

**FIRST AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BROADWAY NORTH SUBDIVISION**

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF HIDALGO §

WHEREAS, pursuant to Article XII, Section 3, Broadway North Subdivision Owners Association, Inc., hereinafter called "Association," being the owners of the herein described property does hereby make and publish this First Amended and Restated Declaration of Covenants, Conditions and Restrictions for Broadway North Subdivision. As is evidenced by the signatures of at least 2/3 of each class of members below, the original Declaration of Covenants, Conditions and Restrictions for Broadway North Subdivision filed on November 25, 1998 as Document No. 727819 in the Official Records of Hidalgo County, Texas is amended in Articles III and VII and restated as follows:

WHEREAS, **DOVE AVENUE JOINT VENTURE**, hereinafter called "Declarant," being the owner of the herein described property, does hereby make and publish the following limitations and restrictions which are to apply to and become part of all contracts of sale, deeds or other legal instruments whereby title or possession is divested out of the present owners and invested in other person or person, to any and all real property described as follows:

Broadway North Subdivision, including all of the subdivided and numbered Lots One (1) through Twenty-five (25) and Common Areas, McAllen, Hidalgo County, Texas, as recorded in Volume 33, Page 103, and amended in Volume 33, Page 182, Official Records of Hidalgo County, Texas;

to all of which the undersigned does hereby bind itself as the sole owner of said real property.

WHEREAS, Declarant desires to subject all of the above described property to the protective covenants, conditions, restrictions, liens and charges as hereinafter set forth, pursuant to an established general plan for the improvement and development of said property;

NOW, it is hereby declared that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and shall be binding on all parties having any right, title or interest in or to the above-described property or any part thereof, and their heirs, successors and assigns, and which easements, restrictions, covenants and conditions shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to **BROADWAY NORTH SUBDIVISION OWNERS ASSOCIATION, INC.**, a non-profit corporation, its successors and assigns, which shall be formed by the Owners for the purpose of enforcing the covenants, restrictions and agreements set forth herein.

Section 2. "Common Area" shall mean and refer to (1) all real property located between the numbered Lots and the surrounding properties which might be the responsibility of the City of McAllen and/or The State of Texas to maintain; (2) the area on the recorded plat denoted as "Common Area 'A,'" and; (3) parking spaces as may be delineated on the recorded plat and notes or created thereafter, and; (4) roadways, driveways and curbcuts to provide vehicle

access to and ingress to and from and in and out of the parking spaces and the Lots, including but not limited to the roadways, driveways and curbcuts shown on the recorded plat, and; (5) driveways, whether shown on the recorded plat or created thereafter to provide accommodation for delivery vehicles to the stores, shops, establishments and retail businesses located on the Lots, and; (6) sidewalks and walkways for pedestrian access to and ingress and egress to and from individual parking spaces and to and among the Lots, and; (7) landscaped and planted areas, and; (8) the "Broadway North" pylon sign (excluding the message center which belongs to the owner of Lot 13) referred to in Article VI, Section 6, and (9) all other areas that are constructed or maintained from time to time as common areas outside of the boundary of the Lots and within the boundaries of the Subdivision as such is set forth in the recorded plat and notes.

Section 3. "Declarant" shall mean and refer to DOVE AVENUE JOINT VENTURE, in its capacity as the initial developer of the Subdivision, and its successors and/or assigns, provided that in order to be a successor or assignee Declarant, the subsequent developer must acquire all of the remaining lots which have not been initially sold by the initial developer.

Section 4. "Lot" shall mean any of the twenty-six (26) numbered plots of land shown on the recorded subdivision map referred to above with the exception of the Common Area. If a numbered plot of land lies between two (2) other numbered Lots and said middle numbered plot of land is acquired in fractions by the two (2) adjoining property Owners, then the expanded plot of land containing the initial numbered area, plus the additional fraction, shall still be considered to be as if the same were one for the purposes of voting (See Article II, Section 3).

Section 5. "Maintenance" shall mean the exercise of reasonable care to keep buildings, streets, alleys, curbs, parking areas, fences, sprinklers, fountains, signs, landscaping, lighting and other related improvements and fixtures, whether enumerated or not, in the Common Area, in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weed free environment for optimum plant growth.

Section 6. "Member" shall mean every person or entity who holds membership in the Association.

Section 7. "Mortgage" shall mean and refer to a conventional mortgage or a deed of trust.

Section 8. "Mortgagee" shall mean a holder of a conventional mortgage or a beneficiary under or holder of a deed of trust.

Section 9. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the property, and shall include contract sellers, but shall not include those holding title merely as security for performance of an obligation.

Section 10. "Subdivision" shall mean the subdivision real property, hereinbefore described and such additions thereto as may be brought within the jurisdiction of the Association as hereinafter provided.

Section 11. "Committee" shall mean the Architectural Control Committee as the same is set out in Article C hereinafter.

Section 12. "Properties" shall mean all of the numbered lots together with the Common Area as said words are defined hereinabove.

Section 13. "Property" shall mean any one of the individual properties noted hereinabove or defined hereinabove.

ARTICLE II
ASSOCIATION MEMBERSHIP, VOTING RIGHTS AND POWERS

Section 1. Membership. Every Owner shall be a member of the Association; membership shall be appurtenant to and may not be separated from ownership of a Lot.

Section 2. Voting Rights. The Association shall have two (2) classes of voting members as follows:

Class A. Class A members shall be all Owners with the exception of Declarant, and shall be entitled to one vote for each Lot owner, except for Lot 13, which shall be entitled to ten (10) votes. When more than one person holds an interest in a given Lot, all such persons shall be members and the vote for such Lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any Lot owned by Class A members except for Lot 13, which shall be entitled to ten (10) votes.

Class B. Class B members shall be Declarant, and shall be entitled to exercise five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or on December 31, 1999, whichever first occurs.

Section 3. Partial Lot Voting. Any Owner acquiring additional property or properties immediately adjacent to its initial numbered Lot, as provided in Article I, Section 4, shall not be entitled to additional votes as a result of such additional properties, save and except the acquisition of more than fifty percent (50%) of such adjacent Lot, in which case, Owner shall be entitled to one additional vote for said additional property. Any Owner who has sold a minor portion of its Lot, but in any event less than fifty percent (50%) of its Lot, with prior written approval of the Committee as provided for herein, shall be entitled to a full vote as a result of such ownership.

