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CAUSE NO. 471-01040-2022

HENRY MISHKOFF	§	**IN THE DISTRICT COURT**
	§	
***Plaintiff*,**	§	
	§	
v.	§	**471st JUDICIAL DISTRICT**
	§	
SONIA BRYANT	§	
	§	
Defendant.	§	**COLLIN COUNTY, TEXAS**

DEFENDANT'S TRADITIONAL MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant Sonia Bryant ("Defendant"), by and through her undersigned counsel, files this Traditional Motion for Summary Judgment against Plaintiff Henry Mishkoff ("Plaintiff"), and in support thereof respectfully shows the Court as follows:

I. SUMMARY

1. Plaintiff claims that he needs to traverse across Defendant's driveway in order to reach an electrical box on the northern side of his home. Met with resistance from Defendant, he has filed a lawsuit for declaratory judgment, requesting that the Court declare an express easement across Defendant's driveway, or in the alternative declare the existence of a prescriptive easement across Defendant's driveway.

2. To frame Plaintiff's lawsuit in plain terms, Plaintiff seeks a right to cross Defendant's property to "access" the northern portion of his property in order to avoid trampling over his flowerbed and other landscaping features found on the northeast corner of his property. Indeed, Plaintiff is seeking court intervention to solve a

problem of his own creation. It was not Defendant who built the shed on Plaintiff's property, blocking access from the western half of Plaintiff's lot, and it was not Defendant who landscaped Plaintiff's yard in a fashion supposedly "preventing" him access from the northern portion of his lot.

3. Both claims for declaratory judgment should be summarily dismissed. The claim for an express easement fails because the maintenance easement claimed by Plaintiff is not apparent on the face of the Declaration of Covenants, Conditions, and Restrictions. *Cummins v. Travis County Water Control & Improvement Dist. No. 17*, 175 S.W.3d 34, 51 (Tex. App.—Austin 2005, pet. denied).

4. The claim for a prescriptive easement fails simply because Plaintiff cannot prove that he exclusively used Defendant's driveway to ripen to the point of adverse possession necessary to claim an easement by prescription. *Tiller v Lake Alexander Properties, Ltd*, 96 S.W.3d 617, 624 (Tex. App—Texarkana 2002).

5. Based on the summary judgment evidence, set forth below, Defendant has conclusively negated the essential elements of Plaintiff's claim for an express and prescriptive easement to a degree where there is no genuine issue of material fact remains. As a result, Defendant is entitled to summary judgment on Plaintiff's claims, in her favor, as a matter of law.

II. SUMMARY JUDGMENT EVIDENCE

6. In support of Defendant's Traditional Motion for Partial Summary Judgment, Defendants relies on the following pieces of evidence, which are attached hereto and are incorporated by reference herein:

Exhibit A: Declaration of Sonia Bryant;

Exhibit A-1: Letter from Henry Mishkoff, dated and signed September 30, 2020;

Exhibit B: *Declaration of Covenants, Restrictions, and Conditions*, recorded in Book 2150, Page 883 of the Deed Records of Collin County, Texas;

III. FACTS

7. Defendant owns the real property located at 4060 Windhaven Lane, Dallas, Texas 75287 ("Lot 32").[1] Plaintiff owns the neighboring property at 4062 Windhaven Lane, Dallas, Texas 75287 directly south of Bryant's home ("Lot 31").

8. The parties have been at odds with one another over Plaintiff's use of Defendant's property since at least September of 2020—when Plaintiff first wrote a letter to Defendant in response to her calling the police over a specific instance where Plaintiff trespassed onto Defendant's property.[2] In this letter, Plaintiff expressed his reasoning for walking across Defendant's driveway, including his unwillingness to walk through his flowerbed.[3] This letter also describes what activities Plaintiff and his wife conduct while trespassing upon Defendant's driveway (the "disputed area").[4]

9. On March 3, 2022, Plaintiff filed this lawsuit requesting this Court's declaration that he has an express easement across Defendant's driveway, or in the alternative, declare that he has a prescriptive easement across Defendant's driveway. As a basis for Plaintiff's express easement claim he points to the language of the

[1] *See* Ex. A at ¶ 2.
[2] *See id*.
[3] *See id*. at ¶ 5; Ex A-1.
[4] *See* Ex. A-1 at 2.

Declaration of Covenants, Restrictions, and Conditions, concerning the Subdivision, recorded in Book 2150, Page 883 of the Deed Records of Collin County, Texas on June 14, 1985 (the "Declaration of Covenants").[5] However, Exhibit A of the Declaration of Covenants—the instrument identifying, by number, subservient lots and the corresponding easement—does not clearly identify the claimed portion of Plaintiff's driveway as subject to an easement.[6]

IV. LEGAL STANDARD

10. The traditional summary judgment standard is well known. To be entitled to summary judgment, the movant must show by the motion and its supporting evidence that no genuine issue of material fact exists, and that the movant is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *American Tobacco Co., Inc. v. Grinnell*, 951 S.W.2d 420, 425 (Tex. 1997); *Cathey v. Booth*, 900 S.W.2d 339, 341 (Tex. 1995); *Lear Siegler, Inc. v. Perez*, 819 S.W.2d 470, 471 (Tex. 1991); *Casso v. Brand*, 776 S.W.2d at 555-56. When the defendant moves on claims brought by the plaintiff, a defendant who conclusively negates at least one essential element of a cause of action is entitled to summary judgment on that claim. *Severs v. Mira Vista Homeowners Ass'n, Inc.*, 559 S.W.3d 684, 695 (Tex. App.—Fort Worth 2018, pet. denied).

11. After which, the burden then shifts to the non-movant to raise a fact issue to defeat summary judgment. *Casso*, 776 S.W.2d 555-56. To defeat a properly supported motion, the non-movant must produce tangible, admissible evidence

[5] *See* Ex. B.
[6] *See id*. at 10.

raising a fact issue on the movant's claim(s), not merely argument or conclusions. *See Liggett v. Blocher*, 849 S.W.2d 846, 852 (Tex. App.—Houston [1st Dist.] 1993, no writ). Mere conclusory statements do not constitute competent summary judgment proof. *Abbot Labs, Inc. v. Seguar*, 907 S.W.2d 503, 508 (Tex. 1995).

V. ARGUMENT & AUTHORITIES

12. The Court should grant summary judgment on Plaintiff's declaratory judgment claims for prescriptive and express easements because summary judgment evidence conclusively negates at least one essential element of Plaintiff's claims and establishes that no genuine issues of material fact remain to be submitted to the jury, thus entitling Defendant to a judgment in their favor as a matter of law. *See American Tobacco Co., Inc.*, 951 S.W.2d at 425.

A. Defendant Conclusively Negates At Least One Element of Plaintiff's Claim for a Prescriptive Easement

13. "A prescriptive easement is not well-regarded in the law." *Harrington v. Dawson-Conway Ranch, Ltd.,* 372 S.W.3d 711, 716 (Tex.App.—Eastland 2012, pet. denied) (collecting cases). To obtain a prescriptive easement, one must use someone else's land in a manner that is open, notorious, adverse, exclusive, and continuous for a period of ten years or more. *See Brooks v. Jones*, 578 S.W.2d 669, 673 (Tex.1979). The absence of any of these elements is fatal to the prescriptive claim. *Davis v. Carriker*, 536 S.W.2d 246, 250 (Tex.Civ.App.—Amarillo, 1976, writ ref'd n.r.e.).

