand Star and in the Dallas Morning News. National Construction Rentals was the only bidder and they have the option to renew for two additional years.

Recommendation: Staff recommends approval of **National Construction Rentals**.

Budget: Proposed bid is \$9,678.75 which is \$8,102.73 (45%) less than was spent in 2005.

Council Agenda Item: #2f

SUMMARY:

Consideration of a resolution to award the bid for **trash clean up services** to **ACT Services** in the amount of **\$33,897.92** for the 2006 special event season with the option to renew for two additional years.

FINANCIAL IMPACT:

Budgeted Amount: \$28,514.19

Cost: \$33,897.92

While the contract is \$5,383.73 more than the budget (based on 2005 expenditures), this amount can be accommodated within the existing budget.

BACKGROUND:

See attached memorandum from Barbara Kovacevich.

RECOMMENDATION:

Staff recommends approval as outlined in the attached memorandum.



MEMORANDUM

P.O. Box 9010 • 16801 Westgrove Drive • Addison, TX 75001-9010 • 972-450-6221 • 972-450-2834FAX

DATE: April 14, 2006
TO: Chris Terry, Assistant City Manager
FROM: Barbara Kovacevich, Special Event Manager
RE: Bids for **Trash Clean-up Services** for the 2006 Special Events
CC: Shanna Sims, Budget and Procurement Manager
Sara Bosquez, Special Event Coordinator

We would like to place an agenda item on the April 25, 2006 City Council Agenda to award the bid for **trash clean up services** to **ACT Services** for the 2006 special event season with the option to renew for the 2007 and 2008 event seasons.

Background: ACT Services was the low bidder for the 2005 special event season and had the option to renew their contract; however, they requested the opportunity to re-bid the project due to an increase in the cost of labor. We also will provide better service to the public by using plastic barrels instead of cardboard trash receptacles. The plastic barrels hold more waste and don't get damaged when it rains. Request for bids were advertised on Demand Star and in the Dallas Morning News. ACT was the only bidder.

Recommendation: Staff recommends approval of **ACT Services**.

Budget: Proposed bid is \$33,897.92 which is \$5,383.73 more than was spent in 2005; however, this amount can be accommodated within the existing budget.

Council Agenda Item: #2g

SUMMARY:

Staff recommends that the Council approve a License Agreement between the Town of Addison and Seven Owls L.P. for a vehicular and pedestrian access easement across the town's property on Landmark Boulevard, and to provide and install landscaping and irrigation on Addison's property in connection with the Licensee's development on Landmark Place. The attached Access Easement Plan (Exhibit A) shows the location of the access drive.

FINANCIAL IMPACT:

The property owner has agreed to install and pay for all costs and expenses of the landscaping on the southeast corner of Landmark Boulevard and Landmark Place in an amount up to but not to exceed \$60,000. This amount was derived from landscape and irrigation cost estimates that staff verified.

BACKGROUND:

This property was the old site for the drive through bank that was purchased for the extension of Landmark Boulevard to the south. Subsequently, staff had David Baldwin Landscape Architects provide a park design that was approved, but later shelved since funding was not available for the project.

In return for allowing the access drive across the south end of the property for use by the adjacent development, the property owner proposes to landscape the town's property totaling 30,386 square feet/.69 acres. The proposed improvements are shown on the attached schematic landscape plan for the east side of Landmark Boulevard. The center median and the west side of Landmark Boulevard will not be included.

The property owner's landscape architect used the town's park design as a template for the landscape improvements; however, the proposed hardscape improvements were removed leaving grass, trees and irrigation. The property owner agreed to plant and irrigate the site according to the park landscape plan, in case the town desires to construct the hardscape amenities in the future.

RECOMMENDATION:

Staff has reviewed the landscape plan and recommends approval. The parks department will be responsible for the ongoing maintenance of the site once the landscape and irrigation improvements are installed and approved. The annual cost to maintain the site will be approximately \$2,300. The attorneys for both parties reviewed and approved the agreement.

Attachments: License Agreement
Landscape Plan

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

LICENSE AGREEMENT

This License Agreement ("License") is made and entered into this _____ day of _____, 2006 by and between the Town of Addison, Texas ("Licensor") and Seven Owls L.P., a Texas limited partnership ("Licensee").

Recitals:

A. Licensor is the owner of Lot 2, Block 3, Quorum West, an addition to the Town of Addison, Dallas County, Texas, the plat of which is recorded in Volume 2005131, Page 0084, Deed Records, Dallas County, Texas (the "Addison Property"). Licensee is the owner of that certain real property located in Dallas County, Texas, as more particularly described in that certain Special Warranty Deed dated October 25, 2005, and recorded on October 26, 2005, as Document No. 200503557801 in the Official Public Records of Dallas County (the "Licensee Property"). The Addison Property and the Licensee Property (together, the "Properties") are contiguous to one another, with the east side of the Addison Property touching and being parallel to the west side of the Licensee Property.

B. The right-of-way for Landmark Boulevard ("Landmark Boulevard") is located immediately west of the Properties, as shown on Exhibit A attached hereto and incorporated herein. The west side of the Addison Property runs along and parallel to the east boundary of Landmark Boulevard. The Licensee Property abuts the Landmark Boulevard right-of-way, but only at a single point (shown as the "Point of Beginning" on Exhibit A).

C. Licensee desires to obtain vehicular and pedestrian access to Landmark Boulevard through and across a portion of the Addison Property, which portion is described and depicted on the attached Exhibit A (such portion being referred to herein as the "Licensed Property"), and to provide and install landscaping and irrigation facilities on and within the Addison Property in connection with the Licensee's development of the Licensee Property, and Licensor desires to allow such access and the installation by Licensee of landscaping and irrigation facilities in accordance with and subject to this License.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00), the mutual promises and covenants herein made, and other good and valuable consideration, the Town of Addison, Texas and Seven Owls L.P. do hereby agree as follows:

1. Incorporation of premises. The parties acknowledge and agree that the above and foregoing Recitals A, B and C are true and correct and are incorporated herein and made a part of this License for all purposes.

2. Licensed Property - Grant of license. Licensor licenses the Licensed Property to Licensee for the sole purpose of providing a means of ingress and egress between the Licensee Property and Landmark Boulevard; provided, however, this License is (a) non-exclusive and revocable (as described herein); (b) subject to and given only upon the terms and conditions set forth in this License; and (c) subject and subordinate to (i) the prior and continuing right of the Licensor, its successors and assigns, to use all and any part of the Addison Property and Landmark Boulevard for any purpose whatsoever in the Licensor's sole discretion, (ii) any existing electric, gas, communication, cable, water, sewer, or other utility or drainage facility located in, on, under, or above the Addison Property, Landmark Boulevard, or the Licensee Property, (iii) existing rights of any utility, communication, or other person, company, or entity in or to the Addison Property, Landmark Boulevard, or the Licensee Property, (iv) any and all currently existing title exceptions or other matters of record, or visible or apparent easements or encumbrances which may be observed from an inspection (v) any existing franchise, grant, license, lease, easement, or other interest heretofore granted or conveyed by the Licensor, and (vi) all laws, ordinances, standards, codes, policies, rules, and regulations, currently existing or hereafter enacted, adopted, amended, or modified, of the Town of Addison, Texas, or of any governmental entity or agency having jurisdiction.

This License is not a lease and grants no interest or estate (including, without limitation, any leasehold interest) in the Licensed Property, any other portion of the Addison Property, Landmark Boulevard, or any other property whatsoever.

3. Other Limitations and Conditions.

A. Ingress and egress between the Licensee Property and Landmark Boulevard over and across the Licensed Property is for and is limited to vehicular and pedestrian traffic only. Licensee may use the Licensed Property for such ingress and egress only if Licensee constructs, in accordance with the terms and conditions of this License, a driveway (the "Driveway") over and across the Licensed Property connecting the Licensee Property and Landmark Boulevard.

B. Until termination of this License, the Driveway shall be constructed, reconstructed, repaired and maintained in accordance with plans approved by Licensor and in accordance with all laws, ordinances, standards, codes, policies and regulations of the Town of Addison and any other governmental authority or agency with jurisdiction. Approval by Licensor of this License or of such plans shall not constitute a warranty or representation by Licensor that such plans conform with federal, state and/or local laws, ordinances, rules, codes and regulations applicable thereto. Licensee shall comply with all applicable laws, ordinances, standards, codes, policies, rules, and regulations, currently existing or hereafter enacted, adopted, amended, or modified, of the Town of Addison, Texas, or of any governmental entity or agency having jurisdiction, including, but not limited to, the securing of building and excavation permits, as necessary or required.

C. All work upon or in connection with the Driveway shall be done to the Licensor's satisfaction at such times and in such manner as not to unreasonably interfere with or to create a hazard to the operation, maintenance, and/or use of any street, roadway, or other right-of-way or property of Licensor. In the construction, reconstruction, maintenance, repair, use and operation of the Driveway, Licensee shall keep the Driveway in a neat and safe condition and in good order and operating condition, failing which, Licensor may do so at Licensee's cost and expense. In exercising Licensee's rights, Licensee agrees to use its best efforts to prevent and minimize damage and injury to the Addison Property and any improvements thereon and any property appurtenant or adjacent thereto. If in exercising Licensee's rights hereunder, Licensee shall cause any damage or injury, or change (not contemplated by this License), to the Addison Property, Licensee shall promptly repair and restore the same. Upon written notice from Licensor, by and through Licensor's Director of Public Works or designee, stating in general terms how and in what manner maintenance or repair of the Driveway is required, Licensee shall perform such maintenance or repair; if Licensee fails to do so, Licensor shall have the right (in addition to any other rights of Licensor provided for herein or at law, in equity, or otherwise) to perform such maintenance or repair, the cost of which shall be borne by the Licensee. If required by the Licensor in its use of the Addison Property, Licensee, at Licensee's sole cost, shall reconstruct, relocate or alter the Driveway. In the event that the Licensee has failed to relocate, reconstruct, or alter the Driveway as directed by the Licensor's Director of Public Works within a reasonable length of time (as determined by the Director of Public Works), Licensor shall give Licensee written notification of such failure; if Licensee fails to cure such

failure within a reasonable length of time thereafter (but in any event not less than thirty (30) days after the date of such notice), the Licensor shall have the right, without liability to the Licensee, to reconstruct, relocate, or alter the Driveway (or cause the same to be done), or remove the Driveway, and the Licensee shall reimburse the Licensor for all costs of relocation or removal. Except in an emergency, Licensee shall give the Licensor at least five (5) days written notice, or such longer time as may be required by the Licensor in any ordinance, rule, regulation, standard, code, or policy of the Licensor, of the day and hour it proposes to begin any work on the Driveway. Licensee shall bear responsibility for timely and complete repairs in the event of damage to the Driveway from any cause whatsoever.

D. Licensee shall cooperate with the Licensor in making any test the Licensor requires of any installation or condition which, in Licensor's judgment, may have an adverse effect on any of the facilities or property of the Licensor. All costs incurred by the test, or any corrections thereof, shall be borne by the Licensee.

4. Term. Subject to the terms and conditions of this License, this License shall continue in force for a period of ten (10) years from the date of execution of this License (the "Initial Term") or earlier if terminated as provided hereinafter. Following the Initial Term and provided this License is in full force and effect and Licensee is not then in breach or default of this License, this License shall automatically renew for one (1) additional ten (10) year period (subject, however, to the termination provisions of this License) commencing on the first day following the end of the Initial Term, such renewal to be on the same terms and conditions set forth herein. The Initial Term as may be extended is hereinafter referred to as the "Term". Notwithstanding the foregoing or any other provision of this License, either party hereto may terminate this License in accordance with the termination provisions set forth herein.

5. Landscaping and Irrigation. As consideration for the grant of this License, Licensee agrees to provide and install landscaping and irrigation facilities (together, the "Landscaping Improvements") on and within the Addison Property in accordance with the following:

A. The Landscaping Improvements shall be provided and installed in accordance with a plan (the "Landscaping Plan") for the Addison Property. Licensee shall prepare the Landscaping Plan by a licensed landscape architect, and shall submit the same to the Parks Director ("Director") for the Town of Addison, Texas for review and consideration of approval.

The Landscaping Plan shall be submitted to the Director at or before the time that Licensee submits its application for a building permit for the construction of any improvements on the Licensee Property. In the event the Director does not approve the Landscaping Plan, Licensee shall modify the same until a Landscaping Plan has been developed that is satisfactory to Licensor. Licensee agrees to pay for all of the costs and expenses of the Landscaping Plan and the installation and construction of the Landscaping Improvements in an amount up to but not to exceed Sixty Thousand and No/100 Dollars (\$60,000.00).

B. To perform and complete the Landscaping Improvements upon the Addison Property, Licensor City does hereby grant to Licensee a temporary, revocable, non-exclusive license to install and construct the Landscaping Improvements, subject to and in accordance with the terms and conditions of this License. Upon the completion of the Landscaping Improvements and acceptance thereof by Licensor, this temporary license shall automatically terminate and be of no further force or effect.

C. Licensee shall complete the installation of the Landscaping Improvements prior to occupancy of the commercial office building currently being constructed on Licensee's Property.. In installing and providing the Landscaping Improvements, Licensee shall use a contractor that is acceptable to Licensor. The installation and construction of the Landscaping Improvements shall be done in such a manner so as not to interfere with or create a hazard to the operation, maintenance, and use of any public right-of-way. Licensee shall perform, supervise and direct the work, using Licensee's best skill, knowledge, and attention, and shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work. Landscaping work performed by or on behalf of Licensee shall comply with all applicable laws, ordinances, rules, and regulations of the Town of Addison and all other governmental entities having jurisdiction.

D. At all times in performing the design of the Landscaping Plan and the installation and construction of the Landscaping Improvements, Licensee is and shall be construed to be an independent entity separate and apart from the Licensor, and nothing in this License is intended nor shall be construed to create an employer-employee relationship, a joint venture or joint enterprise relationship, or to allow Licensor to exercise discretion or control over the manner in which Licensee performs its work and services; provided always however that such work and services is to be provided by Licensee in a manner consistent with all applicable standards and

regulations governing the same. In no event shall Licensor have control over, charge of, or responsibility for construction means, methods, techniques, sequences, or procedures for safety precautions and programs in connection with the work of Licensee hereunder, notwithstanding any of the rights and authority of Licensor set forth in this License.

E. Licensee warrants that all work performed under this License shall be free and clear of liens, claims, security interests or encumbrances, and Licensee shall keep the premises, improvements, and property (whether real or personal) of Licensor and any third party free and clear of all liens caused by the acts or omissions of Licensee..

F. Upon completion of the Landscaping Improvements, Licensee shall notify Licensor in writing of such completion. Licensor may thereafter inspect the same for conformance with the Landscaping Plan, and based upon such inspection Licensor may accept or reject the Landscaping Improvements and provide written notice thereof to Licensee (and if Licensee rejects the same, such notice shall state with particularity what is unacceptable). If Licensor fails to respond to Licensee's written notification of completion of the Landscaping Improvements within ten (10) business days following Licensor's receipt of Licensee's notice, the Landscaping Improvements shall be deemed approved and accepted. Upon acceptance, Licensor shall maintain the Landscaping Improvements. All of the Landscaping Improvements and the Landscaping Plan shall, upon completion and acceptance by the Licensor, be Licensor's sole property.

6. Miscellaneous Obligations of Licensee.

A. Licensee shall maintain a complete set of "as built" plans of the Driveway and the Landscaping Improvements, and shall furnish copies of the same to the Licensor.

B. Licensee shall maintain a local agent who is familiar with the Driveway and whose name and address shall be furnished at least annually to the Licensor. The local agent shall be responsible for satisfying all information needs of the Licensor.

C. Licensee warrants that its work will be provided in a good and workmanlike manner, consistent with the commercially accepted best practices and standards.

7. Indemnification; Insurance.

A. (1) IN CONSIDERATION OF THE GRANTING OF THIS LICENSE, LICENSEE AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TOWN OF

ADDISON, TEXAS, ITS OFFICIALS, OFFICERS, EMPLOYEES, AND AGENTS AND OTHER REPRESENTATIVES (TOGETHER, "LICENSOR INDEMNIFIED PERSONS") FROM AND AGAINST ANY AND ALL SUITS, CLAIMS, ACTIONS, JUDGMENTS, LIABILITIES, LOSSES, PENALTIES, FINES, EXPENSES, FEES AND COSTS (INCLUDING REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF DEFENSE), AND DAMAGES (INCLUDING DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, AND OTHER DAMAGES), (TOGETHER, "INDEMNIFIED DAMAGES") INCURRED BY LICENSOR OR OTHER SUCH LICENSOR INDEMNIFIED PERSONS, OR ANY OF THEM, AS A RESULT OF, ARISING OUT OF OR IN CONNECTION WITH (A) LICENSEE'S PERFORMANCE OF THIS LICENSE, (B) THE USE DURING THE TERM OF THIS LICENSE OF (INCLUDING, WITHOUT LIMITATION, THE CONSTRUCTION OF IMPROVEMENTS ON OR WITHIN) THE ADDISON PROPERTY BY LICENSEE OR BY ANY OWNER, OFFICER, PARTNER, SHAREHOLDER, EMPLOYEE, AGENT, REPRESENTATIVE, CONTRACTOR, SUBCONTRACTOR, SUBTENANT, LICENSEE, GUEST, INVITEE, OR CONCESSIONAIRE OF LICENSEE, OR ANY OTHER PERSON OR ENTITY FOR WHOM LICENSEE IS LIABLE OR RESPONSIBLE (TOGETHER, "LICENSEE PARTIES"), OR ANY OF THEM, (C) ANY BREACH OR DEFAULT IN THE PERFORMANCE OF LICENSEE'S OBLIGATIONS UNDER THIS LICENSE, (D) AND, WITHOUT LIMITING ANY OF THE FOREGOING, ANY ACT OR OMISSION OF LICENSEE OR OF ANY OF LICENSEE PARTIES UNDER, RELATED TO, OR IN CONNECTION WITH, THIS LICENSE, **INCLUDING INDEMNIFIED DAMAGES CAUSED BY THE NEGLIGENCE OF LICENSOR OR ANY OF THE LICENSOR INDEMNIFIED PERSONS, PROVIDED THAT LICENSEE SHALL HAVE NO DUTY TO INDEMNIFY LICENSOR OR ANY LICENSOR INDEMNIFIED PERSON FOR INDEMNIFIED DAMAGES CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONALLY WRONGFUL ACTS OF LICENSOR OR SUCH LICENSOR INDEMNIFIED PERSON.**

(2) THE PROVISIONS OF THIS SECTION 7.A. SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LICENSE.

B. Licensee shall provide and maintain the minimum insurance coverages set forth below during the Term hereof:

1. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage for products/completed operations must be maintained for at least two (2) years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance.

2. Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.

3. Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.

4. Builders Risk coverage as follows:

(a) "All Risk" Builders Risk insurance, including collapse coverage, is required on a completed value form if the contract is for the construction of a structure or building.

(b) The Builders Risk policy must provide transit and off-premises coverage if the contract with the builder makes the Town of Addison responsible for materials. The deductible shall not exceed \$5,000.

Any contractor(s) hired by the Licensee to perform work pursuant to or in connection with this License shall maintain insurance coverage equal to that required of the Licensee. It is the responsibility of the Licensee to assure compliance with this provision.

With reference to the foregoing insurance requirement, Licensee shall specifically endorse applicable insurance policies as follows: (i) the Town of Addison shall be named as an additional insured with respect to General Liability and Automobile Liability; (ii) all liability policies shall contain no cross liability exclusions or insured versus insured restrictions; (iii) a waiver of subrogation in favor of The Town of Addison shall be contained in the Workers Compensation, Builders Risk, and all liability policies; (iv) all insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage; (v) all insurance policies shall be endorsed to the effect that the

Town of Addison will receive at least thirty (30) days' notice prior to cancellation, modification, or non-renewal of the insurance; (vi) all insurance policies, which name The Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance; (vii) required limits may be satisfied by any combination of primary and umbrella liability insurances; (viii) Licensee may maintain reasonable and customary deductibles, subject to approval by the Licensor; (ix) insurance must be purchased from insurers that are financially acceptable to Licensor.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent, delivered to Licensor simultaneously with the execution of this License, and shall contain provisions representing and warranting the following: (i) sets forth all endorsements and insurance coverages according to requirements and instructions contained herein; and (ii) shall specifically set forth the notice-of-cancellation or termination provisions to the Town of Addison. Upon request, Licensee shall furnish the Licensor with certified copies of all insurance policies.

8. Termination. This License shall terminate upon the earlier to occur of (i) the expiration of the Term as described in Section 4 hereof; or (ii) upon the occurrence of any of the following:

A. abandonment of the Driveway or Addison Property or discontinuance of use thereof;

B. failure of Licensee to correct any default hereunder promptly after receipt of notice from the Licensor;

C. thirty (30) days' written notice by the Licensor to the Licensee (such termination may be at the sole discretion of the Licensor and be for any reason or for no reason whatsoever); or

D. thirty (30) days' written notice by Licensee to Licensor (such termination may be at the sole discretion of the Licensee and be for any reason or for no reason whatsoever).

Upon the expiration or termination of this License, Licensee shall restore the Addison Property as directed by the Licensor and to the Licensor's satisfaction, failing which Licensor may arrange to do so at Licensee's expense.

9. Notice. Where the terms of this License require that notice in writing be provided, such notice shall be deemed delivered upon hand-delivery or upon three (3) days following the deposit of the notice in the United States mail, postage prepaid, and sent by certified mail, return receipt requested and properly addressed as follows or at such other address as either party may from time to time designate by notice to the other::

To the Licensor:

5300 Belt Line Road
Dallas, TX 75254

Attn: Director of Public Works

To the Licensor:

Seven Owls, L.P.
5950 Sherry Lane, Suite 900
Dallas, Texas 75225
Attn: Mark A. Portner

10. Applicable Law; Venue. In the event of any action under this License, venue for all causes of action shall be instituted and maintained in Dallas County, Texas. The parties agree that the laws of the State of Texas shall govern and apply to the interpretation, validity and enforcement of this License; and, with respect to any conflict of law provisions, the parties agree that such conflict of law provisions shall not affect the application of the law of Texas (without reference to its conflict of law provisions) to the governing, interpretation, validity and enforcement of this License.

11. Assignment. The rights granted by this License shall not be assigned, transferred, or otherwise conveyed or sublicensed by Licensee without the express prior written consent of Licensor, and Licensee shall have no authority to do so. Any required consent is to be evidenced by an ordinance or resolution of the Licensor that fully recites the terms and conditions, if any, upon which consent is given. Any attempted assignment or transfer, or any attempt to grant any sublicense, concession or other right of use, in violation of the preceding shall be null and void, *ab initio*. Any authorized assignment, transfer or sublicensing shall be expressly subject to all the terms and provisions of this License.

12. Entire Agreement. This License represents the entire and integrated agreement between Licensor and Licensee relative to the Addison Property as described herein and supersedes all prior negotiations, representations and/or agreements, either written or oral.

13. Amendment. This License may not be altered, waived, amended or extended except by an instrument in writing signed by Licensor and Licensee.

14. No Third-Party Beneficiaries. The provisions of this License are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any third person or entity, except as may be provided for herein.

15. Non-Waiver; Rights Cumulative. The failure by either party to exercise any right, power, or option given to it by this License, or to insist upon strict compliance with the terms of this License, shall not constitute a waiver of the terms and conditions of this License with respect to any other or subsequent breach thereof, nor a waiver by such party of its rights at any time thereafter to require exact and strict compliance with all the terms hereof. The rights or remedies under this License are cumulative to any other rights or remedies, which may be granted by law, in equity, or otherwise.

16. Survival. Any rights and remedies either party may have with respect to the other arising out of the performance of or in connection with this License shall survive the expiration or termination of this License.

17. Relationship. The parties hereto have the relationship only of licensor and licensee, and under no circumstances shall this License be construed as one of agency, partnership, joint venture, joint enterprise, or employment between the parties.

18. Severability. If any provision of this License is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this License shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect.

19. "Includes". For purposes of this License, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

20. Authority to Execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this License on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, Licensor and Licensee have executed this License on the day and year first set forth above.

TOWN OF ADDISON, TEXAS

By: _____
Ron Whitehead, City Manager

ATTEST:

By: _____
Carmen Moran, City Secretary

Seven Owls, L.P.
A Texas limited partnership

By: **Mother Owl, LLC**
Its: General Partner

By: _____
Bill Linburg , Vice President

ACKNOWLEDGMENTS

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on _____, 2006 by Ron Whitehead, City Manager, Town of Addison, Texas, a Texas municipal corporation, on behalf of the said municipal corporation.

[SEAL]

NOTARY PUBLIC, State of Texas

My commission expires: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

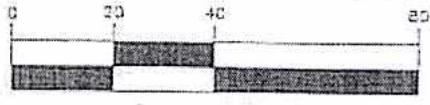
This instrument was acknowledged before me on _____, 2006 by Bill Linburg, Vice President of Mother Owl, LLC, as general partner of Seven Owls, L.P., a Texas limited partnership, on behalf of the said limited partnership.

[SEAL]

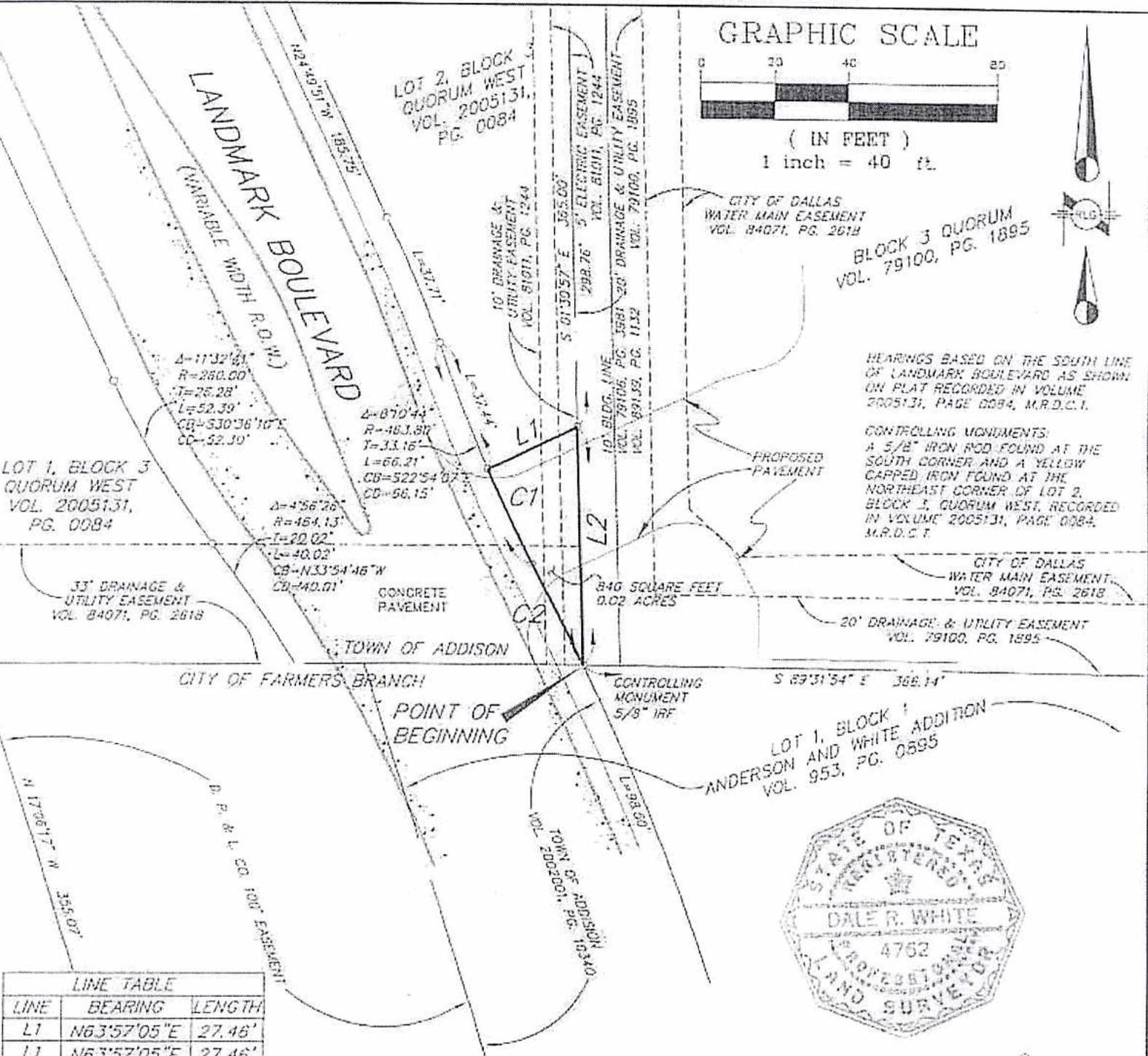
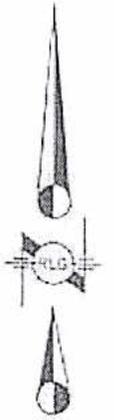
NOTARY PUBLIC, State of Texas

My commission expires:_____

GRAPHIC SCALE



(IN FEET)
1 inch = 40 ft.



HEARINGS BASED ON THE SOUTH LINE OF LANDMARK BOULEVARD AS SHOWN ON PLAT RECORDED IN VOLUME 2005131, PAGE 0084, M.R.D.C.I.

CONTROLLING MONUMENTS:
A 5/8" IRON ROD FOUND AT THE SOUTH CORNER AND A YELLOW CAPPED IRON FOUND AT THE NORTHEAST CORNER OF LOT 2, BLOCK 3, QUORUM WEST, RECORDED IN VOLUME 2005131, PAGE 0084, M.R.D.C.I.