Section 4. Powers. The Association, in addition to the powers it already possesses in its charter, shall have the power to own real and personal property, to open bank accounts, to enforce this Declaration as herein provided, to obtain a policy or policies of insurance insuring the Association and its members, to make physical improvements to the Common Area as the Association shall deem to be in the best interest of the Subdivision and the Owners, to contract for legal, accounting and other professional services, to contract for security, paving, landscaping and/or any other services, to borrow funds, to employ employees directly or through an operator, to bring an action(s) for injunctive relief and/or damages against any Owner for failure to comply with any Article and/or Section herein, and to otherwise do that which it believes necessary to protect or defend the Common Area and facilities located therein, the Association and/or any of its properties from loss or damages, by suit or otherwise.

ARTICLE III
ASSESSMENTS

Section 1. Lien and personal obligation of assessment. Declarant hereby covenants for each Lot with the Subdivision, and each Owner of a Lot is hereby deemed to covenant by acceptance of his deed for such Lot, whether or not it shall be so expressed in his deed, to pay to the Association (1) monthly assessments and (2) special assessments for capital improvements, and (3) special assessments for maintenance improvements. Such assessments will be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and a continuing lien on each Lot against which such an assessment is made. All future transferees of Lots shall have the obligation, prior to purchase, to verify with the Association and/or Declarant that such assessments have been paid to date and that the property to be acquired is free and clear of all assessed indebtedness.

Upon the conveyance of any lot, the lot owner shall be transferred at the same time an undivided interest in the Common Area which shall be equal to the same fraction as the rate of assessment computed in Article III, Section 6. This fractional interest in the Common Area cannot be conveyed separate from the lot with which it was conveyed. The purpose of the conveyance of the fractional interest in the Common Area with each lot conveyance is to allow the taxing entities to assess the ad valorem taxes for the Common Area with the lots. The lien assessments and obligations of this Article III shall attach to the undivided interest in the Common Area in the same manner that they attach to the related lot.

Section 2. Purpose of Monthly Assessments. The monthly assessments levied by the Association shall be used exclusively to promote the health, safety, welfare of the Owners and/or their patrons in the Subdivision, and for the improvement, security, preservation, operation and maintenance of the Common Areas and/or of improvements situated within same or within the control of the Association. Monthly assessments shall include, and the Association shall acquire and pay for out of the funds derived from monthly assessments, the following:

- (a) Maintenance and repair of the Common Area to the extent not performed by governmental authority or an Owner. The Association shall be responsible for exterior building maintenance, excluding specifically roofs, glass and doorways.
- (b) Water, sewer, garbage, electrical, lighting, telephone, gas and other necessary utility services for the Common Area, including specifically exterior lighting.
- (c) Acquisition of furnishings and equipment for the Common Area as may be determined by the Association including without limitation all equipment, furnishings, and personnel necessary or proper for the use of the Common Areas.
- (d) Maintenance and repair of all structures in the Common Area including, but not limited to, sidewalks, alleys, fences, sprinkler systems, storm drains, storm water or other run-off drainage facility, sanitary sewers, street lighting, traffic markers, signs and private streets within the confines of the Subdivision, and/or any maintenance and repair required by the City of McAllen, excluding specifically roofs, glass and doorways.
- (e) Insurance, if obtainable, covering the full insurable replacement value of the improvements in the Common Area with extended coverage and if the Association elects, a Master Policy which provides casualty insurance on each building on each lot. The portion of the premium for the casualty insurance shall be billed by the insurance carrier directly to the lot owner but shall still remain a continuing lien on each lot for the insurance costs.
- (f) Liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitees or tenants of any Owner arising out of their occupation and/or use of the Common Area. The policy limits shall be set by the Association and shall be reviewed at least annually and increased or decreased in the discretion of the Association.
- (g) Workmen's compensation insurance to the extent necessary to comply with applicable law, and any other insurance deemed necessary by the Board of Directors of the Association.
- (h) A standard fidelity bond covering all members of the Board of Directors of the Association and all other employees of the Association in an amount to be determined by the Board of Directors.
- (i) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or by law, or

which shall be necessary or proper in the opinion of the Board of Directors of the Association for the operation of the Common Areas, for the benefit of Lot Owners, or for the enforcement of these restrictions.

- (j) All taxes of all taxing entities levied against the Common Areas.

Section 3. Fixing of and Maximum Monthly Assessments.

- (a) Until December 31, 1998, the maximum monthly assessments per Lot shall be five cents per square foot per month. Declarant shall monitor the expenses actually incurred within the three (3) months after the execution of this Declaration and set a monthly amount necessary to meet the actual expenses, but not to exceed the amount set out hereinbefore.
- (b) Commencing with January 1, 1999 and continuing thereafter, all assessments shall be fixed by the Association in advance of January 1st of each calendar year, after giving due consideration to the anticipated cost of all Common Area maintenance obligations, and other costs of operating the Association. The Association shall have the right to collect such assessments in advance on either a monthly or quarterly basis. If at any time the Association determines that the assessments for that fiscal year are insufficient to discharge all assessments to be incurred or payable during that assessment year by the Association, the Association may increase the assessments to cover such costs (incurred or to be incurred), and such increase shall become effective at the beginning of the next monthly or quarterly assessment period. If required, assessments shall be prorated for the period from the commencement thereof to the end of the then current month.
- (c) The Board of Directors of the Association may fix the monthly assessment at an amount not in excess of the maximum prescribed herein, unless required to pay ad valorem taxes on the Common Areas.

Section 4. Special assessments for capital improvements. In addition to the monthly assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement (including, but not limited to, streets, alleys, lighting, and/or utilities) on the Common Area, including fixtures and personal property related thereto. Any such assessment must be approved by a majority of each Class of members.

Section 5. Notice and quorum for action authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized by Section 3 or 4 shall be sent to all members not less than three (3) nor more than ten (10) days in advance of such meeting. In the event the proposed action is favored by a majority of the votes cast at such meeting, but less than the requisite majority of each Class of members, members who were not present in person or by proxy may give their assent in writing within three (3) days after the date of such meeting.

Section 6. Rate of assessment. Both monthly and special assessments shall be fixed at a rate for all Lots, derived according to the following formula: the rate of assessment for each Lot shall be calculated by application of a fraction, the numerator of which is the total square footage contained in the Lot and denominator of which is the total square footage contained in all of the numbered Lots in the Subdivision.

Section 7. Commencement and collection of monthly assessments. The monthly assessments provided for herein shall commence as to all Lots on recording of the Subdivision plat. The first monthly assessments shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the monthly assessment against each Lot at least thirty (30) days in advance of the due date thereof and shall

fix the date such amounts become due. Assessments may be made payable monthly or quarterly. Notice of the monthly assessments shall be sent to every Owner subject thereto. The Association shall, on demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment against a specific Lot has been paid and may, on or before February 15 of each year, cause to be recorded in the Office of the County Clerk of Hidalgo County, Texas, a list of delinquent assessment as of that date.