14. Further, open use without an adverse act that would give notice to the landowner of a claim of right cannot support an easement by prescription:

It has long been the law in Texas that, when a landowner and the

> claimant of an easement both use the same way, the use by the claimant is not exclusive of the owner's use and therefore will not be considered adverse. . . . The easement claimant must exclude, or attempt to exclude, all other persons, including the true property owner, from using the roadway.

Tiller v Lake Alexander Properties, Ltd, 96 S.W.3d 617, 624 (Texarkana 2002); *see Brooks v. Jones*, 578 S.W.2d 669, 673 (Tex.1979). Notably, the "hostile and adverse character of the use necessary to establish an easement by prescription is the same as that which is necessary to establish title by adverse possession." *Harrington*, 372 S.W.3d at 719; see *Othen v. Rosier*, 148 Tex. 485 (1950).

15. Here, summary judgment evidence establishes as a matter of law that Plaintiff's use of the disputed area he claims to have a prescriptive easement is not (1) exclusive, (2) adverse, nor (3) continuous and therefore is not prescriptive easement.

16. *First*, the disputed area is not exclusively used by the Plaintiff because both the Plaintiff and Defendant use the area as a walkway.[7] Most commonly, Defendant uses this portion of her property to drive her vehicle in and out of her carport.[8] Similarly, to Defendant's dismay, evidence shows that Plaintiff also uses the disputed area as an access point to enter Defendant's carport.[9] As admitted in Plaintiff's letter to Defendant, both parties use the area for yard keep, specifically blowing leaves.[10]

17. *Second,* Plaintiff's use of the disputed area is not adverse. Indeed,

[7] *See* Ex. A at ¶ 3; Ex A-1 at 2-3.
[8] *See* Ex. A at ¶ 4.
[9] *See* Ex. A-2.
[10] *See* Ex. A-1 at 2.

Plaintiff has never sought to exclude Defendant, the true property owner, from use of the disputed area.[11] Indeed, throughout Plaintiff's letter to Defendant he repeatedly referred to the disputed area as "your driveway," thereby admitted that Defendant has a right to access and use her driveway.[12] Such evidence clearly shows that Plaintiff's use of the disputed area has never been adverse. *Third*, Plaintiff's use of the property has not been continuous. On multiple occasions, Plaintiff has elected to access the northern portion of their lot without use of the disputed area.[13]

18. For the reasons set forth above, summary judgment evidence shows no genuine issue of material fact that Plaintiff has not used the disputed area (1) exclusively, (2) adversely, nor (3) continuously and therefore negates the elements necessary to establish the existence of a perspective easement. As a result, Defendant is entitled to summary judgment, in her favor, on Plaintiff's claim for a prescriptive easement.

B. Defendant Conclusively Negates At Least One Element of Plaintiff's Claim for an Express Easement.

19. Express easements are created by express grant or reservation in writing and are the most common type of easement in Texas. *Henslee v. Boyd*, 107 S.W. 128 (Tex. Civ. App. 1908, no writ). An express easement is created by written agreement, typically a deed between a grantor and a grantee, which entails the right of a person (or the public) an interest in the land to which the statute of frauds applies. *Cummins v. Travis County Water Control & Improvement Dist. No. 17*, 175

[11] *See* Ex. A at ¶ 4.
[12] *See* Ex. A-1.
[13] *See* Ex. A at ¶ 8; Ex A-3.

S.W.3d 34, 51 (Tex. App.—Austin 2005, pet. denied). In Texas, an express easement must meet the same legal requirements as any real property conveyance. *Parsons v. Hunt*, 98 Tex. 420, 84 S.W. 644, 646 (1905). As such, an easement conveyance must (1) be reduced to writing; (2) express an intent to convey an easement; (3) provide an adequate property description of the servient estate; and (4) be executed by the grantor or an agent of the grantor. TEX. PROP. CODE ANN. § 5.021 (Vernon 1984); *Seber v. Union Pacific R. Co.*, 350 S.W.3d 640 (Tex. App.—Houston [14th Dist.] 2011) (subject to some exceptions, a writing is required to create an easement).

20. In *Cummins v. Travis County Water Control & Improvement Dist. No. 17*, the court noted that "for the statute of frauds to be satisfied, the intent of the parties, the essential terms of the easement, and an adequate description of the easement's location must be apparent from the face of the document, without reference to extrinsic evidence." 175 S.W.3d at 51. The court continued that "if the court cannot determine these elements with reasonable certainty, then no express easement is conveyed." *Id*.

21. Here, summary judgment evidence establishes as a matter of law that Declaration of Covenants supposedly conveying the claimed express easement does not convey an express easement to the Plaintiff. Indeed, the Declaration of Covenants (1) does not express the claimed easement in writing, (2) indicates no intent to convey the same, and (3) lacks an adequate property description of the servient estate, if any description may be found at all.

22. *First,* the easement claimed by Plaintiff is not expressed in writing. For

example, Plaintiff's claim for an express easement hinge on Article II, Section 6 of the Declaration of Covenants which states "[e]ach Owner shall have a nonexclusive easement . . . over and upon the portions of the Affected Lots *within the Maintenance Area associated with such Owner's Affected Lot* for the purposes specified in Article IV. Section l." (emphasis added).[14] Specifically, the Declaration of Covenants states that each Maintenance Area will be designated by number on Exhibit A and correspond with the number of the subservient estate.[15] However, upon closer examination, Exhibit A does not clearly convey any such easement to Plaintiff.[16] The only way to determine what *might* have been intended to be reserved as the Maintenance Area on Defendant's lot would be through inadmissible parole evidence as to what the drafter *intended* the Maintenance Area to encompass.

23. *Second,* the Declaration of Covenants does not intend to convey the easement claimed by Plaintiff. Easements were expressly granted in designated "Maintenance Areas" in order to allow homeowners to fulfill the purposes described in Article IV, Section 1, activities homeowners could not otherwise conduct without the access to an easement.[17] The northern portion of Plaintiff's lot is fully accessible to Plaintiff through his own property and the Article IV Section 1 responsibilities may be fully conducted upon Plaintiff's property without use of Defendant's property.[18] Such an area was never intended by the drafters of the Declaration of Covenants to

[14] *See* Ex. B. at 3.
[15] *See id*. at 1.
[16] *See id*. at 10.
[17] *See* Ex. B. at 6.
[18] *See* Ex. A at ¶ 8; Ex A-3.

be accompanied by an easement. The intent of the drafters was to convey an easement to areas where maintenance of a respective owner's lot was impossible absent the existence on an easement. To be clear, the northern portion of Plaintiff's lot is fully accessible to him without the use of Defendants lot,[19] a fact Plaintiff attempts to avoid simply because he wishes to avoid "tramp[ing] through [his] flowerbed . . . ."[20] Plaintiff's inability to access the northern portion of his lot is a product of his own creation. It was not Defendant who built the shed on Plaintiff's property, blocking access from the western half of Plaintiff's lot, and it was not Defendant who landscaped Plaintiff's yard in a fashion also "preventing" him access to such portion of his lot.

