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FIRST AMENDMENT TO NOTICE
OF
FILING OF DEDICATORY INSTRUMENTS
FOR
EMPORIUM ON LBJ

4619446
05/19/04

\$30.00 Deed

STATE OF TEXAS §
COUNTY OF DALLAS §

KNOW ALL MEN BY THESE PRESENTS:

THIS FIRST AMENDMENT TO NOTICE OF FILING OF DEDICATORY INSTRUMENTS FOR EMPORIUM ON LBJ (this "First Amendment") is made this 4th day of ~~February~~ May 2004, by the Emporium On LBJ Owners Association, Inc. (the "Association").

WITNESSETH:

WHEREAS, Emporium On LBJ Owners Association, Inc., a Texas non-profit corporation (the "Association"), prepared and recorded an instrument entitled "Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Emporium On LBJ", filed of record on December 19, 1991, at Volume 91246, Page 1934 *et seq.*, (without the exhibits), of the Deed Records of Dallas County, Texas and filed of record on February 11, 1992, at Volume 92028, Page 3040 *et seq.*, (with the exhibits), of the Deed Records of Dallas County, Texas (the "Declaration"); and

WHEREAS, Section 202.006 of the Texas Property Code provides that a property owners' association must file each dedicatory instrument governing the association that has not been previously recorded in the real property records of the county in which the planned development is located; and

WHEREAS, on January 25, 2000, the Association filed a Notice of Filing of Dedicatory Instruments for the Emporium On LBJ, in Volume ²⁰⁰⁰144, Page 02256 *et seq.*, of the Deed Records of Dallas County, Texas (the "Notice"); and

WHEREAS, the Association desires to amend the Notice, to replace the dedicatory instrument entitled "Delinquent Assessment Collection Procedure", executed on August 27, 1987, with the dedicatory instrument attached hereto as Exhibit "A", entitled "Assessment Collection Policy", adopted May 4, 2004 and incorporated herein by reference.

NOW, THEREFORE, the dedicatory instrument entitled "Delinquent Assessment Collection Procedure" is hereby replaced and superceded by the dedicatory instrument attached hereto as Exhibit "A", entitled "Assessment Collection Policy", which dedicatory instrument is a true and correct copy of the original and is hereby filed of record in the real property records of Dallas County, Texas, in accordance with the requirements of Section 202.006 of the Texas Property Code.

IN WITNESS WHEREOF, the Association has caused this First Amendment to be executed by its duly authorized agent as of the date first above written.

**EMPORIUM ON LBJ OWNERS
ASSOCIATION, INC.,
a Texas non-profit corporation**

By: _____

Its: President

ACKNOWLEDGMENT

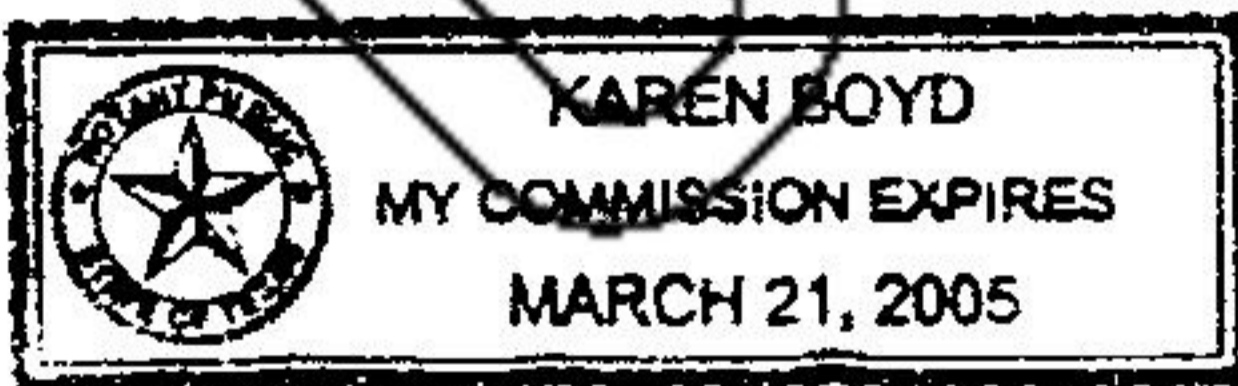
STATE OF TEXAS

COUNTY OF DALLAS

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BEFORE ME, the undersigned authority, on this day personally appeared Rick Skewen, President of the Emporium On LBJ Owners Association, Inc., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that (s)he executed the same for the purposes and consideration therein expressed on behalf of said corporation.