Section 8. Effect of nonpayment of assessments, remedies of the Association Any assessment not paid within thirty (30) days after the due date shall be deemed in default and shall bear interest at ten percent (10%) per annum from the due date until paid. When the Owner is in default, the Association may bring an action at law against the Owner personally obligated to pay the same, file a lien affidavit or may foreclose the lien against the property, judicially or non-judicially. In any such foreclosure or other collection efforts, the Owner in default shall be required to pay reasonable attorney's fees and costs expended for such collection effort, including the sale of such property. If monthly dues are ninety (90) days in arrears, the dues for the remainder of the year ending at the end of December may be accelerated, and become immediately due. No Owner may waive or otherwise avoid liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

Section 9. Subordination of assessment lien to Mortgage. The assessment lien provided for herein shall be subordinate to the lien of any first mortgage. A sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the assessment lien as to assessments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien therefor.

ARTICLE IV **PROPERTY RIGHTS**

Section 1. Owner's Easements of Enjoyment. Every Owner of a Lot shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to such Lot, subject to the following rights of the Association.

- (a) The right to suspend the voting rights of any Owner for periods during which assessments against his Lot remain unpaid, and the right, after hearing by the Board of Directors, to suspend such rights for a period not exceeding three hundred sixty-five (365) days for any infraction of the published rules and regulations of the Association.
- (b) The right to dedicate or transfer all or any part of the Common Area, including any improvements, to any municipality, public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication or transfer shall be effective unless an instrument executed by two-third (2/3) of each Class of members agreeing to such dedication or transfer has been duly recorded.

Section 2. Delegation of Use. Subject to such limitations as may be imposed by the Bylaws, each Owner may delegate his right of enjoyment in and to the Common Areas and facilities to the members of his family, his guests, tenants and invitees.

Section 3. Easements of Encroachment. There shall exist reciprocal appurtenant easements as between adjacent Lots and between each Lot and any portion or portions of the Common Area adjacent thereto for any encroachment due to the unwillful placement, settling or shifting of the improvements constructed, reconstructed or altered thereon, provided such construction, reconstruction or alteration is in accordance with the terms of this Declaration. Such easement shall exist to a distance of not more than three (3) inches as measured from any

point on the common boundary between adjacent Lots, and between each Lot and any adjacent portion of the Common Area, along a line perpendicular to such boundary at such point. No easement for encroachment shall exist as to any encroachment occurring due to the willful conduct of an Owner.

Section 4. Other easements.

- (a) Easements for installation and maintenance of utilities and drainage facilities are shown on the recorded subdivision map. No structure, planting or other material shall be placed or permitted to remain on such easement which may damage or interfere with the installation and maintenance of utilities or which may damage, interfere with or change the direction of flow of drainage facilities in the easements. The easement area of each Lot and all improvements therein shall be continuously maintained by the Owner of such Lot, except for improvements for maintenance of which a public authority or utility company is responsible.
- (b) No structure of any kind shall be built, erected or maintained on any such easement, reservation or right of way and such easement, reservations and rights of way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Declarant, its successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under and above such locations to carry out any of the purposes for which such easements, reservations and rights of way are reserved.
- (c) There shall exist appurtenant easements of access to all private streets, alleys and, as necessary, lots, within the subdivision to the City of McAllen for the use of city personnel and equipment on city business.
- (d) No structures, kiosks, buildings, fences or barriers shall be erected upon the Common Areas by any Lot Owner.

Section 5. Right of Entry. The Association, through its duly authorized employees, contractors and delegated agents, shall have the right, after reasonable notice to the Owner thereof, to enter any Lot at any reasonable hour on any day to perform such maintenance as may be authorized herein, save and except in case of an emergency which threatens either life or property, in which case advance notice shall not be required.

Section 6. No Partition. There shall be no judicial partition of the Common Area, nor shall Declarant, or any Owner or any other person acquiring any interest in the Subdivision or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in contiguity.

Section 7. Reciprocal Access Easement. Developer does hereby grant for the benefit of the Lot Owners, their transferees, successors and assigns and for the benefit of the Lots, the non-exclusive right, privilege and easement to use the Common Area portions of the Subdivision for pedestrian and vehicular traffic access, ingress and egress, and to permit their respective agents, customers, business visitors, business guests, licensees and invitees to use the same in common with the Lot Owners for parking purposes, delivering and servicing for the benefit of a Lot or Lot Owner and for the purpose of ingress to and egress from the Lots and the adjacent public highways or private roads. The Association shall retain the right to maintain traffic flow indicators within the Subdivision for the purpose of controlling and directing traffic. Such easements shall be perpetual and shall not terminate.

Section 8. Ownership of Common Areas. Developer shall convey the Common Areas to the Association on December 31, 1999 or upon the request of the Association if requested earlier.

ARTICLE V
USE RESTRICTIONS

Section 1. Commercial Use. All lots, and each and every one thereof, are for general commercial use only, as permitted by existing municipal zoning laws, regulations and ordinances and not for residential purposes.

Section 2. Construction Specifications. Each subdivided lot shall have maximum of one (1) building on each. The floor area of the structure shall not be less than 1,700 square feet. Each building shall be built of masonry, whether the same be tilt wall, concrete, block, clay, tile, brick or any other combination of the same and shall be of new construction. The construction plans and specifications for each building upon any Lot must conform to the provisions of Article VII, Section 1 and must be approved in writing by the Architectural Control Committee prior to the commencement of any construction or pre-construction activity on the building or the Lot.

Section 3. Setbacks. Minimum building setback lines shall be as shown on the recorded plat as amended.

Section 4. Consolidation and Partial Lots. None of said lots shall be resubdivided in any fashion, except that any person owning two (2) or more adjoining lots may consolidate such lots into a single building site, with the privilege of constructing improvements thereon as permitted by Sections 2, and 3 herein. However, any sale of a portion or fraction of a Lot must be approved by a unanimous vote of the Committee, and then only if the remaining portion is of sufficient square footage to viably be used as an independent Lot for the construction of a building within the other limitations set forth herein, or if said remaining portion is to be utilized by the adjoining Lot Owner to augment both larger properties (i.e., one on each side of the property being purchased in fractions).

Section 5. Easements. Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Subdivision plat. No utility company, water district, political subdivision or other authorized entity using the easement herein referred to shall be liable for any damage done by them or their assigns, agents, employees or servants to shrubbery, trees or flowers, or to other property of the Owners situated within any such easement.