24. *Third,* for the reason's discussed above, the Declaration of Covenants does not adequately describe the servient estates property subject to the easement, notably providing no description at all. Not only does Exhibit A of the Declaration of Covenants not list Lot 32 as a maintenance area, but there is no description of the dimensions or which portion of Defendant's property is subject to an easement.[21]

25. Because summary judgment evidence conclusively negates the elements of an express easement, Defendant is entitled to summary judgment on Plaintiff's claim, in her favor, as a matter of law.

26. Pursuant to TEX. CIV. PRAC. & REM. CODE § 37.009 and any other applicable provision at law or in equity Defendant seeks to recover her reasonable

[19] *See* Ex. A at ¶ 8.
[20] Ex. A-1 at 2.
[21] *See* Ex. B. at 10.

and necessary attorney's fees. Defendant requests a judgment from and against Plaintiff for such attorney's fees established by the Court.

VI. PRAYER

For these reasons, Defendant Sonia Bryant, respectfully requests that this Court Grant her Traditional Motion for Summary Judgment; enter final summary judgment in her favor on Plaintiff's claims for declaratory judgment; award Defendant all of her costs and attorneys' fees incurred over the course of this lawsuit; and such other and further relief, at law or in equity, to which Defendant may be justly entitled.

Respectfully submitted,

SCHEEF & STONE, L.L.P.

/s/ *T. Chase Garrett*

T. Chase Garrett
State Bar No. 24069764
chase.garrett@solidcounsel.com
2600 Network Blvd., Suite 400
Frisco, Texas 75034
(214) 472-2100 Telephone
(214) 472-2150 Telecopier

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on July 7, 2022 a true and correct copy of the foregoing was sent to all parties who have made an appearance or their attorney of record in accordance with Texas Rules of Civil Procedure 21 and 21a.

/s/ *T. Chase Garrett*

T. Chase Garrett

EXHIBIT

A

CAUSE NO. 471-01040-2022

HENRY MISHKOFF	§	**IN THE DISTRICT COURT**
	§	
***Plaintiff*,**	§	
	§	
v.	§	**471st JUDICIAL DISTRICT**
	§	
SONIA BRYANT	§	
	§	
Defendant.	§	**TARRANT COUNTY, TEXAS**

DECLARATION OF SONIA BRYANT
IN SUPPORT OF SUMMARY JUDGMENT

1. "My name is Sonia Bryant. I am over twenty-one years of age and have never been convicted of a felony or a crime involving moral turpitude. I am of sound mind, capable of making this Declaration, fully competent to testify to the matters stated herein and have personal knowledge of each of the matters stated herein. All of the facts and statements contained herein are true and correct and of my personal knowledge.

2. I am the owner of the property located at 4060 Windhaven Lane, Dallas, Texas 75287 ("Lot 32"). My neighbor Henry Mishkoff, the Plaintiff, owns the neighboring property at 4062 Windhaven Lane, Dallas, Texas 75287 ("Lot 31"). The southern portion of my property shares a border with the northern portion of Mr. Mishkoff's property.

3. Mr. Mishkoff, Ms. Mishkoff, and I have interacted on various occasions regarding our respective property lines and the uses of our respective properties. Despite such interactions, Mr. Mishkoff and his wife continue to access my property without my permission. Most commonly, Mr. Mishkoff and Ms. Mishkoff' will walk across my driveway located on the southeast portion of my property to blow leaves, feed squirrels, and access my carport located on my property adjacent to my driveway.

4. Nearly every day I access my carport and the road by traversing across my driveway. I also have leaves removed from the driveway. At no point has Mr. Mishkoff attempted to block my access to and use of my driveway.

5. Related to such interactions, on September 30, 2020, Mr. Mishkoff wrote me a letter in response to my decision to call the police in an attempt to gather some sort of assistance to stop he and his wife's continual trespass onto my property. A true and correct copy of the letter is attached hereto as **Exhibit A-1**. Mr. Mishkoff duly signed the letter.

6. Because I am a single working mother who cannot always be present at my home where my son also lives, I have placed multiple security cameras on my property to help bring peace of mind. I have also used the security camera to document Mr. Mishkoff and Ms. Mishkoff's persistent trespasses onto my property, One security camera is located in my carport and captures images of activity inside the same. A second security camera is located on the southern half of my home and captures images of my driveway that runs adjacent to the northern portion of Mr. Mishkoff's property.

7. I have engaged the law firm of Scheef & Stone, LLP and have agreed to pay its reasonable and necessary attorney's fees in prosecuting this action.

8. My date of birth is 08/30/1971. My address is 4060 Windhaven Lane, Dallas, Texas 75287. I submit this declaration under the penalty of perjury in lieu of an affidavit, as authorized by TEX. CIV. PRAC. & REM. CODE § 132.001. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Collin County, State of Texas, on 7/7/2022.

DocuSigned by:
8D0863A4D4014DE...
Sonia Bryant

HANK
MISHKOFF

EXHIBIT
A-1

September 30, 2020

Sonia Bryant
4060 Windhaven Lane
Dallas, TX 75287

Sonia:

I'm writing this in response to a couple of incidents that you precipitated in late August.

First, you confronted Donna while she was blowing leaves off your driveway and you threatened to call the police.

Second, you actually did call the police a few days later.

Both of these incidents were disturbing and completely unwarranted. I consider them both to be harassment, which we will not tolerate. You may have already received a letter from our attorney (if not, you probably will within a few days), but his letter may be couched in legalese, and I wanted to write to you directly and in my own words to eliminate the possibility that there could be any misunderstanding.

The short version of this letter is: We are going to continue to perform certain activities in which we have engaged for 34 years. If you don't like it, sue us. If you call the police, we may or may not talk to them. If you harass Donna or me again, either in person or by calling the police, we may respond either by exercising our property rights in ways that you might not like, or by initiating legal action against you (or both).

Donna has blown leaves from the cul-de-sac for more than 30 years. She has cleared our driveway and the common driveways we share with our neighbors. She has cleared leaves from our neighbors' lawns. She has cleared leaves from the pavement of the cul-de-sac and blown them all the way into the street. I have seen her spend more than an hour at a time doing this, and it is hard work. She does it because she cares for the way our cul-de-sac looks and she wants it to be a pleasant place to live.

She gets almost no help from our neighbors and has received very little in the way of thanks.

But until last month, nobody had ever threatened her for her efforts.

If you don't want us on your property, that's your prerogative. But why would you object to a neighbor volunteering to clean your driveway? We can't force you to be a good neighbor, but I

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don't understand why you'd be so nasty to someone who's just trying to help you.

And to make it worse, I've learned that you ordered Donna off her own property! Donna is still upset about the incident, and it turns out that it was not only unnecessary, it was also illegal. The policewoman with whom I spoke said that you were familiar with your property lines – but either you lied to her, or you ***are*** familiar with them and you harassed Donna anyway, even though you knew she was on her own property. I don't know which is worse.

Here are some of the activities in which Donna and I will continue to engage any time we feel like it. None of these is unusual, and all of them are activities in which we have engaged for decades without any complaints from our neighbors. (And because we have engaged in these activities for all that time, we probably have an implied easement – but that would be for a court to decide, if it comes to that.)