CITY OF DALLAS WATER MAIN EASEMENT VOL. 84071, PG. 2618

20' DRAINAGE & UTILITY EASEMENT VOL. 79100, PG. 1895

LOT 1, BLOCK 1 AND WHITE ADDITION VOL. 953, PG. 0895



Dale R. White
DALE R. WHITE M.P.L.S. NO. 4782

LINE TABLE

LINE	BEARING	LENGTH
L1	N63°57'05"E	27.46'
L1	N63°57'05"E	27.46'

CURVE TABLE

CURVE	DELTA	RADIUS	TANGENT	LENGTH	CH.BRG.	CHORD
C1	3°33'15"	463.80'	14.39'	28.77'	N25°12'51"W	28.77'
C2	2°22'47"	758.50'	15.75'	31.50'	N26°43'28"W	31.50'

LEGEND

- PROPERTY LINE
- EASEMENT LINE
- 1/2"IRS / 1/2"IRF 1/2" IRON ROD SET / FOUND
- MAGNS / MAGNF MAG NAIL SET / FOUND
- CMS / CMF CHISELED "X" SET / FOUND
- PKF / PKS PK NAIL SET / FOUND

ACCESS EASEMENT
PART OF
LOT 2, BLOCK 3
QUORUM WEST

JOSIAH PANCOAST SURVEY ABSTRACT NO. 1146
TOWN OF ADDISON, DALLAS COUNTY, TEXAS

SHEET 2 OF 2

RAYMOND L. GOODSON, JR., INC.
5445 LA SIERRA
SUITE 300 L.B.17
DALLAS, TX. 75231-4138
214-739-8100
rlg@rlginc.com

SCALE	1" = 40'	DATE	12-09-2005
JOB NO.	6325	E-FILE	6325esmt.dwg.DWG NO. 24110X

ACCESS EASEMENT
PART OF
LOT 2, BLOCK 3
QUORUM WEST
JOSIAH PANCOAST SURVEY ABSTRACT NO. 1146
TOWN OF ADDISON, DALLAS COUNTY, TEXAS

Being a 840 square feet tract of land situated in the Josiah Pancoast Survey, Abstract No. 1146, Town of Addison, Dallas County, Texas, and being a part of Lot 2, Block 3 of Quorum West, an addition to the Town of Addison, according to the plat recorded in Volume 2005131, Page 0084, Deed Records, Dallas County, Texas, and being more particularly described as follows;

BEGINNING at a 5/8 inch iron rod found at the south corner of said Lot 2, said rod being the southwest corner of Block 3, Quorum, an addition to the Town of Addison, according to the plat recorded in Volume 79100, Page 1895, Deed, Records Dallas, County, Texas, and being in the northeast line of Landmark Boulevard (a variable width right-of-way) in a non-tangent curve to the left;

THENCE along the northeast line of said Landmark Boulevard and said non-tangent curve to the left whose chord bears North 26° 43' 28" West a distance of 31.50 feet, having a radius of 758.50 feet, a central angle of 2° 22' 47" and an arc length of 31.50 feet to a 1/2 inch iron rod with yellow plastic cap stamped "RLG" set for corner at the beginning of a reverse curve to the right;

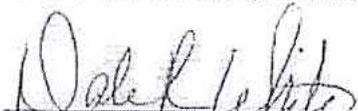
THENCE along the northeast line of said Landmark Boulevard and said reverse curve to the right whose chord bears North 25° 12' 51" West a distance of 28.77 feet, having a radius of 463.80 feet, a central angle of 03° 33' 15" and an arc length of 28.77 feet to a 1/2 inch iron rod with yellow plastic cap stamped "RLG" set for corner;

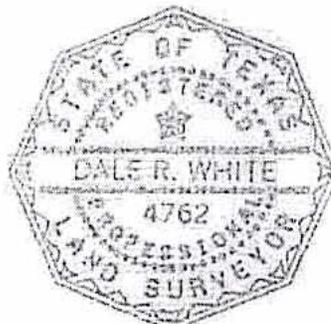
THENCE North 63° 57' 05" East, departing said northeast line, a distance of 27.46 feet to a 1/2 inch iron rod with yellow plastic cap stamped "RLG" set for corner in the common line between said Block 3 and said Lot 2;

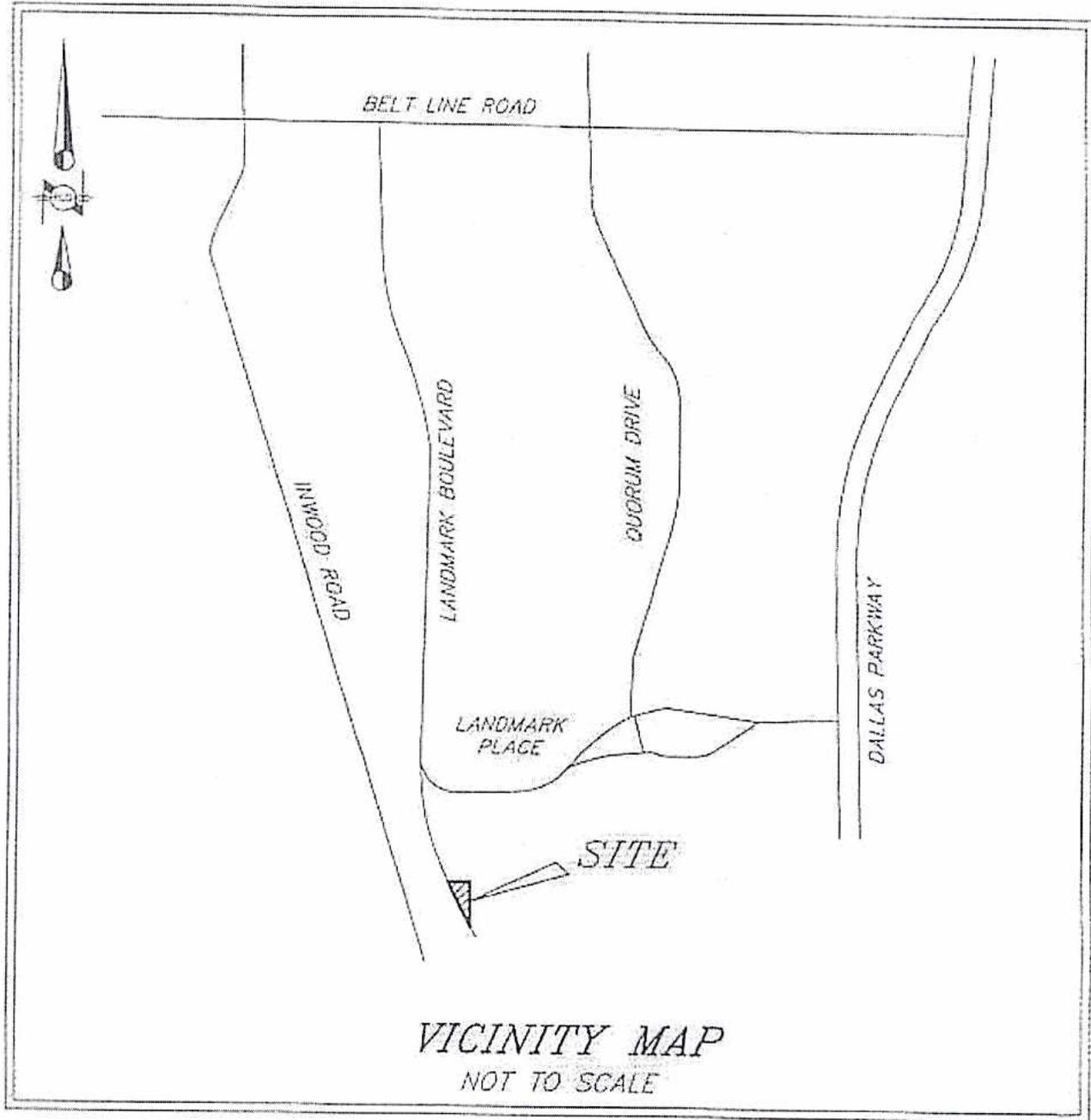
THENCE South 01° 30' 57" East along said common line a distance of 66.24 feet to the POINT OF BEGINNING, and containing 840 square feet or 0.02 acres, more or less.

BEARINGS BASED ON THE SOUTH LINE OF LANDMARK BOULEVARD AS SHOWN ON PLAT RECORDED IN VOLUME 2005131, PAGE 0084, D.R.D.C.T.

CONTROLLING MONUMENTS: A 5/8" IRON ROD FOUND AT THE SOUTH CORNER AND A YELLOW CAPPED IRON FOUND AT THE NORTHEAST CORNER OF LOT 2, BLOCK 3, QUORUM WEST, RECORDED IN VOLUME 2005131, PAGE 0084, D.R.D.C.T.


Dale R. White RPLS No. 4762





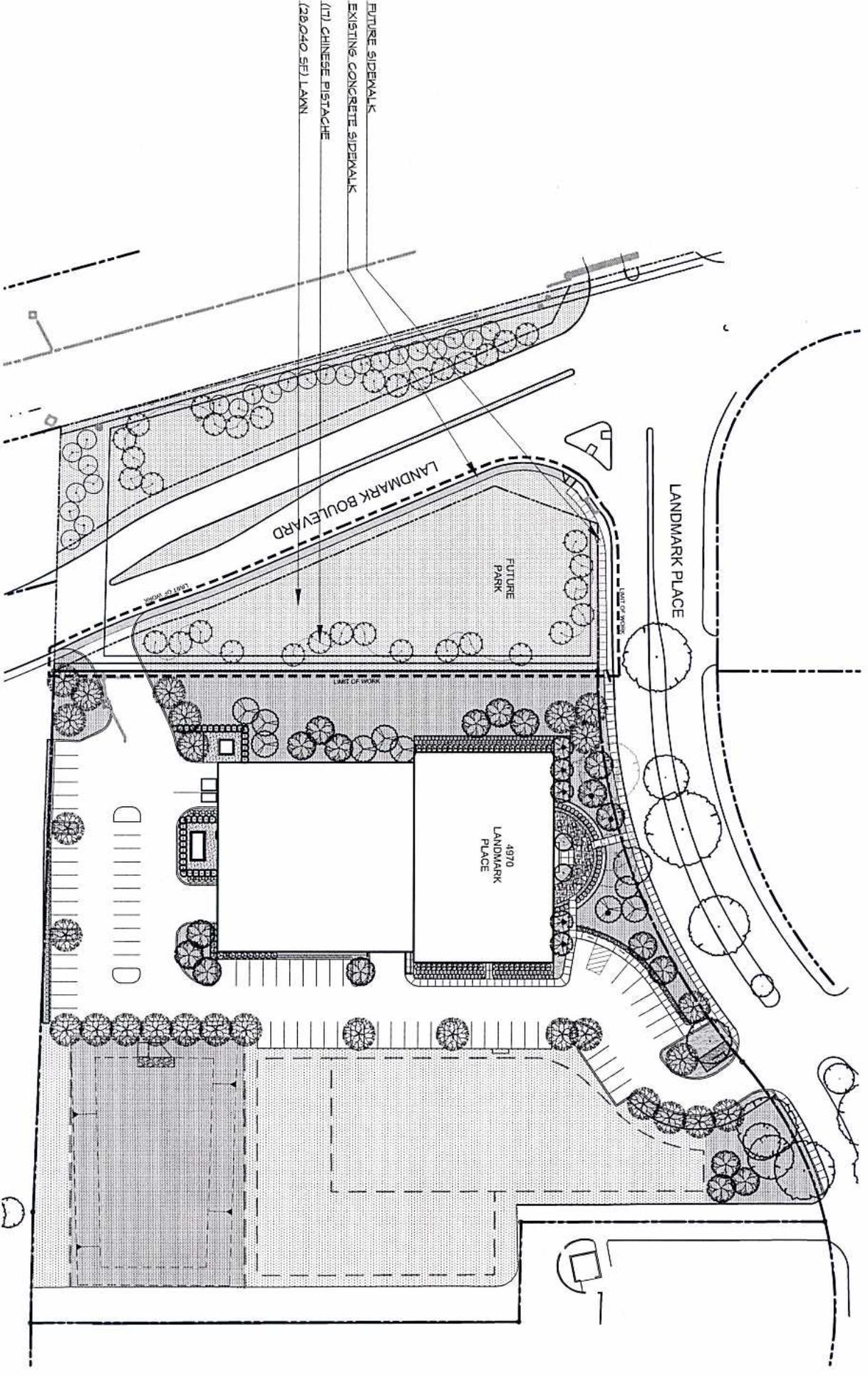
ACCESS EASEMENT
PART OF
LOT 2, BLOCK 3
QUORUM WEST

JOSIAH PANCOAST SURVEY ABSTRACT NO. 1146
CITY OF ADDISON, DALLAS COUNTY, TEXAS

A

LANDMARK PARK - AMENITY PLAN

SCALE: 1" = 60'-0"



FUTURE SIDEWALK
 EXISTING CONCRETE SIDEWALK
 (17) CHINESE PISTACHE
 (28,040 SF) LAWN

LANDMARK BOULEVARD

LANDMARK PLACE

4970
LANDMARK
PLACE

FUTURE
PARK

PARKING

LIMIT OF WORK

LIMIT OF WORK

Exhibit B Planned Development Regulations

Development shall take place in general accordance with the attached Comprehensive Site Plan (Exhibit C), as well as in accordance with the regulations established below.

PERMITTED USES

1. Townhouses.

YARD REQUIREMENTS

1. Minimum Front Yard: 10'. Where a garage door faces the street, the minimum front yard for that portion of the building shall be 20'. In those instances where a lot has a depth of at least 95', the minimum front yard shall be 25' for that portion of the building where a garage is located and 15' for any other portion of the building.
2. Minimum Side Yard: 0' for an interior townhome. 5' for an exterior townhome. The uniform building code will regulate construction requirements where side property lines intersect with buildings.
3. Minimum Rear Yard: 5'.
4. Every part of a required yard or court shall be maintained as open space; provided that ordinary projections may extend into a minimum side yard not more than 24 inches.

DENSITY

1. Maximum Allowable Density: 10 homes/acre.
2. Maximum Lot Coverage: 70%
3. Building; Lot Ratio: There shall be at least 2,250 square feet of lot area for each dwelling unit built on any lot.
4. Minimum Dwelling Size: Every dwelling unit, hereafter erected, shall have a floor area exclusive of breezeways, basements, open and screened porches and garages of not less than 1,800 air conditioned square feet.
5. Maximum Height: 2 stories, not to exceed 35' to the ridge line.
6. Minimum Lot Width: 25'. (Measured at the front building line.)
7. Minimum Lot Depth: 90'.

PARKING

1. Two parking spaces shall be provided for each dwelling unit.
2. Additional off-street parking spaces, as identified on the Comprehensive Site Plan (Exhibit C), shall be provided.
3. Fire lanes, as required by the fire code, shall be provided and clearly marked.
4. Security lighting must be provided to illuminate parking and public areas; placed so as to reflect the lighting away from adjacent dwelling units.

STREETS, ALLEYS, AND ACCESSWAYS

1. All areas for locating dwelling units shall be platted property and located on private streets. The streets and open spaces located within the development shall be controlled and maintained by a homeowner association.
2. The private streets shall have a minimum paving width of 27' (back-to-back), a minimum parkway width of 1.5', and shall be constructed in accordance with the Town of Addison's paving standards.

OPEN SPACE

1. Landscaping shall be provided in general accordance with the Landscape Plan (Exhibit D).
2. In addition to paved parking and driving areas, at least 10% of the lot shall be maintained in landscaped open area. All landscaped areas shall have adequate and inconspicuous irrigation systems. All parking areas shall be designed and constructed in a manner to include landscaping.
3. A minimum 10' wide landscape buffer shall be provided adjacent to all perimeter property lines for the development. For those areas adjacent to public right-of-way, the buffer shall be located "outside" of the development. For those areas adjacent to private property, the buffer shall be located "interior" to the development. The buffer shall be landscaped. Included in said landscaping shall be minimum 4" caliper trees, planted 35' on center. The landscape buffer along the east property line shall be planted with a combination of large shrubs and trees that will provide immediate screening. The final planting plan for the buffer shall be reviewed and approved by the staff prior to the issuance of the first construction permit. Said landscaping shall be maintained by the homeowner association.
4. A minimum 8' tall masonry wall shall be provided as part of the landscape buffer when the buffer is adjacent to public right-of-way. The wall may be constructed of a combination of masonry and tubular steel (wrought iron). In no instance shall the tubular steel comprise more than 25% of the wall's surface area.
5. An eight (8) foot fence and retaining wall, which shall maintain a finished height of 14 feet above existing grade, shall be constructed on the east property line of this tract, between this tract and the home at 14757 Celestial Place. Final design for retaining wall/fence along the entire east property line shall be reviewed and approved by the staff prior to the issuance of the first construction permit.
6. Sidewalks along Montfort and Celestial Roads shall be adjacent to the screening wall.

ARCHITECTURAL CONTROLS

1. The townhomes shall generally be constructed in accordance with the elevations depicted on Exhibit E.
2. All residences must conform to the Mediterranean style and character. No modern or contemporary architecture will be allowed.
3. Exterior materials shall be 100% hard coat (concrete) stucco on all walls. Combinations of natural or synthetic stone and/or cast stone accents may also be used. No EIFS products (other than architectural foam shapes such as window sills, window surrounds, etc.) will be allowed on any elevations.

4. No second story windows shall be allowed on the south side of Building W-2 (delineated on page 2 of 5 in the Stanford Court Villas handout) which is adjacent to the rear of 14725 Celestial Place. Second story windows on the front of Building E-1 shall be located so as to restrict views into the adjacent Celestial Place homes (14757 Celestial Place, 14753 Celestial Place, 14749 Celestial Place, 14745 Celestial Place as reasonably possible. Second story windows in these areas shall be limited to windows of 10 square feet or less with bottom sill heights placed no lower than 7' A.F.F. so as to restrict any direct line of sight.
5. The homes will have uniform cast stone house numbers and house number locations.
6. The homes will have a uniform wrought iron mailbox and mailbox location.
7. All roofs shall have a minimum slope 6:12 Roof Pitch. Vent stacks and other roof penetrations shall be placed on roof planes other than those visible from the front street must be painted to blend with the roof color. Satellite Dishes shall not be installed in locations directly visible from the front street. Solar Collectors, if used, must be integrated into the building design and constructed of materials that minimize their visual impact. Cornice, eave and architectural details may project up to two feet.
8. Roof material shall be concrete or clay barrel tile.
9. Walls and screens visible from streets or common areas shall be constructed of masonry to match the residence, masonry and wrought iron, or wrought iron. Walls and screens not visible from streets or common areas may be constructed of smooth finish redwood or #1 grade cedar. All fence posts shall be steel set on concrete and shall not be visible from another dwelling. All fence tops shall be level with grade changes stepped up or down as the grade changes.
10. All garage doors shall be equipped with automatic remote controlled door openers and shall remain closed when not in use. Garage doors must be constructed of cedar or like material and offer some type of architectural styling with metal accents.
11. All driveways, approaches, leadwalks, patios and porches shall be constructed of the following materials: brick pavers, stone, interlocking pavers, stamped concrete, or exposed aggregate with brick, stone, or smooth finish concrete borders. All steps from the street to the front entry must be constructed in brick, stone, slate, or flagstone.

UTILITIES

1. Each townhome shall have its own underground electrical service.
2. Each townhome shall have washer and dryer connections.

POSTAL SERVICE

1. Individual mail provision shall be provided for each townhome and shall be located in accordance with the guidelines established by the postal service.

REFUSE COLLECTION AND STORAGE

1. Individual curbside refuse collection shall be required for each townhome.

DEED RESTRICTIONS AND OWNER ASSOCIATION AGREEMENTS

1. Agreements shall be approved by the Town of Addison and recorded in the county clerk's office, prior to the issuance of a certificate of occupancy.

FIREWALLS SEPARATING DWELLING UNITS

1. The common walls and ceiling of each unit must be constructed of materials of one-hour construction.
2. The attic space must be fire stopped as required by the Uniform Building Code.

TIMING

1. In the event that no permits for site engineering or construction have been issued on this property by April 26, 2007, the Commission may call this zoning case up for review, and may recommend to the Council that the zoning approval be altered or repealed.

AFTER RECORDING RETURN TO:



**CORPORATE CERTIFICATE
OF
STANFORD COURT HOMEOWNER'S ASSOCIATION, INC.**

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned ("Affiant") is the duly elected and acting Secretary, as indicated below, of **STANFORD COURT HOMEOWNER'S ASSOCIATION, INC.**, a Texas non-profit corporation (the "Association"), and is authorized to execute and deliver this Certificate, and Affiant certifies as follows:

1. That the Association was formed for the maintenance, management, preservation, care and control of the common areas and landscape areas and related improvements provided in the residential area of Stanford Court Addition, a residential subdivision situated in the City of Dallas, County of Dallas, State of Texas (the "Property"), such Property described in that certain Declaration of Covenants, Conditions and Restrictions for Stanford Court Addition (the "Declaration") dated as of _____, 2006, and recorded as County Clerk's Document Number: _____ in the Real Property Records of Dallas County, Texas, which Property is platted as **Stanford Court**, as approved by the City of Dallas, Dallas County, Texas, and filed of record on _____, 2006, in **Volume** _____, **Page** ___ of the Plat Records of Dallas County, Texas, and the owners of the Property are subject to any rules, regulations and restrictions promulgated by the Association.

2. That a true, complete and correct copy of the Articles of Incorporation of the Association, filed with the Secretary of State of Texas on _____, 2006, is attached hereto as **Exhibit A** and incorporated herein by reference for all purposes.

3. That a true, complete and correct copy of the Bylaws of the Association, as of the date hereof, is attached hereto as **Exhibit B** and incorporated herein by reference for all purposes.

4. That pursuant to the Declaration, the Association has the authority to publish and adopt rules, regulations and building guidelines, and any such items that supplement the dedicatory instruments of the Association described above and which are applicable to the Property which shall

be made available to any owner or prospective owner or other party contemplating obtaining an interest in any portion of the Property upon request to the Secretary of the Association.

5. That neither the Articles of Incorporation nor the Bylaws of the Association attached hereto have been amended, modified or rescinded as of the date hereof, and any amendments or modifications to any such dedicatory instruments which are effective after the date hereof may be obtained upon request to the Secretary of the Association.

IN WITNESS WHEREOF, I have hereunto set my hand as of the ____ day of _____, 2006.

AFFIANT:

Name and Title

SUBSCRIBED AND SWORN TO BEFORE ME on the ____ day of _____, 2006, to certify which witness my hand and official seal.

NOTARY PUBLIC, STATE OF TEXAS
Printed Name: _____
My Commission Expires: _____

**ARTICLES OF INCORPORATION
OF
STANFORD COURT HOMEOWNER'S ASSOCIATION, INC.**

The undersigned, being a natural person of the age of eighteen (18) years or more, whom is a citizen of the State of Texas, acting as incorporator of the corporation under the Texas Non-Profit Corporation Act (the "Act"), hereby adopts the following Articles of Incorporation for such corporation. All terms as used herein, such as (but not by way of limitation) "land", "Owners", "Lot", "Members", "Areas of Common Responsibility", "Declarant", "Addition" and "assessments" shall have the same meanings as set forth in the Declaration (as hereinafter defined) unless otherwise specified and defined herein.

ARTICLE ONE

The name of the corporation is **STANFORD COURT HOMEOWNER'S ASSOCIATION, INC.** (hereinafter referred to as the "Association").

ARTICLE TWO

The Association is a non-profit corporation.

ARTICLE THREE

The period of its duration shall be perpetual.

ARTICLE FOUR

The Association is organized pursuant to the Act and does not contemplate pecuniary gain or profit to the Members thereof and is organized for non-profit purposes. The purposes for which the Association is formed are to provide for the maintenance, preservation and management of the land located in the Town of Addison, which is an addition to the Town of Addison (the "Town"), Dallas County (the "County"), Texas, as more fully described in that certain Declaration of Covenants, Conditions and Restrictions for Stanford Court (the "Declaration") filed of record in the Real Property Records of the County on [REDACTED], 2006, under County Clerk's Instrument Number: [REDACTED], and any and all other property which is accepted from time to time by the Association for similar purposes, and to promote the health, safety and welfare of the residents within the land and any and all other property which is accepted by the Association for similar purposes. Without limiting the foregoing, the purposes of the Association shall include, without limitation, the following:

(a) The Association may exercise all of the powers and privileges and perform all of the duties and obligations of the Association, including cooperation with other homeowners' associations organized for the same or similar purposes in other subdivisions, as set forth in the

Declaration, as same may be amended from time to time, the Declaration being incorporated herein by reference as if set forth at length herein.

(b) The Association may (i) fix, levy, collect and enforce payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration and/or Bylaws, (ii) as agent, pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association including all licenses, taxes or governmental charges levied or imposed against the land of the Association, (iii) make disbursements, expenditures and payments on behalf of the said land owners as required by the Declaration and the Bylaws of the Association, and (iv) hold as agent for said land owners reserves for periodic repairs, maintenance and capital improvements to be made as directed by the land owners acting through the Board (as herein defined).

(c) The Association may acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association subject to the limitations, if any, set forth in the Declaration.

(d) The Association may borrow money, and with the required assent of voting Members as set forth in the Declaration, mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the limitations, if any, set forth in the Declaration.

(e) The Association may provide management, upkeep, maintenance, repair, care of and general sanitation and cleanliness of the Areas of Common Responsibility as provided in the Declaration.

(f) The Association may incur or assume obligations and duties to the Town or any other governmental authority, regarding the development, operation and maintenance of the Areas of Common Responsibility and any improvements within the Areas of Common Responsibility.

(g) The Association may enter into, incur or assume obligations and duties under escrow agreements or other escrow arrangements with the Town or other governmental authorities, to provide or escrow funds to pay for the operation, maintenance and repair of the Areas of Common Responsibility and any improvements owned by the Association.

(h) The Association may enter into and perform any contract and exercise all powers which may be necessary or convenient to the operation, management, maintenance and administration of the affairs of the Association in accordance with the Declaration.

(i) The Association may dedicate, sell or transfer all or any part of the Areas of Common Responsibility to any public agency, authority or utility company for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication, sale or transfer shall be effective unless an instrument has been recorded after it has been

signed by the requisite number of voting Members agreeing to such dedication, sale or transfer as provided in the Declaration.

(j) The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes or annex additional residential property and Areas of Common Responsibility, provided that any such merger, consolidation or annexation shall have the assent of the Owners representing the requisite number of votes of voting Members as provided in the Declaration.

(k) The Association may have and exercise any and all powers, rights and privileges a corporation organized under the Act may now or hereafter exercise, including any other powers, rights or privileges described in the Declaration.

The foregoing enumeration of specific purposes shall not be held to limit or restrict in any manner the powers of this Association conferred by the laws of the State of Texas and shall be understood to be in furtherance of, and in addition to, such general powers conferred on non-profit corporations under the provisions of the Texas Non-Profit Corporation Act.

ARTICLE FIVE

Every record owner of a fee or undivided fee interest in any Lot included in the Declaration shall be a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of a Lot. Every member shall have the right at all reasonable times during business hours to inspect the books of the Association. The foregoing is not intended to include persons or entities holding an interest in a Lot merely as security for the performance of an obligation. Transfer of ownership either voluntarily or by operation of law, shall terminate such Owners' membership in the Association, and membership shall be vested in the transferee; provided, however, that no such transfer shall relieve or release such Owner from any personal obligation with respect to the assessments which have accrued prior to such transfer.

ARTICLE SIX

At all meetings of the Association, there shall be no cumulative voting. Prior to all meetings, the Board of Directors shall determine the total number of votes outstanding and entitled to vote by the Members.

ARTICLE SEVEN

The street address of its initial registered office of the Association is 5300 Town & Country Blvd. Suite 190, Frisco, Texas 75034, and the name of its initial registered agent at such address is Zachary Luterman.

ARTICLE EIGHT

Subject to the terms of the Declaration, the Members of the Association shall elect the Board of Directors of the Association (the "Board"), and the Board shall, by majority rule, conduct all of the business of the Association, except when membership votes are required pursuant to the Declaration, the Articles of Incorporation, or the Bylaws of the Association. The number of Directors constituting the initial Board is three (3), and the names and addresses of the persons who are to serve as the initial members of the Board are:

<u>Name</u>	<u>Address</u>
<u>Zachary Luterman</u>	<u>5300 Town & Country Blvd.</u> <u>Suite 190</u> <u>Frisco, Texas 75304</u>
<u>Steve McCraw</u>	<u>5300 Town & Country Blvd.</u> <u>Suite 190</u> <u>Frisco, Texas 75304</u>
<u>Brian Donovan</u>	<u>5300 Town & Country Blvd.</u> <u>Suite 190</u> <u>Frisco, Texas 75304</u>

The Board may make whatever rules and bylaws it deems desirable to govern the Association and its Members; provided, however, any conflict between such bylaws and the provisions hereof shall be controlled by the provisions of the Declaration.

ARTICLE NINE

No Director of the Association shall be personally liable to the Association for monetary damages for any act or omission in the Director's capacity as a Director, except that this Article does not eliminate or limit the liability of a Director for (1) a breach of a Director's duty of loyalty to the Association, (2) an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law, (3) a transaction from which a Director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the Director's office, or (4) an act or omission for which the liability of a Director is expressly provided for by statute. Neither the amendment nor repeal of this Article shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise prior to such amendment or repeal. If the Act or the Texas Miscellaneous Corporation Laws Act (the "TMC Act") is hereafter amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a Director of the Association shall be eliminated or limited to the fullest extent permitted by the Act or the TMC Act, as so amended from time to time. Without limiting the foregoing, the following shall apply:

(a) The Association shall indemnify, to the extent provided in the following paragraphs, any person who is or was a director, officer, agent or employee of the Association. In the event the provisions of indemnification set forth below are more restrictive than the provisions of indemnification allowed by Article 1396-2.22A of the TMC Act, then such persons named above shall be indemnified to the full extent permitted by Article 1396-2.22A of the TMC Act as it may exist from time to time.

(b) In case of a threatened or pending suit, action or proceeding (whether civil, criminal, administrative or investigative) against a person named in paragraph (a) above by reason of such person's holding a position named in such paragraph (a), the Association shall indemnify such person if such person satisfies the standard contained in paragraph (c) below, for amounts actually and reasonably incurred by such person in connection with the defense or settlement of the suit as expenses (including court costs and attorneys' fees), amounts paid in settlement, judgments, penalties (including excise and similar taxes), and fines.

(c) A person named in paragraph (a) above will be indemnified only if it is determined in accordance with paragraph (d) below that such person:

(i) acted in good faith in the transaction which is the subject of the suit;
and

(ii) reasonably believed:

(A) if acting in his or her official capacity as director, officer, agent or employee of the Association, that his or her conduct was in the best interests of the Association;
and

(B) in all other cases, that his or her conduct was not opposed to the best interests of the Association; and

(iii) in the case of any criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, will not, or itself, create a presumption that such person failed to satisfy the standard contained in this paragraph (c).

(d) A determination that the standard in paragraph (c) above has been satisfied must be made:

(i) by a majority vote of a quorum consisting of Directors who at the time of the vote are not named defendants or respondents in the proceeding; or

(ii) if such quorum cannot be obtained, by a majority vote of a committee of the Board, designated to act in the manner by a majority vote of all Directors, consisting solely of two (2) or more Directors who at the time of the vote are not named defendants or respondents in the proceeding; or

(iii) by special legal counsel selected by the Board or a committee of the Board by vote as set forth in subparagraphs (i) and (ii) above, or, if such quorum cannot be obtained and such committee cannot be established, by a majority vote of all Directors.

(e) Determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, determination as to reasonableness of expenses must be made in the manner specified by subparagraph (d)(iii) above for the selection of special legal counsel.

(f) The Association may reimburse or pay in advance any reasonable expenses (including court costs and attorneys' fees) which may become subject to indemnification under paragraphs (a) through (e) above, but only in accordance with the provisions as stated in paragraph (d) above, and only after the person to receive the payment (i) signs a written affirmation of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under paragraph (c), and (ii) undertakes in writing to repay such advances if it is ultimately determined that such person is not entitled to indemnification by the Association. The written undertaking required by this paragraph must be an unlimited general obligation of the person but need not be secured. It may be accepted without reference to financial ability to make repayment.

(g) The indemnification provided by paragraphs (a) through (e) above will not be exclusive of any rights to which a person may be entitled to by law, bylaws, agreement, vote of Members or disinterested Directors, or otherwise.

(h) The indemnification and advance payment provided by paragraphs (a) through (f) above will continue as to a person who has ceased to hold a position named in paragraph (a) above and will inure to such person's heirs, executors and administrators.

(i) The Association may purchase and maintain insurance on behalf of any person who holds or has held any position named in paragraph (a) above against any liability incurred by such person in any such position, or arising out of such person's status as such, whether or not the Association would have power to indemnify such person against such liability under paragraphs (a) through (f) above.

