

**CAUSE NO. 471-01040-2022**

**HENRY MISHKOFF** § **IN THE DISTRICT COURT**  
**Non-Movant,** §  
 §  
**V.** § **DISTRICT COURT NO. 471**  
 §  
**SONIA BRYANT,** §  
**Movant.** § **COLLIN COUNTY, TEXAS**

**NON-MOVANT'S RESPONSE TO  
MOVANT'S MOTION FOR SUMMARY JUDGMENT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**NOW COMES** Henry Mishkoff, Non-Movant herein, and requests this Honorable Court to DENY Movant's Motion for Summary Judgment.

I.

**INTRODUCTION**

A. When a movant files a motion for summary judgment based on summary judgment evidence, the court can grant the motion only when the movant's evidence proves, as a matter of law, all the elements of the movant's cause of action or defense, or disproves the facts of at least one element in the non-movant's cause or defense.

B. When evaluating a motion for summary judgment, the court must:

1. Assume all the non-movant's proof is true;
2. Indulge every reasonable inference in favor of the non-movant; and
3. Resolve all doubts about the existence of a genuine issue of material fact

against the movant.

*Montgomery v. Kennedy*, 669 S.W.2d 309, 310-11 (Tex.1984); *Wilcox v. St. Mary's University of San Antonio*, 531 S.W.2d 589, 592-93 (Tex.1975). See also *City of*

*Houston v. Clear Creek Basin Authority*, 589 S.W.2d 671 (Tex.1979)

II.

A. Non-Movant filed a claim against Movant seeking, among other things, a declaratory judgment that a prescriptive and/or express easement existed on Movant's property for the benefit of Non-Movant.

B. Movant alleges no genuine issue of material fact exists as to at least one element of both a prescriptive easement and an express easement.

C. Non-Movant claims a genuine issue of material fact exists as to each element of its claims of a prescriptive easement and express easement and submits Non-Movant's Brief in Support of Denying Movant's Motion for Summary Judgment filed with this response and incorporated by such reference for all purposes as if recited verbatim herein.

**PRAYER**

**WHEREFORE, PREMISES CONSIDERED**, Non-Movant prays that this Court will deny Movant's Motion for Summary Judgment, or order such other relief as may be appropriate.

Respectfully submitted,

The Law Office of Robert Newton, P.C.

By: /s/ Robert Newton

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Attorney for Non-Movant Henry Mishkoff

**CERTIFICATE OF SERVICE**

I certify that on August 15, 2022, a true and correct copy of Non-Movant's Response to Motion for Summary Judgment was served by electronic delivery on T. Chase Garrett.

*/s/ Robert Newton*

\_\_\_\_\_  
Robert Newton

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<b>HENRY MISHKOFF</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Non-Movant,</b>	§	
	§	
<b>V.</b>	§	<b>DISTRICT COURT NO. 471</b>
	§	
<b>SONIA BRYANT,</b>	§	
<b>Movant.</b>	§	<b>COLLIN COUNTY, TEXAS</b>

**NON-MOVANT’S MEMORANDUM IN SUPPORT OF  
DENYING NON-MOVANT’S MOTION FOR SUMMARY JUDGMENT**

**I. FACTUAL SUMMARY**

1. On or about June 13, 1984, the Final Plat for the Bently Court subdivision as it pertains to the subject properties of this lawsuit was filed in Cabinet D of Page 150 of the Map Records of Collin County, Texas (the “Subdivision”).<sup>1</sup>

2. On or about June 14, 1985, Declaration of Covenants, Restrictions, and Conditions, concerning the Subdivision were recorded in Book 2150, Page 883 of the Deed Records of Collin County, Texas, concerning the property subject to this lawsuit (the “Restrictions”).<sup>2</sup>

3. On or about September 30, 1986, Henry Mishkoff (“Non-Movant”) purchased the residence located at 4062 Windhaven Lane, Dallas, Collin County, Texas, more formally known as Lot 31, in Block F/8740, of Bently Court, an Addition to the City of Dallas, Collin County, Texas, according to the map thereof recorded in Cabinet D, Page 150 of the Map Records of Collin County, Texas (the “Non-Movant’s Property”).<sup>3</sup>

4. On or about April 23, 2020, Sonia Bryant (“Movant”) purchased the residence

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<sup>1</sup> See Exhibit A, which is incorporated herein by reference.

<sup>2</sup> See Exhibit B, which is incorporated herein by reference.

<sup>3</sup> See Exhibit C, which is incorporated herein by reference.

located at 4060 Windhaven Lane, Dallas, Collin County, Texas, more formally known as Lot 32, in Block F/8740, of Bently Court, an Addition to the City of Dallas, Collin County, Texas, according to the map thereof recorded in Cabinet D, Page 150 of the Map Records of Collin County, Texas (the “Movant’s Property”).<sup>4</sup>

5. The Subdivision is uniquely designed so that a portion of certain owners’ properties are located in what would ordinarily be another’s property. The subdivision was designed in such a manner to meet the requirements of the City of Dallas pertaining to each lot fronting a road. For example, Non-Movant, other lot owners, and Movant each own a portion of the driveway to access Movant’s Property. And, a portion of Non-Movant’s Property is accessible by such driveway, namely, the portion owned by Movant.

6. Since purchasing Non-Movant’s Property in June 1986, Non-Movant has openly, actually and visibly, and continuously used a portion of Movant’s Property, to access a portion of Non-Movant’s Property. And, it is important to consider that the circuit breaker and all utility connections for Non-Movant’s residence are on such portion of Non-Movant’s Property that is accessible by a small portion of the driveway situated on Movant’s Property.<sup>5</sup>

7. Since purchasing Movant’s Property in April 2020, Movant has attempted to prevent Non-Movant from accessing such portion of Non-Movant’s Property by utilizing harassment and placing barriers to prevent access.<sup>6</sup> Namely, Movant has taken videos of Non-Movant and/or Non-Movant’s spouse, called Non-Movant and/or Non-Movant’s spouse names, called the police after a surveyor attempted to identify the boundaries of Non-Movant’s Property,

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<sup>4</sup> See Exhibit D, which is incorporated herein by reference.

<sup>5</sup> See Exhibit E, Reporter’s Record, Volume 1, Cause No. 471-01040-2022, Page 19, Line 14-Page 20, Line 10, which is incorporated herein by reference.

<sup>6</sup> See Exhibit F, which is incorporated herein by reference.

and placed flower pots to prevent access.<sup>7</sup>

## II. ARGUMENTS & AUTHORITIES

8. The movant seeking summary disposition has the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law; evidence favorable to the Non-movant will be taken as true; and every reasonable inference must be indulged in favor of the Non-movant and any doubts resolved in its favor. *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548-49 (Tex.1985). A party moving for traditional summary judgment under Texas Rules of Civil Procedure 166a(c) has the burden to establish that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c).

### **A. Genuine Issues of Material Fact Exist as to Whether a Prescriptive Easement Exists.**

9. All preceding paragraphs are incorporated by reference as if set out herein.

10. A prescriptive easement is available if Non-Movant used the easement for at least ten years and the use was: (1) open and notorious; (2) continuous; (3) exclusive; and (4) adverse.

11. Non-Movant has used a portion of Movant's Property to access Non-Movant's Property for more than thirty-five years.<sup>8</sup> Non-Movant's use was open and notorious, continuous, exclusive, and adverse to Movant and all prior owners.

12. In her Motion for Summary Judgment, Movant misrepresents Non-Movant's claim for prescriptive easement. Rather than arguing a prescriptive easement exists over the entirety of Movant's driveway, Non-Movant is only stating that a prescriptive easement exists on that portion of the driveway that is used exclusively by Non-Movant, namely, the portion Non-

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<sup>7</sup> See Exhibit G, Movant's Declaration, Paragraph 5, which is incorporated herein by reference.

<sup>8</sup> See Exhibit E, Page 22-23.

Movant has continually used for thirty-five years to access his property from the driveway.

13. Movant's own evidence submitted in her Motion for Summary Judgment proves that Non-Movant's use of the portion of the driveway used to access Non-Movant's Property was open, notorious, and adverse.<sup>9</sup> Police have been called. Lawsuits have been threatened. Security cameras have been installed. Conversations have been held. Both the Declaration of Movant and the letter from Non-Movant, at the very least, show a scintilla of evidence to open, notorious, and adverse.

14. However, Movant's greatest misrepresentation of Non-Movant's claim for a prescriptive easement arises in regard to the exclusivity element. Movant submits the Declaration of Donald King and the Declaration of Bill Partridge as its strongest claim to defeat the prescriptive easement. In summary, the conclusive evidence for non-exclusivity is the fact that Movant, Mr. King, and Mr. Partridge use the driveway to park their cars in the carport and garage. Non-Movant does not dispute this. However, Non-Movant is not claiming a prescriptive easement over the entirety of the driveway. Rather, Non-Movant claims a prescriptive easement over the driveway that is approximately five feet in length and about the width of a person so that he can access his circuit breaker and maintain such portion of his residence.

15. To refute Movant's evidence that parking vehicles in the carport and garage prove non-exclusivity, Non-Movant submits the photograph shown on Exhibit E. In said photograph, one can see that Movant has placed flowerpots to impede Non-Movant's access to a portion of Non-Movant's Property. Yet, in accordance with Movant's Declaration, the flowerpots did not impede access to the carport or the garage, which Movant continued to use. In short, the fact that Movant can still access her carport and garage with the flowerpots impeding Non-Movant's

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<sup>9</sup> See, generally, Exhibit G.

access, shows that the area claimed by Non-Movant for the prescriptive easement is not used to access the carport and garage. At the very least, the fact that Movant can still access her carport and garage while the flowerpots are positioned in the disputed area creates a scintilla of evidence that neither Movant, Mr. King, nor Mr. Partridge ever used that portion of the driveway to park their respective vehicles.