- We will continue to drop seeds and nuts out of our window onto our property below, to feed the birds and squirrels. You asked us not to throw seeds and nuts onto the roof of your carport – and although we are baffled about why you would ask us to stop doing something that brings us so much pleasure and causes you no harm, we have honored your request. However, next time you call the police because a squirrel picked up a nut and left a piece of the shell on your driveway, we will consider that to be harassment and we will take appropriate action. (Calling the police on us because we fed a squirrel that then dropped a single peanut shell on your driveway is as petty as if we were to call the police on you when you let your cats go outside without being leashed. The difference is that it's perfectly legal for us to feed the squirrels, while it's illegal for you to let your cats go outdoors untethered.)

- We will continue to walk across your driveway as necessary to access the strip of our land on the north side of our house, which we may need to do, for example, to access our circuit breakers and utility connections. The only other way for us to access the north side of our house would be for us to tramp through our flower bed and to push our way through the branches of a tree, which we will not do. The developer of our subdivision should not have constructed the relationship between these properties so awkwardly, but the developer probably expected neighbors to be reasonable, as has been the case here for 34 years. It's sad that after all this time I actually have to put these common-sense issues into writing – but if that's what I have to do to stop you from harassing us, then that's what I have to do.

- Donna will continue to blow leaves from the north side of our house, because to neglect that duty would be unsightly and would create a fire hazard. Some of the leaves Donna blows off our property will end up on your driveway and in your carport, there is simply no way around that. For decades, Donna has simply blown the leaves from what is now your driveway and carport, as she does not feel that it would be considerate and proper to leave them there. However, you have strongly indicated that you no longer wish Donna to do that, so those leaves will remain on your driveway and in your carport. (By the way, your lawn-maintenance company blows leaves and dirt onto our property. We expect them to clean up that debris.)

- In order to paint the north side of our house or to clean the windows or to perform other maintenance, we may have to place the feet of our ladders and other equipment on your driveway, which we will do. Again, I don't know why the developers built these properties in such a way that we cannot maintain our property without using yours, but they did, and that's the way it is. To access the upper reaches of our north wall we will have to set ladders on your carport – we've done it before, and there is simply no alternative. (Other maintenance activities may require us to stand on the roof of your carport as well.) Or we could just force you to tear down your carport, as it was probably built without a permit, and it definitely encroaches on our property, but that doesn't strike me as a reasonable and neighborly thing to do – and if you decide to be reasonable and neighborly, so will we.

- In order to paint or otherwise maintain the back of our shed, we will have to walk to the back of your carport and roll up the shade you mounted there. (In fact, we may have to temporarily remove the shade to access our shed.) I don't know that we will ever need to do that – but if the occasion arises when this is necessary, that's exactly what we'll do.

A couple of other related issues:

- The roof of your carport is connected to the roof of our shed. This is to protect our shed, because water running off the roof of your carport has caused severe and expensive damage to our shed in the past. The roof of your carport extends over our property, which is illegal, and which we could force you to correct, although we are not asking you to do that at this time. Water from the roof of your carport runs off onto our property, which is also illegal – and as I said, it has caused significant damage to our shed in the past. At this time, we're not inclined to force you to change anything about the carport, because the situation seems to be stabilized. However, if you do anything to alter the connection between the roof of your carport and the roof of our shed, you will force us to take immediate legal action to remedy the situation.

- I can't tell you how disgusting it is that you've pointed a video camera at our bedroom window – which is certainly intrusive, and which is probably illegal. We use that room primarily as an office, but Donna's closet is in that room, as is her bathroom. Are you watching her as she gets dressed? Can you see her in reflections from the TV and PC screens? Can we expect those videos to appear on YouTube? Or are you only spying on her as she enters passwords into her computer? (At least we'll know who to blame if our bank account gets hacked.) I know you'll say that the camera is for security purposes and that your view into our bedroom is only incidental, but we both know that's not the case. For one thing, the camera appeared the day after your confrontation with Donna, and it was obviously designed to intimidate us after that incident. But more to the point, you now have a camera at your front door which covers the approach to your carport, making your "bedroom cam" totally redundant.

Part of the problem seems to be that, despite what you apparently told the police officer who later spoke with me, you are totally unfamiliar with the boundaries of your property. I've included a survey, which might help to clear that up. Do you see the solid black lines with white dots at the four corners? That's the extent of your property. As you see, the eastern boundary of your property is four feet from your house. In other words, your property extends roughly to the edge of your flowerbed (and actually, some of your flowerbed is probably ***our*** property).

So, you ask, who owns the rest of "your" front lawn?

As you'll notice if you look at the survey, our lot (to the south of yours) is number 31. And if you look to the east of your property, you'll see a ten-foot-wide strip of land that's also labeled Lot 31, extending from the eastern edge of your property (remember, that's roughly the edge of your flowerbed) to the trees. The next easternmost 10 feet of land belongs to the owners of Lot 30, which is the house in the southwest corner of the cul-de-sac.

In other words: The first 20 feet of "your" lawn and "your" driveway do not belong to you at all. Half of that property is owned by Donna and me. We own it, you don't. We pay taxes on it, you don't. You have non-exclusive access to it as an easement, but it's ***our*** property, not yours. (By the way: We're thinking of mounting a bird-and-squirrel feeder on one of the trees, facing your front windows, so we can see it from our windows. Since the west sides of those tree trunks are entirely on our property, we would neither require nor seek your permission to do that.)

This is a crude and approximate depiction, but the property between the two red lines belongs to Donna and me.

I wasn't really aware of any of these property issues until you decided to harass my wife and call the police on her for daring to clear leaves from your driveway. It took me a lot of research into some obscure documents to understand what was going on, but now I'm certain that you kicked her off her own property.

Now that I know that this strip of land is our property, we're trying to figure out what we want to do with it. We're thinking, for example, that we might want to pave it, so that we'll be able to save time on our daily walk to and from the mailbox. We'll wave at you as we walk by, four feet from your front windows.

By the way, I'm not really serious about paving a ten-foot path through "your" front yard. I'm just pointing out that there are things we can do if you do not refrain from harassing us.

For example: Among the other things I learned from my research is that the fascia and roof of your carport overhang our property, which means that they're not legal. We could force you to remove them, which might weaken your carport to the extent that you'd have to remove the whole thing. And I'll bet that the foundations of your carport posts also extend onto our property, which means that we could take a concrete saw and trim those foundations at any time, which could also cause you to have to remove your carport. (By the way, we've been thinking about mounting a bird-and-squirrel feeder on the fascia of your carport – and since, like the trees, the carport fascia is on our property, we would neither require nor seek your permission to do that.)

These issues with your carport have led me to wonder how the builders could have been granted a building permit, which is yet another reason why you might have to tear it down. I'm working with the city to try to determine if the permit exists, but they're understandably slow right now, so I haven't yet reached a conclusion about this issue.

Having said all that, Sonia: If you will refrain from harassing us, we will have no reason to ask you to modify or remove your carport.

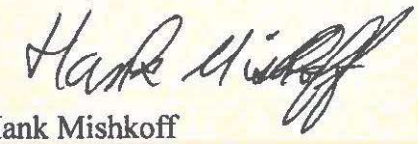
The bottom line is: If you will start acting like a good neighbor, we will continue to act like good neighbors, as we've been doing for decades. But if you persist in harassing us, either in person or by calling the police, our motivation for continuing to be good neighbors could disappear at any time.