Section 6. Noxious or Offensive Activities Prohibited. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Subdivision, save and except Section 15 below.

Section 7. Occupancy. No building erected upon any Lot shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed, except as herein required. Nor shall any building, when completed, be in any manner occupied until made to comply with the approved plans, the requirements herein and all other covenants, conditions, reservations and restrictions herein set forth. No temporary structure shall be placed or erected upon any Lot either permanently or temporarily unless approved in writing by the Committee.

Section 8. Garbage Tanks, Equipment, Etc. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. All trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 9. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or maintained for commercial purposes.

Section 10. Fences, Walls, Hedges and Utility Meters. Each building, fence, and plantings shall adhere to the setbacks shown on the Subdivision plat and the requirements of the city.

Section 11. Truck, Buses and Trailers. No trailer, camper, boat, or inoperable automobile will be left in the street or in the Common Area.

Section 12. Prohibited Activities. No fence or wall shall be built forward of the front wall line of the respective building on any Lot. The digging of dirt or the removal of any dirt from any Lot is prohibited, except as necessary in conjunction with landscaping or construction of improvements thereon.

Section 13. Exterior Colors. There shall not be any change in the exterior paint color or alterations in the exterior of any building except in the same manner as existing colors and exterior of said building. An exception to this rule is available only if authorized by the Architectural Control Committee.

Section 14. Insurance. Nothing shall be done or kept on a lot or on the Common Area which would increase the rate of insurance relating thereto without the prior written consent of the Association, and no Owner shall permit anything to be done or kept on his lot or the Common Area which would result in the cancellation of insurance on any resident or on any part of the Common Area, or which would be in violation of any law.

Section 15. Declarant's Special Rights. Declarant or the transferees of Declarant shall undertake the work of developing all Lots included within the Subdivision. The Completion of that work, and the sale, rental or other disposal of business units is essential to the establishment and welfare of the Subdivision as an ongoing business community. In order that such work may be completed and the Subdivision be established as a fully occupied business community as soon as possible, nothing in this Declaration shall be understood or construed to:

- (a) prevent Declarant, Declarant's transferees or the employees, contractors or subcontractors of Declarant or Declarant's transferees from doing on any part or parts of the Subdivision owned or controlled by Declarant or Declarant's transferees or their representatives, whatever they determine may be reasonably necessary or advisable in connection with the completion of such work;
- (b) prevent Declarant, Declarant's transferees or the employees, contractors or subcontractors of Declarant or Declarant's transferees from constructing and maintaining on any part of parts of the Subdivision property owned or controlled by Declarant, Declarant's transferees or their representatives, such structures as may be reasonably necessary for the completion of such work, the establishment of the Subdivision as a business community and the disposition of Lots by sale, lease or otherwise;
- (c) prevent Declarant, Declarant's transferees or the employees, contractors or subcontractors of Declarant or Declarant's transferees from conducting on any part or parts of the Subdivision property owned or controlled by Declarant or Declarant's transferees of their representatives, the business of completing such work, of establishing the Subdivision as a business community and of disposing of Lots by sale, lease or otherwise; or
- (d) prevent Declarant, Declarant's transferees or the employees, contractors, or subcontractors of Declarant or Declarant's transferees from maintaining such sign or signs on any of the Lots owned or controlled by any of them as may be necessary in connection with the sale, lease or otherwise of Subdivision Lots.
- (e) prevent the Declarant, or his assigns from amending the subdivision plat to change the square footage of any unsold lots or to increase the number of lots in the subdivision.

As used in this Section, the words "its transferees" specifically exclude purchasers of Lots improved with complete business.

Section 16. Declarant's Right of Purchase. Declarant, or its assigns, reserves the right of first refusal to purchase any lot to be conveyed by a lot owner. In the event a lot owner receives a contract for the purchase of a lot, the owner, prior to accepting the contract, shall provide Declarant, or its assigns, with an opportunity to review the terms of the contract for a period of fifteen (15) days ("Review Period") and with the opportunity to contract to purchase the lot on the same terms and conditions at any time within the Review Period. In the event the Declarant or its assigns does not contract to purchase the lot within the Review Period, the lot owner may sell the lot under the reviewed contract free and clear of this right of first refusal.

ARTICLE VI **COMMON AREA USE AND RESTRICTIONS**

Section 1. Parking. The parking spaces provided in the Common Area shall only be used to park vehicles driven by lot owners, their employees and their customers/clients. In no event shall parking spaces be used to store vehicles, trailers, etc. or to conduct commercial activities (e.g. car sales, tent sales, etc.). No parking shall be permitted in the alleyway abutting the southerly property line of the Subdivision or in other areas which shall be marked by the Association as No Parking Areas.

Section 2. Non-Exclusive Rights. No property owner has any exclusive rights in the use of parking spaces provided in the Common Area. Said spaces are to be used in common by all property owners, their employees and their clients/customers.

Section 3. Maintenance and Prorations Maintenance of the Common Area, including asphalt and curbs, shall be carried out by the Association and each Owner shall pay its prorata share of costs as determined by multiplying the costs of such maintenance by the fraction set forth in Article III, Section 6, in the event the maintenance costs exceed the monthly assessments collected from each Owner. Maintenance shall include, but not limited to landscaping upkeep, lighting of the Common Area (exterior), garbage disposal (i.e. dumpsters) and periodic striping of the parking spaces. Maintenance shall specifically exclude roofs, glass and doorways. The amounts assessed for maintenance hereunder shall be verified by the Association and the Association shall authorize periodic assessments to be sent to each lot owner within the subdivision which shall be due and payable within fifteen (15) days from the day that such bill is sent.

Section 4. Liability. This document is not intended and shall not be construed to create any joint and several liability among the owners due to premise defects in the Common Area. Each owner is responsible only for that portion of the Common Area which is located within the boundary lines of each owner's property.

Section 5. Common Area Signs. Declarant may construct one large pylon sign to display the names of all of the owners of the numerous lots. If Declarant does not construct such a sign, then only the Architectural Control Committee can authorize same. Political, "For Rent," "For Sale," and other such signs shall be prohibited in the Common Area. Owners may not place signs or their trademark and/or logos of their individual businesses on, in, or upon outside surfaces of the buildings within their Lot or on any portion of their Lot, that do not conform with the standard building lettering and coloring prescribed by the Architectural Control Committee and must have the written approval of the Architectural Control Committee.

Section 6. Outparcel Signs. The two outparcel group of lots (lots 1 through 4, and lots 22 through 25) may have a separate sign for each of the two groups, provided they have prior written approval of the Architectural Control Committee. The costs and expenses of maintenance of these two (2) signs shall be the responsibility of the groups owners and not a common expense.