16. Therefore, a genuine issue of material fact exists regarding each element of Non-Movant's claim for a prescriptive easement because more than a scintilla of evidence exists regarding the open and notorious, continuous, adverse, and exclusive nature of Non-Movant's use. Thus, the court should deny Movant's motion for summary judgment for the prescriptive easement because genuine issues of material fact exist as to each element.

**B. Genuine Issues of Material Fact Exist as to Whether an Express Easement Exists.**

17. All preceding paragraphs are incorporated by reference as if set out herein.

**The Easement Area is Sufficiently Defined Under Texas Law.**

18. An easement "... must contain the essential terms of a contract, expressed with such certainty and clarity that it may be understood without recourse to parol evidence to show the intention of the parties." *Pick v. Bartel*, 659 S.W. 2d 636, 637 (Tex. 1983). "A description in a writing which states 'my property,' 'my land,' or 'owned by me' is a sufficient description when it is shown by extrinsic evidence that the party to be charged owns a tract that satisfies the description." *Id.* Extrinsic evidence may be used for the purpose of identifying with reasonable certainty from the data. *Kanan v. Plantation Homeowner's Ass'n Inc.*, 407 SW 3d 320, 331 (Tex.App. - 13th Dist. 2013). "The certainty of the contract may be aided by parol only with certain limitations. The essential elements may never be supplied by parol. The details which



merely explain or clarify the essential terms appearing in the instrument may ordinarily be shown by parol.” *Wilson v. Fisher*, 144 Tex. 53, 188 S.W.2d 150 (1945).

19. As evidenced in Movant’s Motion for Summary Judgment, the Restrictions contain several written easements. This is undisputed between the parties. Such easements include construction, maintenance, repair easements for utilities,<sup>10</sup> a paving construction easement,<sup>11</sup> an access easement to common drives,<sup>12</sup> a connection utility easement,<sup>13</sup> an encroachment and overhang easement,<sup>14</sup> and a maintenance easement.<sup>15</sup>

20. Movant’s argument that the easement is not written because the legal description is not well-defined appears to be against the interest of Movant. First, Movant utilizes an overhang easement in connection with Movant’s carport, which overhangs Non-Movant’s Property. More importantly, Movant utilizes the common drive across Non-Movant’s Property to access her carport and garage. Neither of these easements Movant herself utilizes are any more defined than the maintenance easement at issue in this case. The only evidence of their existence is the written language in the Restrictions and a drawing attached as Exhibit A to the Restrictions showing the property lines. Neither contain legal descriptions. Neither are even evidenced on the drawing. One must use extrinsic evidence to determine their location. Utilizing Movant’s logic, Non-Movant could force the destruction of Movant’s carport and prevent Movant’s access to her carport and garage. Moreover, Movant’s interpretation of the case law would render void every blanket utility easement in the State of Texas. However, Non-Movant is not so petty. Thankfully for Movant, neither Non-Movant nor the courts in the State of Texas agree with Movant’s

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<sup>10</sup> See Exhibit B, Article II, Section 1.

<sup>11</sup> See Exhibit B, Article II, Section 2.

<sup>12</sup> See Exhibit B, Article II, Section 4.

<sup>13</sup> See Exhibit B, Article II, Section 5.

<sup>14</sup> See Exhibit B, Article II, Section 7.

<sup>15</sup> See Exhibit B, Article II, Section 6.

interpretation of the case law.

21. A blanket easement is "[a]n easement without a metes and bounds description of its location on the property." *First Am. Title Ins. Co. of Tex. v. Willard*, 949 S.W.2d 342, 344 n.2 (Tex. App.-Tyler 1997, writ denied). "It is not necessary ... for the easement description to be a smaller area than the entire servient estate." *Atmos Energy Corp. v. Paul*, 598 SW 3d 431 - Tex: Court of Appeals, 2nd Dist. 2020 (citing 2 Tex. Prac. Guide Real Estate Trans. § 15:19.) Blanket easements have been commonly used in Texas history. *Id.* "An easement over an entire servient tract is a `blanket easement.'" *Id.*

22. Similar to *Willard*, the Restrictions contain blanket easements over every property in the clustered unit of homes for various purposes. The common drive easement is an easement for wherever pavement would have been laid to access one's garage. The overhang easement is a blanket easement for wherever carports would have been built that overhang an adjacent lot's property. And, the maintenance easement is a blanket easement for owners who need to access a portion of their property for the purpose of maintenance. Further, an owner may utilize the maintenance and repair easement to access circuit breakers or other utilities. Of course, such access and use must be reasonable. The servient estate is the entirety of the adjacent lot within a clustered unit, which is clearly defined in the Restrictions. And, the legal description of such Affected Lots (as defined in the Restrictions) within the Clustered Unit (as defined in the Restrictions) refers to the Subdivision Plat recorded in Cabinet D, Page 150 as modified by a replat filed in Cabinet F, Page 242 of the Deed Records of Collin County, Texas. Therefore, the easement area is defined as required under Texas law, and the servient state can be determined within the Restrictions themselves. Thus, more than a scintilla of evidence exists that there is a written easement with a well-defined easement area and servient estate.

**The Restrictions Grant an Express Easement to Non-Movant.**

23. The Restrictions state, “Each 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 1.” It is undisputed that Non-Movant is an Owner. Moreover, it is undisputed that Movant’s Property is an Affected Lot within the Maintenance Area associated with Non-Movant’s Property. Therefore, Non-Movant possesses an express easement over and upon Movant’s Property for the purposes of fulfilling the maintenance obligations contained in Article IV, Section 1 of the Restrictions.

24. Article IV, Section 1 of the Restrictions state, in relevant part, “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.” Therefore, Non-Movant may reasonably access Movant’s Property for the purpose of maintaining the exterior of his Unit.

25. Movant asserts that Non-Movant should simply access his property through the flowerbed that was planted at the time the home was constructed, which would require Non-Movant to cut a tree. Obviously this is a petty argument. Moreover, Movant again misrepresents Non-Movant’s argument. Non-Movant does not simply want to access that portion of his property. Rather, Non-Movant needs to conduct maintenance activity on that portion of his property. Yet Non-Movant has roughly five feet of his own property to clean windows, paint a two-story house, perform landscaping, access electrical equipment, and make any necessary repairs. Movant is being unrealistic. And it is unrealistic to believe the authors of the Restrictions, as well as the architects, engineers, and developers of the subdivision, thought five feet was enough space to perform these activities.

26. Additionally the Restrictions state, in relevant part, “No Owner may make a substantial change of the landscaping of his Unit ... unless such ... change has been approved in writing by the Architectural Control Committee.” Therefore, even if five feet was considered substantial enough to perform all the maintenance obligations imposed on an Owner, Non-Movant would first have to obtain approval from the Architectural Control Committee to alter the landscape that existed at the time the home was purchased.

27. Rather, it seems that the authors of the Restrictions, along with the architects, engineers, and developers, would have relied on the various easements to provide reasonable access to perform those duties without the need to damage or destroy landscaping they planted.

28. More than a scintilla of evidence exists as to whether the Restrictions granted an express easement to Non-Movant over and above Movant’s Property for the purpose of accessing and maintaining Non-Movant’s Property because the Restrictions specifically grant an express easement for those purposes to Owners of Affected Lots within the Maintenance Areas, which includes Non-Movant.

29. Thus, a genuine issue of material fact exists as to whether an express easement exists because more than a scintilla of evidence exists that the Restrictions contain express easements within a defined area, describe a servient estate, and provide a purpose for such easement.

### **III. CONCLUSION**

Based on the foregoing, genuine issues of material fact exist as to whether Non-Movant has a prescriptive easement. Further, genuine issues of material fact exist as to whether the Restrictions grant Non-Movant an express easement to cross Movant’s Property for the purpose of fulfilling Non-Movant’s maintenance obligations. Therefore, Non-Movant respectfully

requests this Court to DENY Movant's Motion for Summary Judgment.

Respectfully submitted,

The Law Office of Robert Newton, P.C.

By: /s/ Robert Newton

Robert Newton

Texas Bar No. 24046526

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9355 John W. Elliott Dr., Ste 25450

Frisco, TX 75034

Tel. (214) 957-1292

Attorney for Non-Movant

# **EXHIBIT A**

FILED

APR 10 1934

36966

OWNER	FOY & JACOBS, INC.
APPLICANT	FOY & JACOBS, INC.
AGENT	W. H. WATSON
DATE	APR 10 1934
CITY	DALLAS
COUNTY	DALLAS
STATE	TEXAS



**STATE OF TEXAS**  
 COUNTY OF DALLAS  
 I, County Clerk, do hereby certify that the within and foregoing plat was filed in the office of the County Clerk of Dallas County, Texas, on the 10th day of April, 1934, at 10:30 A.M., and that the same is a true and correct copy of the original as filed in said office.

*W. H. Watson*  
 County Clerk, Dallas  
 Texas

**AFFIDAVIT OF AFFIRMATION**  
 I, *John E. Young*, being duly sworn, depose and say that the within and foregoing plat is a true and correct copy of the original as filed in the office of the County Clerk of Dallas County, Texas, on the 10th day of April, 1934, at 10:30 A.M., and that the same is a true and correct copy of the original as filed in said office.

*John E. Young*  
 Dallas, Texas



**WARRANTY OF TITLE**  
 I, the undersigned, being duly sworn, depose and say that the within and foregoing plat is a true and correct copy of the original as filed in the office of the County Clerk of Dallas County, Texas, on the 10th day of April, 1934, at 10:30 A.M., and that the same is a true and correct copy of the original as filed in said office.