I would be happy to discuss this with you further, but only in writing, preferably via email (Hank@WebFeats.com). I will discuss the situation only with you – Brian seems like a very nice person, and I'm sure I'd enjoy speaking with him, but it's not his house, and I want to deal directly with you on this issue. Also, I don't want you to involve Donna in any discussion about this situation – she's still angry and upset that you ordered her off her own property, and I don't see any reason to upset her any further.

As I mentioned earlier, you may have already heard from our attorney, and his letter may have asked you to respond to him, rather than to me. However, I've decided that I'd rather deal with you directly, so I'd prefer that you respond to me instead of to him. (If you respond to him, I'm just going to ask him to forward your response to me, anyway.) And if you decide to hire your own lawyer to address this situation, please ask your lawyer to communicate directly with me, rather than communicating with me through our attorney. (Frankly, I hate to spend more money on an attorney just because I have a nasty neighbor – but I'm prepared to do that if I have to.)

In summary: I recognize that there's nothing I can do to turn you into a good neighbor. So instead, I want to make sure that you no longer harass Donna and me, either in person or by calling the police. If you refuse to refrain from those kinds of disturbing actions, there will be repercussions along the lines of those I've outlined in this letter.

Sincerely,



Hank Mishkoff
Hank@WebFeats.com

EXHIBIT

B

STATE OF TEXAS)
)
COUNTY OF COLLIN)

VOL 2150 PAGE 883

36247

DECLARATION OF COVENANTS, RESTRICTIONS AND CONDITIONS (BENTLY COURT Dallas, Texas)

This Declaration is made on the date hereinafter set forth by Fox & Jacobs, Inc., a Nevada corporation, hereinafter called "Declarant".

RECITALS:

The following facts exist:

A. Declarant is the owner of that certain property known as the Bently Court Addition, a subdivision in the City of Dallas, Collin County, Texas, according to the map or plat thereof recorded in Cabinet D, Page 150, as modified by replat filed in Cabinet F, Page 242, of the Deed Records of Collin County, Texas, as amended and/or replatted from time to time in accordance with state laws and municipal ordinances applicable thereto.

B. Declarant desires to restrict the above-described property as more particularly provided in this Declaration of Covenants, Restrictions and Conditions in order to establish a uniform plan for the development, improvement and sale of the lots in the above-described property, and to insure the preservation of such uniform plan for the benefit of both the present and future owners of such lots.

NOW, THEREFORE, Declarant does hereby adopt, establish and impose the following restrictions, reservations, covenants and conditions upon the above-described property, which shall constitute covenants running with the title of such property and be binding upon and inure to the benefit of Declarant, its successors, assigns and each and all of such beneficiaries.

ARTICLE I

DEFINITIONS

Section 1. "Properties" shall mean and refer to all land described in Recital A., above, which is subject to the reservations set forth herein, and "Subdivision" shall mean and refer to the Bently Court Addition as depicted on the Subdivision Plat, as hereinafter defined.

Section 2. "Affected Lot" or "Affected Lots" shall mean and refer to the plot or plots of land described in Recital A., above, shown upon the Subdivision Plat, with the exception of any portion of such plots which may be designated or described on the Subdivision Plat as "Not Platted" or "Reserve" or with words of similar meaning

Section 3. "Declarant" shall mean and refer to Fox & Jacobs, Inc. or its successors and assigns, including, but not limited to, any person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, which acquires all or substantially all of the properties then owned by Fox & Jacobs, Inc. (or subsequent successors in interest), together with its rights hereunder, by conveyance or assignment from Fox & Jacobs, Inc., or by judicial or non-judicial foreclosure, for the purpose of development and/or construction on the Properties.

Section 4. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Affected Lot but excluding those whose interest is held merely as security for the performance of an obligation.

Section 5. "Subdivision Plat" shall mean and refer to the map or plat of the Subdivision recorded in Cabinet D, Page 150, as modified by replat filed in Cabinet F, Page 242, of the Deed Records of the County, as amended and/or replatted from time to time in accordance with state laws and municipal ordinances applicable thereto.

Section 6. "Unit" shall mean and refer to the structure which Declarant intends to construct and in fact constructs on an Affected Lot for occupancy by one person or one family. "Clustered Units" shall mean and refer to that group of detached units adjacent to each common drive, as hereinafter defined, in the subdivision.

Section 7. "Common Drive" shall mean and refer to the paved courtyard, sidewalk, and drive providing access to Clustered Units from dedicated streets, located between the Affected Lots immediately adjacent to such dedicated streets and within the easement therefor reserved herein, designated on the Subdivision Plat as located within access and utility easements.

Section 8. "Maintenance Area" shall mean and refer to that portion of each Affected Lot, and areas adjacent thereto, designated by number on Exhibit A attached hereto and incorporated herein by reference for all purposes, the maintenance and repair responsibilities for which shall be borne by the Owner of the Affected Lot numbered with the same number as such Maintenance Area.

Section 9. "City" shall mean and refer to the City of Dallas. "County" shall mean and refer to Collin County, Texas.

ARTICLE II

RESERVATIONS, EXCEPTIONS AND DECLARATIONS

Section 1. Easements. Declarant reserves the easements and rights-of-way as shown on the Subdivision Plat for the purpose of constructing, maintaining and repairing a system or systems of electric lighting, electric power, telegraph and telephone line or lines, gas, sewers, cable television or any other utility Declarant sees fit to install in, across or under the Properties. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the improvements. Neither Declarant nor any utility company nor any authorized political subdivision using the easements herein referred to shall be liable for any damages done by them or their assigns, their agents, employees or servants, to fences, shrubbery, trees or flowers or any other property of the Owner on the land covered by said easements. All easements, as filed on record, are reserved for the mutual use and accommodation of garbage collectors and all public utilities desiring to use same. Any public utility shall have the right to remove and keep all or part of any buildings, fences, trees, shrubs, or other improvements or growths which in any way endanger or interfere with the construction, maintenance, or efficiency of its utility system on any easement strips, and any public utility shall, at all times, have the right of egress and ingress to and from and upon said easement strips for the purpose of constructing, reconstructing, inspecting, patrolling, maintaining, and adding to or removing all or any part of its utility system without the necessity at any time of procuring the permission of anyone.

Section 2. Installation of Paving. Declarant reserves the right, during installation of paving of the streets as shown on the Subdivision Plat, to enter onto any of the Properties for the purpose of street excavation, including the removal of any trees, if necessary, whether or not the Properties have been conveyed to or contracted for sale to any other Owner.

Section 3. Title Subject to Easements. It is expressly agreed and understood that the title conveyed by Declarant to any of the Properties shall be subject to any easement affecting same for roadways or drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph, telephone, or cable television purposes as pictured on the Subdivision Plat or as installed, and shall convey no interest in any pipes, lines, poles or conduits, or in any utility facility or appurtenances thereto constructed by or under Delcarant or any easement owner or any agents through, along, or upon the premises affected thereby, or any part thereof, to serve said land or any other portion of the Properties. The right to maintain, repair, sell or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved.

Section 4. Access to Common Drives.

(a) Each Owner of an Affected Lot which is located in a group of Clustered Units shall have a nonexclusive easement (which is hereby reserved by Declarant in his behalf) upon, over and across the paved portion of other Affected Lots in such group of Clustered Units to the extent necessary to allow vehicular access from such owner's garage to the Common Drive serving the group of Clustered Units in which such Owner resides.