Section 7. Exceptions Exceptions to common area utilization may be granted on a case by case basis upon written application and approval by the Board of Directors. The written

application must be received at least 10 days before the requested exception is to occur.

Section 8. Violations and remedies of the Association In the event an owner violates any section under Article V or VI, the Association may levy reasonable fines to be established by the Board of Directors, against delinquent owners.

ARTICLE VII **BUILDING RESTRICTIONS**

Section 1. Similarity of Buildings. All buildings shall have a consistent height and facade to promote the appearance of harmony and unity in design and development and shall first be approved by the Architectural Control Committee to insure the appearance of conformity with the overall development plan of the Subdivision. The Architectural Control Committee may approve or disapprove proposed construction plans and specifications based upon its sole judgment as to whether such proposed construction plans and specifications meet the requirements of this section.

Section 2. Setbacks. No building shall be located on the properties nearer to the front line, rear line, side street, or alley ways than the minimum building setback lines shown on the recorded plat including its notes. If two or more lots, or fractions thereof, are consolidated into a building site in conformity with the provisions of Section 3 hereinafter, these building setback provisions shall be applied to such resultant building site as if it were one original platted lot.

Section 3. Merging Lots. None of said properties shall be resubdivided in any fashion except that any person owning two or more adjoining lots or tracts of land in the property may resubdivide or consolidate such lots or tracts into on tract and building site.

Section 4. Common Area Fixtures. No fence, wall, hedge, sign or utility meter shall be placed or permitted to remain, in the Common Area except for decorative entry way structures or signs promoting entire subdivision in general. No signs shall be placed on any Lot. Business or occupant identification shall be placed on the front overhead facade in uniform color and lettering, which shall be approved by the Architectural Control Committee to insure the appearance of unity and conformity with existing signs and facades.

Section 5. Signs. No signs shall be placed on any Lot without prior approval of Architectural Control Committee. Business or occupant identification shall be placed on the front overhead facade in uniform color and lettering, which shall be approved by the Architectural Control Committee to insure the appearance of unity and conformity with existing signs and facades.

ARTICLE VIII **OWNERS' OBLIGATION TO REPAIR**

Each Owner shall, at his sole cost and expense, repair his building improvements, keeping the same in a condition comparable to the condition of such building at the time of its initial construction, excepting only normal wear and tear.

ARTICLE IX. **OWNERS' OBLIGATION TO REBUILD**

If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof, with all due diligence, to rebuild, repair or reconstruct such residence in a manner which will substantially restore it to its appearance and condition

immediately prior to the casualty. Reconstruction shall be undertaken within two (2) months after the damage occurs, and shall be completed within six (6) months after the damage occurs, unless prevented by causes beyond the control of the Owner or Owners. All plans for rebuilding must be approved by the Committee.

ARTICLE X

ARCHITECTURAL CONTROL COMMITTEE

Section 1. Architectural Control Committee. Declarant shall designate and appoint the initial Architectural Control Committee (the "Committee") consisting of three (3) adult persons, which Committee shall serve until December 31, 1999. If any member becomes unable or unwilling to continue to serve during such term, Declarant, his successor or assigns, shall appoint a successor to finish the respective term. A majority of the Committee may designate a representative to act for it. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. After December 31, 1999, the duties, rights, powers and authority of the Committee shall automatically transfer, without any further formality, to the Association. Further, any and all of the duties, rights, powers and authority of the Committee may be assigned at any time, upon the unanimous decision of the Committee, to the Association. From and after the date of such assignment, the Association shall have full right, authority and power and shall be obligated to perform the functions of the Committee as provided herein.

Section 2. Function. The Committee shall perform the functions provided for and consistent with the provisions of this Declaration.

Section 3. Powers. The Committee shall have and exercise the powers and rights provided for in and consistent with the provisions of this Declaration. Each Committee member shall have one (1) vote. Except in those instances in this Declaration where the unanimous action of all Committee members is required for the Committee to make a decision or take an action, no action shall be taken or any decision made by the Committee except with the concurrence of not less than two (2) Committee members, however, a designated representative approved unanimously by all three (3) Committee members shall have the sole power to act on behalf of the Committee. The designated representative's power may be revoked by a written communication to all Owners. Each Committee member shall be entitled to receive (but may waive) not less than five (5) days written notice of each meeting of the Committee and of each action proposed to be taken and decision proposed to be made by the Committee (whether or not at a meeting). The Committee may adopt such Bylaws to govern the performance of its functions under this Declaration as the Committee members may deem appropriate, provided that no provision of such Bylaws shall be contrary to any provision of this Declaration.

Section 4. Approval of Plans and Specifications. No building, fence, wall, road driveway or other structure shall be commenced, erected, altered or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made, nor shall any landscaping of any property be undertaken, except as set forth below, until samples of the brick or exterior paint (if brick is not to be used) and roofing material, and 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 the harmony of external design and location of such improvements in relation to the surrounding structures and topography. It is the intent of the parties to this agreement that all buildings have a common facade which conforms to the overall development plan of the Subdivision.

Section 5. Exterior Maintenance. In the event an owner of any lot shall fail to maintain the premises and the improvements situated thereon in a neat and orderly manner, the Architectural Control Committee shall have the right, through its agents and employees, to enter upon said lot and to repair, maintain, and restore the lot and exterior of the buildings and any other improvements thereon, all at the expense of the owner of said lot.

Section 6. Failure of Committee to Act. In the event that any plans and specifications

are submitted to the Committee as provided herein, and a written receipt of delivery is obtained, and such Committee shall fail either to approve or reject such plans and specifications for a period of thirty (30) days following such submission, approval by the Committee shall not be required, and full compliance with this Article shall be deemed to have been had.

Section 7. Failure to Comply. Failure to comply with Section 4 and/or 5 herein shall submit the respective lot Owner to injunctive relief and/or damages, pursuant to Article II, Section 4. The defendant lot owner shall pay all costs of court and attorney's fees borne by the Association or other entity bringing such action should the Association or other entity, as the case may be, prevail.

ARTICLE XI
ANNEXATION OF ADDITIONAL PROPERTY

Additional business property and Common Area may be annexed to the subdivision with the consent of two-thirds (2/3rds) of each class of members.

ARTICLE XII
GENERAL PROVISIONS

Section 1. Enforcement. Declarant, the Association or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by the provisions of this declaration. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Amendments. Covenants and restrictions of this Declaration may be amended by duly recording an instrument executed and acknowledged by not less than two-thirds (2/3) of each Class of members.