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 Dallas, Texas

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*John E. Young*  
 Dallas, Texas

**FINAL PLAT**  
**BENTLEY COURT**  
 IN ADDITION TO THE CITY OF DALLAS  
 DALLAS CITY BLOCK NO. 8740  
 EDWIN ALLEN SURVEY - SUBTRACT 2  
 MARCH, 1924 SCALE 1/4" = 100'

OWNER  
**FOY & JACOBS, INC.**  
 2802 BENTLEY COURT, DALLAS, TEXAS  
 PHONE 1244

THREADGILL, CONDEY AND ASSOCIATES  
 SURVEYING ENGINEERS  
 828 HARRISON STREET, DALLAS, TEXAS

# **EXHIBIT B**



STATE OF TEXAS     )  
                          )  
COUNTY OF COLLIN    )

NOV 21 50 PM 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".

R E C I T A L S:

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 Declarant 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 Declarant 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.

BOOK 2150 PAGE 889

(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.

BOOK 2150 PAGE 890

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.



BOOK 2150 PAGE 891

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:  
  
JACOBS  
CORPORATION  
SECRETARY  
1978

FOX & JACOBS, INC.

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

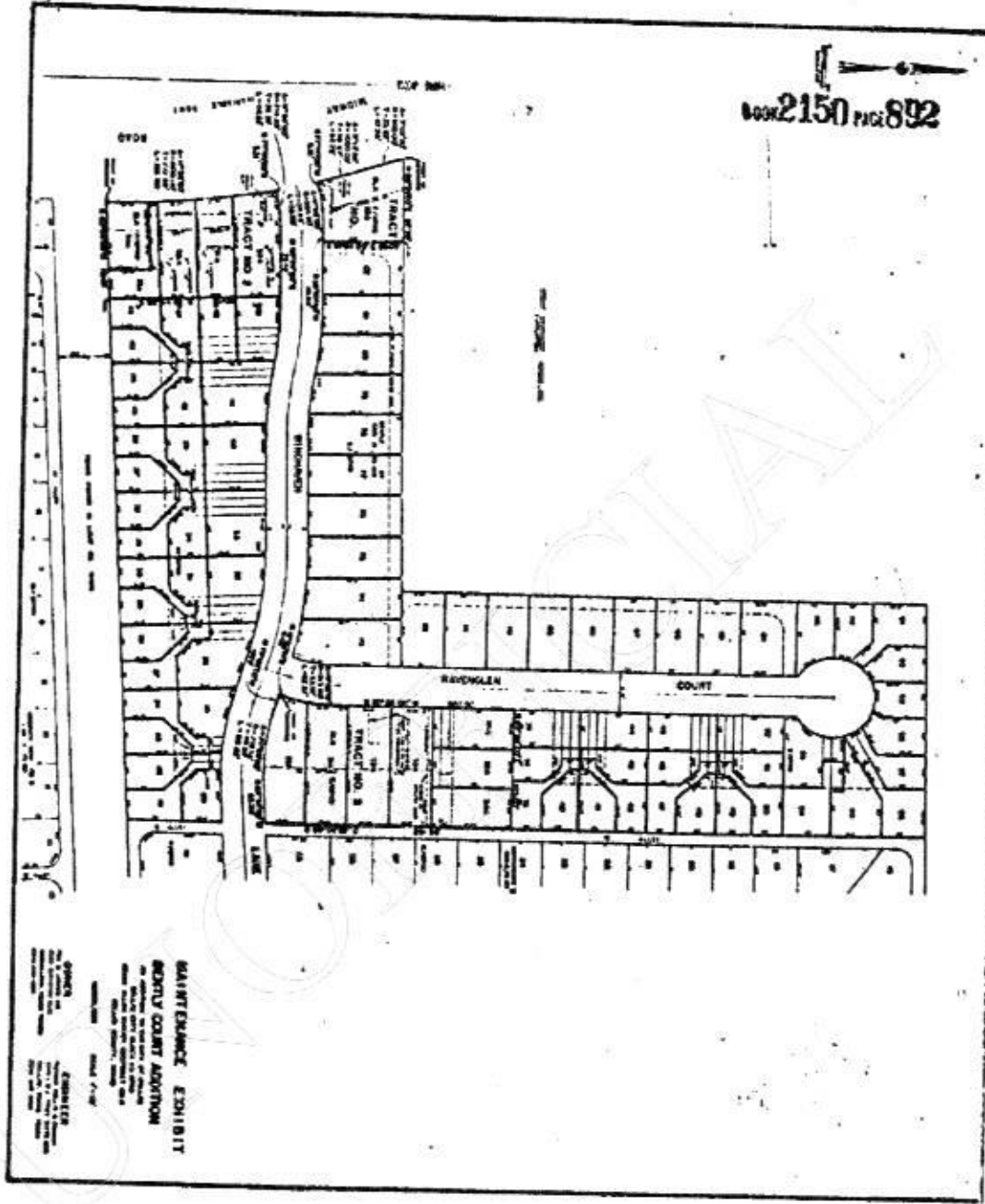
STATE OF TEXAS §  
COUNTY OF DALLAS §

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.

  
My Commission Expires: 12/31/85

Name: Thomas G. [Signature]  
Notary Public, State of Texas

BOOK 2150 FIG 892



MAINTENANCE EXHIBIT  
 SOCIETY COURT ADDITION  
 TO THE TRACTS SHOWN  
 ON PLAT NO. 892  
 BOOK 2150  
 COLLIN COUNTY, TEXAS  
 1985

FILED FOR RECORD 13th DAY OF June A.D. 19 85 at 2:51 P.  
 DULY RECORDED 14th DAY OF June A.D. 19 85  
 BY: Carol Derry Jones HELEN STARNES, County Clerk  
 DEPUTY. Collin County, Texas

# **EXHIBIT C**

COOPERATION WARRANTY DEED (Vendor's Form)

63914

THE STATE OF TEXAS,

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN

That PCK & JACOBS, INC.

A NEVADA CORPORATION

XXXXXXXXXXXXXXXXXXXX

acting herein by and through its duly authorized officers, hereinafter called GRANTOR, of the County of DALLAS State of Texas, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS cash, and other good and valuable consideration paid to GRANTOR, receipt of which is hereby fully acknowledged, by HENRY CHARLES MISHKOFF AND CO-MTRG COLEMAN SAUL MISHKOFF AND WIFE HARRIET MISHKOFF hereinafter called GRANTEE;

And the execution and delivery by Grantee herein of Grantee's one certain note of even date herewith in the principal sum of EIGHTY SEVEN THOUSAND TWO HUNDRED & 00/100

payable as therein provided to the order of CITI MORTGAGE COMPANY (\$ 87,200.00 )DOLLARS hereinafter called Payee, said Payee having advanced said sum at the special instance and request of Grantee herein as part of the purchase money for the property hereby conveyed, and Payee shall be and is hereby subrogated to all of the rights and titles of said Grantor to secure the payment of said note as fully as if Payee were Grantor herein, and in addition to the Vendor's Lien herein retained, said note is further secured by Deed of Trust of even date herewith to MICHELLE E. HARRIS,

RICHARD K. SMITH, AND BILLIE BOLTON, Trustee, has Granted, Sold and Conveyed, and by these presents does Grant, Sell and Convey, unto the said GRANTEE of the County of COLLIN, State of Texas, all that certain tract or parcel of land, lying and being situated in the County of COLLIN, State of Texas,

described as follows: BEING LOT 317, IN BLOCK F/8740, OF BENTLY COURT, AN ADDITION TO THE CITY OF DALLAS, COLLIN COUNTY, TEXAS, ACCORDING TO THE MAP THEREOF RECORDED IN CABINET D, PAGE 150 OF THE MAP RECORDS OF COLLIN COUNTY, TEXAS.

THE MAILING ADDRESS OF THE GRANTEE HEREIN IS: HENRY CHARLES MISHKOFF AND CO-MTRG COLEMAN SAUL MISHKOFF 4062 WINDHAVEN LANE DALLAS TX 75252-0000

This Deed is executed and delivered subject to easements, reservations, conditions, covenants and restrictive covenants affecting the property conveyed hereby as the same appear of record in the Office of the County Clerk of COLLIN County, Texas

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said GRANTEE, Grantee's heirs and assigns forever, and Grantor does hereby bind itself, its successors and assigns, to Warrant and Forever Defend, all and singular the said premises unto the said GRANTEE, Grantee's heirs and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

But it is expressly agreed and stipulated that the Vendor's Lien is retained against the above described property, premises and improvements, until the above described note and all interest thereon are fully paid according to its face and tenor, effect and reading, when this Deed shall become absolute.

Grantee herein assumes the payment of all taxes for the year 19 86 and subsequent years.