(j) Indemnification payments and advance payments made under paragraphs (a) through (i) above are to be reported in writing to the Members of the Association in the next notice or waiver of notice of annual meeting, or within twelve (12) months after the payments are made, whichever is sooner.

(k) All liability, loss, damage, cost and expense incurred or suffered by the Association by reason of or arising out of, or in connection with, the foregoing indemnification provisions shall be treated and handled by the Association as an expense subject to special assessment.

ARTICLE TEN

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of voting Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be conveyed to either (a) another non-profit Texas corporation, association, trust or other organization devoted to purposes similar to those of the Association, or (b) an appropriate governmental agency to be used for purposes similar to those for which the Association was created. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE ELEVEN

Amendment of these Articles shall require the assent of the requisite number of votes of the voting Members as set forth in the Declaration.

ARTICLE TWELVE

The name and address of the incorporator is (name) , (address)

EXECUTED this ____ day of _____, 2006.

Name and Title

STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, a notary public, on this day personally appeared _____,
known to me to be the person whose name is subscribed to the foregoing document and, being by me
first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and seal of office this _____ day of _____, 2006.

NOTARY PUBLIC, STATE OF TEXAS

Printed Name: _____

My Commission Expires: _____

**BYLAWS
OF
STANFORD COURT HOMEOWNER'S ASSOCIATION, INC.
(A Texas Non-Profit Corporation)**

ARTICLE I

DEFINITIONS

1.01 Definitions.

(a) All terms used herein, such as (but not by way of limitation) "owners", "lot", "land", "Areas of Common Responsibility", "Developer", "Declarant" and "assessments" shall have the same meanings as set forth in that certain Declaration of Covenants, Conditions and Restrictions for Stanford Court Addition (the "Declaration") filed of record in the Real Property Records of Addison County, Texas, on _____, 2006, under County Clerk's Instrument Number: _____, which affects that certain real property platted as Stanford Court, as approved by the Town of Addison, Texas, and filed of record on _____, 2006, in **Volume _____, Page _____** of the Plat Records of Dallas County, Texas.

(b) "Act" shall refer to the Texas Non-Profit Corporation Act, as amended from time to time.

ARTICLE II

NAME

2.01 Name. The name of this corporation shall be **Stanford Court Homeowner's Association, Inc.** (hereinafter called the "Association").

ARTICLE III

OFFICES OF THE ASSOCIATION

3.01 Principal Office. The initial principal office of the Association shall be located at 5300 Town & Country Blvd. Suite 190 Frisco, Texas 75034, but meetings of members and directors may be held at such place within the State of Texas as may be designated by the Board of Directors.

3.02 Other Offices. The Association may also have offices at such other places both within and without the State of Texas as the Board of Directors may from time to time determine or as the business of the Association may require.

ARTICLE IV

ASSOCIATION RESPONSIBILITIES AND MEETINGS OF MEMBERS

4.01 Association Responsibilities. The members will constitute the Association, which shall be responsible for administering and enforcing the covenants, conditions and restrictions contained in the Declaration, including with respect to the collection and disbursement of charges and assessments as provided therein, and coordinating with other homeowners' associations in the adjacent subdivisions in administering and enforcing such covenants, conditions and restrictions through their respective boards of directors. In the event of any dispute or disagreement between any members relating to the land, or any questions of interpretation or application of the provisions of the Declaration, Articles of Incorporation or these Bylaws, such dispute or disagreement shall be submitted to the Board of Directors of the Association. The resolution of such dispute or disagreement by such Board of Directors shall be binding on each and all such members, subject to the right of members to seek other remedies provided by law after such determination by such Board of Directors.

4.02 Place of Meeting. Meetings of the Association shall be held at such suitable place, reasonably convenient to the members, within the State of Texas, County of Dallas, as the Board of Directors may determine.

4.03 Annual Meetings. The first meeting of the Association shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year thereafter unless otherwise determined by the Board. At such meetings, there shall be elected a Board of Directors by ballot of the members in accordance with the requirements of Article V of these Bylaws. The members may also transact such other business of the Association as may properly come before them at such meeting. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following such day which is not a legal holiday.

4.04 Special Meetings. It shall be the duty of the President of the Association to call a special meeting of the members as directed by resolution of the Board of Directors or upon receipt of a written request of members entitled to vote at least one-fourth (1/4) of all of the votes of either class of membership. No business except as stated in the notice shall be transacted at a special meeting of the members. Any such meetings shall be held after the first annual meeting and shall be held within forty-five (45) days after receipt by the President of such request or petition.

4.05 Notice of Meetings. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered by the Secretary or Assistant Secretary of the Association not less than fifteen (15) nor more than thirty (30) days before the date of the meeting, either personally or by mail, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it

appears on the books of the Association, with postage thereon prepaid. Business transacted at any special meeting shall be confined to the purposes stated in the notice or waiver thereof.

4.06 Quorum. The holders of twenty five percent (25%) of all the votes entitled to be cast by Members of the Association, represented in person or by proxy, plus the presence in person or by proxy of the Class "B" Member, shall constitute a quorum for any meetings of members except as otherwise provided in the Articles of Incorporation, the Declaration or the Bylaws. If, however, such quorum shall not be present or represented at any meeting of the members, the members present, or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which may have been transacted at the meeting as originally notified.

4.07 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and shall be filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance by a member of his lot.

4.08 Voting by Association and Members. The Association shall not be a voting member of the Association by virtue of its ownership of any lot. Each member may vote the number of votes and in the manner set forth in the Declaration and Articles of Incorporation.

4.09 Order of Business. The order of business at all meetings of the Members shall be as follows:

- (a) roll call and certifying proxies;
- (b) proof of notice of meeting or waiver of notice;
- (c) reading and disposal of unapproved minutes of prior meetings;
- (d) reports of officers;
- (e) reports of committees;
- (f) election of directors;
- (g) unfinished business;
- (h) new business; and
- (i) adjournment.

4.10 Membership List. The officer or agent having charge of the membership books shall make, at least five (5) days before each meeting of members, a complete list of the members entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address

of and number of votes held by each, which list, for a period of five (5) days prior to such meeting, shall be kept on file at the principal office of the Association, and shall be subject to inspection by any member at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting, and shall be subject to the inspection of any member during the whole time of the meeting. The original member books shall be prima facie evidence as to who are the members entitled to examine such list or to vote at any such meeting of members.

4.11 Action Taken Without a Meeting. Any action required by statute to be taken at an annual or special meeting of the members, or any action which is otherwise permitted by law or by these Bylaws, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of members. Subject to the provisions required or permitted by statute for notice of meetings, unless otherwise restricted by the Articles of Incorporation or these Bylaws, the members may participate in and hold a meeting by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other.

ARTICLE V

BOARD OF DIRECTORS

5.01 Number and Qualification. Until the first meeting of the Association, the affairs of the Association shall be governed by a Board of Directors consisting of the three (3) persons delineated in the Articles of Incorporation of the Association. At such first meeting, there shall be elected three (3) directors to the Board of Directors who shall thereafter govern the affairs of the Association until their successors have been duly elected and qualified.

5.02 Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and for the operation and maintenance of the land in keeping with the character and quality of the area in which it is located. The business and affairs of the Association shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Association and do all such lawful acts and things as are not by statute, the Articles of Incorporation, these Bylaws or the Declaration directed or required to be exercised or done by the members.

5.03 No Waiver of Rights. The omission or failure of the Association or any member to enforce the covenants, conditions, restrictions, easements, uses, liens, limitations, obligations or other provisions of the Declaration, these Bylaws or the rules and regulations adopted pursuant thereto or hereto, shall not constitute or be deemed a waiver, modification or release thereof, and the Board of Directors shall have the right to enforce the same at any time thereafter.

5.04 Election and Term of Office. At the first meeting of the Association, the term of office for three (3) Directors shall be fixed at one (1) year. At the expiration of the initial term of office of each respective Director, his successor shall be elected to serve a term of one (1) year. The

Directors shall hold office until their successors have been elected and hold their first meeting, except as is otherwise provided herein.

5.05 Vacancies. Vacancies in the Board of Directors caused by death, resignation or disqualification (i.e., by any reason other than the removal of a Director by a vote of the Association as set forth in Section 5.06 hereof) shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum, and each person so elected shall be a Director until his successor is elected at the next annual meeting of the Association to serve out the unexpired term (if any) of his predecessor in office. Vacancies in the Board of Directors caused by a removal of a Director by a vote of the Association shall be filled in the manner set forth in Section 5.06 hereof.

5.06 Removal of Directors. At any annual or special meeting of the Association duly called, any one or more of the Directors may be removed with or without cause by the affirmative vote of a majority of members of each class entitled to vote who are present at a meeting at which a quorum is present, and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed by the members shall be given an opportunity to be heard at the meeting.

5.07 Organizational Meeting. The first meeting of each newly elected Board of Directors shall be held at such time and place as shall be fixed by the vote of the members at the annual meeting, and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the members to fix the time and place of such first meeting of the newly elected Board of Directors, or in the event such meeting is not held at the time and place so fixed by the members, the meeting shall be held within ten (10) days after the annual meeting of the members at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided a quorum of the Board of Directors shall be present.

5.08 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least one (1) such meeting shall be held during each calendar year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, at least five (5) days prior to the day named for such meeting.

5.09 Special Meetings. Special meetings of the Board of Directors may be called by the President upon five (5) days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President, Secretary or Assistant Secretary of the Association in like manner and on like notice on the written request of one (1) or more Directors.

5.10 Meeting by Telephonic Means. Members of the Board of Directors may participate in a meeting by means of conference telephone or similar communications equipment by means of

which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 5.10 shall constitute presence in person at the meeting.

5.11 Waiver of Notice. Before or after any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board of Directors shall be a waiver of notice by him of the time and place thereof. If all of the Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

5.12 Board of Directors' Quorum. At all meetings of the Board of Directors, a majority of the Directors in office shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. Directors present by proxy may not be counted toward a quorum. If, at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

5.13 Compensation. No member of the Board of Directors shall receive any compensation for acting as such.

5.14 Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at any meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

5.15 Nomination and Election of Directors. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members or representatives of a member of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from members or non-members. The appropriate number of members of the Board of Directors shall be elected at the annual meeting of members of the Association, which members of the Association shall vote the number of votes and in the manner set forth in the Declaration and the Articles of Incorporation.

ARTICLE VI

OFFICERS

6.01 Designation. The officers of the Association shall be a President, one (1) or more Vice-Presidents, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors, and such assistant officers as the Board of Directors shall, from time to time, appoint. Such officers need not be members of the Board of Directors. The office of President and Treasurer may be held by the same person, and the office of Vice-President and Secretary or Assistant Secretary may be held by the same person.

6.02 Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors, and such new officers shall hold office subject to the continuing approval of the Board of Directors.

6.03 Resignation and Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor appointed at any regular or special meeting of the Board of Directors called for such purpose. An officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date such notice is received, or at any later time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6.04 Vacancies. A vacancy in any office due to the death, resignation, removal or other disqualification of the officer previously filling such office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

6.05 President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of president of an association, including but not limited to the power to appoint committees from the members from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association, or as may be established by the Board of Directors or by the members of the Association at any annual or special meetings.

6.06 Vice-President. The Vice-President shall have all the powers and authority and perform all the functions and duties of the President in the absence of the President or his inability for any reason to exercise such powers and functions or perform such duties, and shall also perform any duties he is directed to perform by the President.

6.07 Secretary.

(a) The Secretary shall keep all of the minutes of the meetings of the Board of Directors and the Association. The Secretary shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all the duties incident to the office of Secretary as provided in the Declaration, Bylaws and Articles of Incorporation.

(b) The Secretary shall compile and keep up to date at the principal office of the Association a complete list of the members and their last known addresses as shown on the records of the Association. Such list shall be open to inspection by members and other persons lawfully entitled to inspect the same at reasonable times during regular business hours.

6.08 Assistant Secretary. The Assistant Secretary, if any, shall have all the powers and authority to perform all the functions and duties of the Secretary in the absence of the Secretary or in the event of the Secretary's inability for any reason to exercise such powers and functions or to perform such duties, and also to perform any duties as directed by the Secretary.

6.09 Treasurer.

(a) The Treasurer shall have custody of and be responsible for Association funds and for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors.

(b) The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer, and of the financial condition of the Association.

ARTICLE VII

INDEMNIFICATION OF OFFICERS AND DIRECTORS

7.01 Indemnification.

(a) The Association shall indemnify, to the extent provided in the following paragraphs, any person who is or was a director, officer, agent or employee of the Association. In the event the provisions of indemnification set forth below are more restrictive than the provisions of indemnification allowed by Article 1396-2.22A of the Texas Non-Profit Corporation Act (the "Act"), then such persons named above shall be indemnified to the full extent permitted by the Act as it may exist from time to time.

(b) In case of a threatened or pending suit, action or proceeding (collectively, "Suit"), whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), against a person named in paragraph (a) above by reason of such person's holding a position named in such paragraph (a), the Association shall indemnify such person, if such person satisfies the standard contained in paragraph (c) below, for amounts actually and reasonably incurred by such person in connection with the defense or settlement of the Suit as expenses (including court costs and attorneys' fees), amounts paid in settlement, judgments, penalties (including excise and similar taxes), and fines.

(c) A person named in paragraph (a) above will be indemnified only if it is determined in accordance with paragraph (d) below that such person:

(i) acted in good faith in the transaction which is the subject of the Suit;
and

(ii) reasonably believed:

(A) if acting in his or her official capacity as director, officer, agent or employee of the Association, that his or her conduct was in the best interests of the Association;
and

(B) in all other cases, his or her conduct was not opposed to the best interests of the Association; and

(iii) in the case of any criminal proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, will not, of itself, create a presumption that such person failed to satisfy the standard contained in this paragraph (c).

(d) A determination that the standard in paragraph (c) above has been satisfied must be made:

(i) by the Board of Directors by a majority vote of a quorum consisting of Directors who, at the time of the vote, are not named defendants or respondents in the proceeding; or

(ii) if such quorum cannot be obtained, by a majority vote of a committee of the Board of Directors designated to act in the matter by a majority vote of all Directors, consisting solely of two (2) or more Directors who at the time of the vote are not named defendants or respondents in the proceeding; or

(iii) by special legal counsel selected by the Board of Directors or a committee of the Board of Directors by vote as set forth in subparagraphs (i) or (ii) above, or, if such

a quorum cannot be obtained and such a committee cannot be established, by a majority vote of all Directors.

(e) Determination as to reasonableness of expenses must be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, determination as to reasonableness of expenses must be made in the manner specified by subparagraph (d)(iii) above for the selection of special legal counsel.

(f) The Association may reimburse or pay in advance any reasonable expenses (including court costs and attorneys' fees) which may become subject to indemnification under paragraphs (a) through (e) above, but only in accordance with the provisions as stated in paragraph (d) above, and only after the person to receive the payment (i) signs a written affirmation of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under paragraph (c) above, and (ii) undertakes in writing to repay such advances if it is ultimately determined that such person is not entitled to indemnification by the Association. The written undertaking required by this paragraph must be an unlimited general obligation of the person but need not be secured. It may be accepted without reference to financial ability to make repayment.

(g) The indemnification provided by paragraphs (a) through (e) above will not be exclusive of any other rights to which a person may be entitled by law, bylaw, agreement, vote of members or disinterested Directors, or otherwise.

(h) The indemnification and advance payment provided by paragraphs (a) through (f) above will continue as to a person who has ceased to hold a position named in paragraph (a) above and will inure to such person's heirs, executors and administrators.

(i) The Association may purchase and maintain insurance on behalf of any person who holds or has held any position named in paragraph (a) above against any liability incurred by such person in any such position, or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against such liability under paragraphs (a) through (f) above.

(j) Indemnification payments and advance payments made under paragraphs (a) through (i) above are to be reported in writing to the members of the Association in the next notice or waiver of notice of annual meeting, or within twelve (12) months after the payments are made, whichever is sooner.

(k) All liability, loss, damage, cost and expense incurred or suffered by the Association by reason of or arising out of, or in connection with, the foregoing indemnification provisions shall be treated and handled by the Association as an expense subject to special assessment,

7.02 Other. The Board of Directors, officers, or representatives of the Association shall enter into contracts or other commitments as agents for the Association, and they shall have no

personal liability for any such contract or commitment (except such liability as may be ascribed to them in their capacity as Owners).

7.03 Interested Directors and Officers.

(a) If paragraph (b) below is satisfied, no contract or transaction between the Association and any of its Directors or officers (or any other corporation, partnership, association or other organization in which any of them directly or indirectly have a financial interest) shall be void or voidable solely because of this relationship or because of the presence or participation of such Director or officer at the meeting of the Board of Directors or committee thereof which authorizes such contract or transaction, or solely because such person's votes are counted for such purpose.

(b) The contract or transaction referred to in paragraph (a) above will not be void or voidable if:

(i) the contract or transaction is fair to the Association as of the time it is authorized, approved or ratified by the Board of Directors, a committee of the Board of Directors, or the members; or

(ii) the material facts as to the relationship or interest of each such Director or officer as to the contract or transaction are known or disclosed (A) to the members entitled to vote thereon and they nevertheless in good faith authorize or ratify the contract or transaction by a majority of the members present, each such interested person to be counted for quorum and voting purposes, or (B) to the Board of Directors or a committee of the Board of Directors and the Board of Directors or committee nevertheless in good faith authorizes or ratifies the contract or transaction by a majority of the disinterested Directors present, each such interested Director to be counted in determining whether a quorum is present but not in calculating the majority necessary to carry the vote.

(c) The provisions contained in paragraphs (a) and (b) above may not be construed to invalidate a contract or transaction which would be valid in the absence of such provisions.

ARTICLE VIII

AMENDMENTS TO BYLAWS

8.01 Amendment to Bylaws. These Bylaws may be amended at a regular or special meeting of the members by a vote of sixty-six and two-thirds percent (66-2/3%) of the outstanding votes of each class of Members entitled to vote; provided, however, that such authority may be delegated by the majority of such members to the Board of Directors if allowed by the Act. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control, and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE IX

EVIDENCE OF OWNERSHIP, REGISTRATION OF MAILING ADDRESS

9.01 Proof of Ownership. Except for those owners who purchase a lot from Developer, any person, on becoming an owner of a lot, shall furnish to the Board of Directors a true and correct copy of the original or a certified copy of the recorded instrument vesting that person with an interest or ownership in the lot, which copy shall remain in the files of the Association. A member shall not be deemed to be in good standing nor shall he be entitled to vote at any annual or special meeting of members unless this requirement is first met.

9.02 Registration of Mailing Address. The owner or several owners of a lot shall have the same registered mailing address to be used by the Association for mailing of monthly statements, notices, demands and all other communications, and such registered address shall be the only mailing address of a person or persons to be used by the Association. Such registered address of an owner or owners shall be deemed to be the mailing address of the lot owned by said owner or owners unless a different registered address is furnished by such owner(s) to the Board of Directors within fifteen (15) days after transfer of title, or after a change of address. Such registration shall be in written form and signed by all of the owners of the lot or by such person(s) as are authorized by law to represent the interest of all of the owner(s) thereof.

ARTICLE X

GENERAL

10.01 Assessments and Liens. As more fully provided in the Declaration, each Member shall pay to the Association annual and special assessments which are secured by a continuing lien upon the lot against which the assessment is made.

10.02 Abatement and Enforcement. The violation of any rule or regulation, or the breach of any Bylaw or any provision of the Declaration, shall give the Board of Directors the right, in addition to any other rights set forth in the Declaration or herein, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of such violation or breach.

10.03 Committees. The Association may appoint an Architectural Control Committee, subject to the terms of and as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

10.04 Books and Records. The books, records and accounts of the Association shall, at reasonable times upon reasonable written notice, be subject to inspection by any member at such member's sole cost and expense. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, and copies of such documents may be purchased from the Association at a reasonable cost.

10.05 Non-Profit Association. This Association is not organized for profit. No member of the Association, member of the Board of Directors, officer or person from whom the Association may receive any property or funds shall receive or shall be lawfully entitled to receive any pecuniary profit from the operation thereof, and in no event shall any part of the funds or assets of the Association be paid as salary or compensation to, or distributed to, or inure to the benefit of, any member of the Board of Directors, officer or member; provided, however, that (a) reasonable compensation may be paid to any member, Director or officer while acting as an agent or employee of a third party for services rendered to the Association in effecting one or more of the purposes of the Association, and (b) any member, Director or officer may, from time to time, be reimbursed for his actual and reasonable expenses incurred in connection with the administration of the affairs of the Association.

10.06 Execution of Documents. The persons who shall be authorized to execute any and all contracts, documents, instruments of conveyance or encumbrances, including promissory notes, shall be the President or any Vice President, and the Secretary or any Assistant Secretary, of the Association.

10.07 Proxy for Beneficiary or Mortgage Under Deed of Trust. Owners shall have the right to irrevocably constitute and appoint their Mortgagees their true and lawful attorney to vote their lot membership in this Association at any and all meetings of the Association and to vest in such beneficiary or his nominees any and all rights, privileges and powers that they have as owners under the Bylaws of this Association or by virtue of the Declaration. Such proxy shall become effective upon the filing of a notice by the beneficiary with the Secretary or Assistant Secretary of the Association at such time or times as the beneficiary shall deem its security in jeopardy by reason of the failure, neglect or refusal of the Association or the owners to carry out their duties as set forth in the Declaration. Such proxy shall be valid until such time as a release of the beneficiary's deed of trust is executed and a copy thereof delivered to the Secretary or Assistant Secretary of the Association, which shall operate to revoke such proxy. Such proxy may be terminated prior to such revocation by the beneficiary's delivering written notice of such termination to the Secretary or Assistant Secretary of the Association. Nothing herein contained shall be construed to relieve owners of, or to impose upon the beneficiary of the Deed of Trust, the duties and obligation of an owner.

10.08 Conflicting or Invalid Provisions. Notwithstanding anything contained herein to the contrary, should all or part of any Article or Section of these Bylaws be in conflict with the provisions of the Act or any other Texas law, such Act or law shall control, and should any part of these Bylaws be invalid or inoperative for any reason, the remaining parts, so far as is possible and reasonable, shall be valid and operative.

10.09 Notices. All notices to members of the Association shall be given by delivering the same to each owner in person or by depositing the notices in the U.S. Mail, postage prepaid, addressed to each owner at the address last given by each owner to the Secretary of the Association. If an owner shall fail to give an address to the Secretary for mailing of such notices, all such notices shall be sent to the street address of the lot of such owner. All owners shall be deemed to have been

given notice of the meetings upon the proper mailing of the notices to such addresses irrespective of the actual receipt of the notices by the owners.

10.10 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association.

Adopted by the Board of Directors to be effective as of the ____ day of _____, 2006.

Zachary Luterman, President

Steve McCraw, Vice President

Brian Donovan, Secretary

**DECLARATION OF
COVENANTS AND RESTRICTIONS
FOR
STANFORD COURT
(A Townhome Community in Addison, TX)**

**DECLARATION OF
COVENANTS AND RESTRICTIONS**

FOR

STANFORD COURT
(A Townhome Community in Addison, TX)

RECITALS

A. Declarant is the owner of certain real property situated in the Town of Addison, Dallas County, Texas, as more particularly described on Exhibit "A", attached hereto and made a part hereof such real property, together with additions thereto as may be made subject to the terms of this Declaration by any Supplemental Declaration of Covenants executed and filed, from time to time, by Declarant in the Deed Records of Dallas County, Texas, being collectively called the "Property"); and desires to create on the Property a residential community with residential lots, open spaces and other common facilities for the benefit of the Owners, as hereinafter defined.

B. Declarant desires to provide for the efficient preservation of the values and amenities within the Property and for the maintenance of open spaces and other common facilities. To this end, Declarant desires to impose upon the Property the covenants, conditions, restrictions, easements, charges and liens contained in this Declaration and to create a non-profit corporation to which would be delegated and assigned the powers of maintaining and administering the community Property and facilities in accordance with the terms of this Declaration.

C. Declarant has caused or will cause to be incorporated under the Non-Profit Corporation Act of the State of Texas (the "Act") a non-profit corporation known as, Stanford Court Homeowners Association, Inc. (the "Association").

NOW, THEREFORE, Declarant, for an in consideration of, and expressly for the benefit of, and to bind, its successors in interest, does hereby agree and declare that the Property, including any additions thereto as may hereafter be made hereof, shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens sometimes referred to collectively as the (the "Covenants") hereinafter set forth which shall run with the land and shall be binding upon all parties having any right, title, or interest in or to the Property, or any part thereof, and their heirs, successors, representatives and assigns. The covenants, conditions, restrictions, easements, charges and liens hereinafter set forth are covenants running with the Property at law as well as in equity.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration shall have the following meanings:

"Architectural Committee" as appointed by the Stanford Court Homeowner's Association, Inc. Board of Directors and shall mean the New Construction Committee or the Modifications Committee whichever is applicable.

"Assessments" shall mean and refer to the regular annual assessments, the special assessments and the default assessments levied for the Association as determined by the Board of Directors.

"Association" shall mean and refer to the Stanford Court Homeowners Association, Inc., a Texas non-profit corporation, its successors and assigns.

"Board of Directors or Board " shall mean the governing body of the Association, the elections and procedures of which shall be as set forth in the Articles of Incorporation and the By-Laws of the Association.

"Builder" shall mean and refer to any person or entity undertaking the construction of a residence on a Lot.

"Common Property" shall mean and refer to all property, real or personal, owned or held by the Association for the common use and enjoyment of the Members of the Association.

"Declarant" shall mean and refer to [REDACTED] or Affiliate of, and its successors and assigns, if (a) such successor or assignee should acquire more than one (1) undeveloped Lot from [REDACTED] or Affiliate of, for the purpose of development and (b) any such successor or assignee shall receive by assignment from [REDACTED] or Affiliate of, of all or a portion of its rights hereunder as such Declarant, by an instrument expressly assigning such rights as Declarant to such successor or assignee.

"Dwelling Unit" shall mean and refer to any building or portion of a building situated upon the Property which is designed and intended for use and occupancy as a residence by a single person, a couple, a family or a permitted family size group of persons.

"Institutional Mortgage" shall mean a mortgage or deed of trust creating a first lien on a Lot which is held by a third party institutional lender.

"Lot" or "Lots" shall mean, with respect to any Property for which a subdivision map has been recorded in the map or plat records of Dallas County, Texas, each lot shown on such recorded subdivision map which is or is to be improved with a residential dwelling.

"MC" shall refer to the Modifications Committee.

"Member" shall mean and refer to each Owner as provided herein in Article II of this Declaration.

"NCC" shall mean and refer to the New Construction Committee.

"Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot but, notwithstanding any applicable theory of mortgages or other security devices, shall not mean or refer to any mortgagee or trustee under a mortgage or deed of trust unless and until such mortgagee or trustee has acquired title pursuant to foreclosure or any conveyance in lieu of foreclosure. Declarant shall be deemed an Owner of each Unplatted Lot.

"Property" shall have the meaning given to it in Paragraph A of the Introductory Statement above.

"Resident" shall mean and refer to each person (not otherwise an Owner or Member) authorized by an Owner to reside within such Owner's Dwelling Unit.

"Two-Thirds Member Vote By Class" shall mean the approval of two-thirds (2/3) of each class of Members entitled to vote who either (i) are voting in person or by proxy at a meeting duly called for this purpose and at which the necessary quorum exists, or (ii) execute a written consent in lieu of a meeting for such purpose.

"Two-Thirds Member Vote" shall mean the approval of two-thirds (2/3) of all Members (regardless of class) entitled to vote who either (i) are voting in person or by proxy at a meeting duly called for this purpose and at which the necessary quorum exists, or (ii) execute a written consent in lieu of a meeting for such purpose.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION; ADDITIONS TO THE PROPERTY

2.1 **Membership.** Each and every Owner shall automatically be and must remain a Member of the Association, subject to the terms of this Declaration, the Articles of Incorporation and the Bylaws of the Association and the Association's rules and regulations. Membership of an Owner in the Association shall be appurtenant to and may not be separated from the interest of such Owner in and to a Lot. Ownership of a Lot shall be the sole qualification for being a Member; provided, however a Member's privileges in the Common Property may be regulated or suspended as provided in this Declaration, the Bylaws of the Association and/or the Association's rules and regulations. Any person or entity that holds an interest in and to a Lot merely as security for the performance of an obligation shall not be a Member until such time as the holder or its successor acquires title to the Lot through foreclosure or conveyance in lieu thereof.

2.2 **Transfer.** Membership of an Owner in the Association may not be severed from or in any way transferred, pledged, mortgaged or alienated except upon the sale or assignment of said Owner's interest in a Lot and then only to the purchaser or assignee as the new Owner thereof. Such membership shall not be severed by the encumbrance by an Owner of a Lot. Any attempt to make a prohibited severance, transfer, pledge, mortgage or alienation shall be void and of no further force or effect. Owners shall notify the Association of any transfer of the fee title to a Lot. Such transfer shall automatically operate to transfer the membership to the new Owner thereof. In the event an Owner should fail or refuse to provide written evidence of transfer of the membership in the Association registered in such Owner's name to the transferee of such Owner's interest in a Lot, the Association shall have the right to record the transfer upon the books and records of the Association.

2.3 **Classes of Membership.** The Association shall have two classes of voting membership:

CLASS A. Class A Members shall be all Members with the exception of Declarant. Class A Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any such Lot.

CLASS B. The Class B Member(s) shall be the Declarant. The Class B Member(s) shall be entitled to five (5) votes for each Lot owned by the Class B Member(s). However, at such times as the total number of Lots owned by the Class A Members equals or exceeds eighty percent (80%) of the total number of lots in the development (18 Lots), the Class B Member(s) shall, during the time such equality or excess continues, be entitled to only one (1) vote for every Lot owned by it.

ARTICLE III

PROPERTY RIGHTS IN THE COMMON PROPERTY

3.1 **Members' Easements of Enjoyment.** Subject to the provisions of Section 3.3 of this Article, every Member and every Resident shall have a right and easement of use and enjoyment in and to the Common Property and such easement shall be appurtenant to and shall pass with the title to every Lot; provided however, such easement shall not give such person the right to make alterations, additions or improvements to the Common Property.

3.2. **Title to the Common Property.** The Declarant shall convey the fee simple title to the Common Property to the Association, or in the case where easements constitute part of the Common Property, Declarant shall assign and transfer such easements to the Association, in each case free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements and mineral interests outstanding and of record in Dallas County, Texas.