Section 4. Subordination. No breach of any of the conditions herein contained or re-entry by reason of such breach shall defeat or render invalid the lien of any mortgage made in good faith and for value as to the Subdivision or any Lot therein; provided, however, that such conditions shall be binding on any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

Section 5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, Association or any member thereof for a period of thirty (30) years from November 25, 1998, and thereafter shall continue automatically in effect for additional periods of ten (10) years, unless otherwise agreed to in writing by the then Owners of at least two-thirds (2/3) of the Subdivision Lots.


EXECUTED this 27 day of October, 2004.

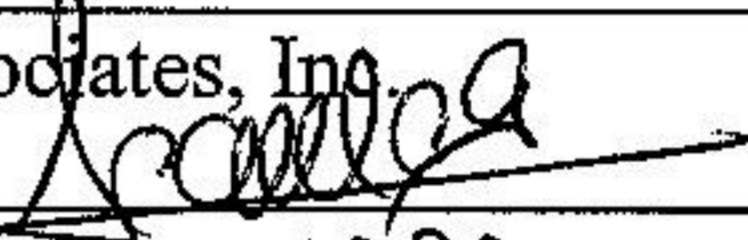
Carlos Garza
Dove Avenue Joint Venture,
By: Carlos Garza,
Its: General Partner
Owner of Lots 1, 2, 3, 4, 8, and 12

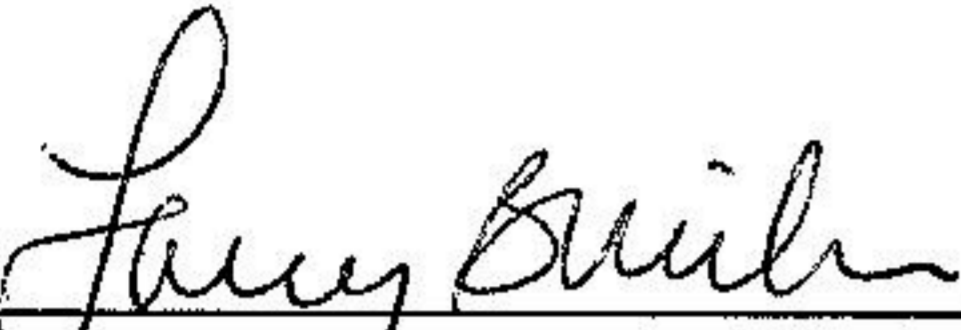
William P. Stocker
William P. Stocker,
Owner of Lot 5

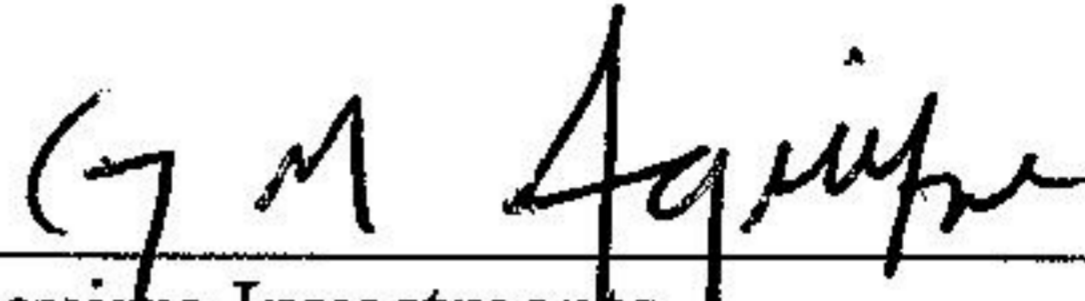

Richard Longoria,
Owner of Lot 6

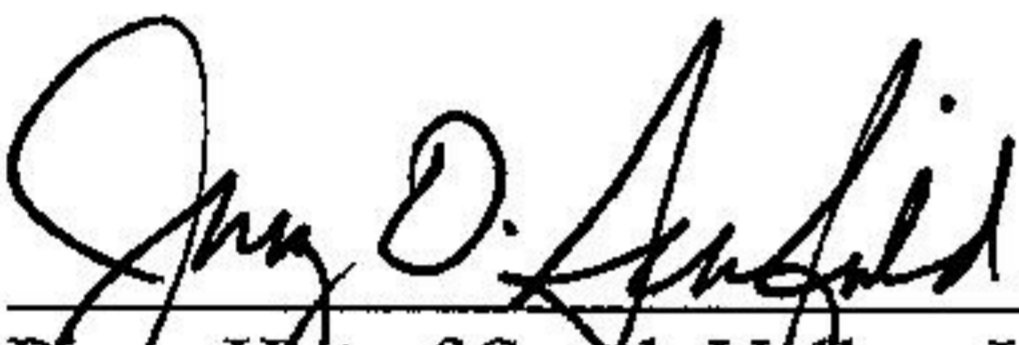
Fishing Properties, Inc.
By: _____
Its: _____
Owner of Lot 7