EXECUTED this the 30TH day of SEPTEMBER, 19 86

PCK & JACOBS, INC.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

By: [Signature] RICH ALBERQUE PCK & JACOBS DIVISION MANAGER

THE STATE OF TEXAS

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared RICH ALBERQUE known to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said

PCK & JACOBS, INC. a Corporation, and that he executed the same for the act of such corporation for the purposes and consideration therein expressed and in the capacity therein expressed, this 30th day of September A. D. 19 86

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 30th day of September A. D. 19 86



[Signature] Patricia A. Zasadzinski Notary Public, State of Texas PATRICIA A. ZASADZINSKI Notary Public State of Texas My Commission Expires 7-22-89

FILED FOR RECORD 7th DAY OF Oct. A.D. 19 86 at 3:49 P.M. DULY RECORDED 8th DAY OF Oct. A.D. 19 86 BY: Carol Durnbaugh HELEN STARNES, County Clerk DEPUTY, Collin County, Texas

# **EXHIBIT D**

After Recording Return to:  
Sonia Alexandra Bryant  
4060 Windhaven Lane, Dallas, TX 75287

*Time to 2020-24P*

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**GENERAL WARRANTY DEED WITH VENDOR'S LIEN**

**Date:** April 23, 2020

**Grantor:** Bill B. Partridge, Jr. and Jenny Julia Olivet Rojas

**Grantor's Mailing Address:**

**Grantee:** Sonia Alexandra Bryant, an unmarried woman

**Grantee's Mailing Address:** 4060 Windhaven Lane, Dallas, TX 75287

**Consideration:** TEN AND NO/100 DOLLARS (\$10.00) and a Note of even date herewith executed by Grantee and payable to the order of **SWBC Mortgage Corp., a corporation ("LENDER")** in the original principal sum of **TWO HUNDRED TWENTY ONE THOUSAND ONE HUNDRED SIXTY & NO/100 DOLLARS (\$221,160.00)**. The Note is secured by a superior vendor's lien and superior title retained in this Deed in favor of **Lender**, and by a first-lien deed of trust of even date from Grantee to **Edward Kershner, Trustee**.

**Property (including any improvements):** Lot 32, Block F/8740, of **BENTLY COURT**, an addition to the City of Dallas, Collin County, Texas, according to the map or plat thereof recorded in Volume D, Page 150, of the Map Records of Collin County, Texas

**For Identification Purposes:** 4060 Windhaven Lane, Dallas, TX 75287

**Reservations from Conveyance:** None.

**Exceptions to Conveyance and Warranty:** Liens described as part of the Consideration and any other liens described in this deed as being either assumed by Grantee or subject to which title is taken by Grantee; validly existing restrictive covenants common to the platted subdivision in which the Property is located; standby fees, taxes, and assessments by any taxing authority for the year 2020 and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership; validly existing utility easements created by the dedication deed or plat of the subdivision in which the Property is located; any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements; homestead or community property or survivorship rights, if any, of any spouse of Grantee; and any validly existing titles or rights asserted by anyone, including but not limited to persons, the public, corporations, governments, or other entities, to (1) tidelands or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs, or oceans, (2) lands beyond the line of the harbor or bulkhead lines as established or changed by any government, (3) filled-in lands or artificial islands, (4)

water rights, including riparian rights, or (5) the area extending from the line of mean low tide to the line of vegetation or the right of access to that area or easement along and across that area; validly existing easements, reservations or exceptions which are recorded in the real property records of the County where the Property is located.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

The vendor's lien against and superior title to the Property are retained until each note described is fully paid according to its terms, at which time this deed will become absolute, and the vendor's lien and superior title herein reserved shall be automatically released and discharged.

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

GRANTOR:

*Bill B. Partridge, Jr.*  
Bill B. Partridge, Jr.

*Jenny Julia Olivet Rojas by and through her agent*  
~~Jenny Julia Olivet Rojas, by and through her agent and attorney~~  
in fact, Bill B. Partridge Jr. *and attorney in fact, Bill B. Partridge, Jr.*

STATE OF Texas )  
COUNTY OF Collin ) ss

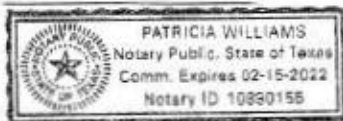
Before me, the undersigned Notary Public, on this day personally appeared Bill B. Partridge, Jr., individually, and as attorney in fact on behalf of Jenny Julia Olivet Rojas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 23 day of April, 2020.

*Patricia Williams*  
Notary Public, State of Texas

Printed Name: Patricia Williams

My Commission Expires:



Filed and Recorded  
Official Public Records  
Stacey Kemp, County Clerk  
Collin County, TEXAS  
04/24/2020 11:02:43 AM  
\$30.00 DKITZMILLER  
20200424000594150

*Stacey Kemp*

# **EXHIBIT E**





# **EXHIBIT F**

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REPORTER'S RECORD  
VOLUME 1 OF 1 VOLUMES  
CAUSE NO. 471-01040-2022

HENRY MISHKOFF, ) IN THE 471ST  
 )  
Plaintiff, )  
 )  
vs. ) JUDICIAL DISTRICT COURT  
 )  
SONIA BRYANT, )  
 )  
Defendant. ) COLLIN COUNTY, TEXAS

-----  
**TEMPORARY INJUNCTION HEARING**  
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On the 31st day of May, 2022, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable ANDREA BOURESSA, Judge Presiding, held in McKinney, Collin County, Texas.

Proceedings reported by computerized stenotype machine.

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I N D E X  
VOLUME 1  
(TEMPORARY INJUNCTION HEARING)

<u>MAY 31, 2022</u>	<u>PAGE</u>	<u>VOL.</u>
Announcements .....	5	1
Opening Statement by Mr. Newton .....	5	1
Opening Statement by Mr. Garrett .....	6	1
Closing Argument by Mr. Newton .....	37	1
Ruling of the Court .....	38	1
Adjournment .....	39	1
Court Reporter's Certificate .....	40	1

<u>PLAINTIFF'S WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>VOL.</u>
HENRY MISHKOFF	10,36	27	1

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25

**EXHIBIT INDEX**

**PLAINTIFF ' S**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>OFFERED</b>	<b>ADMITTED</b>	<b>VOL.</b>
1	Photograph	10	10	1
2	Photograph	18	18	1
3	Photograph	19	19	1
4	Plat	11	11	1
5	Covenants, Restricions and Conditions	24	24	1
6	Video	21	22	1
7	Video	23	24	1

**DEFENDANT ' S**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>OFFERED</b>	<b>ADMITTED</b>	<b>VOL.</b>
1	Letter	30	30	1
2	Photograph	34	34	1
3	Photograph	32	32	1
4	Photograph	33	33	1

**P R O C E E D I N G S**

1  
2 THE COURT: We'll go on the record in  
3 Cause No. 471-01040-2022.

4 Who do we have for the applicant?

10:49 AM 5 MR. NEWTON: Yes, Your Honor, this is  
6 Robert Newton.

7 And would you prefer us sitting or  
8 standing?

9 THE COURT: You can sit if you're going  
10 to use the microphone.

11 MR. NEWTON: Okay. Your Honor, we're  
12 here on the application of the temporary injunction of  
13 my client. Mr. Henry Mishkoff, owns a property in  
14 Dallas, Texas, in the Collin County area, and is  
10:49 AM 15 neighbors with the defendant, Ms. Sonia Bryant.

16 And the way this property is designed, or  
17 this subdivision is designed, that they have portions of  
18 Mrs. Bryant's driveway are owned by other people in the  
19 subdivision. The reason it was designed that way is to  
10:50 AM 20 actually provide each of them an address down to  
21 Windhaven, is my understanding, which is the main road  
22 there and a requirement for the building permit.

23 In doing so, we have a lot of messy lot  
24 lines. And part of these messy lot lines is the fact  
10:50 AM 25 that Ms. Bryant has to pass over other people's property

10:50 AM 1 to get onto her property, and my client, Mr. Mishkoff,  
2 has to pass over other people's property to kind of get  
3 to his property as well.

4 So the subject of this dispute is that  
10:50 AM 5 there's a portion of Mr. Mishkoff's property that is  
6 really kind of inaccessible to him without passing along  
7 and over the driveway of the neighbor, Mrs. Bryant. And  
8 we'll have plats and everything to show, and we'll get  
9 Mr. Mishkoff on the stand as well, Your Honor, to  
10:51 AM 10 testify as to that effect.

11 That's about it.

12 THE COURT: All right. Thank you.

13 And then the response?

14 MR. GARRETT: Your Honor, we've filed a  
10:51 AM 15 brief. Hopefully the Court's had a chance to take a  
16 look at it. We don't think that this is a case that  
17 they're entitled to temporary injunctive relief.

18 We also have a couple pleading problems.  
19 It's an unverified application, in violation of Rule  
10:51 AM 20 682.

21 Also, the pleading is wholly devoid of  
22 any reference to the third element required under Texas  
23 Supreme Court case opinion, *Butnaru*. They have not pled  
24 a probable imminent or irreparable injury for which  
10:51 AM 25 Mr. Mishkoff has no adequate remedy at law. That case



10:51 AM

1 says there is a pleading burden and a proof burden.  
2 They will not have been able to meet their pleading  
3 burden because their pleading is just absolutely silent  
4 on any of those things.

10:51 AM

5 Notwithstanding that, I would just sort  
6 of -- I don't know if I can share my screen with Your  
7 Honor.

8 THE COURT: Officer Burnett, is that  
9 screen on?

10:52 AM

10 THE BAILIFF: I just switched it, but I  
11 don't think the TVs on.

12 MR. GARRETT: Well, I've got a printed  
13 copy that I can --

14 THE BAILIFF: Are you plugged up?

10:53 AM

15 THE COURT: Yes, but that looks like an  
16 Apple.

17 MR. NEWTON: Yeah.

18 THE BAILIFF: Ours is not compatible with  
19 Apple.

10:53 AM

20 MR. GARRETT: That's fine.

21 May I approach, Your Honor?

22 THE COURT: You may.

23 MR. GARRETT: This is just sort of a  
24 sketch so that Your Honor can be familiar with the  
10:53 AM 25 property.

10:53 AM 1 Mr. Newton is correct, the lot lines are  
2 really weird in this neighborhood. You'll see the top  
3 is 4600 Windhaven Lane. This particular neighborhood is  
4 a cul-de-sac, and you'll see that Mr. Mishkoff's  
10:53 AM 5 property is lot 31. It actually takes sort of an L  
6 shape, and he has a small piece that goes across my  
7 client's yard and across her driveway that gives him  
8 access to Windhaven Lane.