(b) Each Owner of an Affected Lot which is located in a group of Clustered Units shall have a nonexclusive easement (which is hereby reserved by Declarant in his behalf) for the purposes described in this Section 4(b) upon, over and across the Common Drive serving the group of Clustered Units in which such Owner resides. Such nonexclusive easement shall be for the purposes of (i) access to and from such Owner's property to and from a dedicated street and (ii) the installation, maintenance and repair of utility and sewer services to such Owner's property (if any) located beneath the Common Drive. It is specifically provided that each Owner's entry upon the property affected by the easements herein reserved shall be made with due consideration for other Owners within the group of Clustered Units and without obstruction to the passage of others over the Common Drive.

Section 5. Water, Sewer and Drainage. Declarant hereby reserves for itself the right to place connecting lines for all utility and sewer systems, including water, gas (if any) and sewer main connections, and drainage facilities on or under any Affected Lot for service to and drainage of such lot and other Affected Lots. An easement shall exist on any Affected Lot for such connecting lines and drainage facilities as the same are installed and Declarant hereby reserves an easement on any Affected Lot on which connecting lines are installed for their use and maintenance in favor of the Owner of any property which is served by or drains into such lines, provided that any entry upon the property on which the connecting lines are located shall be made with as little inconvenience to the Owner thereof as practical.

Section 6. Easement for Maintenance Purposes. Each Owner shall have a nonexclusive easement (which is hereby reserved by Defendant in his behalf) over and upon the portions of the Affected Lots within the Maintenance Area associated with such Owner's Affected Lot for the purposes specified in Article IV, Section 1.

Section 7. Encroachments; Overhang Easement.

(a) Declarant hereby reserves for itself and each Owner an easement and right to overhang each Affected Lot with the roof of any Unit as any such roof is originally constructed or substantially repaired by necessity, but not otherwise.

(b) If any portion of any Unit or any carport now encroaches upon any other Affected Lot or the property of any Owner other than the Owner of such Unit, or if any Unit hereafter constructed encroaches upon any other Affected Lot or the property of any Owner other than the Owner of such Unit, or if any such encroachment shall occur hereafter as a result of settling or shifting of the building, a valid easement for the encroachment and for the maintenance of the

same shall exist so long as the building shall stand. In the event any Unit shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings and then rebuilt, encroachment easements due to such rebuilding shall exist for such encroachments and maintenance thereof for so long as the building shall stand to the same extent and degree as such initial encroachments.

ARTICLE III

USE RESTRICTIONS

Section 1. Land Use and Building Type. All Affected Lots shall be known, described and used for residential purposes only and no structure shall be erected, altered, placed, or permitted to remain on any Affected Lot other than one single family residence not to exceed two (2) stories in height. No Affected Lot shall be used for business or professional purposes of any kind or for any commercial or manufacturing purpose. No building of any kind or character shall ever be moved onto any Affected Lot, it being the intention that only new construction shall be placed and erected thereon.

Section 2. Dwelling Size. The main residential portion of each Unit shall have a minimum floor area equal to or greater than the applicable zoning requirements of the City, and in any event shall be equal to or greater than 600 square feet.

Section 3. Type of Construction, Materials, and Landscape.

(a) No Unit shall be erected on an Affected Lot of materials other than brick, stone, brick-veneer, stone veneer, stucco type material, or other masonry materials unless the above named materials constitute at least sixty percent (60%) of the total outside wall areas. Gables or other exterior areas above a height of the top of standard height first floor windows are excluded from this requirement.

(b) No fence or wall shall be erected, placed, or altered on any Affected Lot nearer to the boundaries of the such Affected Lot than the applicable zoning requirements of the city and no fence or wall shall exceed eight (8) feet in height above ground level.

Section 4. Building Location. The Subdivision Plat shall comply with applicable zoning requirements of the City and Units will be located not less than each of the required distances from the front, side and rear property lines to building line established by applicable zoning requirements (if the zoning laws establish any such minimum set-back requirement).

Section 5. Minimum Lot Area. No Owner's Property shall be resubdivided.

Section 6. Annoyance or Nuisances. No noxious or offensive activity shall be carried on upon any portion of the Properties. Nothing shall be done upon any Affected Lot which may be or become an annoyance or a nuisance to the neighborhood.

Section 7. Temporary Structures.

(a) No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn or other outbuilding shall be maintained or used on any Affected Lot at any time as a residence, either temporarily or permanently; provided, however,

(i) Declarant reserves the exclusive right to erect, place and maintain such facilities in or upon any portions of the Properties as in its sole discretion may be necessary or convenient while selling Affected Lots or portions thereof, selling or constructing Units and constructing other improvements upon

the Properties. Such facilities include, but are not limited to, sales and construction offices, storage areas, model units, signs, and portable toilet facilities.

(ii) Anything contained in these restrictions to the contrary notwithstanding, there shall be permitted on Affected Lots the use of a dog house, so long as said dog house is not of unreasonable size and is so placed on an Affected Lot so as not to be visible from the front street side of the buildings.

(b) Except as otherwise provided in paragraphs (i) and (ii) no truck, camper, motor home, trailer or vehicle of any type (whether or not operable) or boat (whether powered, sail or otherwise) may be parked, kept or stored on any Affected Lot (except in a garage) or in any street for more than thirty-six (36) hours during any seventy-two (72) hour period or parked, kept or stored at any time adjacent to the curb fronting the portion of the Common Drive between the courtyard portion thereof and the nearest dedicated street.

(i) A trailer, camper, operable vehicle, motor home or boat may be parked, kept or stored on any Affected Lot behind the back building line of the Unit. An "operable vehicle" shall be one in usable, running condition.

(ii) A trailer, camper, motor home or boat may be parked, kept or stored on any Affected Lot behind the front building line, provided that the Owner maintains a solid wooden fence with no gaps between the Unit and each of the side lot lines of the Affected Lot, said fence to shield from view from the front and side street the parked or stored trailer, camper, motor home or boat.

Section 8. Signs and Billboards. No signs, billboards, posters, or advertising devices of any character shall be erected, permitted, or maintained on any Affected Lot or Unit except one sign of not more than ten (10) square feet in surface area advertising the particular Owner's Property on which the sign is situated for sale or rent. The right is reserved by Declarant to construct and maintain such signs, billboards or advertising devices as are customary in connection with the general sale of residential property.

Section 9. Oil and Mining Operations. No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Affected Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Affected Lot. No derrick or other structure designed for use in boring for oil or natural gas or other minerals shall be erected, maintained or permitted upon any Affected Lot.

Section 10. Storage and Disposal of Garbage and Refuse. Owners shall abide by all the rules, regulations and ordinances duly enacted by the City including all such ordinances as they relate to storage and disposal of garbage, rubbish, trash or refuse which ordinances, as and when enacted, are incorporated herein by reference. No Affected Lot shall be used or maintained as a dumping ground for rubbish or garbage. Trash, garbage or other waste materials shall not be kept except in sanitary receptacles constructed of metal, plastic or masonry materials with sanitary covers or lids or as otherwise required by the City. All equipment for the storage or disposal of such waste materials shall be kept in clean and sanitary condition. No Affected Lot shall be used for the open storage of any materials whatsoever which materials are visible from the street, except that new building materials used in the construction of improvements erected upon any Affected Lot may be placed upon such lot at the time construction is commenced and may be maintained thereon for a reasonable time, until the completion of the improvements, after which these materials shall either be removed from the Affected Lot or stored in a suitable enclosure on the Affected Lot.