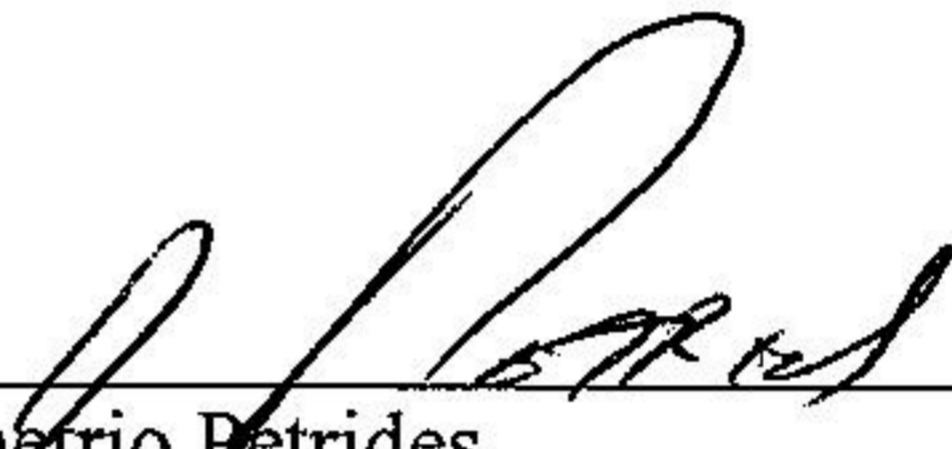

Felipe Cavazos,
Owner of Lot 9

CI & Associates, Inc.
By: 
Its: OWNER
Owner of Lot 10

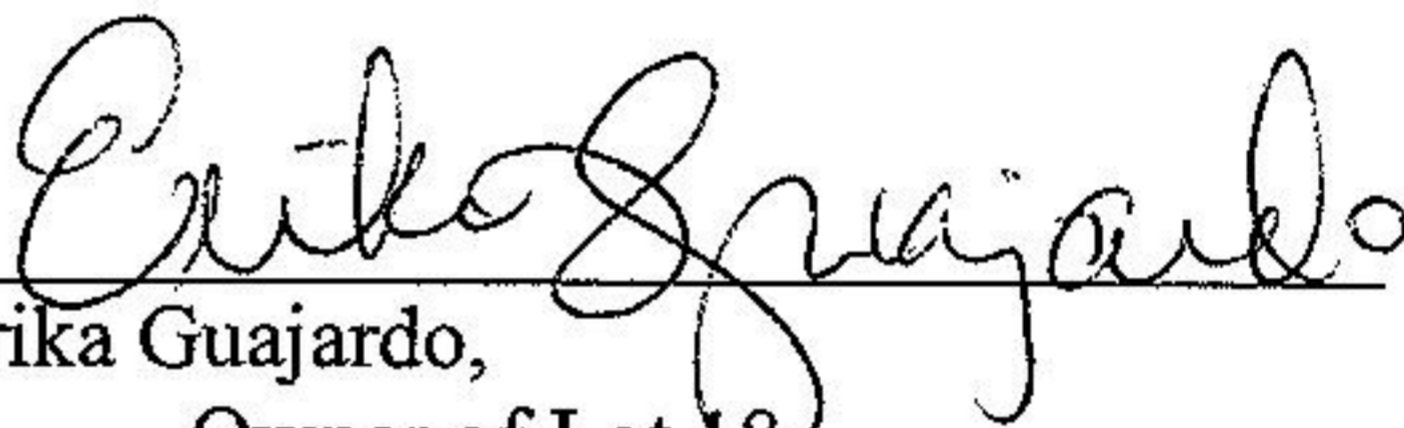

Larry Wilson,
Owner of Lot 11

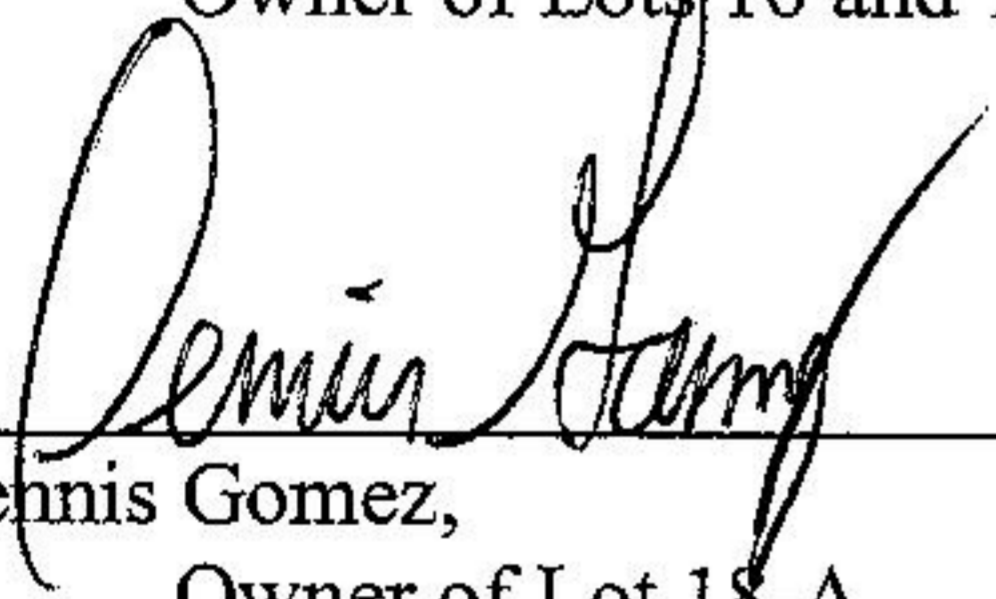

Aguirre Investments
By: OWNER
Its: _____
Owner of Lot 13 (ten votes)


Pizza Hut of South Valley, Inc.
By: JERRY D. GREENFIELD
Its: SEC-LEASE
Owner of Lot 14



Demetrio Petrides
Owner of Lot 15

GB. Wadhvani
BGS Naraindas, Inc.
By: Geeta Wadhvani V. President & Secretary
Its: _____
Owner of Lots 16 and 19


Erika Guajardo,
Owner of Lot 18


Dennis Gomez,
Owner of Lot 18-A

Pamela Conklin,
Owner of Lots 20 and 21


J. Humberto Rodriguez
Owner Lots 22, 23, 24 and 25

STATE OF TEXAS §
 §
COUNTY OF HIDALGO §

This instrument was duly acknowledged by me on this the 27 day of October

2004 by Guillermo Aguirre Owner of Dove Avenue Joint Venture.

Notary Public, State of Texas



STATE OF TEXAS

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COUNTY OF HIDALGO

This instrument was duly acknowledged by me on this the 27 day of October 2004 by William P. Stocker.

[Signature]
Notary Public, State of Texas

STATE OF TEXAS

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§

COUNTY OF HIDALGO



This instrument was duly acknowledged by me on this the 27 day of October 2004 by Richard Longoria.

[Signature]
Notary Public, State of Texas

STATE OF TEXAS

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COUNTY OF HIDALGO

This instrument was duly acknowledged by me on this the _____ day of _____, 2004 by _____, _____ of Fishing Properties, Inc.

Notary Public, State of Texas

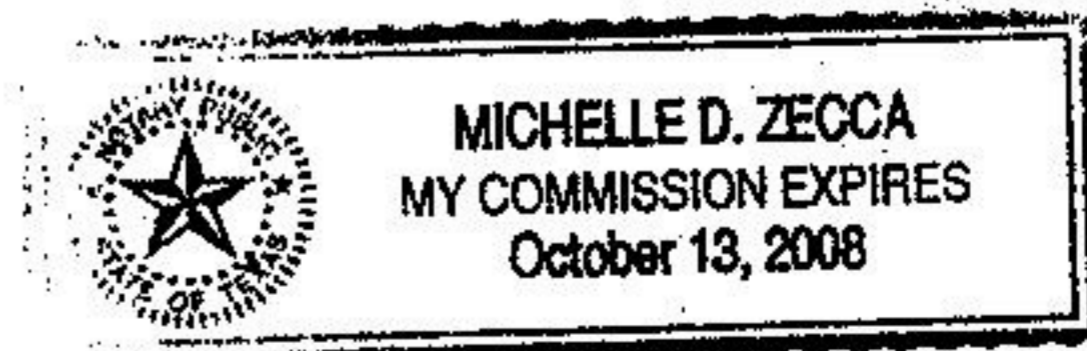
STATE OF TEXAS

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COUNTY OF HIDALGO

This instrument was duly acknowledged by me on this the 24 day of January 2005 by Felipe Cavazos.