9 The only part of that that's paved is the  
10:53 AM 10 driveway itself. The other portion of that, that's  
11 actually a yard with like a tree in it.

12 Mr. Mishkoff's property is directly to  
13 the south, and the issue in this case is he claims that  
14 he cannot access the side of his house without walking  
10:54 AM 15 into the starred area. What he claims is he has to walk  
16 in a circular fashion, or semicircle fashion off of his  
17 property onto her property, back onto his property.

18 And what he's actually seeking is an  
19 injunction that I suppose requires my client to move a  
10:54 AM 20 potted plant that she has there that he claims is in his  
21 way.

22 We'll show you other pictures and other  
23 evidence that he can absolutely walk wholly within the  
24 big square at the bottom, the rectangle. The Mishkoff  
10:54 AM 25 property is where he can absolutely and his wife can

10:54 AM 1 absolutely stay on their property to access the side of  
2 his house.

3 So we don't think that there's any --  
4 even though it's not been pled, there is no imminent  
10:54 AM 5 harm for which the Court should issue an injunction.

6 THE COURT: All right. And the witnesses  
7 today will be?

8 MR. NEWTON: Henry Mishkoff, Your Honor,  
9 for the plaintiff.

10:55 AM 10 THE COURT: Okay. Any witnesses for the  
11 defendant?

12 MR. GARRETT: Undetermined at this time,  
13 but if so it would be Ms. Bryant.

14 THE COURT: All right. Let me go ahead  
10:55 AM 15 and swear in both Mr. Mishkoff and Ms. Bryant.

16 *(Witnesses sworn)*

17 THE COURT: If you'd just be a little  
18 louder.

19 All right. Thank you. You may both be  
10:55 AM 20 seated.

21 You may begin.

22 MR. NEWTON: Your Honor, I would like to  
23 call Henry Mishkoff to the stand.

24 THE COURT: Mr. Mishkoff if you would  
10:55 AM 25 please come sit over here in the witness chair, and make

10:55 AM 1 sure that the green light on that microphone is on.

2 THE WITNESS: Okay. The light is on.

3 THE COURT: Great.

4 MR. NEWTON: May I approach, Your Honor?

10:55 AM 5 THE COURT: You may.

6 **HENRY MISHKOFF,**

7 having been first duly sworn, testified as follows:

8 **DIRECT EXAMINATION**

9 BY MR. NEWTON:

10:55 AM 10 Q. All right, Mr. Mishkoff, this is Plaintiff's  
11 Exhibit 1 which shows two houses. And I'm actually  
12 going to let you review this one. Sorry about that.

13 MR. NEWTON: Your Honor, would you like  
14 me to pass that along to you?

10:56 AM 15 THE COURT: Thank you.

16 Does defense counsel have a copy of your  
17 exhibits?

18 MR. GARRETT: Yes, Your Honor, I do.

19 MR. NEWTON: We'd like to admit  
10:56 AM 20 Plaintiff's Exhibit 1 into evidence, Your Honor.

21 MR. GARRETT: No objection.

22 THE COURT: All right. Plaintiff's 1 is  
23 admitted.

24 Q. (BY MR. NEWTON) Mr. Mishkoff, could you  
10:56 AM 25 describe to me what Plaintiff's Exhibit 1 is looking at?

10:56 AM 1 A. Okay. Please let me know if my mask is  
2 getting in the way, or can you hear me?

3 THE COURT: I can hear you just fine.  
4 Thank you.

10:56 AM 5 THE WITNESS: Well, that's my house on  
6 the left, and that's Ms. Bryant's house, unfortunately  
7 mostly in the shadow, on the right.

8 How much detail do you want me to go into  
9 about this?

10:56 AM 10 Q. (BY MR. NEWTON) So in looking at that house,  
11 if you -- if you look at the house, what orientation,  
12 directional orientation is Mrs. Bryant's house in  
13 relation to your own house?

14 A. Ms. Bryant's house is north of my house. So  
10:57 AM 15 this photo is looking west.

16 MR. NEWTON: Your Honor, I hate to do  
17 this, I'm going to try to put this on the screen as  
18 well, but I'd like to admit Plaintiff's Exhibit 4. This  
19 is the plat of the subdivision.

10:57 AM 20 THE COURT: Any objection to Plaintiff's  
21 4?

22 MR. GARRETT: No, Your Honor.

23 THE COURT: All right. Plaintiff's 4 is  
24 admitted.

10:58 AM 25 Q. (BY MR. NEWTON) Okay. Mr. Mishkoff, can you

10:58 AM 1 see this plat well enough?

2 A. I can.

3 Q. Okay. Could you describe for me which lot is

4 yours on this property?

10:58 AM 5 A. My lot is number 31.

6 Q. Okay. Your lot is number 31. And which lot

7 is Mrs. Bryant's?

8 A. Ms. Bryant's lot is number 32.

9 Q. Okay. So can you see those property lines

10:58 AM 10 well enough on the screen?

11 A. I think so, yes.

12 Q. Okay. So can you describe to me, and if you

13 can even point, to the center line of that driveway as

14 shown on the plat?

10:58 AM 15 A. When you say "point," is this a --

16 Q. The line. Just kind of the center line for

17 the driveway.

18 THE COURT: You'll have to use that

19 screen to point.

10:58 AM 20 Q. (BY MR. NEWTON) Let me use my mouse. Is this

21 here the centerline for the driveway?

22 THE WITNESS: Is it okay if I get up and

23 go there?

24 THE COURT: Yes.

10:59 AM 25 THE WITNESS: You mean the driveway? The

10:59 AM 1 paved portion of Windhaven?

2 Q. (BY MR. NEWTON) Right.

3 A. Yes. The long line -- the longest straight  
4 line there is the center of the driveway that leads into  
10:59 AM 5 the cul-de-sac.

6 Q. Okay. And so the driveway is roughly from  
7 which line to which?

8 A. From the line you're on now?

9 Q. From this line.

10:59 AM 10 A. Yes, which is a 10-foot line to the left of  
11 the center. 20 feet over.

12 Q. So it's about a 20-foot wide driveway; is that  
13 correct?

14 A. Right.

10:59 AM 15 Q. All right. And so your property runs from the  
16 street all the way up?

17 A. Oh, you're not on -- you're on my neighbor's  
18 property there. It's the next one.

19 THE COURT: Okay. I've got to interrupt  
10:59 AM 20 you for a second.

21 Is this picture the same as this picture?

22 MR. NEWTON: Yes, ma'am.

23 THE COURT: And what portion are you  
24 looking at?

11:00 AM 25 MR. NEWTON: May I approach, Your Honor?

11:00 AM

1

THE COURT: You may.

2

MR. NEWTON: That would be the easiest way for me to detail this for you.

3

THE COURT: Because the numbering does not appear to be the same.

11:00 AM

5

6

MR. NEWTON: So it's lot 32 is --

7

THE COURT: So on this depiction, which is not in evidence, but this demonstrative, 31 and 34 are adjoining, and it's the same on that.

8

9

11:00 AM

10

MR. NEWTON: It should be 31 and 32 are north and south to each other.

11

12

THE COURT: 31 and 34 here are next to each other, and here 31 and 34 are not next to each other. So I'm just trying to figure out what I'm looking at.

13

14

11:00 AM

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16

MR. NEWTON: Oh, I'm not sure. I haven't seen this one.

17

18

THE COURT: On this one I see --

19

MR. NEWTON: Are these two not the same?

11:00 AM

20

THE COURT: 30 to the right of 31, and then 32 above 31, and 33 above 30.

21

22

MR. NEWTON: Oh, I'm sorry. That might be a different -- that's a different block, I believe. We're on the southern side. There's another 32 right there, Your Honor.

23

24

11:00 AM

25



11:01 AM

1

THE COURT: All right. There's another

2

32.

3

MR. NEWTON: With 31. I apologize.

4

THE COURT: My eyesight is not good

11:01 AM

5

enough to read that 32.

6

MR. NEWTON: I know. No one's is,

7

unfortunately. I could have done a better job of the

8

lot blocks.

9

THE COURT: 31 is the plaintiff's

11:01 AM

10

property. 32 is the defendant's property. Is that

11

correct?

12

MR. NEWTON: That is correct, Your Honor.

13

THE COURT: Okay.

14

Q. (BY MR. NEWTON) So Mr. Mishkoff, so this is --

11:01 AM

15

your property runs from Windhaven south all the way

16

along this line into here; is that correct?

17

A. That's correct.

18

Q. And this is not in the driveway, correct?

19

A. It crosses -- When you say "the driveway," are

11:01 AM

20

you talking about Ms. Bryant's property or the common

21

drive?

22

Q. No, I'm sorry. The common drive.

23

A. That is not in the common drive.

24

Q. So what is this in reality? Like if we're

11:01 AM

25

looking at it in person, what is this up here?

11:02 AM 1 A. The first portion of it is Ms. Bryant's  
2 driveway, and the rest of it is Ms. Bryant's front lawn.

3 Q. Right. So Mrs. Bryant's front yard is -- a  
4 good portion of it is actually in your property; is that  
11:02 AM 5 correct?

6 A. Most of her front yard, yes, is in my property  
7 and my other neighbor's property. Very little of her  
8 front yard is actually her property.

9 Q. Okay. And then everybody kind of shares this  
11:02 AM 10 drive and comes in and pulls into their own  
11 neighborhood.