SUBSCRIBED AND SWORN TO BEFORE ME on this 4th day of May, 2004.



Karen Boyd
Notary Public, State of Texas

My Commission Expires _____

AFTER RECORDING, RETURN TO:
Lance E. Williams, Esq.
Riddle & Williams, P.C.
3811 Turtle Creek Blvd, Suite 1050
Dallas, Texas 75219

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EXHIBIT "A"

DEDICATORY INSTRUMENTS

1. Assessment Collection Policy

Unofficial Copy

EMPORIUM ON LBJ OWNERS ASSOCIATION, INC.

ASSESSMENT COLLECTION POLICY

Pursuant to the provisions of Article 1396-9.10 of the Texas Non-Profit Corporation Act, as amended from time to time, the undersigned, being all of the Directors of Emporium on LBJ Owners Association, Inc. (the "Association"), do hereby unanimously consent to the adoption of the following resolutions as and for the act of the Directors, to have the same force and effect as if adopted at a meeting of the Directors at which all Directors were present and voted.

WHEREAS, the Association has authority pursuant to Article IV of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Emporium on LBJ (the "Declaration") to levy assessments against Owners of Estates located within Emporium on LBJ, a commercial development located in Dallas County, Texas (the "Development"); and

WHEREAS, the Board of Directors (the "Board") finds there is a need to establish orderly procedures for the collection of assessments that remain unpaid beyond the prescribed due dates and the application of the payments made by Owners in order to encourage Owners to promptly pay their assessment obligations.

NOW, THEREFORE, IT IS RESOLVED that the following procedures and practices are established for the collection of assessments owing and to become owing by Owners in the Development and the application of payments made by Owners and the same are to be known as the "Assessment Collection Policy" for the Association in the discharge of its responsibilities regarding collection of assessments against Owners and their Lots:

1. **Policy Objectives.** The collection of assessments and application of payments made by Owners pursuant to the Declaration and this Assessment Collection Policy will be governed by the following objectives:

a. The Association will pursue collection of all assessments, including annual assessments, special assessments and special individual assessments for a given fiscal year such that should the recovery of amounts owing by a particular Owner require commencement of legal proceedings, those proceedings will be initiated prior to the end of the fiscal year for which the unpaid amounts are due.

b. At each step within the collection process, the Board will analyze the facts and circumstances then known concerning a given delinquency to direct collection efforts toward the most expedient course of action.

2. **Ownership Interests.** The person or entity who is the Owner of an Estate as of the date an assessment becomes due is personally liable for the payment of that assessment. Further, the personal liability for unpaid assessments passes to the successors in title to an Estate only if expressly assumed by them. As used herein, the term "Delinquent Owner" refers to that person or entity who held title to an Estate on the date an assessment became due. As used herein, the term "Current Owner" refers to that person or entity who then holds title to an Estate. Unless expressly

denoted otherwise, the "Owner" of an Estate refers to the Delinquent Owner or the Current Owner or both, as may be appropriate under the circumstances in question.

3. Due Dates. Pursuant to Article IV of the Declaration, the due date for the annual assessment is the first day of January of each year. The due date for a special assessment or a special individual assessment shall be set by the Board, but in no event shall it be less than thirty (30) days after the date the Owner is invoiced therefor. The due date for any assessment shall be collectively referred to in this Assessment Collection Policy as the "Due Date". Any assessment which is not paid in full within ten (10) days of the date it is due is delinquent (the "Delinquency Date") and shall be assessed interest and handling charges as provided in Paragraphs 6 and 7 below.

4. Reminder Notice. If an assessment has not been paid by the Delinquency Date, the Association will send a second invoice or notice (referred to as the "Reminder Notice") which will include the unpaid assessments, late charges, collection fees and interest charges claimed to be owing. The Reminder Notice will be sent via first-class United States mail.