3.3. **Extent of Members' Easement.** The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Property (including limiting the number of guests of Members);

(b) Following the approval by a Two-Thirds Member Vote by Class of Class A Members only, the right of the Association, in accordance with its Articles, to borrow money for the purpose of improving the Common Property and facilities and in aid thereof to mortgage the Common Property;

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure;

(d) The right of the Association, as provided in its Bylaws, to suspend the voting rights of any Member and to suspend the right of any individual to use any of the Common Property for any period during which any assessment against a Lot owned by such Member or resided upon by such individual remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations;

(e) Following approval by a Two-Thirds Member Vote, the right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and upon such conditions as the Board of Directors of the Association may determine.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation for Assessments. Declarant, for each Lot owned by it within the Property, hereby covenants and agrees, and each purchaser of a Lot (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance), for each Lot owned by any such Owner, hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association (or to a mortgage company or other collection agency designated by the Association): (a) annual assessments or charges, to be paid in installments as the Board of Directors of the Association may elect, (b) special assessments for capital expenditures, such assessments to be fixed, established and collected from time to time as hereinafter provided, and (c) default assessments which may be assessed against an individual Owner to reimburse the Association for extra maintenance and repair costs incurred as a result of the willful or negligent acts or omissions of such Owner, or the Owner's family, agents, guests and invitees, such default assessments to be fixed, established and collected from time to time as hereinafter provided. The regular annual assessments, special assessments and default assessments, together with such interest thereon and costs of collection thereof as hereinafter provided (collectively "Assessments"), shall be a charge and continuing lien upon each Lot against which each such Assessment is made. Each such Assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the Assessment became due. The annual assessments shall be payable as provided in this Article IV.

4.2 Purpose of Assessments. The Assessments levied by the Association shall be used (i) for the purposes of promoting the recreation, health, safety and welfare of the residents of the Property, and in particular for the improvement and maintenance landscaped areas owned in common by the Association, or other Property, services and facilities devoted to this purpose and directly related to the use and enjoyment of the Common Property including, but not limited to, the payment of taxes on and insurance in connection with the Common Property and the repair, replacement and additions thereto; (ii) for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Property; and (iii) for carrying out the purposes of the Association as stated in its Articles of Incorporation. The Board may at any time increase or decrease the amount of the annual assessments in accordance with this Declaration to such level as shall be reasonably necessary in the judgment of the Board to cover obligations of the Association under this Declaration, including maintenance of reasonable cash reserves. The Board is obligated to maintain assessments at a level sufficient to enable payment of all costs which are the Association's obligation.

4.3 Basis and Amount of Assessments.

(a) Until the year beginning 2007, the maximum annual assessment shall be One Hundred and No/100 Dollars (\$100) for each Lot not owned by Declarant or Builder, and

an amount equal to not more than twenty-five percent (25%) of such annual amount for each Lot owned by Declarant or Builder at the time of each such annual assessment. The Board of Directors may fix the annual assessment at any amount less than such maximum.

(b) Commencing with the year beginning 2008, and each year thereafter, the maximum annual assessment for the following year for each Lot, shall automatically increase ten percent (10%) above the maximum annual assessment for the previous year without a vote of the membership or the Board of Directors. The maximum assessment for each Lot owned by Declarant or Builder, at the time of annual assessment, shall be an amount equal to twenty-five percent (25%) of the maximum amount assessed against each Lot owned by Members other than Declarant or Builder, unless a Lot owned by Declarant or Builder is improved with a residential structure that is occupied, in which event the maximum assessment for such Lot shall be an amount equal to the maximum amount assessed against each Lot owned by other Members.

(c) Provided that the Board has received approval by a Two-Thirds Member Vote, the maximum annual assessment for the following year for each Lot may exceed the maximum amounts set forth in Section 4.3(a) or (b) above.

4.4 Special Assessments for Capital Improvements. In addition to the annual Assessments authorized by Section 4.3 above, the Association may levy in any Assessment year a special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of any capital improvement upon the Common Property, including the necessary fixtures and personal property related thereto; provided that any such Assessment for capital improvements shall have been approved by a Two-Thirds Member Vote By Class.

4.5 Uniform Rate of Assessment Within Classes of Members. In recognition of the fact that while Declarant or Builder is the Owner of Lots, the benefits the Declarant or Builder receives from such Lots will be proportionately less than other Owners, the regular annual and special Assessments for Lots owned by Declarant or Builder and on which no Dwelling Unit is constructed shall be fixed at twenty-five percent (25%) of the Assessments for all other Lots. Except as provided in this Section 4.5 and Section 4.3, and until such time as Additional Property is subjected to this Declaration in accordance with Section 2.4, the regular annual and special Assessments shall be fixed at a uniform rate for all Lots. Since Additional Property subjected to this Declaration, like the Property originally covered by this Declaration, may involve common areas that disproportionately benefit the Lots within the particular phase of the project in which they are located, the Board may create different classes of Owners for purposes of determining Assessments, based on the Board's determination of the benefits to be received or extraordinary expenses incurred by each such class from certain Common Property. Except as provided above with respect to the Declarant or Building within any such class created by the Board, the Assessments shall be uniform.

4.6 Date of Commencement of Assessments; Due Date. Regular annual assessments provided for herein shall commence as to each Lot on the date a Builder sells a Lot with a Dwelling Unit to a Resident. The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessments provided for in Section 4.3 as the remaining number of months in that year bear to twelve. The first annual assessment, pro-rated to January 1st of the following year, shall be due and payable by the Resident at the closing date a Builder sells each Lot with a Dwelling Unit to a Resident. Subsequent annual assessments will be billed by the Association in December and payable quarterly. The due date or dates, if it is to be paid in installments, of any special assessment under Section 4.4 or of any default assessment under Section 4.1, shall be fixed in the respective resolution authorizing such assessment. Notwithstanding anything contained to the contrary in this Section, it is hereby understood that the Board of Directors of the Association shall have the right to establish a payment date and payment period that is different from the annual payment date provided herein.

4.7 Duties of the Board with Respect to Assessments.

(a) The Board shall fix the date of commencement and the amount of the Assessment against each Lot for each Assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

(b) Written notice of the Assessment shall thereupon be delivered or mailed to every Owner subject thereto.

(c) The Board shall, upon an Owner's written request and payment of any reasonable fee previously set by the Board, furnish to any Owner liable for each Assessment a certificate in writing signed by an officer of the Association, setting forth whether such Assessment has been paid. Each such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificates.

4.8 Effect of Non-Payment of Assessment: The Personal Obligation of the Owner, the Lien, Remedies of Association.

(a) If any Assessment or any part thereof is not paid on the date(s) when due (being the dates specified by the Board), then the unpaid amount of such Assessment shall become delinquent and shall, together with such interest thereon and the costs of collection thereof as hereinafter provided, be a continuing lien (the "Lien") on the Lot of the non-paying Owner which shall bind such Lot in the hands of the then Owner, his heirs, executors, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. Any assumption of the obligation to pay an Assessment by a successor in title shall not relieve

the prior Owner of his personal obligation to pay such Assessment. The lien for unpaid Assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the Assessments provided herein by non-use of the Common Property or abandonment of his Lot.

(b) In furtherance of the Lien provided in Section 4.8(a), and to secure the full and timely payment of all Assessments and other amounts payable by each Owner hereunder, each Owner, by his acceptance of a deed or other conveyance of the Lot and regardless of whether or not such deed or other conveyance expressly contains such a provision, does hereby grant and convey unto the Board of Directors, in trust as Trustee (the "Trustee"), for the benefit of the Association, the Lot owned by such Owner, subject to all easements and other encumbrances affecting such Lot; provided, that each such grant shall be subordinated to the lien of any mortgage or deed of trust only to the extent provided in Section 4.9; and for these purposes the provisions of this Section 4.8(b) shall be deemed to have created a deed of trust (the "Deed of Trust") covering all of the Lots with a power of sale granted to the Trustee in accordance with the provisions of Chapter 51 of the Texas Property Code (the "Code") and as it may be amended from time to time. The Deed of Trust created hereby shall be upon the same terms and conditions, and shall provide to the Association all of the rights, benefits and privileges, of the Deed of Trust promulgated by the State Bar of Texas for use by lawyers designated as Form No. 2402, and all amendments, modifications and substitutions thereof, which form is hereby incorporated by reference for all purposes hereof. The Association, acting through its president, shall have the right in its sole discretion at any time, and from time to time, to appoint in writing a substitute or successor trustee who shall succeed to all rights and responsibilities of the then acting Trustee.

(c) Without limitation of the remedies available to the Association and to the other Owners upon the occurrence of a default by any Owner in the payment of any Assessment or other amount due and payable hereunder, the Association may, at its election and by and through the Trustee, sell or offer for sale the Lot owned by the defaulting Owner to the highest bidder for cash at public auction in accordance with the provisions of the Code. The Association may, at its option, accomplish such foreclosure sale in such manner as permitted or required by the Code or by any other present or subsequent laws relating to the same. After the sale of any Lot in accordance with the provisions of this Section 4.8(c), the Owner of such Lot shall be divested of any and all interests and claims thereto, and the proceeds of any such sale shall be applied in the following order of priority: (i) to the payment of the costs and expenses of taking possession of the Lot, (ii) to the payment of reasonable Trustee's fees, (iii) to the payment of costs of advertisement and sale, (iv) to the payment of all unpaid Assessments and other amounts payable by such Owner to the Association hereunder, and (v) to the defaulting Owner or to any other party entitled thereto. The Association shall have the right to become the purchaser at the sale of any Lot pursuant to the Deed of Trust and shall have the right to be credited on the amount of its bid therefor all of the Assessments due and owing by the defaulting Owner to the Association as of the date of such sale.

(d) If any Assessment or part thereof is not paid within thirty (30) days after the delinquency date, the unpaid amount of such Assessment shall bear interest from the date of delinquency at the lesser of eighteen percent (18%) per annum or the maximum legal rate of interest, then prevailing and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien against the property subject thereto. There shall be added to the amount of such Assessment the costs of preparing and filing the complaint (including reasonable attorneys' fees) in such action, and in the event a judgment is obtained such judgment shall include interest on the Assessment as above provided and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action.

4.9 Subordination of the Lien to Mortgages. The lien securing the payment of the Assessments and other obligations provided for herein shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon any Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, except for:

(a) bona fide first mortgage or deed of trust liens for purchase money and/or home improvement purposes placed upon a Lot, including without limitation Institutional Mortgages and Eligible Mortgages, in which event the Association's lien shall automatically become subordinate and inferior to such first lien,

(b) liens for ad valorem taxes or other public charges as are by applicable law made superior to the Association's lien; and

(c) such other liens about which the Board may, in the exercise of its reasonable discretion, elect to voluntarily subordinate the Association's lien; provided however, such subordination shall apply only to the Assessments which have been due and payable prior to the foreclosure sale (whether public or private) of such Lot pursuant to the terms and conditions of any such first mortgage or deed of trust or tax lien. Such sale shall not relieve such Lot from liability for the amount of any Assessment thereafter becoming due nor from the lien of any such subsequent Assessment. Such subordination shall not apply where the first mortgage or deed of trust or tax lien is used as a device, scheme or artifice to evade the obligation to pay Assessments and/or to hinder the Association in performing its functions hereunder.

4.10 Exempt Property. The following property subject to this Declaration shall be exempted from the Assessments, charge and lien created herein:

(a) All Property dedicated to and accepted by the local public authority and devoted to public use.

(b) All Common Property.

4.11 **Omission of Assessments.** The omission of the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed by the Board.

ARTICLE V

GENERAL POWERS AND DUTIES OF BOARD OF DIRECTORS OF THE ASSOCIATION

5.1 Powers and Duties.

(a) The Board, for the benefit of the Property and the Owners, shall provide, and shall pay for out of Assessments, to the extent appropriate, the following:

(i) Care, preservation and maintenance of the Common Property, including without limitation, the purchase and upkeep of any desired personal property used in connection with the maintenance of the Common Property; maintenance of grounds, including the care and replacement of trees, shrubs and grass, lighting systems and any installed sprinkler systems on the Common Property; the maintenance of all entry monuments, and payment of utility usage charges and taxes, assessments and other charges properly assessed against the Common Property; provided however, in the event the need for maintenance or repair is caused through the willful or negligent act of any Owner, the Owner's family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment attributable to such Owner's Lot.

(ii) The services of a person or firm to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by the manager.

(iii) Legal and accounting services.

(iv) If deemed appropriate by the Board, a policy or policies of insurance insuring the Association and the Board against any liability to the public or to the Owners (and/or invitees, guests or tenants), incident to the operation of the Association, in an amount not less than \$250,000 to indemnify against the claim of one person, \$500,000 against the claims of two or more persons in any one occurrence, and property damage insurance in an amount not less than \$100,000 per occurrence; which policy or policies shall contain an endorsement

providing that the rights of the named insured shall not be prejudiced with respect to actions against other named insured.

(v) Workers' compensation insurance to the extent necessary to comply with any applicable laws.

(vi) Such fidelity bonds as the Board may determine to be advisable.

(vii) Any other materials, supplies, insurance, furniture, labor, services, maintenance, repairs, taxes or assessments (including taxes or assessments assessed against an individual Owner) which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

(b) The Board shall have the following additional rights, powers and duties:

(i) To execute all replats of the Property and to execute all declarations of ownership for tax assessment purposes with regard to the Common Property on behalf of all Owners.

(ii) To borrow funds to pay costs of operation, secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.

(iii) To enter into contracts, maintain one or more bank accounts (granting authority as the Board shall desire to one or more persons to sign checks), and, generally, to have all the powers necessary or incidental to the operation and manage of the Association.

(iv) To protect or defend the Common Property from loss or damage by suit or otherwise, and to provide adequate reserves for replacements.

(v) To make reasonable rules and regulations for the maintenance and protection of the Common Property, and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members, or, with respect to a rule applicable to less than all of the Property, by the Members owning Lots in the portions affected.

(vi) To make available to each Owner upon written request within sixty days after the end of each year an annual report.

(vii) To adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property, and if proceeds are insufficient to repair

damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.

(viii) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any Owner for violation of such provision or rules.

5.2 Board Powers, Exclusive. The Board shall have the exclusive right to contract for all goods, services, and insurance, payment for which is to be made from the Assessments and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

5.3 Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Common Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions for violations of this Declaration, the By-Laws, or such rules and regulations may include reasonable monetary fines, suspension of the right to vote, the right to use any recreational facilities on the Common Property and the right to hold any office or appointed position in the Association or committee. In addition, the Association shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Unit in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall also have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association.

ARTICLE VI

EASEMENTS

6.1 Easement Reserved for the Association. Full rights of ingress and egress shall be had by the Association at all times over and upon each Lot and the Property for the carrying out by the Association of its rights, functions, duties and obligations hereunder; provided, that any such entry by the Association upon any Lot shall be made with as minimum inconvenience to the Owner as practical, and any damage caused thereby shall be repaired by the Association.

6.2 Easements and Rights Reserved by Each Declarant. Declarant hereby reserves for itself, its successors and assigns, the right to: (i) dedicate streets, walks throughout the Property, and (ii) reserve or grant easements of ingress and egress and for the installation, construction, maintenance, repair and replacement of utilities and related facilities, which shall include, but not be limited to, sewer (sanitary and storm), gas, electric, telephone, cable television and water lines, upon, over, under, and across the Property, as it in its sole discretion deems proper or appropriate. Further, Declarant hereby reserves temporary construction easements for the construction, repair, removal, maintenance and reconstruction of improvements

within the Property, including the right to remove, on a temporary basis, fences, driveways, sprinkler systems, landscaping and other improvements as shall be reasonably necessary to enable Declarant to complete the development and improvement of the Property; provided, that any such improvements removed by Declarant shall be replaced and/or restored, upon completion of the construction activities, to substantially their former condition. All claims for damages, if any, arising out of any such construction or other activities by Declarant are hereby waived by each Owner and the Association.

6.3 Rights Reserved to Governmental Authorities and Utility Companies. Full rights of ingress and egress shall be had by Declarant, any governmental authority having jurisdiction over the Property, and any utility company which provides utilities to the Property, at all times over any dedicated easement for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. All claims for damages, if any, arising out of the construction, maintenance and repair of utilities or on account of temporary or other inconvenience caused thereby against the Declarant, or any utility company or governmental authority, or any of their agents or servants are hereby waived by each Owner and the Association. Declarant further reserves the right to alter, redesign or discontinue any street, avenue or way shown on the subdivision plat not necessary for ingress or egress to and from an Owner's Lot, subject to the approval of the applicable government authority, if required.

6.4 Universal Easement. Each Lot and its Owner is hereby declared to have an easement, and the same is hereby granted to Declarant, over all adjoining Lots and Common Areas for the purpose of accommodating any encroachment due to engineering error, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of any encroachment, settling or shifting. In the event a structure on any Lot is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and there shall be easements for the maintenance of any encroachments so long as they shall exist. Each of the easements referred to in this Section shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Lot being serviced and shall pass with each conveyance of said Lot. Notwithstanding the foregoing, in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

ARTICLE VII

PROTECTIVE COVENANTS

7.1 Residential Purpose Only. Each Lot and Dwelling Unit shall be used exclusively for single-family residential purposes only. No building or structure intended for or adapted to business purposes, and no apartment house, double house, lodging house, rooming house, hospital, sanitarium, or other multiple-family dwelling shall be erected, placed, permitted or

maintained on any Lot, or on any part thereof. No improvement or structure whatever, other than a private Dwelling Unit, patio walls, swimming pool, and customary outbuildings, garage, servants' quarters or guest house may be erected, placed or maintained on any Lot. All parking spaces shall be used exclusively for the parking of passenger automobiles, except as expressly permitted in Section 7.6.

7.2 Rubbish, Etc. No Lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort or serenity of the occupants of the surrounding property. No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon the Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon.

7.3 Animals. No animals, reptiles, livestock, poultry or birds of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, not to exceed a total of three such animals, provided that they are not kept, bred or maintained for any commercial purpose. The foregoing limitation on number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. Horses, reptiles, ponies, goats, sheep, hogs, pigs, monkeys, chickens, ducks, peacocks, pigeons, and Guinea fowl shall not be deemed as household pets and are expressly prohibited. Notwithstanding the foregoing, however, no individual dogs or other animals deemed by the Board in its sole discretion to be dangerous to persons or other animals shall be raised, bred or kept on any Lot.

7.4 Development Activity. Notwithstanding any other provision herein, Declarant and its successors and assigns shall be entitled to conduct on the Property all activities normally associated with and convenient to the development of the Property and the construction and sale of Lots within the Property.

7.5 Signs and Picketing. No sign or emblem of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Dwelling Unit, fence or other improvement upon such Lot so as to be visible from public view except the following:

(a) **For Sale Signs.** An Owner may erect one (1) sign on his Lot, not exceeding 2' x 3' in area, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of such Lot advertising the property for sale.

(b) **Declarant's Signs.** Declarant may erect and maintain a sign or signs deemed reasonable and necessary for the construction, development, operation, promotion, leasing and sale of the Lots.

(c) **Builders' Signs.** Any Dwelling Unit builder may utilize one professional sign (of not more than five (5) square feet in size) per Lot for advertising and sales promotion of such Dwelling Unit.

(d) **Political Signs.** Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship or a political party, issue or proposal, provided that such signs shall not be erected more than Thirty (30) days in advance of the election to which they pertain and shall be removed within ten (10) days after such election.

7.6 **Parking and Prohibited Vehicles.**

(a) **Parking.** Vehicles shall be parked only in the garage or driveway serving the Dwelling Unit, or in such other paved areas as have been approved by the Board of Directors for parking vehicles. A maximum of two (2) occupant vehicles may be parked outside of the garage, if any, serving the Dwelling Unit. For purposes of this provision, a vehicle shall be considered an "occupant vehicle" if it is parked on the Lot, four (4) or more hours per day, four (4) or more days in any seven (7) day period. No garage shall be modified or otherwise used so as to reduce its capacity for parking vehicles below that originally approved by the NCC. Notwithstanding the foregoing, however, a Builder may temporarily convert a garage into a sales or construction office, provided that the garage is converted back to a garage within thirty (30) days after cessation of construction and sale of new homes within the Property by such Builder. Garage doors visible from any street within the Property shall remain closed except during ingress or egress or when the garage is actively being used by the Owner or occupant.

(b) **Prohibited Vehicles.** Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board. Stored vehicles and vehicles which are either obviously inoperable or do not have current licenses shall not be permitted on the Property except within enclosed garages. Notwithstanding the foregoing, vehicles that become inoperable while on the Property must be removed within seventy-two (72) hours thereof. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked on the Property during the daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Dwelling Unit or the Common Areas. Any vehicle parked in violation of this section or parking rules promulgated by the Board may be towed.

7.7 **Commercial or Institutional Use.** No Lot, and no building erected or maintained on any Lot, shall be used for manufacturing, industrial, business, commercial, institutional or

other non-residential purposes. Home Offices are permitted within the zoning rules and regulations imposed by the Town of Addison.

7.8 Mailboxes. Mailboxes, house numbers and similar matter used in the Subdivision must be harmonious with the overall character and aesthetics of the community.

7.9 Detached Buildings. No detached accessory building, shall be erected, placed or constructed upon any Lot.

7.10 Fences.

(a) No fence, wall or hedge shall be erected, placed or altered on any Lot without the approval of the Architectural Committee. All clotheslines, wood piles, tool sheds, air-conditioning equipment, sanitation facilities or other service facilities must be enclosed or screened with fences, walls or landscaping so as not to be generally visible by the public.

(b) Screening walls shall be incorporated into and be harmonious with the overall landscaping plan developed for the Property.

(c) No chain link, wire or open fencing other than approved wrought iron fencing shall be erected on a Lot if it is visible from the street along the front or side of side of any Dwelling Unit.

(d) The foregoing restrictions shall not be applicable to the construction or erection of any fence, wall or hedge on any Lot or the Common Property by Declarant or Builder.

7.11 Clotheslines. No clotheslines shall be erected or installed and no clothing, linens or other material shall be aired or dried so as to be visible from the street.

7.12 Window Treatment. No aluminum foil, reflective film, signs or similar treatment shall be placed on windows or glass doors.

7.13 Temporary Structures. No temporary structure of any kind shall be erected or placed upon any Lot. No trailer, mobile, modular or prefabricated home, tent, shack, barn or any other structure or building, other than the residential structure to be built thereon, shall be placed on any Lot, either temporarily or permanently, and no residence house, garage or other structure appurtenant thereto, shall be moved upon any Lot from another location; except, however, that Declarant reserves the exclusive right to erect, place and maintain, and to permit builders and Owners to erect, place and maintain such facilities in and upon the Property as in its sole discretion may be deemed necessary or convenient during the period of and in connection with the sales of Lots, construction and selling of residential structures and constructing other improvements on the Property. Such facilities may include, but not necessarily be limited to, a temporary office building, sales trailer, storage area, signs, portable toilet facilities and sales office. Declarant and Builders of residential structures on Lots shall also have the temporary right

to use a residence situated on an Lot as a temporary office or model home during the period of and in connection with construction and sales or leasing operations on the Property, but in no event shall a builder have such right for a period in excess of one (1) year from the date of substantial completion (as defined by the American Institute of Architects) of his last residential structure on the Property.

7.14 Trash Receptacles and Collection. All trash receptacles, if any, shall be screened by fences or shrubbery so as not to be generally visible by the public. Each and every Owner shall observe and comply with any and all regulations or requirements promulgated by the applicable governmental authority, and/or the Association, in connection with the storage and removal of trash and garbage. All Lots shall at all times be kept in a healthful, sanitary and attractive condition. No Lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers which shall be constructed of dark plastic no larger than 35 gallons, with tightly-fitting lids, and which shall be maintained in a clean and sanitary condition and to be set out only on days of collection. No Lot shall be used for open storage of any materials whatsoever, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored in a suitable enclosure on the Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot. All woodpiles, yard equipment and other similar items shall be located or screened so as to be concealed from view of neighboring Dwelling Units, streets, and property located adjacent to the Lot. All rubbish, trash, and garbage shall be stored in appropriate containers and shall regularly be removed from the Property and shall not be allowed to accumulate thereon.

7.15 Swimming Pools. No above-ground swimming pools shall be permitted.

7.16 Truck Weight Limit. Trucks with tonnage in excess of one ton shall not be permitted to park overnight on the streets, driveways or on any Lot.

7.17 Utilities. Dwelling Units shall be connected to the water and sewer lines as soon as practicable after same are available at the Lot line. No privy, cesspool or septic tank shall be placed or maintained upon or in any Lot. The installation and use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type is prohibited. All telephone, electric, cable or other service lines shall be installed underground and shall meet all requirements of the applicable governmental authority.

7.18 Paint. All painted or stained improvements and other painted or stained structures on each Lot shall be repainted by the Owner thereof at the Owner's sole cost and expense as often as is reasonably necessary to ensure the attractiveness and aesthetic quality of such Lot or Dwelling Unit. The approval of the Architectural Committee otherwise required for improvements under Article VIII, shall not be required for such repainting so long as neither the

color scheme nor the arrangement of the colors of any improvements, nor the color of any paint thereon is altered.

7.19 Athletic Facilities. Basketball goals, or backboards, or any other similar sporting equipment of either a permanent or temporary nature shall not be placed within forty feet (40') from the front property line of any Lot in the subdivision, without the prior written consent of the Architectural Committee.

7.20 Quiet Enjoyment. No portion of the Property shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Property that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Property. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Property. The use and discharge of firecrackers and other fireworks is prohibited within the Property.

7.21 Air Conditioning Units. Any air conditioning unit installed in a Unit shall be located or screened so as not to be generally visible from any street within the Property.

7.22 Lighting. Except for traditional holiday decorative lights, which may be displayed for two (2) months prior to and one (1) month after any commonly recognized holiday for which such lights are traditionally displayed.

7.23 Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the front exterior of any portion of the Property.

7.24 Business Use. No garage sale, moving sale, rummage sale or similar activity unless sanctioned by the HOA, and no trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Unit may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve continuous persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board.

The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Dwelling Unit shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or conducted by a Builder with approval of the Declarant, with respect to its development and sale of the Property or its use of any Dwelling Units which it owns within the Property, including the operation of a timeshare or similar program.

7.25 Mineral Production. No oil drilling, oil development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot.

7.26 Exterior Noise. No exterior horns, whistles, bells or other sound devices (except security devices such as entry door and patio intercoms used exclusively to protect the Lot and improvements situated thereon) shall be placed or used upon any Lot.

7.27 Garages. Garage doors may not be kept open for extended periods of time. Garage doors which are damaged or not kept in working order may be fixed by the HOA and the HOA may then exercise its rights to pursue reimbursement from the homeowner.

ARTICLE VIII

ARCHITECTURAL GUIDELINES

8.1 Building Lines, Set Backs and Lot Coverage.

(a) Front Yard Setback: Lots shall have a twenty (20) foot front yard setback from the front Property Line.

(b) Rear Yard Setback: Lots shall have a five (5) foot rear yard setback from the rear Property Line.

(c) Side Yard Setback: End lots shall have a five (5) foot side yard setback from the side Property Line.

(d) **Garage Door Setback:** Setback for a garage to a street is twenty (20) feet from the garage door to the front Property Line.

(e) **Lot Coverage:** A maximum of 70% of an individual lot may be covered by structure under roof.

(f) **Minimum Square Footage:** Each residence must contain a minimum of 1,800 square feet of contiguous, air-conditioned living space.

8.2 Architecture. All residences must conform to the Mediterranean style and character. No modern or contemporary architecture will be allowed.

8.3 Exterior Materials and Detailing.

(a) Exterior materials shall be 100% hard coat (concrete) stucco on all walls. Combinations of natural or synthetic stone and/or cast stone accents may also be used. All exposed portions of the fire breast, flu and chimney shall be clad in hard coat stucco or stone, matching the materials used on the residence. No EIFS products (other than architectural foam shapes such as window sills, window surrounds, etc.) will be allowed on any elevations.

(b) The entire structure shall be guttered with downspouts and tied into underground drains. Gutters shall not drain across property lines.

(c) All windows shall be aluminum or vinyl windows as manufactured by G.A., Showcase, Fashion Windows or equivalent.

(d) No second story windows shall be allowed on the south side of Building W-2 (delineated on page 2 of 5 in the Stanford Court Villas handout) which is adjacent to the rear of 14725 Celestial Place.

(e) Second story windows on the front of Building E-1 shall be located so as to restrict views into the adjacent Celestial Place homes (14757 Celestial Place, 14753 Celestial Place, 14749 Celestial Place, 14745 Celestial Place as reasonably possible. Second story windows in these areas shall be limited to windows of 10 square feet or less with bottom sill heights placed no lower than 7' A.F.F. so as to restrict any direct line of sight.

(f) Each structure shall have a minimum principal plate height of 10 feet on the first floor and a minimum plate height of 9 feet on garages and a minimum plate height of 9 feet on the second floor.

(g) The homes will have uniform cast stone house numbers and house number locations.

(h) The homes will have a uniform wrought iron mailbox and mailbox location.

(i) Acceptable stone includes: Granbury; Millsap, Lueders, and Limestone, – chopped rectangular shapes and random sizes. No vertical stones or random patterns.

(j) Cast Stone: light brown, white or cream color with or without pitting.

(k) Electrical meters visible from streets or common areas:

The supply conduit for electrical meters visible from streets or common areas shall enter the foundation beneath the final yard grade so that the electrical meter is recessed in the wall and the meter box front and the meter are the only items visible. Any meter visible from a street or common area must be screened by landscape material.

8.4 Time of Construction. Construction is allowed Monday – Friday 7:00 AM to 6:00 PM and Saturday 8:30 AM to 6:00 PM. No exterior construction is allowed on Sundays.

8.5 Roof.

(a) All roofs shall have a minimum slope 6:12 Roof Pitch. Vent stacks and other roof penetrations shall be placed on roof planes other than those visible from the front street must be painted to blend with the roof color. Satellite Dishes shall not be installed in locations directly visible from the front street. Solar Collectors, if used, must be integrated into the building design and constructed of materials that minimize their visual impact. Cornice, eave and architectural details may project up to two feet.

(b) Roof material shall be concrete or clay barrel tile.

8.6 Walls / Fencing / Screening.

(a) Walls and screens visible from streets or common areas shall be constructed of masonry to match the residence, masonry and wrought iron, or wrought iron. Walls and screens not visible from streets or common areas may be constructed of smooth finish redwood or #1 grade cedar. All fence posts shall be steel set on concrete and shall not be visible from another dwelling. All fence tops shall be level with grade changes stepped up or down as the grade changes.

(b) Equipment, air conditioning compressors, service yards, storage piles, woodpiles, garbage receptacles, and similar items must be visually screened from streets, common areas and neighboring lots by solid screening walls which match the residence material or heavy landscaping.

(c) No retaining walls shall be used between residences. Where vertical grade differentials exceed 18" between residences, builders must utilize dropped brick ledges

across all portions of residence sides to maintain a proper grade differential between residences with positive drainage away from all foundations.

8.7 Garages / Driveways / Walkways. Each residential dwelling erected on any Lot shall provide garage space for a minimum of two conventional automobiles and outside parking for a minimum of 2 conventional automobiles. All garage doors shall be equipped with automatic remote controlled door openers and shall remain closed when not in use. Garage doors must be constructed of cedar or like material and offer some type of architectural styling with metal accents.

All driveways, approaches, leadwalks, patios and porches shall be constructed of the following materials: brick pavers, stone, interlocking pavers, stamped concrete, or exposed aggregate with brick, stone, or smooth finish concrete borders. All steps from the street to the front entry must be constructed in brick, stone, slate, or flagstone.

8.8 Landscaping Approval. To preserve the aesthetic appearance of the Community, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed on a Lot by any Owner after the initial landscaping during the construction of the home unless and until the plans therefore have been submitted to and approved in writing by the Architectural Committee. The provisions of the Article regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, and so forth shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Weather permitting, each Residence shall be fully landscaped within ninety (90) days from the date the Residence comes into existence. All initial landscaping shall be completed in accordance with Exhibit D Stanford Court Landscaping Plan as it relates to each Lot.