12 And the way Mrs. Bryant's works, she  
13 pulls in and her garage is up here but her carport's  
14 over here; is that correct?

11:02 AM 15 A. Right. I would say first the carport, then  
16 the garage and then the house.

17 Q. Okay. So if you can -- if you can look at --

18 THE COURT: Can I ask on Plaintiff's  
19 Exhibit 1 which direction -- are these facing north?

11:03 AM 20 Q. (BY MR. NEWTON) Could you go back and look at  
21 Plaintiff's Exhibit 1, Mr. Mishkoff?

22 So this is Plaintiff's Exhibit 1.

23 A. Should I stay over here or should I sit down?

24 Q. You can stay there, that's fine.

11:03 AM 25 Which house is yours?

11:03 AM 1 A. My house is on the left. That's to the south.  
2 Ms. Bryant's house is to the north on the right, so the  
3 camera is facing due west.

4 Q. Okay. And so can you point -- and I know this  
11:03 AM 5 is not going to be exact. Can you point to roughly  
6 where your property line runs?

7 A. Yeah. My property runs -- there's a strip  
8 10-foot wide that runs down to Windhaven. I don't want  
9 to block anybody. I'd say about there.

11:03 AM 10 Actually, there's a little -- you can't  
11 even probably barely see it. There's a little  
12 electrical circuit box there I never noticed before, but  
13 when I look at the survey I see that as the easternmost  
14 portion of Ms. Bryant's property.

11:04 AM 15 Q. So it's fair to say that you -- like between  
16 you and your other neighbor, not Mrs. Bryant, y'all own  
17 pretty much the entirety of Mrs. Bryant's driveway, or  
18 at least the majority of it until it turns into the  
19 garage?

11:04 AM 20 A. Well, the driveway, of course, goes all the  
21 way back to the fence, but the part that goes here that  
22 goes back to the garage is, yes, is mostly not her  
23 property.

24 Q. Okay. And so could you point on that picture  
11:04 AM 25 to the portion of your property you are trying to

11:04 AM 1 access?

2 A. Yes. There's a strip -- you can barely see it  
3 here. It's 5 feet wide. It runs along the north side  
4 of my house. I've just got it covered in river rock.

11:04 AM 5 So you can see at the side of my house  
6 there going west, there's a strip here, an east-west  
7 strip just behind the tree that is 5 feet wide.

8 MR. NEWTON: May I approach, Your Honor?

9 THE COURT: You may.

11:05 AM 10 Q. (BY MR. NEWTON) I want to show you Exhibit 2  
11 right here, and I will bring this up.

12 MR. NEWTON: And Your Honor, plaintiff  
13 would like to admit Exhibit 2 into evidence.

14 MR. GARRETT: No objection.

11:05 AM 15 THE COURT: Plaintiff's 2 is admitted.

16 Q. (BY MR. NEWTON) Hopefully I can pull the right  
17 picture up here for you.

18 That's not Exhibit 2. I apologize. I'm  
19 looking for it on my computer so I can bring it up.

11:06 AM 20 Could you describe what we're looking at  
21 on Exhibit 2? It's not on the screen. It's in the  
22 picture.

23 A. Yeah. Those are -- pretty much in the center  
24 of the photo are some flowerpots that Ms. Bryant has put  
11:06 AM 25 there to hinder my access from getting from one part of

11:06 AM 1 my property to another. That's it in the most general  
2 terms.

3 Q. Now I want to show you Exhibit 3.

4 MR. NEWTON: May I approach, Your Honor?

11:06 AM 5 THE COURT: You may.

6 MR. NEWTON: I'd like to admit those into  
7 evidence.

8 THE COURT: You're offering this?

9 MR. NEWTON: Yes, Your Honor.

11:06 AM 10 THE COURT: Any objection to Plaintiff's  
11 3?

12 MR. GARRETT: No, Your Honor.

13 THE COURT: Plaintiff's 3 is admitted.

14 Q. (BY MR. NEWTON) Okay. I've got this one on  
11:07 AM 15 the screen so it will be easier to show.

16 So can you using this photo show how you  
17 typically approached that area of the yard?

18 A. Well, to get to that strip, that 5-foot wide  
19 of land on the north side of my property, I would walk  
11:07 AM 20 from my grass over Sonia's driveway, and then onto the  
21 rocks, which are -- which is the north side of my  
22 property.

23 Q. And so could you describe what else is back  
24 there?

11:07 AM 25 A. On the north side of my property all of my

11:07 AM 1 circuit breaker boxes are there, all of my utility boxes  
2 are there, my electric meter, my cable, my phone.

3 I have a couple of windows that in order  
4 to, you know, to wash -- like there is one of my windows  
11:08 AM 5 there -- in order to wash that window that's where I  
6 have to go.

7 There's a shed further back. I don't  
8 know if you want to get into that or not. Right at the  
9 back of that you can see the wall of my shed. The back  
11:08 AM 10 of my shed faces onto Ms. Bryant's driveway.

11 THE COURT: And you can go ahead and have  
12 a seat.

13 MR. NEWTON: And then, Your Honor, if it  
14 please the Court I'd like to show two quick videos of  
11:08 AM 15 the property. I don't believe counsel's had a chance to  
16 view these.

17 Do you have a problem?

18 MR. GARRETT: Go ahead.

19 MR. NEWTON: So we'd like to admit these  
11:08 AM 20 into evidence, Your Honor, if it's okay.

21 Q. (BY MR. NEWTON) So Mr. Mishkoff, can you  
22 describe what we are about to witness in this first  
23 video?

24 THE COURT: Have the videos been marked?

11:08 AM 25 MR. NEWTON: No, Your Honor.

11:08 AM

1 THE COURT: And do you have them in a  
2 format that you can leave with --

3 MR. NEWTON: There in MP4, and I can  
4 forward those to -- as Exhibits 6 and 7.

11:09 AM

5 THE COURT: Ms. Moses, do you have the  
6 ability to receive MP4 videos via email?

7 THE REPORTER: I do.

11:09 AM

8 THE COURT: Okay. We have a 471st  
9 exhibit email address, if you would send them to that  
10 email address marked appropriately, and then, Ms. Moses,  
11 we can get those to you.

12 THE REPORTER: Sure. I just need to know  
13 which one is which.

11:09 AM

14 THE COURT: Or alternatively, if you have  
15 the ability to put them on a flash drive -- I don't know  
16 what the size of the files is and --

17 MR. NEWTON: Let me see if I have a flash  
18 drive. I can email them, Your Honor.

11:09 AM

19 THE COURT: Okay. But you're marking  
20 them as 6 and 7?

21 MR. NEWTON: Yes, Your Honor.

22 THE COURT: Any objection to 6 and 7?

23 MR. GARRETT: I can see 6. I don't have  
24 any objection.

11:09 AM

25 Will you just pull up 7 and let me see 7?

11:09 AM

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MR. NEWTON: Yes.

2

THE COURT: Okay. Plaintiff's 6 is

3

admitted.

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MR. NEWTON: Can we do it in a second so

11:09 AM

5

I can show Mr. Mishkoff?

6

MR. GARRETT: Sure.

7

Q. (BY MR. NEWTON) So Mr. Mishkoff, can you

8

describe to me what we are about to see?

9

A. Yes. That's my wife, Donna, in the pink

11:10 AM

10

slippers, and she appears to be rinsing off windows with the hose. I image she just washed them.

12

And through the screen that Ms. Bryant

13

has put on her carport, you can see Ms. Bryant. And as

14

you run the video you'll see that she's speaking -- over

11:10 AM

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there speaking to each other. And Ms. Bryant is

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gesturing and she's holding up a phone to record

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everything that went on.

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And as the video goes on you'll see that

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she seems to be gesturing for Donna to leave. Donna is

11:10 AM

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standing entirely on our property at this point.

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But to get back to the front of our

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property she's going to have to walk around that tree

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and take half a dozen steps on Ms. Bryant's property.

24

And this runs about a minute, I think.

11:11 AM

25

Q. Mr. Mishkoff, the flowerbed that your wife is



11:11 AM 1 watering there, how long has that been there?

2 A. Well, it was laid out with the subdivision.  
3 The developer put it there. I don't remember if the  
4 developer had anything planted there when we moved in.

11:11 AM 5 That's probably -- those are probably plants that we've  
6 planted in the last 35 years. I know we planted the  
7 tree.

8 Q. How long have you lived on the property?

9 A. 35 years. We were the original owners.

11:11 AM 10 Q. And for that 35 years have you had constant  
11 access to this portion of the property, at least until  
12 Mrs. Bryant purchased the property?

13 A. Absolutely.

14 THE COURT: And counsel, you do have  
11:11 AM 15 about five minutes remaining.

16 MR. NEWTON: Thank you, Your Honor.

17 THE WITNESS: And so Donna is standing on  
18 her own -- on our property right there, and Sonia  
19 continues to gesture at her.

11:12 AM 20 MR. NEWTON: I'm sorry, before I play  
21 this, Your Honor, I want to get counsel's --

22 MR. GARRETT: That's fine.

23 MR. NEWTON: Your Honor, this would be  
24 Exhibit 7.

11:12 AM 25 MR. GARRETT: No objection, Your Honor.

11:12 AM

1

THE COURT: Plaintiff's 7 is admitted.

2

Q. (BY MR. NEWTON) Could you describe what we are witnessing here?

3

4

A. Yeah. It looks to me like Donna is washing windows, and Ms. Bryant pulls up and waits. I know it doesn't take that long for her to get into her garage, but she is just waiting there because she knows that Donna is going to have to walk across her property. And as you see -- you can't see really clearly and I have no sound, but she jumps out of her car and confronts Donna as Donna takes just a few steps across her property to get over to my front yard.

