

Electronically Recorded

Tarrant County Texas

Official Public Records

12/1/2009 11:58 AM

D209313504

PGS 7 \$40.00

Suzanne Henderson

Submitter LANDATA

STNT 110910306 105/224

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (hereinafter "Declaration") is made by **MHI PARTNERSHIP, LTD.** (hereinafter "Declarant"), a Texas limited partnership, as follows:

RECITALS

- A. Property Address: **10408 WINDING PASSAGE WAY
FORT WORTH, TX. 76131**
(hereinafter "Property," consisting of the real property and all improvements thereon).
- B. Seller: **MHI Partnership, LTD**
(hereinafter "Seller").
- C. Buyers(s): **MORRIS DEAN WHITENER & CONNIE JEAN
WHITENER**
(hereinafter collectively, "Buyer" whether one or more).
- D. Legal Description: Lot 63, in Block 1, of
FOSSIL HILL, an addition
to the City of **FORT WORTH, TARRANT** County, Texas.
(include applicable lot, block, subdivision, section and county).
- E. Closing Date: 11/24/09
(hereinafter "Closing Date").
- F. On the Closing Date, Seller sold and conveyed the Property to Buyer.
- F. The contract through which Buyer purchased the Property from Seller ("Contract") contains certain arbitration, jury waiver and attorney's fee provisions which shall run with the land.
- G. Declarant makes this Declaration for the purpose of subjecting the Property to one or more restrictive covenants as more particularly described below. Buyer joins herein solely to evidence Buyer's acceptance of the Property subject to this Declaration and Buyer's agreement to the terms and conditions hereof.

NOW, THEREFORE, Declarant hereby subjects the Property to the covenants, conditions and restrictions more particularly described below.

9/01/07

DECLARATION

1. Recitals. The Recitals set forth above are incorporated herein as a substantive part of this Declaration.

2. Successors and Assigns; Covenants Running with the Property. The benefits of this Declaration shall inure to the benefit of the parties and their respective successors and assigns (including any future owner or occupier of the Property), and the burdens and obligations of this Declaration shall be binding upon the parties and their respective successors and assigns (including any future owner or occupier of the Property), and shall be deemed to be covenants that run with the Property. For purposes of this Declaration, the term "Holder" shall encompass Buyer, together with any holder of any legal or equitable interest in the Property, including any right of occupancy. BY ACCEPTANCE OF A DEED TO THE PROPERTY OR ANY PORTION THEREOF, OR BY OCCUPANCY OF THE PROPERTY OR ANY PORTION THEREOF, HOLDER IRREVOCABLY ACKNOWLEDGES AND AGREES TO ABIDE BY THE TERMS AND PROVISIONS OF THIS DECLARATION.

3. Term. Except as provided below, this Declaration shall have a term of fifteen (15) years (the "Covenant Period") commencing on the Closing Date. At the conclusion of the Covenant Period, this Declaration shall automatically expire and be of no further force or effect, except as to arbitration and/or legal proceedings which are in progress at the time of its expiration. In those instances, this Declaration shall survive as to the proceedings in progress at the expiration of the Covenant Period until they are concluded by the entry of a final, non-appealable arbitration award or judgment. Notwithstanding the foregoing, if Declarant, Seller or an affiliate of them becomes the holder of legal title to the Property, this Declaration shall automatically terminate and be of no further force or effect as to Declarant, Seller, such affiliate, or the Property.

4. ARBITRATION.

A. BROAD FORM AGREEMENT TO ARBITRATE. ANY CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THE CONTRACT, THE BREACH THEREOF, OR RELATING DIRECTLY OR INDIRECTLY TO THE CONTRACT, THE PURCHASE, CONSTRUCTION OR REPAIR OF THE HOME AND IMPROVEMENTS WHICH ARE THE SUBJECT OF THE CONTRACT, AND/OR THE PROPERTY, INCLUDING ANY AND ALL CLAIMS AGAINST SELLER AND/OR SELLER'S AGENTS, PARTNERS, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, DEVELOPERS, SUBCONTRACTORS, MATERIALMEN, SUPPLIERS, MANUFACTURERS OR OTHER THIRD PARTIES JOINED IN ACCORDANCE WITH SUBPARAGRAPH 25.E OF THE CONTRACT OR PARAGRAPH 4.E HEREOF, SHALL BE SETTLED BY BINDING ARBITRATION UNDER THE FEDERAL ARBITRATION ACT, 9 U.S.C., § 1, ET SEQ. HOLDER IRREVOCABLY ACKNOWLEDGES AND AGREES THAT THE TRANSACTION MADE THE BASIS OF THE CONTRACT INVOLVED AND AFFECTED INTERSTATE COMMERCE.