[Signature]
Notary Public, State of Texas



STATE OF TEXAS

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§

COUNTY OF HIDALGO

This instrument was duly acknowledged by me on this the 1 day of December 2004 by Cesar Cepeda, _____ of CE& Associates, Inc.

[Signature]

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF HIDALGO

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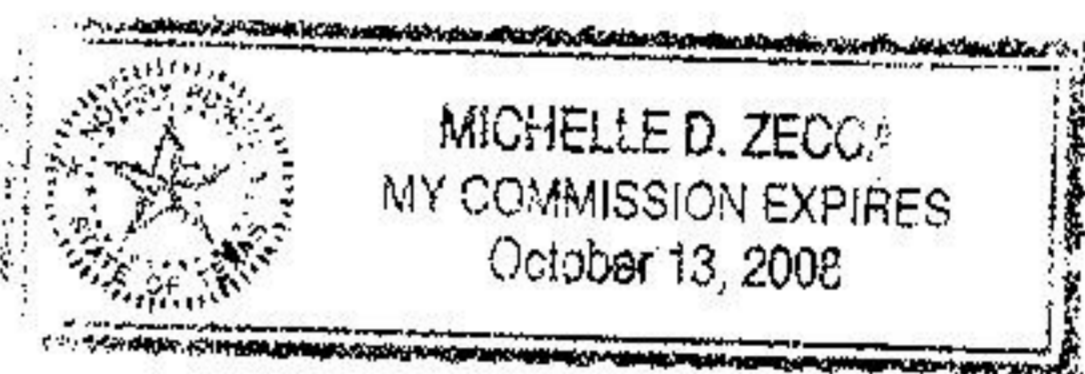
This instrument was duly acknowledged by me on this the 21 day of January 2005 by Larry Wilson.

[Signature]

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF HIDALGO

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This instrument was duly acknowledged by me on this the 27 day of October 2004 by Guillermo Aguirre, Jr.

[Signature]

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF HIDALGO

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This instrument was duly acknowledged by me on this the 25 day of January 2005 by Larry D Greenfield, Officer of Pizza Hut of South Valley, Inc.

[Signature]

Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF HIDALGO

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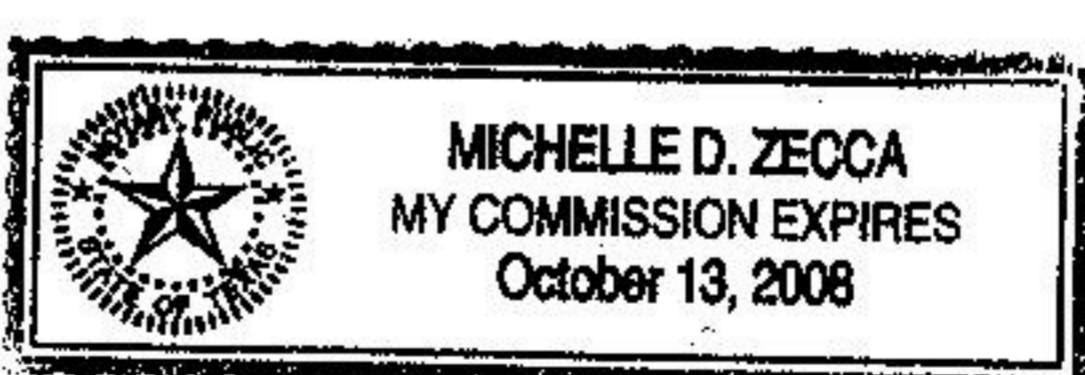
This instrument was duly acknowledged by me on this the 25 day of January 2005 by Demetrio Petrides.

[Signature]

Notary Public, State of Texas

STATE OF TEXAS

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COUNTY OF HIDALGO §

This instrument was duly acknowledged by me on this the 25 day of January 2005 by C. B. Wadhvani, Vice President of BGS Naraindas, Inc.

[Signature]
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF HIDALGO §



This instrument was duly acknowledged by me on this the 25 day of January 2005 by Erika Guajardo.

[Signature]
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF HIDALGO §



This instrument was duly acknowledged by me on this the 27 day of October, 2004 by Dennis Gomez.

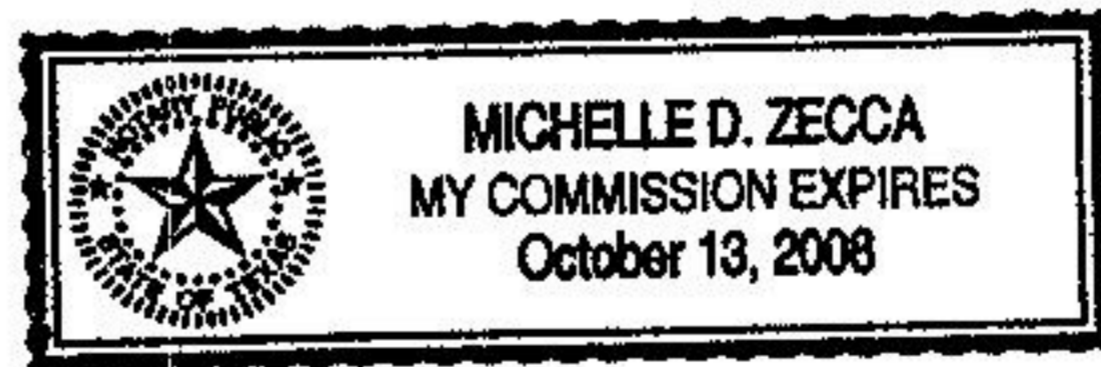
[Signature]
Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF HIDALGO §

This instrument was duly acknowledged by me on this the _____ day of _____, 2004 by Pamela Conklin.

Notary Public, State of Texas

STATE OF TEXAS §
COUNTY OF HIDALGO §



This instrument was duly acknowledged by me on this the 27 day of October, 2004 by J. Humberto Rodriguez.

[Signature]
Notary Public, State of Texas

Filed for Record in:
Hidalgo County, III
by J. D. Salinas, III
County Clerk
On Feb 01, 2005 at 11:43A
As a Recording
Document Number: 1430928
Total Fees: 46.00
Receipt Number - 648648
By: Monique Garate, Deputy