11:12 AM

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11:12 AM

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MR. NEWTON: Your Honor, may I approach?

14

THE COURT: You may.

11:13 AM

15

16

17

18

MR. NEWTON: Your Honor, I would like to introduce Plaintiff's Exhibit 5, which is the declarations of covenants and restrictions for the -- pertaining to the property.

19

THE COURT: Any objection?

11:13 AM

20

MR. GARRETT: No, Your Honor.

21

THE COURT: Plaintiff's 5 is admitted.

22

Q. (BY MR. NEWTON) Mr. Mishkoff, here is a -- your copy here.

23

24

Mr. Mishkoff, could you read Section 6 on page 3 for me?

11:13 AM

25

11:13 AM 1 A. Okay. I guess that's what you have starred?  
2 Q. Yes, I did star it.  
3 A. Okay. It says, "Each owner shall have a  
4 nonexclusive easement which is hereby reserved by  
11:13 AM 5 defendant on his behalf over and upon the portions of  
6 the affected lots within the maintenance area associated  
7 with each owner's affected lot for purposes specified in  
8 Article 4, Section 1."  
9 Q. Mr. Mishkoff, are you an owner of a property  
11:14 AM 10 in that subdivision?  
11 A. I am.  
12 Q. Is your lot one of the affected lots?  
13 A. Yes, it is.  
14 Q. Is your affected lot within a maintenance  
11:14 AM 15 area?  
16 A. It is.  
17 Q. Do you use that property -- or that portion of  
18 Mrs. Bryant's property, or Ms. Bryant's property, to  
19 access your northern -- or access the northern portion  
11:14 AM 20 of your property?  
21 A. I do.  
22 Q. And do you use it for the purpose of  
23 maintenance and keeping things clean?  
24 A. I do.  
11:14 AM 25 Q. And have you ever used it -- or if you had to

11:15 AM 1 use it to paint the siding, would you use it to paint  
2 the siding over there?

3 A. I have had painters who have painted the  
4 siding and they have had to cross Ms. Bryant's property.

11:15 AM 5 Q. Have you ever had to access it for the circuit  
6 breaker?

7 A. Yes, I have.

8 Q. Have you ever had the police called when you  
9 try to access that portion of your property?

11:15 AM 10 A. Yes, I have.

11 Q. How many times?

12 A. I'm going to say three. I'm not sure. It's  
13 somewhere in that range.

14 Q. Would you consider it important, even  
11:15 AM 15 imminent, to need access to that property to mess with  
16 the circuit breaker, the AC switches, anything like  
17 that?

18 A. Absolutely.

19 MR. NEWTON: No further questions, Your  
11:15 AM 20 Honor.

21 THE COURT: All right. Any questions,  
22 Mr. Garrett?

23 MR. GARRETT: I have a few.

24

11:16 AM 25 (No omissions)

**CROSS-EXAMINATION**

1  
2 BY MR. GARRETT:

3 Q. Mr. Mishkoff, how many times have you been  
4 inside Ms. Bryant's carport?

5 A. Since Ms. Bryant has owned the property?

6 Q. Yes, sir.

7 A. You mean while it's been hers?

8 I would -- I can think of three times,  
9 and there may have been one or two more times.

10 Infrequently.

11 Q. Okay. Would you look at Plaintiff's Exhibit  
12 No. 2 for me? Do you have it up there?

13 A. Oh, our exhibits?

14 Q. Yes, sir.

15 A. No. 2, yes?

16 Q. Yes, sir.

17 Is it your contention that these potted  
18 plant are preventing you from accessing your electrical  
19 box?

20 A. The potted plants appear in different  
21 configurations at different times. She's had anywhere  
22 from three to five. Sometimes they are spread out.  
23 Sometimes they are condensed. Sometimes they have  
24 plastic bags over them and in various configurations.

25 Yes, I have had to move at least one plant to access

11:17 AM 1 that portion of my property.

2 Q. So you can move a plant and walk between the  
3 plants to access your box? Yes?

4 A. The plants are filled with rocks. They are  
11:17 AM 5 very heavy. I can do it. My wife would absolutely not  
6 be able to do it.

7 If she had a circuit breaker go out and I  
8 was not home, she would have to wait for me to come  
9 home.

11:17 AM 10 Q. Okay. So the answer to my question then is,  
11 yes, you can move them?

12 A. Yes, I can and have moved them.

13 Q. And you're the only person listed as a title  
14 owner of your residence, right? Your wife is not on the  
11:17 AM 15 title?

16 A. That's correct.

17 Q. Okay. Mr. Mishkoff, you can walk between  
18 those potting plants, can't you?

19 A. Not the ones that -- the way you have pictured  
11:17 AM 20 there from what I'm looking at.

21 Q. Okay. When did those potted plants first  
22 arrive?

23 A. If I had to guess, I'd say six to eight months  
24 ago.

11:18 AM 25 Q. Okay. In that Exhibit No. 6, the video where

11:18 AM 1 your wife was using the water hose, that video is more  
2 than a year old, isn't it?

3 A. I believe so.

4 Q. Yes. And Exhibit 7, that video is also more  
11:18 AM 5 than a year old, isn't it?

6 A. I believe so.

7 Q. And so you thought the best thing to do would  
8 be to come to court and ask that my client be -- do  
9 something -- we still don't know exactly what it is that  
11:18 AM 10 you're asking the Court -- but you thought the better  
11 decision would be to come to court and spend everyone's  
12 money versus walking between a potted plant?

13 A. First of all, I'm not sure what that has to do  
14 with the two videos because the plants weren't there at  
11:18 AM 15 the time, so I'm not sure if the two parts of your  
16 statement are related.

17 But, yes, I thought that it would --  
18 There have been times when I've had to move them, as you  
19 say, at least one of them, probably only one of them,  
11:18 AM 20 maybe two of them, to get to the side of my property.  
21 And as I say, my wife, who lives there with me, cannot  
22 move the plants.

23 So, yes, I thought it would be best to go  
24 to court to force Ms. Bryant to remove what I call the  
11:19 AM 25 blockade.

11:19 AM 1 MR. GARRETT: May I approach, Your Honor?

2 THE COURT: You may.

3 Q. (BY MR. GARRETT) Mr. Mishkoff, I'm going to  
4 hand you what's been marked Defendant's Exhibit No. 1.

11:19 AM 5 Do you recognize this as a letter you transmitted?

6 MR. GARRETT: A copy for Your Honor.

7 THE WITNESS: Yeah. I assume you don't  
8 want me to read all of this stuff now.

9 Q. (BY MR. GARRETT) No, just let me know if you  
11:19 AM 10 can identify the letter.

11 A. Yeah, this is a letter that I wrote.

12 MR. GARRETT: Your Honor, move to admit  
13 Defendant's Exhibit No. 1.

14 THE COURT: Any objection to Defendant's  
11:19 AM 15 1?

16 MR. NEWTON: No, Your Honor.

17 THE COURT: All right. Defendant's 1 is  
18 admitted.

19 Is the witness' copy marked?

11:19 AM 20 MR. GARRETT: It is, Your Honor.

21 THE COURT: All right. Thank you.

22 Q. (BY MR. GARRETT) Mr. Mishkoff, that letter is  
23 dated September 30th, 2020?

24 A. That's what it say, yes.

11:20 AM 25 Q. This dispute you've been having with



11:20 AM 1 Ms. Bryant has been going on since at least September  
2 30th, 2020, correct?

3 A. Yes.

4 Q. Would you go to the second page? Do you see  
11:20 AM 5 the second indented paragraph from the bottom, the one  
6 that starts with, "We will continue to walk across your  
7 driveway."

8 A. Right.

9 Q. Do you see that?

11:20 AM 10 A. I do.

11 Q. Do you see where you write, "We will continue  
12 to walk across your driveway as necessary to access the  
13 strip of our land on the north side of our house, which  
14 we may need to do, for example, to access our circuit  
11:20 AM 15 breakers and utility connections."

16 Do you see that?

17 A. I do.

18 Q. Is that what you're asking the Court to allow  
19 you to do?

11:20 AM 20 A. Yes, it is.

21 Q. Okay. Do you see the next sentence where you  
22 write, "The only other way force us to access the north  
23 side of our house would be for us to tramp through our  
24 flowerbed and to push our way through the branches of a  
11:20 AM 25 tree, which we will not do."

11:20 AM

1 Do you see that?

2 A. I do.

3 Q. Is it possible to access your circuit breakers  
4 while staying wholly on your own property?

11:21 AM

5 A. It is difficult but possible.

6 MR. GARRETT: Your Honor, may I approach  
7 the witness again?

8 THE COURT: You may.

11:22 AM

9 Q. (BY MR. GARRETT) I'm going to hand you two  
10 photographs. One is marked Defendant's Exhibit 3 and  
11 one is marked Defendant's Exhibit 4.12 Taking a look at Defendant's Exhibit No.  
13 3, do you recognize this as a photograph of your -- as a  
14 photograph of your wife walking on the north side of  
15 your house?

11:22 AM

16 A. I do.

17 Q. Okay. And it appears that she's capable of  
18 walking on the north side of her house without  
19 traversing onto Ms. Bryant's property.

11:22 AM

20 A. It's possible.

21 MR. GARRETT: Your Honor, I move to admit  
22 Defendant's Exhibit 3.

23 MR. NEWTON: No objection, Your Honor.

24 THE COURT: All right. Defendant's 3 is  
11:22 AM 25 admitted.

11:22 AM 1 Q. (BY MR. GARRETT) If you'll take a look at  
2 Defendant's Exhibit No. 4 for me, please, sir.