8.9 Landscape Maintenance. The Association will not be responsible for the planting of seasonals nor the replacement of dead plants within privately owned front or side yards. The Owner shall be responsible for adequately watering all landscaped areas.

8.10 Utility Connections and Fees. Builder shall construct, furnish or install all on-site utility extensions, including without limitation, water and sewer extensions, from the point of connection adjacent to the perimeter of the Lot to any portion of the Lot. Builder further agrees to pay any utility deposit or charge, including any connection, tap or inspection fee, for water, sewer, electrical, gas, telephone, cable television, or utility service for the Lot or any part thereof and any costs or charges for meters for utility service.

8.11 Compliance with Laws. Construction of improvements on each Lot must comply with the current building code and all applicable local building codes that are enforced by governmental agencies. Builder is responsible for applying for and obtaining all applicable governmental permits and other approvals, including payment of all fees for those permits and other approvals.

8.12 Care During Construction. Builder shall take all reasonable precautions to minimize interference with traffic and to protect the general public and residents of the

Subdivision, from injury from movement of vehicular traffic in connection with construction of each Lot. In addition, to, and without limiting the generality of the foregoing, Builder agrees to perform the following:

(a) **Storage of Building Materials.** Building materials stored on a Lot will be kept in a neat condition so as not to detract from the appearance of the neighborhood and so as to give the visual impression from adjacent streets of a clean, orderly work site.

(b) **Scrap Materials and Trash.** Builder agrees to keep scrap materials and trash produced in connection with the construction of a house on a Lot confined to a particular area of such Lot. Trash will be placed in a wire mesh, or solid container, within such area at the end of each work day and removed from the Lot frequently enough so that trash does not overflow from such container.

(c) **Clean Roads and Utilities.** Builder agrees to keep pedestrian and road rights-of-way and drives, and other property, clean and clear of equipment, building materials, dirt, debris and similar materials. Builder further agrees to maintain in good functional condition, storm water pollution prevention materials adequate to comply with guidelines promulgated by the Environmental Protection Agency. During the period of home construction, all trades must enter and leave via designated trade Entrance/Exit as determined by the Board.

(d) **Maintenance.** Builder agrees to keep the interior and exterior of all improvements constructed on a Lot in good working condition and repair. Without limiting the generality of the foregoing, Builder agrees to promptly replace any glass, paint, roof materials, bricks, stone or other exterior building materials on any houses which are damaged or unduly worn.

8.13 **NO LIABILITY.** NO APPROVAL OF PLANS AND SPECIFICATIONS AND NO PUBLICATION OF ARCHITECTURAL GUIDELINES SHALL BE CONSTRUED AS REPRESENTING OR IMPLYING THAT SUCH PLANS, SPECIFICATIONS, OR DESIGN GUIDELINES WILL, IF FOLLOWED, RESULT IN PROPERLY DESIGNED IMPROVEMENTS. SUCH APPROVALS AND DESIGN GUIDELINES SHALL IN NO EVENT BE CONSTRUED AS REPRESENTING OR GUARANTEEING THAT ANY RESIDENCE OR OTHER IMPROVEMENT BUILT IN ACCORDANCE THEREWITH WILL BE BUILT IN A GOOD AND WORKMANLIKE MANNER. REVIEW AND APPROVAL OF ANY APPLICATION PURSUANT TO THIS ARTICLE IS MADE ON THE BASIS OF AESTHETIC CONSIDERATIONS ONLY AND THE ARCHITECTURAL COMMITTEE SHALL NOT BEAR ANY RESPONSIBILITY FOR ENSURING THE STRUCTURAL INTEGRITY OR SOUNDNESS OF APPROVED CONSTRUCTION OR MODIFICATIONS, NOR THE ENSURING COMPLIANCE WITH BUILDING CODES AND OTHER GOVERNMENTAL REQUIREMENTS. NEITHER THE DECLARANT, THE ASSOCIATION, THE BOARD OF DIRECTORS, ANY COMMITTEE, OR MEMBER OF ANY OF THE FOREGOING SHALL BE HELD LIABLE FOR ANY INJURY, DAMAGES OR LOSS ARISING OUT OF THE APPROVED OR DISAPPROVAL OF OR NON-

COMPLIANCE WITH ANY PLANS OR SPECIFICATION, THE MANNER OR QUALITY OF APPROVED CONSTRUCTION ON OR MODIFICATIONS TO ANY DWELLING UNIT.

ARTICLE IX

MAINTENANCE OF LOTS AND DWELLING UNITS BY OWNERS

9.1 **Duty of Maintenance.** The Owner of each Lot shall, at the Owner's sole cost and expense, keep the Owner's Lot and Dwelling Unit in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (a) Prompt removal of all litter, trash, refuse and waste;
- (b) Mowing of rear and side yards; fenced areas
- (c) Tree and shrub pruning in front and side yards which front a public way
- (d) Adequately watering all landscaped areas;
- (e) Keeping exterior lighting and maintenance facilities in working order;
- (f) Keeping lawn, garden and landscaped areas not maintained by the HOA: alive, free of weeds, and attractive;
- (g) Keeping parking areas, driveways and leadwalks in good repair;
- (h) Complying with all government health and police requirements;
- (i) Repair of exterior damages to improvements.

9.2 **Enforcement.** If, in the opinion of the Association, any Owner has failed in any of the foregoing duties or responsibilities, then the Association may give such Owner written notice of such failure and such Owner must within ten (10) days after receiving such notice, perform the care or make arrangements with the Association for making the repairs and maintenance required. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owner of any Lot on which such work is performed shall be liable for the cost of such work (such costs constituting a default assessment as specified in Section 4.1 hereof) and shall promptly reimburse the Association for such cost. If such Owner shall fail to reimburse the Association within thirty (30) days after receipt of a statement for such work from the Association, the said indebtedness shall be a debt of said Owner, and shall constitute a lien against the Lot on which said work was performed.

Such lien shall have the same attributes as the lien for Assessments as set forth in this Declaration, and the Association shall have identical powers and rights in all respects, including but not limited to the right of foreclosure.

ARTICLE X

GENERAL PROVISIONS

10.1 **Power of Attorney.** Each and every Owner and Member hereby makes, constitutes and appoints Declarant as his/her true and lawful attorney-in-fact, coupled with an interest and irrevocable, for him/her and in his/her name, place and stead and for his/her use and benefit, to do the following; provided, however, to the extent this Declaration requires the assent of a certain number of the Members as a condition to such action, such assent has been obtained:

(a) to exercise, do or perform any act, right, power, duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Property;

(b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s) and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing; and

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the subdivision plat(s) of the Property, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authority of said attorney-in-fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Dallas County Clerk's Office and shall remain in full force and effect thereafter until all Lots owned by Declarant have been sold and conveyed by Declarant to Class A Members.

10.2 **Duration.** This Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for an original fifty (50) year term expiring on the fiftieth (50th) anniversary of the date of recordation of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Owners of at least fifty-one percent (51%) of all Lots within the Property and recorded in the Deed Records of Dallas County, Texas, which contains and sets forth an agreement to abolish

this Declaration; provided, however, no such agreement where approved by less than seventy-five percent (75%) of the Owners of all Lots within the Property to abolish shall be effective unless made and recorded one (1) year in advance of the effective date of such abolishment.

10.3 **Amendments.** This Declaration is expressly subject to change, modification and/or deletion by means of amendment at any time and from time to time as provided herein. This Declaration may be amended and/or changed in part as follows:

(a) In response to any governmental or quasi-governmental suggestion, guideline, checklist, requisite or requirement, particularly with respect to those entities or agencies directly or indirectly involved in, or having an impact on, mortgage financing, mortgage insurance and/or reinsurance, Declarant shall have the complete and unrestricted right and privilege to amend, change, revise, modify or delete portions of this Declaration, and each and every Owner and Member specifically and affirmatively authorizes and empowers Declarant, utilizing the attorney-in-fact status set forth above, to undertake, complete and consummate any and all such amendments, changes, revisions, modifications or deletions as Declarant (in their sole and absolute discretion) shall deem reasonable and appropriate.

(b) With the assent of a Two-Thirds Members Vote.

Any and all amendments shall be recorded in the Office of the County Clerk of Dallas County, Texas.

10.4 **Enforcement.** Each Owner of each Lot shall be deemed, and held responsible and liable for the acts, conduct and omission of each and every Resident, Member, guest and invitee affiliated with such Lot, and such liability and responsibility of each Owner shall be joint and several with their Resident(s), Member(s), guests and invitees. The lien created hereby on each Lot shall extend to, cover and secure the proper payment and performance by each and every Resident, Member, guest and invitee affiliated with each Owner. Unless otherwise prohibited or modified by law, all parents shall be liable for any and all personal injuries and property damage proximately caused by the conduct of their children (under the age of 18 years) within the Property to the same extent as if the parent was directly responsible for the action of their child. Enforcement of this Declaration may be initiated by any proceeding at law or in equity against any person or persons violating or attempting to violate them, whether the relief sought is an injunction or recovery of damages, or both, or enforcement of any lien created by this Declaration, but failure by the Association or any Owner to enforce any Covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association, each Owner and the applicable governmental authority are each specifically authorized (but not obligated) to enforce this Declaration. With respect to any litigation hereunder, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, from the non-prevailing party to.

10.5 **Validity.** Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, bona fide lien or other similar security instrument which may then

be existing on any Lot. Invalidation of any one or more of the provisions of this Declaration, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which shall remain in full force and effect. In the event any portion of this Declaration conflicts with mandatory provisions of any ordinance or regulation promulgated by the applicable governmental authority (including, without limitation, any comprehensive zoning ordinance), then such governmental requirement shall control.

10.6 Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa, unless the context requires otherwise. Examples, illustrations, scenarios and hypothetical situations mentioned herein shall not constitute an exclusive, exhaustive or limiting list of what can or cannot be done.

10.7 Registration with the Association. Each and every Owner, Member and Resident shall have an affirmative duty and obligation to originally provide, and thereafter revise and update, within fifteen (15) days after a material change has occurred, the following information: (a) the full name and address of each Owner, Member and Resident, (b) the business address, occupation and telephone numbers of each Resident; (c) the description and license plate number of each automobile owned or used by a Resident and brought within the Property; and (d) such other information as may be reasonably requested from time to time by the Association. In the event any Owner, Member or Resident fails, neglects or refuses to so provide, revise and update such information, then the Association may, but is not required to, use whatever means it deems reasonable and appropriate to obtain such information and the offending Owner, Member and Resident shall become automatically jointly and severally liable to promptly reimburse the Association for all reasonable costs and expenses incurred in so doing.

10.8 Notices to Resident/Member/Owner. Any notice required to be given to any Resident, Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when (i) deposited in the United States Mail, postage prepaid, addressed to the last known address of the person who appears as the Resident, Member or Owner on the records of the Association at the time of such mailing, or when (ii) delivered by hand or by messenger to the last known address of such person within the Property; or when (iii) posted on the Association's bulletin board for at least thirty (30) consecutive calendar days.

10.9 Notices to Mortgagees. The holder(s) of a mortgage may be furnished with written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration, provided that the Association has been theretofore furnished, in writing, with the correct name and address of such mortgage holder(s) and a request to receive such notification and a reasonable supply of self-addressed, stamped envelopes.

10.10 Disputes. Matters of dispute or disagreement between Owners, Residents or Members with respect to interpretation or application of the provisions of this Declaration or the Association Bylaws, shall be determined by the Board. These determinations (absent arbitrary

and capricious conduct or gross negligence) shall be final and binding upon all Owners, Residents and Members.

10.11 **HUD/VA Approval.** Notwithstanding anything to the contrary contained in this Declaration, as long as Declarant retains a disproportionate voting right as the Class B Member, the following actions shall require the prior approval of HUD or VA: (a) annexation of Additional Property to become a portion of the Property, (b) amendment of the Articles of Incorporation or By-Laws of the Association or amendment of this Declaration, (c) mortgaging or dedication of Common Property, or (d) dissolution of the Association.

10.12 **Attorneys' Fees.** All attorneys' fees incurred by the Association or the Declarant in the enforcement of this Declaration, and all future amendments shall be the obligation of the Owner and Owner agrees to pay all such attorneys' fees incurred by the Association and/or Declarant.

Witness the hand of an authorized representative of Declarant on the acknowledgment date noted below.

DECLARANT:

Deedrest.doc
Revised 4/17/06

By: _____

By: _____

By: _____

Name Title

THE STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the ___ day of _____, 200__, by _____ as _____ of _____ a _____ on behalf of such partnership.

Notary Public in and
for the State of Texas

My Commission Expires:

Printed Name

Stanford Court 23 - Home Construction Specifications 4.14.06

General Description of Site Improvements

- Two-Story Mediterranean Design
- Concrete Stucco elevation with stone accents, shutter and wrought iron details
- 2-car garage

Specifications:

1. Soils test completed as required by municipal and engineering specifications.

2. Foundation:

4" post-tension monolithic concrete slab (3000 PSI) on grade engineered per subdivision geotechnical investigation (soils tests) over 6 mil. poly moisture barrier over 4" cushion sand. Beam width and depth as specifically determined by Strand Engineering. Strand Engineering to provide (in addition to city inspections) on-site pad inspection, on-site pre-pour inspection and on-site stress inspection.

3. Framing:

Generally accepted industry practices governed by the uniform building code and local city municipal building codes.

- Min. 2"x 4", kiln-dried, finger-jointed studs @ 16" O.C.
- 2"x 6" studs on all exterior walls over 12'
- 7/16" "OSB" exterior sheathing and/or GP Dens Glass Silver
- Rafters are 2x6 @ 16" O.C. with 2x8 and 2x10 hips, valleys, and ridges and braced for a concrete tile roof
- 7/16" "OSB" roof deck material

4. Exterior Walls:

- Sheathing: 7/16" "OSB" bracing
- Siding: "Hardiplank" fiber-cement lap siding, or similar
- Soffit: "Hardisoffit" fiber-cement soffit, or similar
- Fascia/Trim: "Hardi" fiber-cement board, or similar
- Mortar: Buff color w/ oversized or standard weather joint
- Natural Stone: Per Plan
- Cast Stone: Per plan

Most cementitious fiberboard building products come with a 50-year limited transferable product warranty. Cementitious fiberboard products will remain non-combustible, resist damage caused by hail or termite attacks and will not crack, rot or delaminate. Cementitious fiberboard products also hold paint 2 to 3 times longer than masonite or wood.

5. Exterior Doors:
 - Front Door & Jamb: 3'0" x 8'0" Maple to be stained
 - Other Exterior Doors: Wood per plan

6. Windows:
 - Type: Vinyl or aluminum with double insulated Low-E glass
 - Color: Bronze or tan
 - Glass: Low-E
 - Screens: On all operable windows

7. Garage Doors & Interior Walls:
 - Bays: Cedar doors with various designs and metal (painted black or similar) accents
 - Opener: (1) electronic garage door opener w/ 2 remotes (per door)
 - Finish-Out: Garage walls & ceilings will be textured, painted & trimmed w/ base moulding

8. Fireplaces:

(1) Heatilator GGBR80 (or similar) Gas Appliance firebox (no chimney):

 - Location: Family room
 - Facing: Cast Stone, stone, or marble/granite/travertine (non-combustible material)
 - Hearth: Raised or Flush
 - Mantle: Cast Stone, wood, or none

9. Roofing:
 - Type: Monier Lifetile (or similar)
 - Color: One or Two-color blend
 - Material Warranty: Lifetime Limited
 - 90# Rolled Roofing: Located in valleys
 - 15# Roofing Felt: Entire field
 - Metal Edging: All edges
 - Attic Ventilation: Soffit vents @ 8' O/C (per code) & "Lomanco" #135, 600 CFM roof vents (1) per 600s.f. of slab area (per plan); Thermostatic controlled roof vents where needed

10. Skylights - None

11. Gutters and Downspouts:
 - Location: Full gutters on all eaves (except gable type eaves)
 - Type: Rolled aluminum with ogee profile
 - Downspouts: Where necessary

12. Insulation:
 - R-13 Fiberglass Batt Insulation in all 2x4 exterior frame walls
 - R-19 Fiberglass Batt Insulation in all 2x6 exterior frame walls
 - R-22 Fiberglass Batt insulation in all sloped ceilings
 - R-38 Fiberglass (blown in) insulation in all flat ceilings
 - Dual-paned glass in aluminum windows
 - Weather-stripping on all exterior doors
 - Polycel foam caulking used around doors, windows, and all exterior penetrations,

including bottom plates and holes drilled through top plates

13. Interior Wall Finish:

- "1/2" gypsum board walls
- ****"5/8" gypsum ceilings (typical is 1/2" ---we use the 5/8" to prevent sagging and better hide seams)
- "5/8" gypsum fire rated board where required
- All interior gypsum to be nailed and screwed

All Areas:

- Round sheetrock corners, splattered texture finish with latex paint (no texture where wallpaper)

14. Interior Doors:

- 8'0" tall solid core slab doors w/ 2 square DM-27 applied moulding
- Finish: Oil base (semi-gloss) enamel paint

15. Interior Trim:

Family, Foyer, Study, Kitchen, Breakfast, Bedrooms:

- Baseboards: 3/4"x 6" MDF bullnose top edge
- Door Casing: C-422 (or similar) casing

All Other Areas:

- Baseboards: B-422 Size: 4 1/8"
- Door Casing: C-422 Size: 3 3/8"

16. Cabinetry:

- Includes all cabinets, built-ins, associated crown mould, and installation

Kitchen Cabinets: Kitchen cabinets can be stain grade, using maple or alder.

Upper Kitchen Cabinets Could Include:

- 48" and 42" tall wall mounted cabinets (8'6", 8'0") w/ 8009 and PM 5 crown moulding & 3" bottom rail & round corners
- (2) six light divided light glass doors on opposite sides of vent hood (where applicable)
- One decorative wood hood or stainless steel hood
- Door style: raised panel w/ arched design or inset flat panel design
- Hidden European style hinges

Base Cabinets and Drawers Include:

- 36" tall base cabinets
- Built-in refrigerator cabinet to 96" tall (minimum)
- Built-in Oven cabinet to 96" tall (minimum)
- Trash roll-out drawer
- Door style: square design with various panel designs including raised panel or flat inset
- Four banks of drawers where applicable
- Hidden European style hinges
- Microwave cabinet with appliance garage beneath where applicable

Bathroom & Utility Room Cabinets: These cabinets will be paint grade, using maple, birch, MDF or stain grade using maple or alder.

Master Bath Cabinets Could Include (possibility to have on legs with Ball & Claw or Queen Ann feet):

- Base cabinet for his sink w/ one bank of drawers, 36" high
- Base cabinet for her sink w/ one bank of drawers, 36" high

Secondary Bath Cabinets Include:

- Base cabinet w/ one or two banks of drawers and the option for inset rope trim with scroll toe kicks

Utility Room Cabinets Could Include:

- Upper cabinets 24" to 40" tall

Other Built-ins Could Include:

- Entertainment Center: 6'w x 8't with center T.V. cabinet and overlay pocket doors
- Study: 8'w x 8't base with bookshelves above
- Master Closet: Chest of drawers
- Commode Cabinets: 30"x 36" linen (typically above toilets)

18. Heating and Air Conditioning:

- Heating & air conditioning: Trane units (2 Zones) as determined by plan layout, engineered design and local industry standards.
- Heating units will be natural gas fueled with electronic spark ignition
- Multiple return air vents throughout the home.
- Each zone (system) will be controlled by a Honeywell #T8112D1005 programmable thermostat.
- The "Standard Energy Efficiency Rating" (SEER) shall be thirteen (13)

19. Electrical Wiring And Trim:

- All wiring used in the home shall be copper and shall meet uniform national and local municipal electrical codes.

FutureSmart Wiring Package Includes:

- Kitchen, Master Bedroom, Bedroom #2, #3: Single Category 5E phone drop (4 pair) with standard wall plate
- Bedroom #2, #3: TV / Dual Video Drop (RG-6 Quad)
- Family Room: Future Integrated Receptacle (FIR 2x3) 2-CAT 5; 3-Coax
- Master Bedroom: Future Integrated Receptacle (FIR 2x2) 2-CAT 5; 2-Coax
- Digital Satellite System Pre-Wire (2-coax; CAT 5 to HR or Panel; feed to dish with grounding wire)
- Quick Network (21 Zone CAT5, 3 Zone Data; 4x8 Coax – with DBS input and Coax surge protection) with 3 Zone Patch module and LBO-1

Audio/Visual:

- Family Room pre-wired for surround sound system (5 speakers) – HR plate; sub-plate (speakers not included)

Light Switches:

- Decorative rocker switches / white or beige

20. Lighting:

Decorative Light Fixtures Include:

- Front entry coach lights
- All chandeliers and sconces
- All ceiling fans
- Bathroom vanity fixtures

21. Plumbing:

- All copper water supply lines in house
- PVC-DWV (Drain Waste Vent) system
- Steel and polyethylene gas supply system
- Two exterior hose bibs
- One 50 gallon water heater

Gas Line Stub-Out Locations Include: Fireplace, furnace units, cooktop, and water heater.

22. Plumbing Fixtures:

- Includes all tubs, toilets, sinks, faucets
- Toilets to be Toto, Kohler and/or American Standard
- Fixtures to have oil rubbed bronze, pewter and / or satin nickel finish
- Kitchen sink to be undermount, all others to be drop-in

23. Hardware:

- Hardware includes all door knobs, locks, cabinet pulls, towel rings, towel bars, and paper holders.
- Finish: Oil rubbed bronze, pewter and/or satin nickel

24. Granite & Marble Countertops and Splashes:

Countertops:

- Kitchen: Granite slab 2 cm (Venetian Gold or similar) with
Edge Detail: 1 ½" laminated Bullnose edge or polished ¾" square edge
- Secondary Baths: 2 cm Marble Slab (Dark Emperador, or similar) with
Edge Detail: ¾" ogee edge
- Master Bath: 2 cm Marble Slab (Dark Emperador, or similar) with
Edge Detail: ¾" ogee edge
- Utility: Granite slab 2 cm (Venetian Gold or similar) with
Edge Detail: 1 ½" laminated Bullnose edge or polished ¾" square edge

Backsplash:

- Kitchen: 4"x4" Tumbled marble tile laid on diagonal
- Secondary Baths: 4" square edge slab splash to match top
- Master Bath: 4" square edge slab splash to match top

25. Floor Coverings:

- Entry: 18" Travertine, 18" Ceramic Tile or 2 ¼" Red Oak
- Gallery (Walkway): 18" Travertine, 18" Ceramic Tile or 2 ¼" Red Oak
- Kitchen/ Nook: 18" Travertine, 18" Ceramic Tile or 2 ¼" Red Oak
- Family Room: 18" Travertine, 18" Ceramic Tile or 2 ¼" Red Oak
- Study: Carpet
- Master Bedroom: Carpet
- Secondary Bedrooms: Carpet
- Utility Room: 18" Travertine or 18" Ceramic Tile
- Closets: Carpet
- Master Bath: 18" Travertine or 18" Ceramic Tile
- Master Shower Floor: 4"x 4" Travertine or 4" x 4" Ceramic Tile
- Master Shower Walls: 4"x 4" travertine or ceramic tile w/ one row of contrasting accent tile
- Master Tub Deck: To match Master Bath floor

- Secondary Wet Areas: 18" Travertine or 18" Ceramic Tile
- Exercise Room (option): Carpet

26. Paint/Stain:

- All exterior siding and trim is painted w/ an "exterior latex satin house paint".
- All interior walls and ceilings are painted w/ "interior latex wall paint".
- All interior wood trim shall be painted one color w/ an "oil base semi-gloss enamel".
- All closets are painted one color w/ an "interior latex semi-gloss enamel".
- All paints shall be selected from the Glidden "ICI" paint company standard color charts.

27. Landscaping and Exterior Amenities:

- Landscape: Will consist of all trees, shrubs, sod and plant material (including bed prep)
- Irrigation System: Full yard four zone programmable irrigation system
- Fence: 8' cedar board on board fence with gate (where applicable).
- All landscape & fence design may be governed by community deed restrictions.

28. Concrete Flatwork:

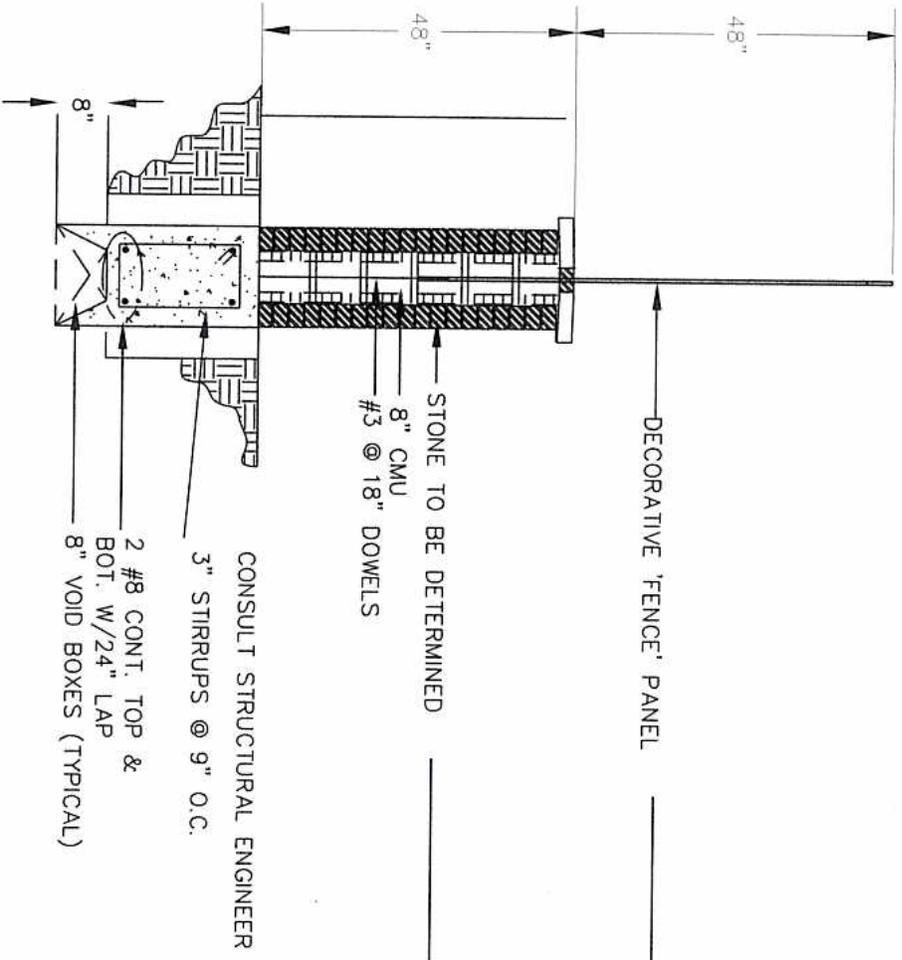
- Front Porch: Brick pavers, stone, interlocking pavers, stamped concrete, or exposed aggregate with brick, stone, or smooth finish concrete borders.,
- Leadwalk: Brick pavers, stone, interlocking pavers, stamped concrete, or exposed aggregate with brick, stone, or smooth finish concrete borders.
- Patios: Brick pavers, stone, interlocking pavers, stamped concrete, or exposed aggregate with brick, stone, or smooth finish concrete borders.
- Driveway: Brick pavers, stone, interlocking pavers, stamped concrete, or exposed aggregate with brick, stone, or smooth finish concrete borders.

29. Appliances:

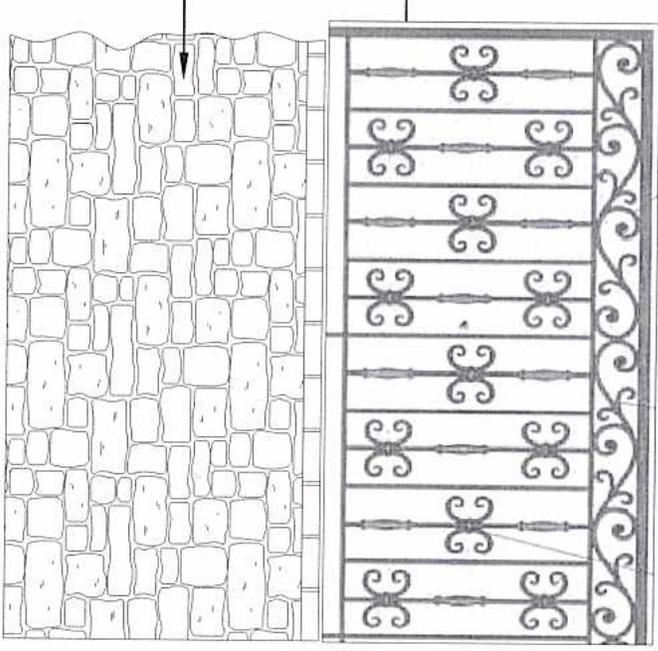
- Kitchen-Aid or Whirlpool

30. Security System:

- Includes hard-wired contacts on all exterior doors, operable windows, and garage doors
- Two (2) keypads, Interior siren (typically in the attic).