5. Default Letter. If an assessment has not been paid within thirty (30) days following the Due Date, the Association will send a notice (referred to as the "Default Letter") to the Owner making formal demand for payment of all outstanding amounts. The Default Letter will be sent via certified mail, return receipt requested, and via first-class United States mail and will, at a minimum, include the following information:

- a. The unpaid assessments, interest, and collection costs claimed to be owing.
- b. A statement that if either (i) the delinquency is not cured in full, including all accrued interest and other charges then owing, within thirty (30) days of the date of the Owner's receipt of the Default Letter, or (ii) the Owner does not dispute, in writing, the amounts set forth in the Default Letter within thirty (30) days of the Owner's receipt of the Default Letter, the delinquency will be assumed to be valid and will be referred to the legal counsel for the Association for further collection action including the possibility of seeking foreclosure of the assessment lien, and that once such referral has occurred all attorney's fees and related costs incurred will be charged to the Owner and Estate.
- c. Such other information as may be required by the debt collection statutes to the extent that any such statutes apply.

6. Interest. In the event any assessment, or any portion thereof, is not paid in full on or before the Delinquency Date, interest on the principal amount due may be assessed against the Owner, the rate of said interest to be eighteen percent (18%) per annum and shall accrue from the day after the Due Date until paid. Such interest, as and when it accrues hereunder, will become part of the assessment upon which it has accrued and, as such, will be subject to recovery in the manner provided herein for assessments.

7. Handling Charges and Return Check Fees. In order to recoup for the Association the costs incurred because of the additional administrative expenses associated with collecting delinquent assessments, collection of the following fees and charges are part of the Assessment Collection Policy:

a. Any handling charges, administrative fees, collection costs, postage or other expenses incurred by the Association in connection with the collection of any assessment or related amount owing beyond the Delinquency Date for such assessment will become due and owing by the Delinquent Owner.

b. A charge of \$25.00 per item will become due and payable for any check tendered to the Association which is dishonored by the drawee of such check, the charge being in addition to any other fee or charge which the Association is entitled to recover from an Owner in connection with collection of assessments owing with respect to such Owner's Estate.

c. Any fee or charge becoming due and payable pursuant to this Paragraph 7 will be added to the amount then outstanding and is collectible to the same extent and in the same manner as the assessment, the delinquency of which gave rise to the incurrence of such charge, fee or expense.

8. Application of Funds Received. All monies received by the Association will be applied to amounts outstanding to the extent of and in the following order unless an Owner has placed a restrictive notation on the check or other form of payment or in correspondence accompanying the payment that a payment is to be applied in another specified manner:

a. First, to attorney's fees and related costs advanced by the attorney for and on behalf of the Association;

b. Next, to handling charges, returned check fees and collection costs incurred by the Association;

c. Next, to interest;

d. Next, to delinquent special individual assessments;

e. Next to delinquent special assessments;

f. Next, to delinquent annual assessments;

g. Next, to outstanding special individual assessments, though same may not then be delinquent;

h. Next, to outstanding special assessments, though same may not then be delinquent;

i. Last, to outstanding annual assessments, though same may not then be delinquent.

9. Ownership Records. All collection notices and communications will be directed to those persons shown by the records of the Association as being the Owner of an Estate for which assessments are due and will be sent to the most recent address of such Owner solely as reflected by the records of the Association. Any notice or communication directed to a person at an address, in both cases reflected by the records of the Association as being the Owner and address for a given Lot, will be valid and effective for all purposes pursuant to the Declaration and this Assessment

Collection Policy until such time as there is actual receipt by the Association of written notification from the Owner of any change in the identity or status of such Owner or its address or both.

10. Notification of Owner's Representative. Where the interests of an Owner in an Estate have been handled by a representative or agent of such Owner or where an Owner has otherwise acted so as to put the Association on notice that its interests in an Estate have been and are being handled by a representative or agent, any notice or communication from the Association pursuant to this Assessment Collection Policy will be deemed full and effective for all purposes if given to such representative or agent.

11. Referral to Legal Counsel. If an Owner remains delinquent in the payment of assessments and related costs for more than thirty (30) days after the sending of the Default Letter (as provided for above), Management, on behalf of the Board, or the Board may, as soon as possible thereafter, refer the delinquency to the legal counsel for the Association for the legal action as required by this Assessment Collection Policy. Any attorney's fees and related charges incurred by virtue of legal action taken will become part of the assessment obligation and may be collected as such as provided herein.