Section 11. Visual Obstructions at the Intersections of Public Streets. No object, including vegetation, shall be permitted on any corner lot which either (i) obstructs reasonably safe and clear visibility of pedestrian or vehicular traffic through sight lines parallel to the ground surface at elevations between two feet

(2') and six feet (6') above the roadways, or (ii) lies within a triangular area on any corner lot described by three points, two such points being at the edge of the paving abutting said corner lot and at the end of twenty-five feet (25') back along the curb on the two intersecting streets abutting said corner lot, and the third point being the center of the corner curb abutting said lot.

Section 12. Antennae. No radio or television aerial wires or antennae shall be maintained on any portion of any Affected Lot forward of the front building line of said lot nor shall any free-standing antennae of any style be permitted to extend more than twenty (20) feet above the roof of the main residential structure on said lot. No Owner shall install or maintain radio or television aerial wires or antennae in airspace over an adjoining Affected Lot.

Section 13. Animals. No person owning any lot or lots shall keep domestic animals of a kind ordinarily used for commercial purposes on his Property, and no person owning any Lot or Lots shall keep any animals in numbers in excess of that which he may use for the purpose of companionship of the private family, it being the purpose and intention hereof to restrict the use of said property so that no person shall quarter on the premises horses, cows, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with the quietude, health or safety of the community.

Section 14. Burning and Burned Houses. No person shall be permitted to burn anything on any Affected Lot outside the main residential building. In the event that any Unit has burned and is thereafter abandoned for at least thirty (30) days, Declarant shall have the right (but no obligation whatsoever), after ten (10) days written notice to the record owner of the residence, to cause the burned and abandoned Unit to be removed and the remains cleared, the expense of such removal and clearing to be charged to and paid by the record owner. In the event of such removal and clearing by Declarant, Declarant shall not be liable in trespass or for damages, expenses, costs or otherwise to Owner for such removal and clearing.

ARTICLE IV

MAINTENANCE AND REPAIR OF UNITS AND MAINTENANCE AREAS; IMPROVEMENTS

Section 1. Unit Exterior and Lot Maintenance. Each Owner shall maintain the exterior of his Unit in an attractive manner and shall not permit the paint, roof, rain gutters, downspouts, exterior walls, windows, doors, walks, driveways, parking areas and other exterior portions of his Unit to deteriorate in an unattractive manner. The drying of clothes on front yards is prohibited and the owner of any Affected Lot at the intersection of streets or adjacent to parks, playgrounds or other facilities where the rear yard or portion of the Affected Lot is visible to full public view shall construct and maintain a drying yard or other suitable enclosure to screen from public view the drying of clothes, yard equipment, and woodpiles or storage piles which are incident to the normal residential requirements of a typical family. Each Owner shall also maintain in an attractive manner and repair when reasonably necessary the grass, shrubbery, trees, other landscaping and sidewalks within the Maintenance Area designated on Exhibit A hereto with the same number as the Affected Lot owned by him. Each Owner shall be permitted, but shall not be required, to plant additional grass, shrubbery, trees or other greenery in the Maintenance Area with the same number as the Affected Lot owned by him, but only after approval of the Architectural Control Committee as provided herein. No Owner shall have the right to landscape any portion of the Properties, including such Owner's Affected Lot, other than that portion included in the Maintenance Area associated with such Owner's lot.

Section 2. Common Drives.

(a) All reasonable costs of necessary restoration, repair and maintenance of Common Drives shall be shared equally, on a prorata basis, by the Owners of the Clustered Units served by such Common Drive. Nothing contained herein shall prevent or prohibit an Owner from seeking a larger contribution than would otherwise be due hereunder if a larger contribution would be due under any rule of law regarding liability for negligence or willful acts or omissions.

(b) Any Owner of an Affected Unit whose utility pipes are located beneath a Common Drive shall have the right to break through the Common Drive for the purpose of repairing or restoring sewage or water pipes or the electrical system, subject to the obligation to restore the Common Drive to its previous structural condition at the repairing party's expense, and to provide adjoining Owners with reasonable access upon, over and through the Common Drive during the repairs.

Section 3. Additions and Exterior Improvements. No Owner shall make any addition to, modification of or alteration of the exterior of his Unit, substantial change of the landscaping of his Unit or any change in the color of any part of the exterior of his Unit, rebuild a Unit after substantial casualty damage other than as originally constructed or construct a new Unit or other structure on his Affected Lot unless such addition rebuilding or change has been approved in writing by the Architectural Control Committee.

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment. There is hereby established an Architectural Control Committee for the Subdivision for the purposes set forth in this Declaration.

Section 2. Composition. Declarant shall have the right to designate the members of the Architectural Control Committee (the "Committee") so long as it owns any portion of the Properties. There shall be three (3) members of the Committee. After Declarant no longer owns any portion of the Properties, it shall no longer have any right to appoint members to the Committee. Thereafter, in the event of the resignation, continued absence, failure to function or death of any single member, the two members of the Committee remaining from time to time shall have full authority to designate the third member, or if there are fewer than two members remaining at any time (or if any two remaining members cannot agree on the appointment of the third member), the Committee vacancies shall be filled by popular vote of the Owners of the Affected Lots on persons nominated by any such Owner.

Section 3. Functions. No building, fence, wall, or other structure shall be commenced, erected, or maintained upon any Affected Lot, nor shall any exterior addition to, or change or alteration therein, be made, nor shall any landscaping of any Affected Lot be undertaken, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to, and approved in writing by, the Committee as to harmony of external design and location in relation to surrounding structures and topography. In the event that any plans and specifications are submitted to the Committee as provided herein, and the Committee shall fail either to approve or reject such plans and specifications for a period of fifteen (15) days following such submission, such failure shall be deemed to be an approval by the Committee for all purposes.

ARTICLE VI

MAINTENANCE ASSOCIATIONS

Section 1. Establishment. There is hereby established a separate Maintenance Association (referred to individually as the "Maintenance Association") for each group of Clustered Units in the subdivision for the purpose

of maintaining and repairing the Common Drive serving such Clustered Units.

Section 2. Composition. Declarant shall have the right to designate the members of each Maintenance Association so long as it owns any Affected Lot subject to the jurisdiction of such Maintenance Association.
There shall be one committee member per Affected Lot within each group of Clustered Units. Each Owner whose property adjoins the Common Drive in question shall have the right to appoint a member to the Maintenance Association for such Common Drive after Declarant no longer owns any Affected Lot adjoining such Common Drive.

Section 3. Function. The function of the Maintenance Association shall be to determine the necessity for maintenance of and repairs to the Common Drive. Whenever the Maintenance Association shall determine, by the affirmative vote of a majority of its members in accordance with the terms hereof, that any such maintenance or repairs are necessary, the Owners who are liable for the cost of such repairs shall contract with such contractors as they may mutually agree upon and cause the maintenance or repairs to be performed. In the event any Owner who, by the terms of this Declaration, is liable for a portion of the cost of Common Drive maintenance and/or repairs, fails or refuses to contribute his prorata share of such costs promptly upon request by the Maintenance Association, the Maintenance Association shall have the authority to enforce the provisions hereof on behalf of the contributing Owners against the defaulting Owner, who shall be liable to the contributing Owners for the attorney's fees and costs reasonably incurred by the contributing Owners, through the Maintenance Association, in collecting the amounts due hereunder.