SECTION-ENTRANCE WALL
NOT TO SCALE



ELEVATION-ENTRANCE WALL
NOT TO SCALE

ALL DISCREPANCIES WITH PLANS SHALL BE BROUGHT TO THE ATTENTION OF EXTERIORS AT WORK PRIOR TO CONSTRUCTION

THESE DRAWINGS ARE FOR
REVIEW ONLY

EXTERIORS
AT WORK

5228 VILLAGE CREEK, SUITE 100
PLANO, TEXAS 75093

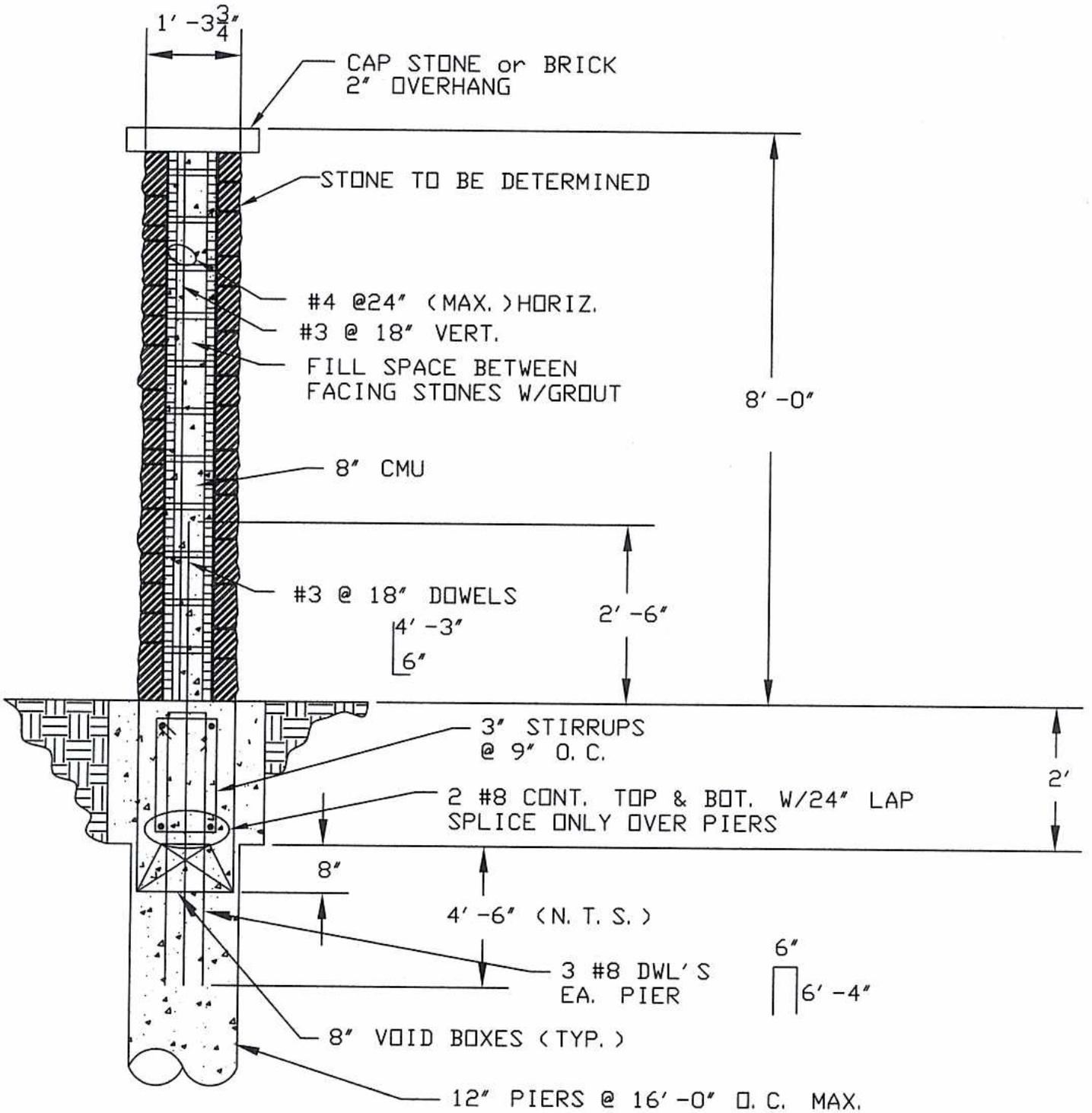
972-267-7508
972-267-7507 FAX

STANFORD COURT
ADDISON, TEXAS

Released:
Revisions:

Project No.:
Drawn By:
Check By:
Sheet No.:

Plan No.:



CONSULT SOILS REPORT AND STRUCTURAL ENGINEER FOR EXACT CONSTRUCTION

TYPICAL STONE WALL SECTION

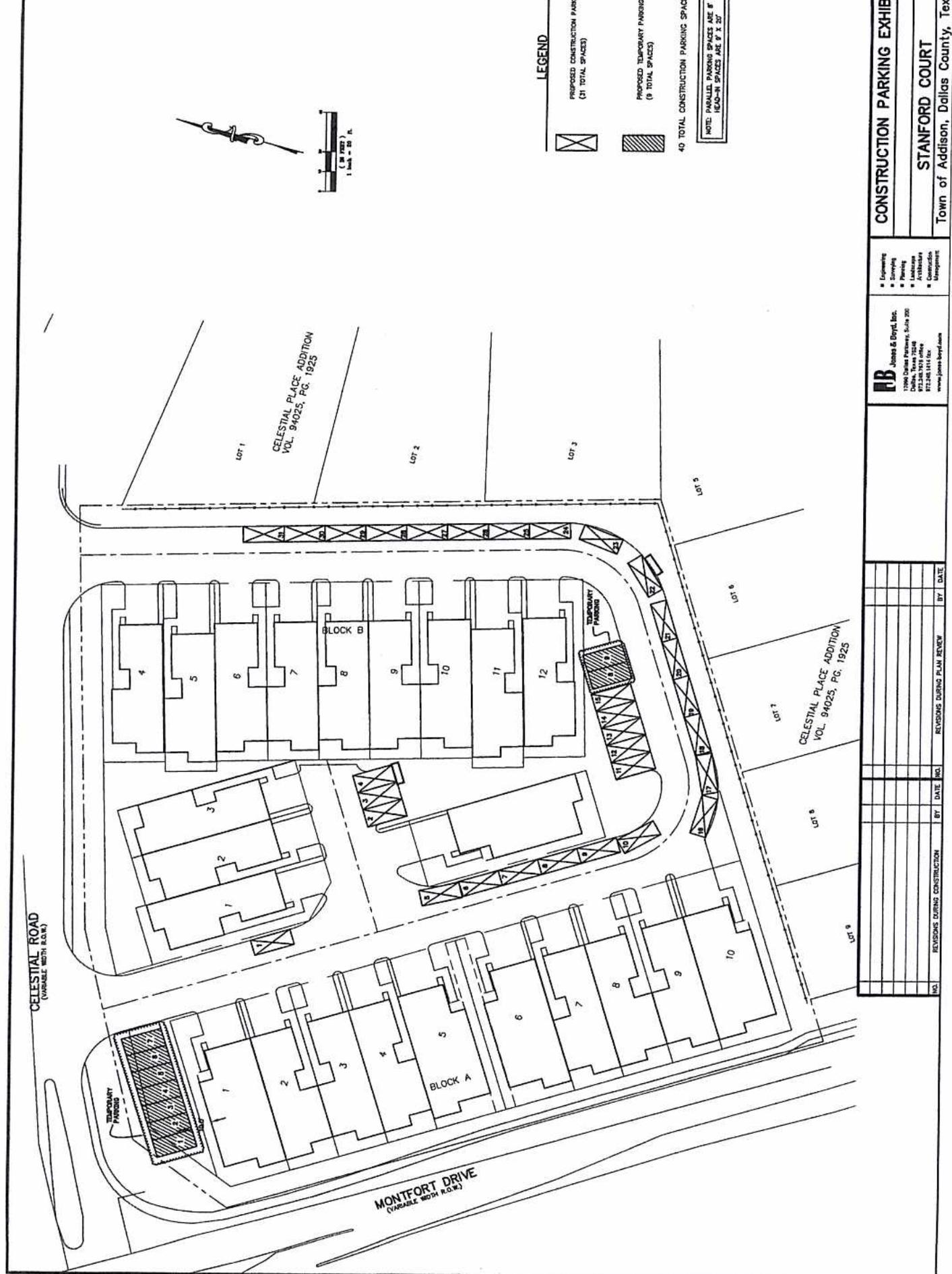
NOT TO SCALE

PROJECT NO. CD0004
 SHEET NO. 1

CONSTRUCTION PARKING EXHIBIT
STANFORD COURT
 Town of Addison, Dallas County, Texas

JB Jones & Boyd, Inc.
 1700 Dallas Parkway, Suite 202
 Dallas, Texas 75248
 972.346.1978 office
 972.346.1414 fax
 www.jones-boyd.com

NO.	REVISIONS DURING CONSTRUCTION	BY	DATE	NO.	REVISIONS DURING PLAN REVIEW	BY	DATE



Council Agenda Item: #R4

SUMMARY:

This item is for Council approval of Change Order No 6 in the amount of \$44,688.62 and an extension of 28 calendar days for the construction of Arapaho Road Phase III from Surveyor Blvd to Addison Road.

FINANCIAL IMPACT:

Budgeted Amount:	included in \$250,000 budgeted for change orders in agenda item presented in April 2005
Change Order Cost:	\$44,688.62
Source of Funds:	Funds have been identified to support excess amounts, primarily from the 2006 bond sales

BACKGROUND:

The Arapaho Road, Phase III project is nearing completion of construction from Surveyor Blvd. to Addison Road. In June 2004, a construction contract was awarded to Archer Western, Ltd. in the amount of \$16,702,578.42. During the construction of these improvements, the Public Works Department staff and the Contractor have jointly identified several necessary field changes related to the project. Five previous change orders in the amounts of \$8,509.00, \$17,548.18, \$124,766.25, \$99,560.54 and \$63,942.44, respectively, were generated as a result of field changes to the original design. As the construction of Arapaho Road has progressed, it was determined that Change Order No. 6, in the amount of \$44,688.62 is also necessary to complete the project. This change order is the result of numerous construction issues (see attachment) that occurred. DWU has agreed to reimburse the Town for Item number 1249 which was a 10-inch air release valve on the 60-inch water main. The attached table summarizes the work from all six change orders and includes details about each item in the comment column. Some of the items included in the change order created delays in the critical path for the construction. As a result, staff determined that the contractor should receive a total of 28 days added to the current contract time of 544 calendar days for this project for a total of 572 days. The current time is the result of 425 calendar days in the original contract plus 86 calendar days approved in Change Order Number 4 and 33 calendar days approved in Change Order No. 5. The 28 days added with Change Order No. 6 will result in an incentive payment of \$112,000 to the contractor. This amount was anticipated in the budget presented to Council in April 2005.

The addition of Change Order No 6 increases the total construction cost to \$17,061,593.45. This represents a 2.1 percent increase over the original contract amount. This is expected to be the last change order on this project. The final payment to Archer Western is anticipated to be brought to Council in June 2006 once warm weather plantings are completed.

RECOMMENDATION:

Staff recommends the Council authorize the City Manager to approve Change Order No 6 in the amount of \$44,688.45 and an extension of 28 calendar days for the construction of Arapaho Road Phase III from Surveyor Blvd. to Addison Road.

Council Agenda Item: #R5

SUMMARY:

This item is for the approval of a supplemental agreement to the Engineering Services Agreement with HNTB Corporation, in the amounts not to exceed \$27,842.00, for additional inspection services on the Arapaho Road Phase III project.

FINANCIAL IMPACT:

Current Design/Inspection Contract Amount: \$1,430,540.00

Additional Design/Inspection Cost: \$27,842.00

Source of Funds: Funds were identified in the budget revision presented and approved in May that includes this additional inspection amount.

BACKGROUND:

The Arapaho Road Phase III extension project extends from Surveyor Blvd. to Addison Road. Construction of this section of Arapaho Road completes an east-west minor arterial roadway that is necessary to relieve traffic congestion on Belt Line Road. Due to the complex nature of this project, the Town entered into an agreement with the firm of HNTB Corporation to provide construction inspection of all improvements, in the amount of \$211,060.00. This cost consisted of using an on-site inspector at a previously determined rate of 40 hours per week. However, as the construction of the project unfolded and demands on the inspector to be present at the project site were elevated, the total inspection hours necessary to keep up with the work increased to approximately 65 hours per week. As a result, the inspector's total billings for work performed resulted in a budget overage with a substantial amount of the project remaining. Consequently, staff requested additional funds for construction services, in the amount of \$149,874.00, on April 12, 2005, with the anticipation that construction of the project would be completed by the end of August 2005. In September 2005, a contract amendment for \$123,980 was approved to provide construction inspection services through December 16, 2005.

The Contractor planned to complete the Arapaho Road project much sooner than the scheduled January 9th opening date. The actual completion of the project when time was stopped was not until February 3, 2006. The budgeted time for an inspector for HNTB ran out on Dec. 17, 2005. HNTB requested that the contract be amended to provide reimbursement for the inspector's time from December 17th until contract completion in the amount of \$27,842. The inspector's expertise was beneficial at the conclusion of the

largest capital improvement project for the Town of Addison and the resolution of the outstanding items in Change Order No. 6, which included items added and reimbursements from the contractor. Although the inspection performed during construction of the project has exceeded original estimated expenditures, staff relies on the inspector to inspect and document the numerous construction activities that are underway simultaneously.

RECOMMENDATION:

Staff recommends that Council authorize the City Manager to enter into a supplemental agreement to the Engineering Services Agreement with HNTB Corporation, in the amount not to exceed \$27,842.00, for additional design and inspection on the Arapaho Road project from Surveyor Blvd. to Addison Road.

Council Agenda Item: #R6

SUMMARY:

Council approval is requested of a resolution denying a request from Atmos Energy Corporation (the Company) for an annual (2005) gas reliability infrastructure program (GRIP) rate increase for customers on the Company's statewide gas utility system.

FINANCIAL IMPACT:

Approval of the ordinance would have no direct financial impact to the Town. Costs associated with the Town participating with the Atmos Cities Standing Steering Committee (ACSSC) will be reimbursed by the Company, which will then pass those costs to their gas customers.

BACKGROUND:

It has been a long-standing policy of the Town to protect the interests of its residents and businesses in any utility rate case. In July, the Council adopted an ordinance denying the GRIP rate increase based on the Company's 2003 investment year. The denial was justified by the ACSSC consultants recommendation that the Company's proposal is unjustified, unreasonable and is not in compliance with the GRIP statute (Texas Utilities Code § 104.301) either in fact or in law. The Company appealed the cities' denials to the Railroad Commission, which dismissed the cities' objections and approved the 2003 GRIP rate increase. In September, the Company submitted to the Town and other cities a GRIP rate increase based on the Company's 2004 investment year. In November, the Town passed an ordinance denying the GRIP rate increase, which the Company appealed to the Railroad Commission. That rate was recently approved by the Commission.

The ACSSC have appealed both GRIP rate filings to state district court arguing that the Commission denied the cities a fair hearing when it approved the GRIP rates without allowing the cities to intervene.

The ACSSC maintains that Atmos is continuing to charge rates far in excess of what the Company needs to operate and receive a reasonable rate of return. The resolution would suspend implementation of the 2005 GRIP rate until the Cities' consultants have had an opportunity to study the Company's filing. Below is a summary of the impact to customer monthly bills of each GRIP rate.

	2003 GRIP	2004 GRIP	2005 GRIP	Total Monthly Surcharge
Residential	\$0.29	\$0.29	\$0.51	\$1.09
Commercial	\$0.96	\$0.98	\$0.85	\$2.79
Industrial	\$31.85	\$26.85	\$78.47	\$137.17

RECOMMENDATION:

It is recommended Council approve the resolution suspending imposition of the 2005 GRIP rates.

TOWN OF ADDISON, TEXAS

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS SUSPENDING THE MAY 30, 2006, EFFECTIVE DATE OF THE PROPOSAL BY ATMOS ENERGY CORP., MID-TEX DIVISION TO IMPLEMENT INTERIM GRIP RATE ADJUSTMENTS FOR GAS UTILITY INVESTMENT IN 2005; AUTHORIZING PARTICIPATION WITH THE GAS STANDING STEERING COMMITTEE IN A REVIEW AND INQUIRY INTO THE SUFFICIENCY OF THE FILING AND THE BASIS AND REASONABLENESS OF THE PROPOSED RATE ADJUSTMENTS; AUTHORIZING INTERVENTION IN ADMINISTRATIVE AND COURT PROCEEDINGS INVOLVING THE PROPOSED GRIP RATE ADJUSTMENTS; REQUIRING REIMBURSEMENT OF REASONABLE LEGAL AND CONSULTANT EXPENSES; AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

WHEREAS, the Town of Addison, Texas ("City") is a gas utility customer of Atmos Energy Corp., Mid-Tex Division, ("Atmos Mid-Tex" or the "Company") and a regulatory authority with an interest in the rates and charges of Atmos Mid-Tex; and

WHEREAS, Atmos Mid-Tex made filings with the City and the Railroad Commission of Texas ("Railroad Commission") on or about March 30, 2006, proposing to implement interim rate adjustments ("GRIP rate increases"), pursuant to Texas Utilities Code § 104.301, on all customers served by Atmos Mid-Tex, effective May 30, 2006; and

WHEREAS, a recent rate investigation conducted by consultants for the Gas Standing Steering Committee has indicated that Atmos Mid-Tex is already collecting sufficient revenues to earn its allowed return and does not require a GRIP surcharge; and

WHEREAS, the sufficiency of the filing by Atmos Mid-Tex and its compliance with statutory mandates is in question and needs to be determined; and

WHEREAS, ratepayers of Atmos Mid-Tex, including the City and its residents, will be adversely impacted by the proposed GRIP rate increases; and

WHEREAS, the City and its residents could benefit from coordination with the Gas Standing Steering Committee in a review of the reasonableness of the proposed GRIP rate increases and joint participation in any proceedings at the Railroad Commission related to the proposed GRIP rate increases; and

WHEREAS, the reasonable costs associated with the participation of Cities in this rate proceeding are reimbursable from Atmos Mid-Tex.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, THAT:

Section 1. The May 30, 2006, effective date of the GRIP rate increases proposed by Atmos Mid-Tex is hereby suspended for the maximum period allowed by law to permit adequate time to investigate the sufficiency of the GRIP Rate Increase filing, review the proposed increases, analyze all necessary information, and take appropriate action related to the proposed increases.

Section 2. The City is authorized to cooperate with the Gas Standing Steering Committee to hire and direct legal counsel and consultants, to negotiate with the Company, to make recommendations to the City regarding the proposed GRIP rate increases, and to direct any administrative proceedings or litigation associated with the proposed GRIP rate increases.

Section 3. The City is authorized to intervene in any administrative proceedings or litigation associated with the proposed GRIP rate increases.

Section 4. Atmos Mid-Tex shall promptly reimburse the City's reasonable costs associated with the City's activities related to the proposed GRIP rate increases.

Section 5. A copy of this Resolution shall be sent to Atmos Mid-Tex, care of Richard T. Reis, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, legal counsel to the Gas Standing Steering Committee, at Lloyd Gosselink, 816 Congress Avenue, Suite 1900, Austin, Texas 78701.

Section 6. The above and foregoing premises to this Resolution are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 7. This Ordinance shall become effective immediately from and after its passage, as the law and charter in such cases provide.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this ___ day of _____, 2006.

Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

Council Agenda Item: #R7**SUMMARY:**

Council approval is requested of an ordinance establishing new, lower rates charged by Atmos Energy Corporation for the distribution of natural gas to Addison residents and businesses.

FINANCIAL IMPACT:

The new rates would impact the Town's annual revenues and expenditures by an estimated 4%. Based on budgeted amounts, Atmos Gas Co. franchise fees paid to the Town would be reduced by approximately \$7,800 while gas costs would be reduced by \$1,550, for a net loss to the Town of \$6,250. The Gas Utility Regulatory Act (GURA) requires the utility to reimburse the Town for its reasonable costs associated with the activities related to the show-cause proceeding.

BACKGROUND:

In November, Addison was one of seventy-six Texas cities served by Atmos Mid-Tex determined that Atmos should be required to establish the reasonableness of its current rates. The "show-cause" resolutions required Atmos to file by December 31, 2005, support for its current rates. Atmos filed schedules with the cities, which have been reviewed by the cities' consultants. In addition, the cities' consultants requested additional information from Atmos. As a result of their analysis of the filing and the additional information, the cities' consultants have issued a report finding that Atmos' current rates are excessive and should be reduced. Below is a summary of the consultants' findings. A detailed consultant report is included with this memorandum.

1. Rate of Return. Atmos' filing used the same rate of return approved in the TXU Gas rate filing before the Railroad Commission (GUD No. 9400) prior to the sale of the system to Atmos and was based upon the capital structure and component costs of TXU Gas. Atmos' filing does not reflect the change in ownership; Atmos' capital structure is markedly different from TXU Gas, and the rate of return should be adjusted.
2. Rate Base. Atmos has allocated plant assets to its Mid-Tex division that did not come from TXU when Atmos purchased the system, and that may already be included in the rates of customers served by other Atmos operating units. Additionally, Atmos has failed to recognize the accumulated deferred income taxes and investment tax credits that were on the books of TXU when the assets were acquired, resulting in a loss by ratepayers of the benefits of the deferrals. As a result, Atmos' rate base should be reduced by \$185 million.
3. Depreciation Expense. A service unit was removed from rate base, but Atmos has not reduced its depreciation expense associated with this removal. As a result, Atmos' depreciation expense should be reduced by \$3.1 million.
4. Operating Expenses. Atmos has improperly adjusted its operation and maintenance expenses, resulting in a reduction of \$35.8 million to these expenses.
5. Service Charge Revenue. Atmos has not included service charge revenues to reduce its revenue requirements. These revenues need to be accounted for, and reduce Atmos' base rate revenue requirements by \$927,576.

Recognizing these adjustments would reduce Atmos' revenue requirement by \$73.5 million from that reflected in its show cause filing, and by \$34.7 million below the revenue requirement

approved in GUD No. 9400. The rates recommended by the cities' consultants are a reduction from both the monthly customer charge and the commodity rate established in GUD No. 9400.

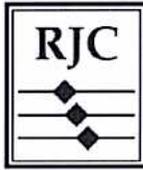
RECOMMENDATION:

State law and the Town of Addison Charter grants to the Town the responsibility to review the rates and fees charged to its residents and businesses by the holder of the natural gas distribution franchise. The Town has conducted its due diligence through the hiring of consultants in association with the Atmos Gas City Steering Committee. According to the consultants, the rates charged by Atmos are excessive and should be reduced. It is recommended that Council conduct a public hearing concerning these rates and charges, and determine their reasonableness.

The attached ordinance establishes fees in accordance with the consultants' recommendations. The rates in Attachment "A" of the ordinance are those rates recommended by the consultants that will meet the requirements of the Gas Utility Regulatory Act. That is, the rates will produce revenues for Atmos that will permit Atmos the opportunity to earn a reasonable return on its invested capital, but will not yield more than a fair return.

The rates ordered by the City will be effective immediately and the ordinance stipulates GRIP surcharges will cease immediately. The GRIP statute contemplates that the investment associated with such surcharges will be reviewed for reasonableness and prudence in subsequent rate cases, and the surcharges will cease thereafter.

It is expected that Atmos will appeal the rate ordinance to the Railroad Commission. The City will intervene in that appeal in conjunction with the Atmos Cities Steering Committee. A full hearing on the merits of Atmos' appeal will be held at the Commission. It is expected that the hearing will take place later this year.



March 3, 2006

MEMOTO: Geoffrey Gay, Georgia Crump
FROM: Karl Nalepa
SUBJECT: Atmos Energy Mid Tex Rate Recommendation

On December 30, 2005 Atmos Energy Mid Tex (Atmos) filed with the Atmos Cities Steering Committee (ACSC) certain rate schedules summarizing its claimed revenue requirement in accordance with city show cause resolutions. The resolutions directed Atmos to file with the cities information sufficient to determine the Company's rate base, expenses, investment, and rate of return for a rate year ending June 30, 2005.

Atmos' rate filing alleged that its current revenue requirement is \$38.7 million more than was granted by the Railroad Commission of Texas (RRC) to TXU Gas Company (TXU Gas) in the final order in GUD 9400. Atmos' initial schedules contained adjustments to the GUD 9400 rates, but no workpapers to support the adjustments. RJC completed three rounds of discovery on Atmos to obtain supporting documentation to evaluate the schedules.

RJ Covington Consulting (RJC) has reviewed and evaluated the schedules filed by Atmos and submits these findings and recommendations to the Cities.

Summary of Recommendations

The total impact of RJC's recommendations on Atmos' filed revenue requirement is attached as Exhibit 1. This Exhibit reflects the adjustments described in this report, as well as any associated tax effects of those adjustments. These changes reduce Atmos' revenue requirement by \$73.4 million from that reflected in its show cause filing, and \$34.7 million below the revenue requirement approved in GUD 9400.

Exhibit 2 summarizes the resulting impact on rates for each customer class. RJC did not change Atmos' cost of service class allocations, but did adjust the rate design for both the customer and commodity charges. For residential customers, RJC proposes to reduce the customer charge \$1.50, from \$9.00 to \$7.50 per customer, and reduce the commodity rate 4.75¢, from \$1.2390 to \$1.1915 per mcf in the first block and from \$0.9890 to \$0.9415 per mcf in the second block. These recommended rates essentially reflect a rollback to pre-GUD 9400 levels for the residential class.

Rate of Return

Atmos included on Schedule G of its filing the same rate of return approved in GUD 9400. This rate derived from the same capital structure, same cost of debt, and same return on equity as in GUD 9400. Atmos responded in discovery that its position is that there has been no change to the capital structure and component costs established in the Company's rates since the Final Order in GUD 9400 was approved.¹

Of course, Atmos is incorrect. The final order in GUD 9400 was based on the capital structure and component costs of TXU Gas. Since then, Atmos has acquired the TXU Gas assets, and its rates should reflect that change in ownership. Using the capital structure and weighted average cost of debt reported in Atmos' Form 10Q filing as of June 30, 2005, Atmos' rate of return calculation is markedly different. Exhibit 3 summarizes these differences:

Exhibit 3

	TXU Gas - GUD 9400			Atmos Energy - Form 10Q		
	Ratio	Cost	Total	Ratio	Cost	Total
Debt	48.3%	6.57%	3.173%	57.5%	5.27%	3.026%
Preferred Stock	1.9%	5.51%	0.105%	-	-	-
Common Equity	49.8%	10.00%	4.980%	42.5%	10.00%	4.250%
Return			8.258%			7.276%

If Atmos' test year end actual capital structure and cost of debt is used, even with the 10% return on equity approved for TXU Gas in GUD 9400, its rate of return is lowered by nearly a full percentage point and its return on investment would be reduced by \$22.6 million if applied to the reduced rate base as described below.

Rate Base

Atmos included on Schedule H of its filing a total rate base of \$990 million. This includes net plant of \$1,097 million and rate base deductions of \$107 million. RJC recommends two adjustments to rate base.

First, Atmos has included \$80.4 million of general plant assigned from its shared services unit, along with \$43.9 million of accumulated depreciation. This net plant of \$36.5 million represents plant assets of Atmos Energy that have been allocated to Mid Tex since its acquisition from TXU. The details of this plant has not been documented, and since the plant did not come from TXU with the acquisition, it is plant for which a return and depreciation is likely already being recovered in the rates of other Atmos customers served by other Atmos operating units.

¹ Atmos response to ACSC 1-9.

Second, Atmos does not recognize as rate base deductions the accumulated deferred federal income taxes (ADFIT) and investment tax credits (ITC) that existed on the books of TXU Gas when the assets were acquired. Atmos responded in discovery that when TXU Gas sold its assets, the accumulated deferred income taxes recorded on its books *presumably* became due and payable.² As of December 31, 2003, the amount of ADFIT was \$140 million and the amount of ITC was \$9.6 million. RJC recommends that rates be set as though these income tax adjustments are on the books of Atmos. Atmos customers have been paying these taxes, yet lose the benefit of the adjustments if TXU keeps the deductions. And as rate base deductions, they have been used by the Company as a cost free source of capital.

The impact of these allocated plant and income tax adjustments is to reduce the rate base by \$185 million.

Depreciation Expenses

Atmos included on Schedule I of its filing total depreciation expenses of \$65.7 million. RJC recommends reducing depreciation expense by \$3.1 million. This amount is associated with the \$36.5 million of net general plant assigned from Atmos shared services unit that was removed from rate base.

Operating Expenses

Atmos included on Schedule L of its filing total Operation & Maintenance (O&M) expense of \$162 million. These expenses are \$2 million less than the amount of O&M expense approved in GUD 9400, but \$7.6 million more than the test year ending June 30, 2005.

The test year included three months when TXU Gas operated the distribution system, and nine months when the system was operated by Atmos Energy. In order to adjust its test year expenses, Atmos revised its operating expenses to account for the portion of the test year operated by TXU Gas by simply removing the three months of TXU operating data and using instead the annualized amount of the 9 months operated by Atmos (i.e: 9 months of actual data / 9 months x 12 months). The adjustment results in a \$7.4 million reduction to expenses. Atmos made additional adjustments to expenses to recognize the transition of operations from TXU and Capgemini to Atmos that increase expenses by \$15.0 million.³

On the other hand, Atmos Energy Corporation held a conference call on August 9, 2005 to present its third quarter 2005 earnings report. During that call, Atmos described a reduction in O&M expenses of \$20-\$25 million by bringing TXU Gas onto the Atmos

² Atmos response to ACSC 1-14.

³ Atmos response to ACSC 1-1 and 1-2.

platform, \$6 million in annualized savings by bringing back in the Waco call center (previously operated by Capgemini), and \$25 million of reduced General & Administrative (G&A) expenses due to over-allocation of costs from the TXU parent to TXU Gas. Atmos clarified in discovery that the \$6 million call center savings are contained in the \$20-\$25 million of O&M savings,⁴ but these estimates still suggest a reduction of \$45-\$50 million from TXU Gas' total O&M expenses.

Atmos O&M adjustments are unreasonable in several respects:

- First, Atmos clearly does not trust the validity of TXU Gas' operating expenses since it removes these expenses entirely from the test year rather than try to verify and adjust the numbers.
- Second, Atmos' method of adjusting the TXU expense values by substituting annualized Atmos values introduces another bias into the expense levels. The months removed by Atmos - July, August and September - represent traditionally low consumption months. If these expenses are replaced by expenses weighted towards winter months with the highest consumption, the replacement expenses are overstated. This problem is compounded by the cost of inevitable transition inefficiencies in the early months of operation by Atmos.
- Third, the additional adjustments made by Atmos to recognize the transition of operations to Atmos comprise, in large part, no more than management estimates of the cost of certain functions impacted by the acquisition, and are not supported by detailed workpapers. And these transition costs increase overall O&M expenses rather than reduce them.
- Fourth, Atmos' schedules do not reflect in any fashion the reductions in O&M expense discussed by the Company at its earnings conference call with the financial markets. During the call, J. Patrick Reddy, Atmos Senior Vice President and Chief Financial Officer, confirmed a \$45 million year to date reduction in expenses from that budgeted by Atmos. Assuming Atmos' budgets were set no higher than TXU Gas' operating expenses, then some or all of this reduction should be passed on to consumers as an adjustment to revenue requirements.

RJC recommends the following adjustments to O&M expenses:

- Use the O&M expenses associated with the last three months of the test year - April, May and June - to estimate the TXU expense levels. This moderates the impact of the winter bias and early transition inefficiencies and results in an additional \$5.8 million reduction in O&M expense.
- Remove one half of the transition adjustments proposed by Atmos. None of the components of the total increase of \$15.0 million are adequately supported, so it is reasonable to expect that some level of adjustment is necessary. This adjustment results in a \$7.5 million reduction to O&M expense.
- Adjust account no. 922, Administrative Expenses Transferred, to reflect \$22.5 million of expense reductions associated with acquisition of the TXU Gas assets

⁴ Atmos response to ACSC 3-2.

by Atmos. This represents one half of the \$45 million savings suggested by Atmos and allows for some uncertainty in the specific nature of the savings.

Total O&M expense reductions are \$35.8 million.

Service Charge Revenue

Atmos included on Schedule O-4 of its filing service charge revenues of \$19.9 million. However, test year service call revenues were \$0 when GUD 9400 test year reflected 35,676 calls and \$927,576 in revenues. Atmos responded in discovery that it did not record any revenue from service calls during the test year ending June 30, 2005.⁵ This does not mean Atmos had no service calls and does not explain what happened to the 35,676 calls received in the prior test year. Therefore, RJC recommends these revenues be added back into total service charge revenues and this reduces base rate revenue requirements by the same \$927,576.

Gas Reliability Infrastructure Program (GRIP)

The GRIP statute was intended to encourage a gas utility to make investments in safety and reliability upgrades to its system. To the extent that a utility did not over-earn on its approved rate of return, the utility was granted the opportunity to impose a surcharge on its customers to recover return, depreciation, and taxes associates with its annual incremental investment.

Atmos has filed requests to impose GRIP surcharges related to its incremental investment in 2003 (filed December 2004) and 2004 (filed September 2005). Atmos sought recover \$6.7 million through its 2003 surcharge and another \$6.7 million through its 2004 surcharge. While Cities did deny these requests, Atmos appealed these decisions to the Texas Railroad Commission, which approved the surcharges.