3 A. Uh-huh.

4 Q. Do you recognize Defendant's Exhibit No. 4 as  
11:22 AM 5 a photograph taken of the area between your home and  
6 Ms. Bryant's home?

7 A. I do.

8 Q. Do you see that there is clear, unimpeded  
9 access to your circuit boards -- your circuit breakers  
11:23 AM 10 from within your own property, sir?

11 A. Not at this time of year. In the photo -- the  
12 photo was taken when there are no leaves or flowers on  
13 the trees and no flowers in the flowerbed.

14 Q. I see.

11:23 AM 15 A. So at this time of year it is probably the  
16 only time that we could do it.

17 Q. This is a fair and accurate depiction of what  
18 it appears like in between your houses during sometime  
19 of the year?

11:23 AM 20 A. That's correct.

21 MR. GARRETT: Move to admit Defendant's  
22 Exhibit 4, Your Honor.

23 MR. GARRETT: No objection.

24 THE COURT: Defendant's 4 is admitted.

11:23 AM 25 MR. GARRETT: May I approach briefly?

11:23 AM

1

THE COURT: You may.

2

Q. (BY MR. GARRETT) Sir, I'm going to hand you what's been marked Defendant's Exhibit No. 2. Is the person depicted in Defendant's Exhibit No. 2 appear to be you?

11:23 AM

5

6

A. It does.

7

Q. Mr. Mishkoff, this is you walking between the blockade; is it not?

8

9

A. I don't know that that's what this shows. It shows me on my property.

11:24 AM

10

11

Q. You don't believe that this is a depiction of you walking between the potted plants?

12

13

A. No. I'm on my property. I don't know how I got there. I am certainly willing to concede that I may have walked through the potted plants to have gotten there.

11:24 AM

15

16

17

Q. Okay. In this depiction there's certainly enough room for you to walk between them.

18

19

A. In this depiction. There usually is not.

11:24 AM

20

MR. GARRETT: Move to admit Defendant's Exhibit 2, a photograph of Mr. Mishkoff.

21

22

THE COURT: Any objection?

23

MR. NEWTON: No objection.

24

THE COURT: All right. Defendant's 2 is admitted.

11:24 AM

25

11:24 AM 1 Q. (BY MR. GARRETT) Mr. Mishkoff, your use of  
2 that small portion of the driveway where you take a  
3 circular route, you're not claiming that you have used  
4 that exclusively, have you?

11:25 AM 5 A. Over what period of time?

6 Q. The last 10 years.

7 A. For most of the time that I've lived there I  
8 think that I have. I mean, I haven't paid much  
9 attention to it. I don't know why anyone else would  
10 have used it.

11:25 AM 11 Q. Would no one else use that to drive a car into  
12 the carport, for example?

13 A. Well, the last two owners -- the original  
14 owner built the carport. They had two cars. Then there  
15 were two owners who did not have multiple cars. And  
16 then Ms. Bryant.

17 And the two owners in between the  
18 original owner and Ms. Bryant, I don't believe they used  
19 the carport, and I'm not willing to say that definitely.  
11:25 AM 20 But I don't think they ever used the carport, and I  
21 don't think they would have any reason to go onto that  
22 portion of the driveway.

23 Q. But you won't testify that you were the  
24 exclusive user of that property for any relevant period  
11:26 AM 25 of time, will you?

11:26 AM 1 A. I may have been. I don't know.

2 Q. You don't know.

3 MR. GARRETT: No further questions, Your  
4 Honor.

11:26 AM 5 THE COURT: All right. Anything else,  
6 counsel?

7 MR. NEWTON: Yeah, if I may, Your Honor,  
8 just a very quick redirect.

9 **REDIRECT EXAMINATION**

11:26 AM 10 BY MR. NEWTON:

11 Q. Mr. Mishkoff, are we here only because you  
12 want to remove the planters, or are we also here because  
13 you want to be able to peacefully enjoy access to that  
14 portion of your property?

11:26 AM 15 A. Both of those things are true.

16 Q. So is it fair to say as it currently stands,  
17 that if Ms. Bryant is home, when someone is on that  
18 portion of the property that there can be a potential  
19 for conflict?

11:26 AM 20 A. That's been -- that's happened, yes.

21 Q. And that the police have been called multiple  
22 times.

23 A. That's true.

24 Q. And is it possible the reason we're here, as  
11:26 AM 25 much as anything, is because you want to be able to

1 clean your windows on that side without having to worry  
2 about a verbal confrontation, at the very least, or the  
3 police being called.

4 A. To refine that, I want my wife to be able to  
5 do that without being confronting because that upsets  
6 her a great deal.

7 MR. NEWTON: No further questions, Your  
8 Honor.

9 MR. GARRETT: Nothing from us of this  
10 witness. Thank you.

11 THE COURT: All right. You may step  
12 down. Thank you for your testimony.

13 Counsel, is there anything else in  
14 support of your application?

15 If you would please leave the exhibits.

16 THE WITNESS: Oh, I'm sorry.

17 MR. NEWTON: The only thing I would say,  
18 Your Honor, is just to kind of reiterate, but in the  
19 declarations we're not just going after the implied  
20 easement but the express easement that's offered through  
21 the CC&Rs as well, to where if you're in an affected lot  
22 within the maintenance easements then you have a right  
23 of access to your property.

24 And this is a clear depiction of why  
25 that's so important to a subdivision like this.

11:28 AM 1 THE COURT: Mr. Garrett, anything in  
2 response?

3 MR. GARRETT: We're not going to offer  
4 any witnesses. I would like to just briefly address  
11:28 AM 5 legal points in a closing statement, if I may.

6 THE COURT: I don't believe that's  
7 necessary. I think the record here is pretty clear that  
8 we do not have the imminent irreparable injury that is  
9 required for temporary relief prior to the time of  
11:28 AM 10 trial.

11 Everything about it seems to be a matter  
12 of convenience as opposed to a matter of emergency, and  
13 it just doesn't rise to a level that would support the  
14 imposition of injunctive relief, which is an  
11:28 AM 15 extraordinary remedy.

16 I would ask that for the record if you  
17 would get those Exhibits 6 and 7, the videos, either by  
18 email to the court's email address or via flash drive  
19 delivered to Ms. Moses.

11:28 AM 20 Ms. Moses, will you be here the rest of  
21 the week?

22 THE REPORTER: Yes.

23 THE COURT: Okay. I just wanted to  
24 confirm. She's filling in for us this week, so if you  
11:28 AM 25 could arrange to get that to her we would appreciate it,



11:29 AM

1 and email is always our backup.

2 Anything else on this case this  
3 afternoon?

4 MR. NEWTON: No, Your Honor.

11:29 AM

5 THE COURT: Okay. All right. Then  
6 counsel is excused.

7 *(Proceedings concluded)*

8

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1 STATE OF TEXAS )

2 COUNTY OF COLLIN )

3 I, Stephanie S. Moses, Deputy Official  
 4 Court Reporter in and for the 471st District Court  
 5 of Collin County, State of Texas, do hereby certify  
 6 that the above and foregoing contains a true and  
 7 correct transcription of all portions of evidence  
 8 and other proceedings requested in writing by  
 9 counsel for the parties to be included in this  
 10 volume of the Reporter's Record in the above-styled  
 11 and numbered cause, all of which occurred in open  
 12 court or in chambers and were reported by me.

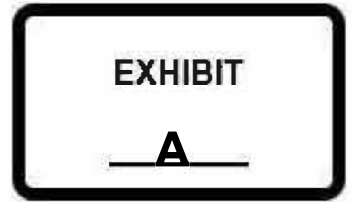
13 I further certify that this Reporter's  
 14 Record of the proceedings truly and correctly  
 15 reflects the exhibits, if any, offered by the  
 16 respective parties.

17 I further certify that the total cost for  
 18 the preparation of this Reporter's Record is \$ 260.00  
 19 and was paid/will be paid by Hank Mishkoff.

20 WITNESS MY OFFICIAL HAND on this, the 25th day  
 21 of June, 2022.

22 /s/ Stephanie S. Moses  
 23 Stephanie S. Moses, CSR 4606  
 24 P.O. Box 645  
 25 Whitewright, Texas 75491  
 Telephone: 214.498.3711  
 Email: stephanie.moses0303@gmail.com  
 Expiration: 4/30/2023

# EXHIBIT G



CAUSE NO. 471-01040-2022

HENRY MISHKOFF

*Plaintiff,*

v.

SONIA BRYANT

*Defendant.*

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§

IN THE DISTRICT COURT

471st JUDICIAL DISTRICT

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.

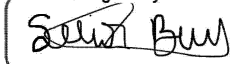
5. Related to such interactions, on September 30, 2020, Mr. Mishkoff wrote me a letter in response to my decision to call the police in an attempt to gather some sort of assistance to stop he and his wife's continual trespass onto my property. A true and correct copy of the letter is attached hereto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

H A N K  
M I S H K O F F

**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



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.

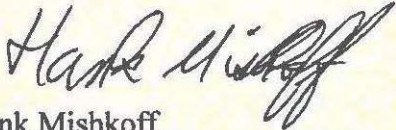
**The bottom line is: If you will start acting like a good neighbor, we will continue to act like good neighbors, as we've been doing for decades. But if you persist in harassing us, either in person or by calling the police, our motivation for continuing to be good neighbors could disappear at any time.**

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,

A handwritten signature in black ink that reads "Hank Mishkoff". The signature is written in a cursive style with a large, sweeping initial "H".

Hank Mishkoff  
Hank@WebFeats.com