Section 4. Meetings. Maintenance Association meetings shall be held upon fifteen (15) days prior written notice to all Owners of Clustered Units whose property adjoins the Common Drive in question by any member thereof, specifying the time and place of such proposed meeting. A quorum shall be composed of three-fourths or more of the members of the Maintenance Association.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Term. Unless earlier terminated in accordance with this instrument, the foregoing building and use restrictions which are hereby made conditions subsequent running with the land shall remain in force and effect for thirty (30) years from the date of this instrument at which time the same shall be automatically extended for successive periods of ten (10) years unless a majority vote of the then property owners of the Affected Lots shall agree in writing to change said conditions and covenants in whole or in part.

Section 2. Adjacent Property. No obligation is created hereby with respect to property adjacent to or adjoining the Properties and which is part of the Subdivision or of any larger tract of land owned by Declarant. While Declarant may subdivide other portions of its property, or may subject same to a declaration such as this Declaration, the Declarant shall have no obligation to do so. Any Subdivision Plat or Declaration executed by Declarant with respect to any of its other property may be the same or similar or dissimilar to the Subdivision Plat covering the Properties or any part thereof, or to this Declaration.

Section 3. Enforcement. If any person shall violate or attempt to violate any of the covenants herein, it shall be lawful for any Owner situated in said Properties, including Declarant, to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages for such violation.

Section 4. Severability. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

Section 5. Existing Liens. Violation or failure to comply with the foregoing restrictions, covenants, and conditions shall in no way affect the validity of any mortgage, loan or bona fide lien which may, in good faith, be then existing on any affected lot.

Section 6. Amendment by Declarant. Declarant reserves the right in its sole discretion and without joinder of any Owner at any time so long as it is Owner of a majority of the Affected Lots, to amend, revise, or abolish any one or more of the foregoing restrictions by instrument duly executed and acknowledged by it as the developer and filed in the Deed Records of the County.

Section 7. Exclusions. These restrictions shall not extend to or cover any portion of the Properties which is or may hereafter be designated or described on the Subdivision Plat or in Exhibit A, if any, attached hereto and made a part hereof for all purposes with the terms "Not Platted" or "Reserve", or with words or terms of similar meaning. Moreover, these restrictions shall not extend to or cover any portion of the Properties upon which no private dwelling is constructed within five (5) years of the date hereof and which property is hereafter, at any time, re-zoned by any city government in which the property is or may be located with a classification other than that existing on the date hereof.

EXECUTED this the 11 day of JUNE, 1985.

ATTEST:

Assistant Secretary

FOX & JACOBS, INC.

By Carl Barcellona
Name: Carl Barcellona
Its: President - Specialty Division

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on June 11, 1985 by Carl Barcellona, President of Fox & Jacobs, Inc., a Nevada corporation, on behalf of said corporation.

Name: Diane Bonstead
Notary Public, State of Texas

My Commission Expires:
11/23/85

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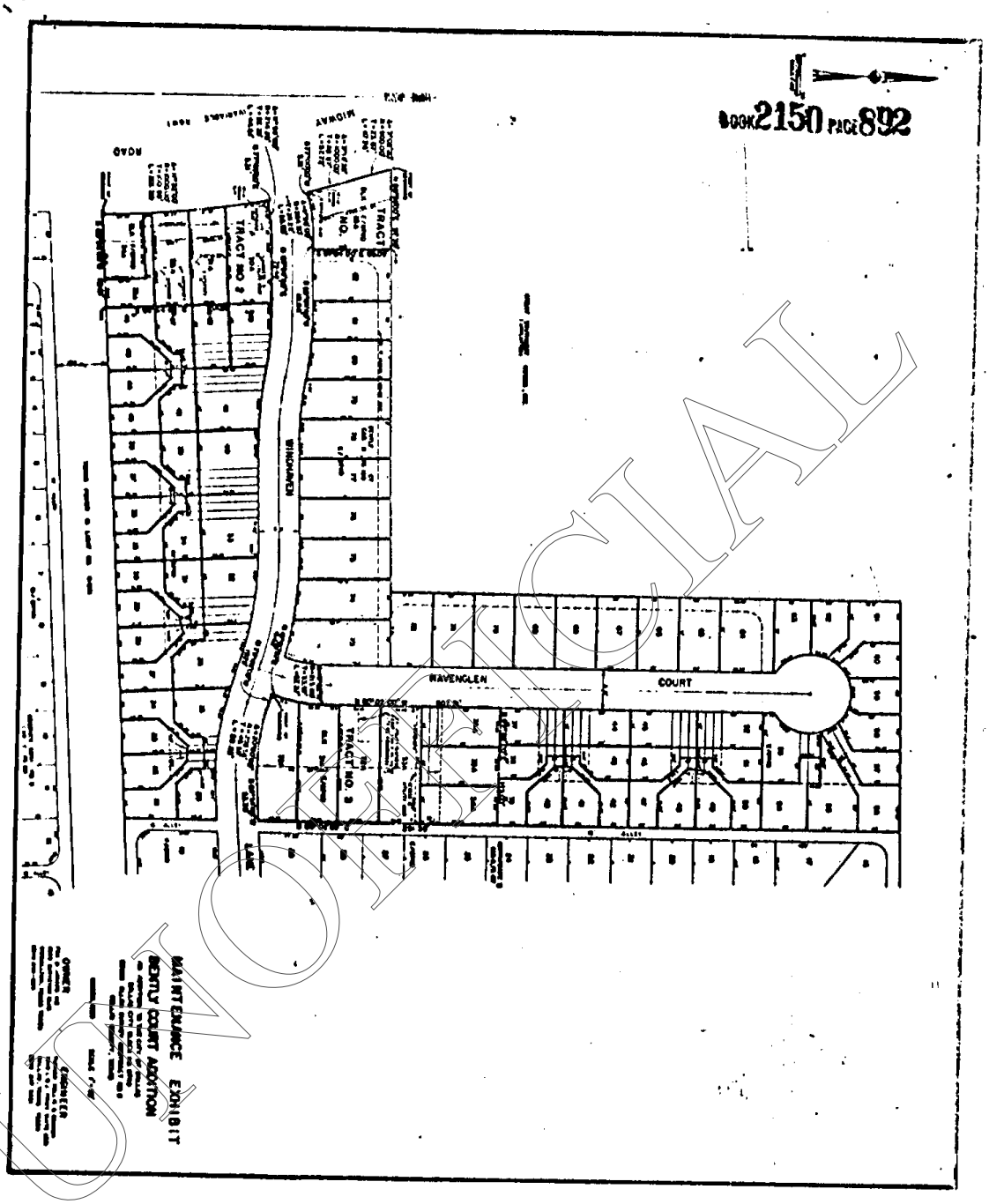

FILED FOR RECORD 13th DAY OF June A.D. 19 85 . at 3:40 P. M.
DULY RECORDED 14th DAY OF June A.D. 19 85 .
HELEN STARNES, County Clerk
BY: Carol Dunglinson DEPUTY. Collin County, Texas