According to the statute, now that the investments reflected in GRIP are incorporated into the rates being set in this proceeding, the approved GRIP surcharges should end with adoption of the Cities' rate ordinance.

Cities have also shown in previous analyses that the GRIP surcharges were unnecessary because Atmos was already generating additional revenues in excess of its return on incremental investment. Therefore, any amounts collected under the GRIP surcharges should be refunded in this proceeding. However, Atmos did not impose its 2003 GRIP surcharge until October 2005 and its 2004 surcharge until February 2006.⁶ While there are no GRIP revenues for which to adjust the revenue requirements, any amounts collected prior to the Cities' rate ordinance should be refunded.

⁵ Atmos response to ACSC 1-26.

⁶ Atmos response to ACSC 3-15.

EXHIBIT 1

Atmos Energy Corp., Mid-Tex Division

Cities Show Cause Rate Filing

Cities Recommended Systemwide Cost of Service

Line No.	Description	Final Order	Atmos Proposed 6/30/05	Cities Recommend 6/30/05	Difference From Final Order
	(a)	(b)	(c)	(c)	(d)
1	Operating Revenue				
2	Residential (non-gas costs)	\$ 270,584,752	\$ 295,503,658	\$ 238,767,430	\$ (31,817,321)
3	Residential (gas costs)	314,197,054	314,197,054	314,197,054	-
4	Total Residential	584,781,805	609,700,712	552,964,484	(31,817,321)
5					
6	Commercial (non-gas costs)	\$ 68,103,234	\$ 73,415,254	\$ 60,303,270	\$ (7,799,964)
7	Commercial (gas costs)	194,651,072	194,651,072	194,651,072	-
8	Total Commercial	262,754,306	268,066,326	254,954,342	(7,799,964)
9					
10	Industrial/Transportation (non-gas costs)	\$ 18,924,434	\$ 24,173,053	\$ 19,677,447	\$ 753,013
11	Industrial/Transportation (gas costs)	26,063,143	26,063,143	26,063,143	-
12	Total Industrial/Transportation	44,987,577	50,236,196	45,740,590	753,013
13					
14	Total (non-gas costs)	\$ 357,612,420	\$ 393,091,965	\$ 318,748,147	\$ (38,864,273)
15	Total (gas costs)	534,911,269	534,911,269	534,911,269	-
16	Total Operating Revenue	892,523,689	928,003,234	853,659,416	(38,864,273)
17					
18	Total Other Revenue	\$ 17,882,192	\$ 21,085,415	\$ 22,012,991	\$ 4,130,799
19					
20	Total Operating and Other Revenue	\$ 910,405,881	\$ 949,088,649	\$ 875,672,407	\$ (34,733,473)
21					
22					
23	Total Revenue Requirement				
24					
25	Operating Expenses				
26	Gas Cost	\$ 534,911,269	\$ 534,911,269	\$ 534,911,269	
27					
28	Operation and Maintenance Expenses	164,130,220	162,340,824	126,522,180	
29					
30	Taxes Other than Income Taxes	70,374,371	75,400,544	71,423,693	
31					
32	Depreciation and Amortization Expense	55,042,990	65,663,511	62,591,960	
33					
34	Interest on Customer Deposits	1,472,587	2,325,821	2,325,821	
35	Interest on Customer Advances	124,993	126,573	126,573	
36					
37	Federal Income Taxes	20,785,888	26,568,125	18,627,900	
38					
39	Return on Rate Base	63,563,562	81,751,983	59,143,011	
40					
41	Total Revenue Requirement	\$ 910,405,880	\$ 949,088,649	\$ 875,672,407	
42					
43	Note: The above figures include the cost of gas.				

EXHIBIT 2

Atmos Energy Corp., Mid-Tex Division

Cities Show Cause Rate Filing

Cities Recommended Rates

Line No.	Rate R - Summary	Final Order	Atmos Proposed 6/30/05	Cities Recommend 6/30/05
1	Customer Charge	\$ 9.00	\$ 9.73	\$ 7.50
2				
3	Block 1 Commodity Rate (0-3 Mcf)	\$ 1.2390	\$ 1.3991	\$ 1.1915 per Mcf
4	Block 2 Commodity Rate (over 3 Mcf)	\$ 0.9890	\$ 1.1491	\$ 0.9415 per Mcf
5				
6	Average Monthly Bill (6 Mcf without Gas Cost)	\$ 16.61	\$ 18.40	\$ 14.72 per Month
7				
8	Average Monthly Bill (6 Mcf with Gas Cost)	\$ 36.64	\$ 38.44	\$ 34.75 per Month
9				
10				
11				
12	Rate C - Summary	Final Order	Atmos Proposed 6/30/05	Cities Recommend 6/30/05
13				
14	Customer Charge	\$ 15.50	\$ 17.93	\$ 12.50
15				
16	Block 1 Commodity Rate (0-30 Mcf)	\$ 0.7894	\$ 0.8215	\$ 0.7417 per Mcf
17	Block 2 Commodity Rate (30-350 Mcf)	\$ 0.5394	\$ 0.5715	\$ 0.4917 per Mcf
18	Block 3 Commodity Rate (Over 350 Mcf)	\$ 0.2894	\$ 0.3215	\$ 0.2417 per Mcf
19				
20	Average Monthly Bill (30 Mcf without Gas Cost)	\$ 41.44	\$ 45.03	\$ 36.76 per Month
21				
22	Average Monthly Bill (30 Mcf with Gas Cost)	\$ 141.46	\$ 145.05	\$ 136.78 per Month
23				
24				
25				
26	Rate T - Summary	Final Order	Atmos Proposed 6/30/05	Cities Recommend 6/30/05
27				
28	Customer Charge	\$ 150.00	\$ 241.86	\$ 300.00
29				
30	Block 1 Commodity Rate (0-1,500 MMBtu)	\$ 0.4882	\$ 0.5935	\$ 0.4977 per MMBtu
31	Block 2 Commodity Rate (Next 3,500 MMBtu)	\$ 0.3382	\$ 0.4435	\$ 0.3477 per MMBtu
32	Block 3 Commodity Rate (Next 45,000 MMBtu)	\$ 0.1882	\$ 0.2935	\$ 0.1977 per MMBtu
33	Block 4 Commodity Rate (Over 50,000 MMBtu)	\$ 0.0382	\$ 0.1435	\$ 0.0477 per MMBtu
34				
35	Average Monthly Bill (300 MMBtu without gas cost)	\$ 313.48	\$ 443.98	\$ 475.07 per Month
36				
37	Average Monthly Bill (300 MMBtu with gas cost)	\$ 1,313.43	\$ 1,443.84	\$ 1,474.93 per Month

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS FINDING THAT THE EXISTING NATURAL GAS DISTRIBUTION RATES OF ATMOS MID-TEX SHOULD BE REDUCED; ORDERING ATMOS ENERGY CORP., MID-TEX DIVISION, TO REDUCE ITS EXISTING RATES WITHIN THE CITY; ADOPTING SPECIFIC NEW RATES R, T & C AND ORDERING ALL RATES, SERVICE CHARGES AND TARIFF LANGUAGE NOT INCONSISTENT WITH ATTACHMENT "A" TO REMAIN OPERATIVE EXCEPT THAT ALL GRIP SURCHARGES SHALL IMMEDIATELY CEASE; ORDERING ATMOS MID-TEX TO REIMBURSE THE CITY FOR ITS REASONABLE COSTS INCURRED IN THIS SHOW CAUSE AND ANY RELATED RATEMAKING PROCEEDINGS OR APPEALS OF SAID PROCEEDINGS; AUTHORIZING THE ATMOS CITIES STEERING COMMITTEE TO ACT ON BEHALF OF THE CITY AND INTERVENE IN ANY PROCEEDINGS BEFORE ADMINISTRATIVE OR JUDICIAL BODIES; REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL; ORDAINING OTHER PROVISIONS RELATED TO THE SUBJECT MATTER HEREOF; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Addison, Texas (the "City") is a regulatory authority under the Gas Utility Regulatory Act ("GURA") and has original jurisdiction over the gas utility rates of Atmos Energy Corp., Mid-Tex Division (the "Company"); and

WHEREAS, the City has the authority under Sections 103.001 and 104.151, GURA, to initiate a proceeding to determine whether the existing rates of a gas utility are unreasonable or in any way in violation of any provision of law; and

WHEREAS, the City previously authorized participation with the Atmos Cities Steering Committee ("ACSC"); and

WHEREAS, on _____, 2005, the City ordered the Company to show cause regarding the reasonableness of its existing natural gas distribution rates within the City; and

WHEREAS, the Company filed its rate filing package with the City on or about December 31, 2005; and

WHEREAS, the City's representatives obtained additional information from the Company through written requests for information; and

WHEREAS, the City's consultants and representatives through cooperative efforts under the direction of the ACSC have reviewed the rate filing package and responses to information requests and have made a recommendation to the City regarding the rates to be charged by the Company within the City; and

WHEREAS, on May 2, 2006, a public hearing was held, at which time the Company was given an opportunity to address the City Council regarding its current rates; and

WHEREAS, GURA § 104.151(a) provides that if a regulatory authority, on its own motion or on complaint by an affected person, after reasonable notice and hearing, finds that the existing rates of a gas utility for a service are unreasonable or in violation of law, the regulatory authority shall enter an order establishing the just and reasonable rates to be observed thereafter, and serve a copy of the order on the gas utility; and

WHEREAS, GURA § 104.151(b) provides that the rates thus ordered by the regulatory authority constitute the legal rates of the gas utility until changed as provided by GURA; and

WHEREAS, after affording reasonable notice and hearing to the Company, it is the City's opinion that the Company's current rates are not reasonable; and

WHEREAS, based upon such hearing, the briefing of staff, and the consultants' findings, the City has made a determination of the reasonableness of the existing rates of the Company, and has determined just and reasonable rates to be hereafter observed and enforced for all services of the Company within the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Company was given reasonable notice of the hearing held on April 25, 2006, and the Company had a reasonable opportunity to show to the City that its rates were just and reasonable.

Section 2. The Company failed to show that its existing rates are just or reasonable.

Section 3. The rates set forth on Attachment "A" to this Ordinance, which attachment is and shall be incorporated herein as if it were fully set forth herein, are just and reasonable rates:

A. The rates set forth in Attachment "A" establish the Company's overall revenues at an amount that will permit the Company a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public in excess of the Company's reasonable and necessary operating expenses, in compliance with GURA § 104.051; and

B. The rates set forth in Attachment "A" do not yield more than a fair return on the adjusted value of invested capital used and useful in providing service to the public, in compliance with GURA § 104.052.

Section 4. The Company shall immediately begin charging the rates set forth on Attachment "A" hereto, and shall, pursuant to GURA § 104.301, immediately cease the imposition and collection of all Gas Reliability Infrastructure Program ("GRIP") surcharges.

Section 5. The existing rates, service charges and tariff language not inconsistent with Section 4 and Attachment "A" shall remain operative.

Section 6. The City is authorized to intervene in any appeal of the City's action filed at the Railroad Commission of Texas and to otherwise participate in any litigation associated with the Company's rates charged in the City, in conjunction with the ACSC.

Section 7. The Company shall promptly reimburse ACSC for ratemaking costs associated with the City's activities related to the show cause proceeding, including appeals to the Railroad Commission or Courts, in accordance with GURA §103.022.

Section 8. A copy of this Ordinance shall be sent to the Company, care of Richard T. Reis, at Atmos Energy Corporation, 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, and to Geoffrey Gay, legal counsel to ACSC, at Lloyd Gosselink, P.O. Box 1725, Austin, Texas 78767-1725.

Section 9. This Ordinance shall become effective immediately from and after its passage, as the law and charter in such cases provide.

Section 10. The above and foregoing premises to this Ordinance are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 11. It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this ___ day of _____, 2006.

Joe Chow, Mayor

ATTEST:

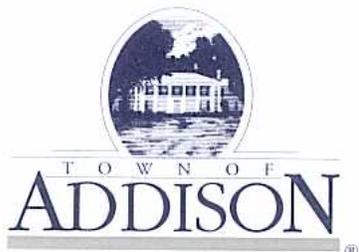
By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

Attachment A
Atmos Energy Corp., Mid-Tex Division
Ordered Rates

Line No.	Rate R - Summary	Ordered Rates
1	Customer Charge	\$ 7.50
2		
3	Block 1 Commodity Rate (0-3 Mcf)	\$ 1.1915 per Mcf
4	Block 2 Commodity Rate (over 3 Mcf)	0.9415 per Mcf
5		
6	Average Monthly Bill (6 Mcf without Gas Cost)	\$ 14.72 per Month
7		
8	Average Monthly Bill (6 Mcf with Gas Cost)	\$ 34.75 per Month
9		
10		
11		
12	Rate C - Summary	Ordered Rates
13		
14	Customer Charge	\$ 12.50
15		
16	Block 1 Commodity Rate (0-30 Mcf)	\$ 0.7417 per Mcf
17	Block 2 Commodity Rate (30-350 Mcf)	\$ 0.4917 per Mcf
18	Block 3 Commodity Rate (Over 350 Mcf)	\$ 0.2417 per Mcf
19		
20	Average Monthly Bill (30 Mcf without Gas Cost)	\$ 36.76 per Month
21		
22	Average Monthly Bill (30 Mcf with Gas Cost)	\$ 136.78 per Month
23		
24		
25		
26	Rate T - Summary	Ordered Rates
27		
28	Customer Charge	\$ 300.00
29		
30	Block 1 Commodity Rate (0-1,500 MMBtu)	\$ 0.4977 per MMBtu
31	Block 2 Commodity Rate (Next 3,500 MMBtu)	\$ 0.3477 per MMBtu
32	Block 3 Commodity Rate (Next 45,000 MMBtu)	\$ 0.1977 per MMBtu
33	Block 4 Commodity Rate (Over 50,000 MMBtu)	\$ 0.0477 per MMBtu
34		
35	Average Monthly Bill (300 MMBtu without gas cost)	\$ 475.07 per Month
36		
37	Average Monthly Bill (300 MMBtu with gas cost)	\$ 1,474.93 per Month



Post Office Box 9010 Addison, Texas 75001-9010 5300 Belt Line Road (972) 450-7000

FAX (972) 450-7043

PLANNING AND ZONING COMMISSION

Ted Bernstein

3875 Weller Run Court
Addison, TX 75001-7931
(H) (972) 406-9677
Term Expires: 04/12/2007 – 2nd Term
KRAFT

Paula Jandura

14936 Oaks North Drive
Dallas, TX 75254-7632
(H) (972) 702-0202
Term Expires: 03/25/2007 – 2nd Term
MALLORY

Roger Chafin

3761 Park Place
Addison, TX 75001-4002
(H) (972) 488-8828
Term Expires: 04/13/2006 – 1st Term
NIEMANN

Todd Meier

Vice Chairman
14857 Towne Lake Circle
Addison, TX 75001-4951
(W) (214) 561-8730
Term Expires: 03/08/2007 - 1st Term
MELLOW

Don Daseke

5656 Celestial Road
Dallas, TX 75254-7614
(H) (972) 960-9015
(W) (972) 866-9423
Term Expires: 08/23/2007 – 1st Term
BRAUN

Alan Wood

Chairman
14609 Lexus Avenue
Addison, TX 75001-3132
(W) (214) 269-3114
Term Expires 04/12/2007 – 1st Term
CHOW

Carol Doepfner

4006 Bobbin Lane
Addison, TX 75001-7931
(H) (972) 233-9722
(W) (972) 307-3229
Term Expires: 02/10/2006 – 3rd Term
HIRSCH

Carmen Moran

Staff Liaison
P.O. Box 9010
Addison, TX 75001-9010
(W) (972) 450-7018
Fax (972) 450-7043

**Citizen Acad...y Graduates
All Classes**

FirstName	LastName	Street	Suite	City	State	Zip	HomePhone	OfficePhone	Email Address	Class
Anne	Adams	14893 Oaks North Dr.		Dallas	TX	75254	9723863954	9723869656	anne.adams@worldspan.com	CA00
Judy	Barrett	14637 Lexus Ave.		Addison	TX	75001-3132	9723867944	9723867944	jbrlb@msn.com	CA00
Brad	Bradbury	3918 Bobbin Ln.		Addison	TX	75001-3101	9729808106	9729808106	HCbtex@aol.com	CA00
Gilbert	Bruneman	14848 Winnwood Rd.		Dallas	TX	75254	9722333304	9724897678	gbruneman@aol.com	CA00
Merle	Bruneman	14848 Winnwood Rd.		Dallas	TX	75254	9722333304			CA00
Virgil	Burkhardt	4007 Winter Park Ln.		Addison	TX	75001-4904	9724908517		vgburk@attbi.com	CA00
Wendy	Burkle	4815 Westgrove Dr.	Apt. 102	Addison	TX	75001-6101	9723804912	9725962732	half0367@aol.com	CA00
Karen	Gassett	16301 Ledgemont Ln.	Apt. 262	Addison	TX	75001-6213	9722489513	2142372015	kkgassett@worldnet.att.net	CA00
Linda	Groce	4102 Pokolodi Cir.		Addison	TX	75001-3152	9724904326			CA00
Neil	Hewitt	4014 Morman Ln.		Addison	TX	75001-4901	9729341260	9722806716	nhewitt@us.ibm.com	CA00
Gregory	Hirsch	14713 Sherlock Dr.		Addison	TX	75001-3116	4693740717	4693846531	ghirsch@ci.addison.tx.us	CA00
Andrew	Hoelle	3914 Azure Ln.		Addison	TX	75001-3105	9722478106		ahoelle@hotmail.com	CA00
Richard	Jeffcoat	4910 Goodman Ave.	Apt. 1921	Addison	TX	75001-6677	9723851835			CA00
Robert	Karl	15658 Witt Pl.	Apt. 4236	Addison	TX	75001-3379	9727611292	9726874788	Bob_Karl@msn.com	CA00
Elizabeth	Knott	14925 Oaks North Dr.		Dallas	TX	75254	9729606408	2145056555	Elizabeth@knott.org	CA00
Mark	MacMullen	16300 Ledgemont Ln.	Apt. 1101	Addison	TX	75001-5943	9727358507	9727016308	mark_macmullen@hotmail.com	CA00
Jimmy	Niemann	14921 Bellbrook Dr.		Dallas	TX	75254-7673	9723873135	2147822850	jniemann@e-rewards.com	CA00
Beverly	Roberts	4040 Morman Ln.		Addison	TX	75001-7945	9723929460	9728512181	bevrob2@aol.com	CA00
Kathleen	Schaffer	17037 Knots Landing		Addison	TX	75001-5033	9722480243	9724232225	shomble@aol.com	CA00
Virginia	Wallace	14820 Le Grande Dr.		Addison	TX	75001-4911	9724507038	9729802665	vwallace@comcast.net	CA00
Rainey	Ashley	17091 Upper Bay Road		Addison	TX	75001	9728183712	9727321989	lashley@pnbfincial.com	CA02
Bob	Baumann	4004 Sherry Lane		Addison	TX	75001	9728660070	9728669199	Bob-baumann@attbi.com	CA02
Ted	Bernstein	3875 Weller Run Ct.		Addison	TX	75001	9724069677	N/A	t.bernstein@sbcglobal.net	CA02
Stephen	Blum	17030 Planters Row		Addison	TX	75001	2143947827	9727206645	Steve@frontlineimaging.com	CA02
Griffon	Bourgeois	3796 Lakeway Ct.		Addison	TX	75001	8724889444	9727596492	griffon@dallas.net	CA02
B.L.	Brady	3876 Weller Run Ct.		Addison	TX	75001	9724886791		blbrady@aol.com	CA02
Anita	Braun	14616 Lexus Avenue		Addison	TX	75001	9723850706		TKBrauns@attbi.com	CA02
Tom	Braun	14616 Lexus Dr.		Addison	TX	75001	9723850706	9725292444	TKBrauns@attbi.com	CA02
Barbara	Colegrove	15022 Bellbrook Drive		Dallas	TX	75254	9723871557		baracole@aol.com	CA02
Patricia	French	3876 Weller Run Ct.		Addison	TX	75001	9724886791	9724886791		CA02
Roberta	Hendrickson	4090 Oberlin Way		Addison	TX	75001	9724903389	4692551817	Rhenedri@AII.LCCisco.com	CA02
Bob	Jacoby	4016 Rive Lane		Addison	TX	75001	9722334536	2146511447	bjacoby@yahoo.com	CA02
Sheridan	Jones	3911 Bobbin Lane		Addison	TX	75001	9722392239	9722392239	thinkskj@worldnet.att.net	CA02
Ursula	Kelley	14616 Heritage		Addison	TX	75001	9723850171	9725712801	ursula3ita@aol.com	CA02
Dennis	Kraft	14726 Celestial Pl.		Dallas	TX	75254	9727261812	9729915800	Krafthouse@aol.com	CA02
Irina	Marchenko	4130 Proton 50-B		Addison	TX	75001	9723874244		crookie@swbell.net	CA02
Barbara	Mathews	14625 Lexus Avenue		Addison	TX	75001	9726615485	9722326023		CA02
Roger	Mellow	14840 Lochinvar Drive		Dallas	TX	75254	9723875785	9723875785	Roger@mellownet.com	CA02
Margaret	Miles	14664 Bentwater Ct.		Addison	TX	75001	9722436068		fancitoo@attbi.com	CA02
John	Parker	14677 Wayside Ct.		Addison	TX	75001	9722441833	9724041034	jbpmh20@aol.com	CA02
Skip	Robbins	14770 Maiden Ct.		Dallas	TX	75254	9727884083	9726057526	skip1019@aol.com	CA02
Phyllis	Silver	15720 Artist Way #4912		Addison	TX	75001	9726224340	9726224340		CA02
Donald	Walden	3785 Waterford Drive		Addison	TX	75001-7955	9722412857			CA02
John	Bailey	4093 Oberlin Way		Addison	TX	75001	2147271347	9726618472	jabailey@mtiamerica.com	CA04

**Citizen Academy Graduates
All Classes**

Cathy K.	Bernstein	3875 Weller Run Ct.		Addison TX	75001	9724069677	n/a	t.bernstein@sbcglobal.net	CA04
Robert D.	Brewster	3781 Waterside Ct.		Addison TX	75001	9722475968	9724208314	Frog4900@aol.com	CA04
James R.	Christensen	3880 Emerald Ct.		Addison TX	75001	9726201270	9726503434	jim-christensen@webtv.net	CA04
Alessandra	Day	14593 Blueberry Ct.		Addison TX	75001	97240-0959		m.day7@comcast.net	CA04
Michael	Day	14593 Blueberry Ct.		Addison TX	75001	9724060959		m.day7@comcast.net	CA04
Chris	DeFrancisco	3917 Bobbin Ln.		Addison TX	75001	9723923572	2145154964	Christidefrancisco@frostbank.com	CA04
Kathryn	Farrar	4815 Westgrove Dr.	#301	Addison TX	75001	9727139293	n/a	KLFARRER@EV1.net	CA04
Gena Lou	Fulmer	17031 Knots Landing		Addison TX	75001	9722500127	9727536841	genaf@comcast.net	CA04
Carlena	Gilbreth	3728 Brookhaven Club Dr.		Addison TX	75001	9722432861	n/a	n/a	CA04
Glenda	Hoelle	3914 Azure Ln.		Addison TX	75001	9722478106	n/a	ghoelle@yahoo.com	CA04
Albert	Jandura	14936 Oaks North Dr.		Dallas TX	75254	9727020202	9727020202	AJANDURA@swbell.net	CA04
Richard E.	Jeffcoat	4910 Goodman Ave.	#1921	Addison TX	75001	9723851835	n/a	n/a	CA04
Todd C.	Meier	14857 Towne Lake Cir.		Addison TX	75001	9722395882	2145618731	TCM51@msn.com	CA04
Daniel	Moulton	3901 Azure Ln.		Addison TX	75001	9726207523	9726207523	dan.moulton@comcast.net	CA04
Bianca	Noble	4008 Bobbin Ln.		Addison TX	75001	9723858573	9724533186	bianca.noble@verizon.com	CA04
Scott	Noble	4008 Bobbin Ln.		Addison TX	75001	9723858573	9723851880	snoble_99@yahoo.com	CA04
Cathy A.	Norton	14640 Waterview Cr.		Addison TX	75001	9722474047	2143609951	calicatnortone@yahoo.com	CA04
Teresa	Perry	3837 Azure Ln.		Addison TX	75001	9724881862	4692313353	bperrybap@comcast.net	CA04
Sandra	Silver	3822 Canot Ln.		Addison TX	75001	9722430023	9724580400	SJSILVER@swbell.net	CA04
Sheldon	Srulevitch	3832 Park Pl.		Addison TX	75001	9722479667	n/a	RBS99@aol.com	CA04
Sara Lynn	Stokes	3901 Azure Ln.		Addison TX	75001	9726207523	2147682270	lynnstokes@comcast.net	CA04
Alden D.	Tinnin	4130 Proton Dr.	#50-B	Addison TX	75001	9723874244	9727649386	atinnin@swbell.net	CA04
Lori	Ward	14801 Lake Forest Dr.		Dallas TX	75254	9723929295	2148407188	Lorward@Deloitte.com	CA04
Kathryn	Wheeler	14925 Havenshire Pl.		Dallas TX	75254	9725036777	n/a	wheelerskw@comcast.net	CA04
Teresa J.	Wilkin	4133 Towne Green Cir.		Addison TX	75001	2146931503	n/a	teresawilkin@yahoo.com	CA04
Alan	Wood	14609 Lexus Ave.		Addison TX	75001	9729912911	2145593900	alan.b.wood@sbcglobal.net	CA04
Katherine	Wood	14609 Lexus Ave.		Addison TX	75001	9729912911	n/a	Wood family@sbcglobal.net	CA04
Stanley	Attaguayefio	17200 Westgrove Dr.	Apt. 434	Addison TX	75001	9722503178	n/a	n/a	CA04
Bob	Barrett	14637 Lexus Ave.		Addison TX	75001-3132	9723867944	9723867944	jtrlib@msn.com	CA98
Laurel	Brewster	3822 Azure Ln.		Addison TX	75001-7901			laurel.brewster@dal.frb.org	CA98
Robert	Brewster	3822 Azure Lane		Addison TX	75001				CA98
Lary	Brown	383 Lakeview Court		Addison TX	752001	9726207098	9729970700		CA98
John	Caris	3883 Weller Run Ct.		Addison TX	75001	9722472988			CA98
Doreen	Cluck	3734 Brookhaven Club Dr.		Addison TX	75001	9722413905			CA98
John	Cummings	3817 Azure Ln.		Addison TX	75001-7902	972241384			CA98
Don	Daseke	5656 Celestial Rd.		Dallas TX	75254	9729609015			CA98
Carol	Doepfner	4006 Bobbin Ln.		Addison TX	75001-3103	9722339722	9723073229		CA98
Mary	Edrich	4015 Bobbin Ln.		Addison TX	75001-3104	9723927561	9723927561	blbrady1@aol.com	CA98
Bonnie	Hill	14700 Marsh Ln.	#1025	Addison TX	75001	9724889991	9724889990		CA98
David	Holmes	3880 Lakeview Ct.		Addison TX	75001	9726209755	9728889382		CA98
Charles	Hughes	14639 Waterview Circle		Addison TX	75001				CA98
Paula	Jandura	14936 Oaks North Dr.		Dallas TX	75254	9727020202		jandura@swbell.net	CA98
John	Jeffers	4015 Bobbin Ln.		Addison TX	75001-3104				CA98
Robert	Mason	3834 Azure Lane		Addison TX	75001	9722410964			CA98
John	Meleky	17030 Vinland Dr.		Addison TX	75001	9722484799	9727132895		CA98

**Citizen Academy Graduates
All Classes**

Karen	O'Neill	14723 Sherlock Dr.	Addison	TX	75001-3116	9727749534	9726630500	CA98
Peggy	Petty	3768 Waterford Dr.	Addison	Tx	75001	9724843628	2148558205	CA98
Dee	Saunders	3796 Waterford Dr.	Addison	TX	75001-7952	9724881914		CA98
Joan	Tuma	4021 Azure Lane	Addison	TX	75001	9723850421		CA98
Dale	Wilcox	3868 Lakeview Ct.	Addison	TX	75001			CA98



1998 Graduates



2000 Graduates



2002 Graduates



2004 Graduates

Council Agenda Item: #R10

DEPARTMENT: Police

SUMMARY: Staff is requesting approval of an ordinance amending the Code of Ordinances to provide for non-motorized passenger transport service regulations.

FINANCIAL IMPACT: Possible \$540.00 per year in revenue from licensing the operation.

BACKGROUND: The Town has been approached by an operator of a horse and carriage business about allowing carriage rides in Addison Circle. The operator currently operates a horse and carriage service in Highland Park during the Holidays and in the West End in downtown Dallas during the rest of the year. The operator is proposing one horse and carriage initially. Depending on how the business goes, the operator might add one additional horse and carriage. The operator anticipates offering 30 minute rides through the Addison Circle area on weekend evenings. The operator also anticipates offering a route that will go south down Quorum Drive, cross Belt Line at the intersection, and go through the south Quorum area. The route the driver anticipates using could pass directly in front of, or close to, seven hotels.

The staff has adapted the Dallas non-motorized passenger transport Service ordinance. The ordinance is quite comprehensive and provides for the licensing of the operator, the licensing of each individual driver, the maintenance and operating standards for the vehicles and the horses, and the route and schedule for the vehicle. This ordinance will be administered by the Police Department, which also administers the licensing of taxicab services and limousines. The ordinance is structured like the taxi and limousine ordinance, which also provides for licensing and inspection. We do not anticipate that our staff will be inspecting the carriages or the horses. We will require that the operator furnish us with an inspection report. We have contacted the City of Dallas to see what inspection service it accepts, and we expect to be able to use the same service.

The Town is interested in providing for this business as an amenity in the Addison Circle area, and as an offering that may benefit the hotels in the area. The operator anticipates that much of her business will come from people who book the service in advance for a wedding or special occasion. We believe that having this service available to the hotels on Quorum Drive will be of benefit to them and will help them book wedding and special occasion business.

RECOMMENDATION: Staff recommends approval of an ordinance amending the Code of Ordinances to provide for non-motorized passenger transport service regulations.

TOWN OF ADDISON, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY BY AMENDING CHAPTER 86, VEHICLES FOR HIRE THEREOF BY ADDING A NEW ARTICLE III REGARDING NON-MOTORIZED PASSENGER TRANSPORT SERVICE REGULATIONS AND STANDARDS; PROVIDING FOR CERTAIN ADMINISTRATIVE PROCEDURES; PROVIDING GUIDELINES FOR A NON-MOTORIZED PASSENGER TRANSPORT SERVICE; PROVIDING FOR FEES FOR REGISTERING A NON-MOTORIZED PASSENGER TRANSPORT SERVICE; PROVIDING QUALIFICATIONS, STANDARDS, AND REGULATIONS FOR A NON-MOTORIZED TRANSPORT DRIVER'S PERMIT; PROVIDING FOR INSURANCE REQUIREMENTS; PROVIDING FOR OTHER MATTERS RELATED TO THE USE AND OPERATION OF A NON-MOTORIZED PASSENGER TRANSPORT SERVICE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. Amendment. The Code of Ordinances ("Code") of the Town of Addison, Texas ("City") is hereby amended by amending Chapter 86 - Vehicles for Hire thereof in the following particulars, and all other chapters, sections, subsections, paragraphs, sentences, phrases and words of the said Code are not amended but are hereby ratified, verified, approved and affirmed:

A. Chapter 86 – Vehicles for Hire is hereby amended by adding thereto a new Article III regarding the operation of a non-motorized passenger transport service within the City as set forth in Exhibit A attached hereto and incorporated herein.