12. Legal Action. Legal counsel for the Association will take the following actions with regard to delinquencies referred to it upon legal counsel's receipt of a written request by Management and/or the Board to take a specific collection action:

a. Demand Letter. As the initial correspondence to a Delinquent Owner, counsel will send a demand letter (the "Demand Letter") to the Owner advising the Owner of the Association's claim for all outstanding assessments and related charges, adding to the charges the attorney's fees and costs incurred for counsel's services. The Demand Letter will inform the Owner that the Owner may dispute the validity of the amounts owing, in writing, within thirty (30) days of the Owner's receipt of the Demand Letter. If the amounts owing are disputed, Management and/or Legal Counsel will provide verification of the amounts claimed to be owing in accordance with Paragraph 13 of this Policy.

b. Title Search. If a Delinquent Owner fails to pay the amounts set forth in the initial Demand Letter sent by counsel or fails to dispute the amounts within the allotted thirty (30) day period, counsel will, upon direction from the Board and/or Management, order a search of the land records to verify current ownership of the Estate on which the delinquency exists. If the title report indicates that the Current Owner is other than the Delinquent Owner, counsel will communicate that fact to the Association. A determination will then be made by the Board whether to pursue collection of the unpaid assessments from the Delinquent Owner or the Current Owner or both. Based on that determination, the Board and/or Management will direct counsel to proceed according to this Assessment Collection Policy. Where the title report confirms that the Current Owner is the Delinquent Owner, the Association, Management and counsel will likewise proceed according to this Assessment Collection Policy.

c. Notice of Lien. Where the Board has determined that foreclosure of the Association's assessment lien is to be pursued, if an Owner fails to pay in full all amounts indicated by the Demand Letter by the date specified or fails to dispute the debt within the allotted thirty (30) day period, counsel, upon being requested to do so by the Board and/or Management, will cause to be prepared, executed by a duly authorized officer of the Association, and recorded in the Real

Property Records of Dallas County, a written notice of lien (referred to as the "Notice of Lien") setting forth therein the amount of the unpaid indebtedness, the name of the Owner of the Estate covered by such lien and a description of the Lot covered by the lien. A copy of the Notice of Lien will be sent to the Owner contemporaneously with the filing of same with the Dallas County Clerk's office, together with an additional demand for payment in full of all amounts then outstanding, within thirty (30) days of the date of the transmittal to the Owner of the Notice of Lien.

d. Non-judicial foreclosure. When the Board has directed that the collection action to be taken is non-judicial foreclosure of the assessment lien, upon the expiration of the time period given in the demand letter accompanying the Notice of Lien, the continued delinquency of unpaid assessments owing will be reported to the Board by Management. As soon as practical thereafter, the Board and/or Management will direct counsel to initiate non-judicial foreclosure of the Estate, pursuant to Texas law. In any foreclosure proceedings, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Association shall have the power to bid on the Owner's Lot and improvements at foreclosure and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. The Association may institute a personal judgment suit against the former Owner for any deficiency resulting from the Association's foreclosure of its assessment lien.

13. Verification of Indebtedness. For so long as the collection of assessments may be subject to the requirements of the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*) (the "FDCPA") and the Texas Debt Collection Act (Tex. Rev. Civ. Stat., art 5096 *et seq.*) (the "TDCA"), all communications from Management and legal counsel will include such required notices as are prescribed by the FDCPA and the TDCA. Furthermore, where an Owner requests verification of the indebtedness, Management will, upon notification of the Owner's request, supply such verification before any further collection action is taken with respect to such Owner. The exercise of the collection rights of the Association regarding assessments will in all ways comply with the FDCPA and the TDCA to the extent such acts may apply.


14. Compromise of Assessment Obligations. In order to expedite the handling of collection of delinquent assessments owed to the Association, the Board may, at any time, compromise or waive the payment of any assessment, interest, handling charge, collection cost, legal fee or any other applicable charge. The Association may, at its option, notify the Internal Revenue Service of the waiver or forgiveness of any assessment obligation.

15. Credit Bureaus. The Association may also notify any credit bureau of an Owner's delinquency. The Association will notify the Owner that it has filed such a report and will comply with any local, state, or federal laws in connection with the filing of such report.

IT IS FURTHER RESOLVED that this Assessment Collection Policy replaces and supersedes in all respects all prior policies and resolutions with respect to the collection of assessments by the Association and is effective upon adoption hereof, to remain in force and effect until revoked, modified or amended.

This is to certify that the foregoing resolution was adopted by the Board of Directors at a meeting of same on May 4, 2004, and has not been modified, rescinded or revoked.

DATE: 5/4/04


Secretary

FRESOL\COLLECT.EMPORIUM\NLBJ

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Clerk of Court
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DALLAS CO., TEXAS

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