Section 2. Savings. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of those ordinances or of the Code except in those instances where the provisions of those ordinances or of the Code are in direct conflict with the provisions of this Ordinance.

Section 3. Severability. The sections, paragraphs, sentences, phrases, clauses and words of this Ordinance are severable, and if any section, paragraph, sentence, phrase, clause or word in this Ordinance or application thereof to any person or circumstance is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 4. Effective Date. This Ordinance shall take effect immediately from and after its passage.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this ___ day of _____, 2006.

Joe Chow, Mayor

ATTEST:

By: _____
Carmen Moran, City Secretary

APPROVED AS TO FORM:

By: _____
Ken Dippel, City Attorney

EXHIBIT A
TO ORDINANCE NO. _____

ARTICLE III. NON-MOTORIZED TRANSPORTATION.

Section 86-80. Non-Motorized Transportation Regulations.

(a) *Non-Motorized Transportation Regulations.* It is the goal of the City to provide for the safe and efficient transportation for all motorized vehicles, non-motorized vehicles, and pedestrians upon the roads and streets with the City.

(b) *Definitions.* For purposes of this Article, the following words, except where the context clearly indicates otherwise, shall be defined as follows:

1. *City* means the Town of Addison, Texas.
2. *Chief of Police* means the head of the Addison Police Department, any member of the police reserve, or any employee of the Addison Police Department.
2. *Conviction* means a conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned.
3. *Director* means the Director of Development Services of the City.
4. *Driver* means an individual who operates a non-motorized passenger transportation vehicle.
5. *Holder* means a person who is granted operating authority under this Section to provide non-motorized passenger transport service in the City.
6. *Horse* means any member of the species *Equus Caballus*.
7. *Horse-drawn carriage* means a non-motorized vehicle designed to carry passengers while being pulled by one or more horses.
8. *Lawful order* means a verbal or written directive issued by the Chief of Police in the performance of official duties in the enforcement of this Article and any rules and regulations promulgated under this Article.
9. *Non-motorized passenger transport vehicle* means a horse-drawn carriage.
10. *Non-motorized passenger transport service* means a business of offering or providing transportation of a person or persons for hire by a non-motorized passenger transport vehicle when:

- a. a driver is furnished as part of the service;
 - b. the service is offered only in accordance with a preapproved route that must be current and kept on file with the director; and
 - c. is not being operated in compliance with a valid parade permit issued by the City.
11. *Non-motorized passenger transport vehicle driver's permit* means a permit issued to an individual by the Chief of Police authorizing that individual to operate a non-motorized passenger transport vehicle for hire in the city.
 12. *Operate* means to drive or to be in control of a non-motorized passenger transport vehicle.
 13. *Operating authority* means written permission granted by the Chief of Police under this Article to operate a non-motorized passenger transport service.
 14. *Operator* means the driver or owner of a non-motorized passenger transport vehicle or the holder of non-motorized passenger transport service operating authority.
 15. *Permittee* means an individual who has been issued a non-motorized passenger transport vehicle driver's permit under this Article.
 16. *Person* means an individual, corporation, government or governmental subdivision, or other business entity of any kind whatsoever, or an agency, trust, partnership, or two or more persons having a joint or common economic interest.
 17. *Preapproved route* means a non-motorized passenger transport service operating on a predetermined schedule with fixed pickup and destination points located on a route approved by and on file with the Chief of Police.

Section 86-81. *Operating Authority.*

- (a) *Operating Authority Required.*
 1. A person commits an offense if the person operates a non-motorized passenger transport service within the City without valid operating authority granted under this Section.
 2. A person commits an offense if the person advertises or causes to be advertised the operation of a non-motorized passenger transport service that does not have valid operating authority granted under this Article when the advertisement is

reasonably calculated to be seen by persons seeking non-motorized passenger transport service in the City.

3. A person commits an offense if he transports, or offers to transport, a passenger for hire by a non-motorized passenger transport vehicle within the City unless the person driving the vehicle or another who employs the driver holds valid operating authority issued under this Article.
4. A person commits an offense if the person hires or employs a non-motorized passenger transport service to pick up passengers in the City that the person knows does not have valid operating authority under this Article.
5. It is a defense to prosecution under this subsection (a) that the person was the publisher of the advertising material and had no knowledge that the non-motorized passenger transport service did not have valid operating authority under this Section.
6. Separate operating authority is required for each type of non-motorized passenger transport service or horse-drawn carriage, to be operated.

(b) *Qualification for Operating Authority.* To qualify for non-motorized passenger transport service operating authority, an applicant must:

1. be at least 19 years of age;
2. be currently authorized to work full-time in the United States;
3. be able to communicate in the English language; and
4. not have been convicted of a crime that is punishable as a felony under applicable law.

(c) *Application for Operating Authority.* To obtain non-motorized passenger transport service operating authority, a person must submit an application on a form approved by the Chief of Police. The applicant must be the person who will own, control, or operate the proposed non-motorized passenger transport service. The application must be verified and contain at least the following:

1. a statement of the type of non-motorized passenger transport service or horse-drawn carriage, for which application is made;
2. the form of business of the applicant, and a copy of the documents establishing the business and the name, address, and citizenship of each person with a direct interest in the business;
3. the name, address, and verified signature of the applicant;

4. the description of any past business experience of the applicant, particularly in providing passenger transport services; identification and description of any revocation or suspension of operating authority held by the applicant or business before the date of filing the application;
5. the number and description of vehicles the applicant proposes to use in the operation of the service, including year, make, model, manufacturer's rated seating capacity, and state license registration number for each vehicle;
6. The number of horses the applicant proposes to use in the operation of the service with a description or photograph and a state certificate of veterinarian inspection for each horse;
7. a description of the proposed service, including routes, and schedules, where applicable;
8. documentary evidence from an insurance company indicating a willingness to provide liability insurance as required by this chapter;
9. such additional information as the applicant desires to include to aid in the determination of whether the requested operating authority should be granted; and
10. such additional information as the director considers necessary to assist or promote the implementation or enforcement of this Section of the protection of the public safety.

(d) *Issuance and Denial of Operating Authority.*

1. In deciding whether to issue or deny an application for operating authority, the Chief of Police shall consider, without limitation, the following:
 - a. whether the public convenience and necessity require the proposed service;
 - b. whether the applicant has complied with all requirements of this chapter for providing the service applied for; and
 - c. the current safety record of the applicant, and the previous safety record, if the applicant has operated a passenger transportation service in the past.
2. The Chief of Police shall issue operating authority to the applicant, if the director determines that:
 - a. the applicant has complied with all requirements for issuance of operating authority;

- b. the public convenience and necessity require the operation of the proposed service;
- c. the applicant has not been convicted within a two-year period for violation of this chapter;
- d. the applicant has not made a false statement as to a material matter in an application for operating authority;
- e. the applicant has not been finally convicted for violation of another city, state, or federal law that indicates a lack of fitness of the applicant to perform a passenger transportation service; or
- f. the applicant's operating authority has not been revoked within two years prior to the date of application.

3. If the Chief of Police determines that the requirements of subsection 2 have not been met, the Chief of Police shall deny operating authority.

4. If the Chief of Police determines that an applicant should be denied operating authority, the Chief of Police shall notify the applicant in writing that the application is denied and include in the notice the reason for denial and a statement informing the applicant of the right of appeal.

(e) *Expiration and Renewal of Operating Authority.*

1. Operating authority expires September 30 of each year. A holder shall apply for a renewal at least thirty (30) days before the expiration of the operating authority. The Chief of Police shall renew operating authority if the Chief of Police determines that:

- a. the holder has performed satisfactorily under the term of the operating authority;
- b. the service provided continues to be necessary and desirable; and
- c. the holder has fully complied with all requirements of this Section.

2. If, after investigation of a renewal application, the Chief of Police determines that a statement in any of subsections 1.a., b., or c. is not true, the Chief of Police will reconsider the application as a new application and not a renewal.

(f) *Revocation of Operating Authority.* The Chief of Police shall revoke operating authority if the Chief of Police determines that the holder has:

1. made a false statement as to a material matter in the application or appeal hearing concerning the operating authority;
2. failed to comply with applicable provisions of this Section;
3. operated a service not authorized by the operating authority;
4. been finally convicted for violation of another city, state, or federal law, that indicates a lack of fitness of the holder to perform a passenger transportation service;
5. is under indictment for or has been convicted of any felony offense while holding the operating authority;
6. does not qualify for operating authority under this Section; or
7. failed to pay a fee for the operating authority at the time it was due.

(g) *Appeals.* Any person whose application for operating authority or renewal of operating authority is denied by the Chief of Police, or a holder whose operating authority has been revoked or suspended by the director, may file an appeal with the City Manager's office, such appeal to be conducted in the same manner as set forth in Section 86-82(k).

(h) *Nontransferability.* A holder's operating authority, permit, emblem, or decal is not transferable and cannot be assigned, conveyed, sublicensed, or otherwise transferred in any manner whatsoever to another. The transfer, assignment, conveyance, sublicense, or other transfer in violation of this provision shall result in the immediate non-appealable revocation of the operating authority.

(i) *Fees.*

1. The annual fee for operating authority for a non-motorized passenger transport service that operates a horse-drawn carriage is:
 - a. five hundred dollars (\$500.00); and
 - b. twenty dollars (\$20.00) for each vehicle authorized to operate under the operating authority.
2. The annual fee for operating authority must be paid before operating authority will be issued. If operating authority is issued for a length of time less than one year, the fee shall be prorated on the basis of whole months.
3. If operating authority is amended to increase the number of vehicles used under the operating authority, the Chief of Police shall compute and collect an adjusted amount in accordance with Subsection 1.b. of this Section.

4. No refund of a fee required by this Section may be made.

Section 86-82. *Driver's Permit.*

(a) *Non-Motorized Passenger Transport Vehicle Driver's Permit Required.*

1. A person commits an offense if the person operates a vehicle engaged in non-motorized passenger transport service in the City without a valid non-motorized passenger transport vehicle driver's permit issued to the person under this Section.
2. A holder commits an offense if the holder employs or otherwise allows a person to operate for hire a non-motorized passenger transport vehicle owned, controlled, or operated by the holder unless the person has a valid non-motorized passenger transport vehicle driver's permit issued under this Section.

(b) *Qualifications for a Non-Motorized Passenger Transport Vehicle Driver's Permit.*

1. To qualify for a non-motorized passenger transport vehicle driver's permit, an applicant must:
 - a. be at least 19 years of age;
 - b. be currently authorized to work full-time in the United States;
 - c. hold a valid driver's license issued by the State of Texas;
 - d. be able to communicate in the English language;
 - e. not be afflicted with a physical or mental disease or disability that is likely to prevent the applicant from exercising ordinary and reasonable control over a vehicle or that is likely to otherwise endanger the public health or safety; and
 - f. not have been convicted of a crime, that is punishable as a felony under applicable law.
2. It is the responsibility of the applicant, the extent possible, to secure and provide to the Chief of Police the evidence required to determine the applicant's qualification under this Subsection.

(c) *Issuance and Denial of Non-Motorized Passenger Transport Vehicle Driver's Permit.*

1. If the Chief of Police determines that an applicant is qualified, the Chief of Police shall issue a non-motorized passenger transport vehicle driver's permit to the applicant.

2. If the Chief of Police determines that a permit should be denied the applicant, the Chief of Police shall notify the applicant in writing that the application is denied and include in the notice the reason for denial and a statement informing the applicant of the right of appeal.

(d) *Expiration of Non-Motorized Passenger Transport Vehicle Driver's Permit; Voidance Upon Suspension or Revocation of State Driver's License.*

1. Except in the case of a probationary or provisional permit, a non-motorized passenger transport vehicle driver's permit expires two years from the date of issuance.
2. If a permittee's state driver's license is suspended or revoked by the state by which it is issued, the non-motorized passenger transport vehicle driver's permit automatically becomes void. A permittee shall notify the holder for whom the permittee drives within three days of a suspension or revocation of a state driver's license and shall immediately surrender the non-motorized passenger transport vehicle driver's permit to the Chief of Police.

(e) *Probationary Permit.*

1. The Chief of Police may issue a probationary non-motorized passenger transport vehicle driver's permit to an applicant who is not qualified for a non-motorized passenger transport vehicle driver's permit under this Article if the applicant:
 - a. could qualify under this Article for a non-motorized passenger transport vehicle driver's permit within one year from the date of application;
 - b. holds a valid state driver's license or occupational driver's license; and
 - c. is determined by the Chief of Police, using the criteria listed in this Article, to be presently fit to engage in the occupation of a non-motorized passenger transport vehicle driver.
2. A probationary permit may be issued for a period not to exceed one year.
3. The Chief of Police may prescribe appropriate terms and conditions for a probationary permit as determined necessary.

(f) *Duplicate Permit.*

1. If a non-motorized passenger transport vehicle driver's permit is lost or destroyed, the Chief of Police shall issue the permittee a duplicate permit upon payment to the City of a duplicate permit fee of \$11.00.

(g) *Display of Permit.*

1. A driver shall at all times conspicuously display a non-motorized passenger transport vehicle driver's permit on the clothing of the driver's upper body. A driver shall allow the Chief of Police or a peace officer to examine the permit upon request.

(h) *Suspension of Non-Motorized Passenger Transport Vehicle Driver's Permit.*

1. If the Chief of Police determines that a permittee has failed to comply with this Section or a regulation established under this Section, the Chief of Police may suspend the non-motorized passenger transport vehicle driver's permit for a definite period of time not to exceed 60 days.
2. If at any time the Chief of Police determines that a permittee is not qualified under this Section or is under indictment or has charges pending for any offense involving driving while intoxicated, the Chief of Police may suspend the non-motorized passenger transport vehicle driver's permit until such time as the Chief of Police determines that the permittee is qualified or that the charges against the permittee have been finally adjudicated without a determination of guilt or a plea of no contest.
3. A permittee whose non-motorized passenger transport vehicle driver's permit is suspended shall not drive a non-motorized passenger transport vehicle inside the City during the period of suspension.
4. The Chief of Police shall notify the permittee and the holder in writing of a suspension under this Section and include in the notice the reason for the suspension, the date the Chief of Police orders the suspension to begin, the duration of suspension or the rights, if any, of appeal. The period of suspension begins on the date specified by the Chief of Police or, in the case of an appeal, on the date ordered by the appeal hearing officer.

(i) *Revocation of Non-Motorized Passenger Transport Vehicle Driver's Permit.*

1. The Chief of Police may revoke a non-motorized passenger transport vehicle driver's permit if the Chief of Police determines that the permittee:
 - a. operated a non-motorized passenger transport vehicle for hire inside the City during a period in which the permittee's non-motorized passenger transport vehicle driver's permit was suspended;
 - b. made a false statement of a material fact in an application for a non-motorized passenger transport vehicle driver's permit;

- c. engaged in conduct that constitutes a ground for suspension under this Section, and received either a suspension in excess of three days or a conviction for violation of this Section one time with the 12-month period preceding the occurrence of the conduct;
 - d. engaged in conduct that could reasonably be determined to be detrimental to the public safety;
 - e. failed to comply with a condition of a probationary permit; or
 - f. is under indictment for or has been convicted of any felony offense while holding a non-motorized passenger transport vehicle.
2. A person whose non-motorized passenger transport vehicle driver's permit is revoked shall not:
- a. apply for another non-motorized passenger transport vehicle driver's permit before the expiration of 12 months from the date the director revoked the permit or, in the case of an appeal, the date the appeal hearing officer affirms the revocation; or
 - b. drive a non-motorized passenger transport vehicle for hire inside the City.
3. The Chief of Police shall notify the permittee and the holder in writing of a revocation and include in the notice the reason for the revocation, the date the Chief of Police orders the revocation, and a statement informing the permittee of the right of appeal.
- (j) *Operation of Non-Motorized Passenger Transport Vehicle After Suspension.*
- 1. After receipt of notice of suspension, revocation, or denial of permit renewal, the permittee shall, on the date specified in the notice, discontinue the operation of a non-motorized passenger transport vehicle for hire inside the City and surrender the non-motorized passenger transport vehicle driver's permit to the Chief of Police.
 - 2. Notwithstanding subsections (h)) and(i) of this Section, if a permittee appeals the suspension or revocation, the permittee may continue to drive a non-motorized passenger transport vehicle for hire pending the appeal unless:
 - a. the non-motorized passenger transport vehicle driver's permit of the permittee is suspended pursuant to this Section; or
 - b. the Chief of Police determines that continued operation by the permittee would impose an immediate threat to public safety.

- (k) *Appeal from Denial, Suspension, or Revocation.*
1. A person may appeal a denial of a non-motorized passenger transport vehicle driver's permit application, suspension of a non-motorized passenger transport vehicle driver's permit, or revocation of a non-motorized passenger transport vehicle driver's permit, if the person requests an appeal in writing, delivered to the City Manager not more than ten 10 days after the date of the notice of the Chief of Police's action.
 2. The City Manager or the Manager's designated representative shall act as the appeal hearing officer in an appeal hearing under this Section, The hearing officer shall give the appealing party an opportunity to present evidence and make argument. The formal rules of evidence do not apply to an appeal hearing under this Section, and the hearing officer shall make a ruling on the basis of a preponderance of the evidence presented at the hearing.
 3. The hearing officer may affirm, modify, or reverse all or part of the action of the Chief of Police being appealed. The decision of the hearing officer is final as to available administrative remedies.
- (l) *Nontransferability.*
1. A non-motorized passenger transport vehicle driver's permit, badge, sticker, or emblem assigned to one person is not transferable and cannot be assigned, conveyed, sublicenses, or otherwise transferred in any manner whatsoever to another. The transfer, assignment, conveyance, sublicense, or other transfer in violation of this provision shall result in the immediate non-appealable revocation of the permit.

Section 86-83. *Holder's and Driver's Duty to Comply.*

- (a) *Holder.* In the operation of a non-motorized passenger transport service, a holder shall comply with the terms and conditions of the holder's operating authority and, except to the extent expressly provided otherwise by the operating authority, shall comply with this Article, rules and regulations established under this Article, and other law applicable to the operation of a non-motorized passenger transport service.
- (b) *Driver.* While on duty, a driver shall comply with this Section, regulations established under this Section, other law applicable to the operation of a motor vehicle in this state, and orders issued by operating authority and this Section.
- (c) *Holder's Duty to Enforce Compliance by Driver.*
1. A holder shall establish policy and take action to discourage, prevent, or correct violations of this Section by drivers who are employed by the holder.

2. A holder shall not permit a driver who is employed by the holder to drive a non-motorized passenger transport vehicle if the holder knows or has reasonable cause to suspect that the driver has applicable law.

Section 86-84. Insurance; Suspension of Operating Authority.

(a) A holder shall procure and keep in full force and effect commercial general liability insurance written by an insurance company approved by the State of Texas and acceptable to the City and issued in the standard form approved by the state board of insurance. All provisions of the policy must be acceptable to the City. The insured provisions of the policy must name the City and its officers and employees as additional insureds and the coverage provisions must provide coverage for any loss or damage that may arise to any person or property by reason of the operation of a non-motorized passenger transport service by the holder.

(b) The commercial general liability insurance must provide combined single limits of liability for bodily injury and property damage of not less than \$500,000 for each occurrence, or the equivalent, and include coverage for premises operations, independent contractors, products/completed operations, personal injury, contractual liability, and medical payments. Coverage for medical payments must include a minimum limit of \$5,000 per person. Aggregate limits of liability are prohibited.

(c) If a vehicle is removed from service, the holder shall maintain the insurance coverage required by this Section for the vehicle until the Chief of Police receives satisfactory proof that all evidence of operation as a non-motorized passenger transport vehicle has been removed from the vehicle.

(d) Insurance required under this Section must include:

1. a cancellation provision in which the insurance company is required to notify the Chief of Police in writing not fewer than thirty (30) days before cancelling, failing to renew, or making a material change to the insurance policy; and
2. a provision to cover all vehicles, whether owned or not owned by the holder, operated under the holder's operating authority.

(e) No insurance required by this Section may be obtained from an assigned risk pool.

(f) Operating authority will not be granted or renewed unless the applicant or holder furnishes the director with such proof of insurance as the Chief of Police considers necessary to determine whether the applicant or holder is adequately insured under this Section.

(g) If the insurance of a holder lapses or is cancelled and new insurance is not obtained, the Chief of Police shall suspend the operating authority until the holder provides evidence that insurance coverage required by this Section has been obtained. A person shall not

operate a passenger transportation service while operating authority is suspended under this Section whether or not the action is appealed.

Section 86-85. Information to be Supplied Upon Request of Director. Upon request of the Chief of Police, a holder shall submit to the director the following information about a non-motorized passenger transport service:

- (a) a current consolidated list of all vehicles and, if applicable, horses used;
- (b) names of current officers, owners, and managers of the holder; and
- (c) a list of current drivers employed by the holder, with their non-motorized passenger transport vehicle driver's permit indicated.

Section 86-86. Solicitation.

- (a) A person commits an offense if the person, by word or gesture, solicits a passenger for hire.
- (b) It is a defense to prosecution under subsection (a) that the person was soliciting:
 - 1. from a location and in a manner authorized by written contract executed by an authorized property manager of the location and the holder of the non-motorized passenger transport service; or
 - 2. at a time and from a location complying with a schedule of loading and drop-off points on file with and approved by the director.

Section 86-87. Conduct of Drivers. A driver shall at all times:

- (a) act in a reasonable, prudent, and courteous manner;
- (b) maintain a sanitary and well-groomed appearance;
- (c) not consume an alcoholic beverage, drug, other substance that could adversely affect the driver's ability to operate a non-motorized passenger transport vehicle;
- (d) not permit a person other than another employee of the non-motorized passenger transport service to operate a vehicle under the driver's control;
- (e) if driving a horse-drawn carriage:
 - 1. not permit a person on the back of a horse when under the driver's control;
 - 2. not leave a horse untethered and unattended except when confined to a stable or other enclosure;

3. not permit a horse to drop excrement from its diaper; and
4. keep all carriage stands and all other places within the City clean and free of animal excrement;
- (f) not interfere with the Chief of Police in the performance of the Chief of Police's duties; and
- (g) comply with lawful orders of the Chief of Police or any law enforcement officer issued in the performance of their respective duties.

Section 86-88. *Alcohol in a Non-Motorized Passenger Transport Vehicle.*

(a) A holder or driver commits an offense if the holder or driver provides an alcoholic beverage to a passenger for a fee or as part of the non-motorized passenger transport service.

(b) A holder or driver commits an offense if the holder or driver purchases or stocks a vehicle with an alcoholic beverage. A nonalcoholic beverage or mixer may be purchased and provided by the holder or driver.

(c) An alcoholic beverage may be in the vehicle only if the passenger brings the alcoholic beverage into the vehicle and meets minimum age requirements of the state.

Section 86-89. *Notification of Change of Address or Ownership.* A holder commits an offense if the holder:

(a) fails to notify the Chief of Police within ten (10) days of a change in the address or telephone number of the non-motorized passenger transport service; or

(b) changes the form of the business or officers of the corporation of the service, from that originally submitted, without a request to amend the operating authority.

Section 86-90. *Return of Passengers' Property.* A driver of a non-motorized passenger transport vehicle shall immediately attempt to return to a passenger any property left by the passenger in the vehicle. If unable to locate the passenger, the driver shall notify the holder of the service, who shall notify the Chief of Police within 24 hours of a description of the property and the location where the property is being stored.

Section 86-91. *Requirements for Horses in Service.*

(a) Before any horse may be used in a non-motorized passenger transport service, the holder must furnish the Chief of Police with:

1. a state certification of veterinarian inspection identifying the horse by description or photograph and showing that the horse has been examined at least once within

the preceding six months by a veterinarian licensed by the State of Texas who specializes in equine medicine;

2. proof that the horse has had tetanus, rabies, and Eastern-Western encephalitis vaccinations; and
3. photographs showing identifying markings of the horse.

(b) A horse used in a non-motorized passenger transport service must:

1. be appropriately shod to work paved streets; if a horse loses a shoe while working, an "easy" type boot may be used to finish the scheduled work day;
2. not have open wound, oozing sore, cut below skin level, or bleeding wound;
3. not have evidence of lameness, such as but not limited to head bobbing or irregular rhythm;
4. be offered not less five gallons of drinking water at least every two hours;
5. have at least a 10-minute rest period after every 50 minutes worked;
6. not work longer than eight hours in a 24-hour period with a minimum of 12 hours rest;
7. have all harnesses properly fitted and in good repair with no deficiencies that could reasonably be deemed a safety hazard;
8. be properly cleaned with no offensive odors or caked dirt or mud;
9. wear a special sanitary device for containing animal excrement;
10. not work when the outside temperature exceeds 99 degrees Fahrenheit, or the thermal heat index exceeds 120, as measured by the National Weather Service at the Addison Airport; and
11. be examined at least once every six months by a veterinarian licensed by the State of Texas who specializes in equine medicine and receive a state certificate of veterinarian inspections, which must be submitted to the director.

(c) The Chief of Police, or a designated representative of the Chief of Police, or a peace officer, may require the holder or driver of a horse-drawn carriage to remove from service any horse that appears to be ill, overtired, undernourished, overloaded, injured, or lame or whose health or life, in the opinion of a veterinarian or qualified equine animal services officer, is in imminent danger. To reinstate a horse removed from service, the horse must be re-examined and a new state certificate of veterinarian inspections issued for the horse by a veterinarian licensed

by the State of Texas and specializing in equine medicine, which certificate must be submitted to the director.

(d) A person commits an offense if the person harasses or startles, or attempts to harass or startle, a horse while the horse is pulling a carriage or at rest or otherwise treats a horse inhumanely while it is working in a non-motorized passenger transport service.

(e) A holder and driver shall use a trailer to transport a horse to a job location in the City that is more than three miles from the location where the horse is stabled.

(f) For purposes of this Section, a horse is considered to be working any time it is on a public street or sidewalk, or other public right-of-way, during any hour of operation of the non-motorized passenger transport service that is authorized by and file with the director.

Section 86-92. *Vehicle Inspection and Maintenance.*

(a) The applicant for operating authority under this chapter shall have each vehicle to be used in the non-motorized passenger transport service inspected in a manner approved by the director before the operating authority is issued and at such other times as may be ordered by the Chief of Police. Inspection must determine safety of the vehicle, condition of maintenance, and compliance with state and federal laws.

(b) If a vehicle is involved in an accident or collision during the term of the operating authority, the driver shall immediately notify the holder and the police department. The holder shall submit a full written report of the accident or collision to the Chief of Police within 48 hours after its occurrence. Before operating the vehicle again under the operating authority, the holder shall have the vehicle reinspected for safety and shall send to the Chief of Police a sworn affidavit that the vehicle has been restored to its previous condition.

(c) The Chief of Police shall designate the time and place for annual inspection of vehicles operated under holder's operating authority. If the Chief of Police designates someone other than a City employee to perform the inspection, the applicant or holder shall bear the reasonable cost of inspection.

(d) A holder may contract for maintenance, but shall be responsible for maintaining all vehicles operated under the operating authority in safe operating condition.

Section 86-93.. *Required Equipment.*

(a) A holder or driver shall, at all times, provide and maintain in good operating condition the following equipment on each non-motorized passenger transport vehicle:

1. head lights;
2. tail lights;

3. flashing lights;
4. a braking system approved by the director;
5. rubber on all wheels;
6. a "slow moving vehicle" sign attached to the rear of the vehicle;
7. evidence of insurance required by this Section;
8. a copy of this Section;
9. the company name and a unit number conspicuously located in the rear of the vehicle in letters not less than two inches high;
10. a decal or temporary permit placed in a manner and location approved by the director;
11. any other equipment required to comply with all applicable federal and state laws; and
12. any other special equipment that the director determines to be necessary for the service to be operated.

(b) A holder or driver shall, at all times, keep each non-motorized passenger transport vehicle clean and free of refuse and in safe operating condition.

(c) A vehicle must not have any cracks, broken or missing parts, or other visible damage. All wheels must be firmly attached to the hub of a vehicle and all springs, axles, and supporting structures of each vehicle must be intact.

Section 86-94. Enforcement by Police Department. Officers of the police department shall assist in the enforcement of this Section. A police officer, upon observing a violation of this Section or of any regulation established by the director, shall take necessary enforcement action to insure effective regulation of non-motorized passenger transport service.

Section 86-95. Correction Order.

(a) If the Chief of Police determines that a holder has violated this Section, the terms of its operating authority, a regulation established by the director, or any law, rule, regulation, or standard whatsoever, the Chief of Police may notify the holder in writing of the violation and by written order direct the holder to correct the violation within a reasonable period of time. In setting the time for correction, the Chief of Police shall consider the degree of danger to the public health or safety and the nature of the violation. If the violation involves equipment that is unsafe or functioning improperly, the Chief of Police shall order the holder to immediately cease use of such equipment.

(b) If the Chief of Police determines that a violation constitutes an imminent and serious threat to the public health or safety, the Chief of Police shall order the holder to correct the violation immediately, and, if the holder fails to comply, the Chief of Police shall promptly take or cause to be taken such action as the Chief of Police considers necessary to enforce the order immediately.

(c) The Chief of Police shall include in a notice issued under this Section an identification of the violation, the date of issuance of the notice and the time period within which the violation must be corrected, a warning that failure to comply with the order may result in suspension or revocation of operating authority or imposition of a fine or both, and a statement indicating that the order may be appealed to the City Manager.

Section 86-96. *Service of Notice.*

(a) A holder shall designate and maintain a representative to receive service of notice required under this Section to be given to a holder and to a driver employed or retained by a holder.

(b) Notice required under this Section to be given: must be personally served or sent by certified United States Mail, five day return receipt requested, to the address, last known to the Chief of Police, of the person to be notified, or to the designated representative thereof.

(c) Service executed in accordance with this Section constitutes notice to the person to whom the notice is addressed. The date of service for notice that is mailed is the earlier of the date received or three days after the notice is deposited in the United States mail, return receipt requested.

Section 86-97. *Appeal.*

(a) A holder may appeal a correction order issued under Section 86-95 if an appeal is requested in writing not more than ten (10) days after notice of the order or action is received.

(b) The City Manager or the Manager's designated representative shall act as the appeal hearing officer in such an appeal hearing. The hearing officer shall give the appealing party an opportunity to present evidence and make argument. The formal rules of evidence do not apply to such an appeal hearing, and the hearing officer shall make a ruling in the basis of a preponderance of evidence presented at the hearing.

(c) The hearing officer may affirm, modify, or reverse all or a part of the order of the director. The decision of the hearing officer is final.

Section 86-98. *Criminal Offenses.*

(a) A person commits an offense if the person violates or attempts to violate a provision of this Article applicable to the person. A culpable mental state is not required for the

commission of an offense under this Article unless the provision defining the conduct expressly requires a mental state. A separate offense is committed each day during which an offense occurs.

(b) Prosecution for an offense under subsection (a) does not prevent the use of other enforcement remedies or procedures applicable to the person charged with or the conduct involved in the offense.