9/01/07

B. ARBITRATION OF CONSTRUCTION DEFECT DISPUTES. THE PROPERTY IS SUBJECT TO THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION ACT, TEX. PROP. CODE ANN. § 401.001, ET SEQ. (AS AMENDED) (THE "ACT"). IF THE DISPUTE IS FOR ONLY (I) ONE (1) OR MORE ALLEGED "CONSTRUCTION DEFECTS" (AS DEFINED BY THE ACT), (II) THE CLAIMANT(S) SEEKS ONLY THOSE REMEDIES APPLICABLE TO CONSTRUCTION DEFECTS AVAILABLE UNDER THE ACT, AND (III) THE CLAIMANT(S) ASSERTS NO OTHER CLAIMS AND SEEKS NO OTHER REMEDIES APART FROM (I) AND (II), THEN THE ARBITRATION SHALL BE CONDUCTED AND ADMINISTERED IN ACCORDANCE WITH THE BUILDER LIMITED WARRANTY (AS DEFINED IN THE CONTRACT).

C. ARBITRATION OF ALL OTHER DISPUTES. IN ALL CASES WHICH ARE NOT GOVERNED BY SUBPARAGRAPH 4.B ABOVE (INCLUDING WITHOUT LIMITATION, ALL INSTANCES WHERE CONSTRUCTION DEFECT CLAIMS ARE JOINED WITH OTHER CLAIMS), THE ARBITRATION SHALL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") IN ACCORDANCE WITH ITS CONSTRUCTION INDUSTRY ARBITRATION RULES (AS SUPPLEMENTED BY AAA SUPPLEMENTARY PROCEDURES FOR CONSUMER-RELATED DISPUTES, WHERE APPLICABLE) IN EFFECT AT THE TIME THE DEMAND FOR ARBITRATION IS FILED. AAA FAST TRACK PROCEDURES SHALL APPLY ONLY UPON THE FURTHER WRITTEN CONSENT OF ALL PARTIES TO THE ARBITRATION PROCEEDING.

D. GENERAL PROVISIONS. WITHIN A REASONABLE TIME AFTER THE CONTROVERSY HAS ARISEN, THE PARTY REQUESTING RELIEF SHALL FILE A WRITTEN DEMAND FOR ARBITRATION AND PAY APPLICABLE FILING FEES. THE ARBITRATION PROCEEDING SHALL BE CONDUCTED IN THE FEDERAL JUDICIAL DISTRICT WHERE THE PROPERTY IS LOCATED, UNLESS OTHERWISE AGREED BY THE PARTIES. IN ALL INSTANCES, THE PARTIES MAY AGREE UPON ONE (1) ARBITRATOR, BUT IN THE EVENT THE PARTIES CANNOT AGREE, THERE SHALL BE THREE (3) NEUTRAL ARBITRATORS APPOINTED IN ACCORDANCE WITH THE APPLICABLE ARBITRATION RULES. IN THE EVENT THE APPLICABLE ARBITRATION RULES MANDATE THAT THE DISPUTE SHALL BE SUBMITTED TO A SINGLE ARBITRATOR AND THE PARTIES CANNOT AGREE AS TO THE SELECTION OF SUCH ARBITRATOR, THEN THERE SHALL BE THREE (3) NEUTRAL ARBITRATORS APPOINTED IN ACCORDANCE WITH THE APPLICABLE ARBITRATION RULES, WITH THE COST OF THE TWO (2) ADDITIONAL ARBITRATORS BEING ADVANCED BY THE SELLER. UNLESS THE APPLICABLE ARBITRATION RULES MANDATE OTHERWISE, ALL ARBITRATORS SHALL BE ATTORNEYS AT LAW, LICENSED TO PRACTICE IN THE STATE OF TEXAS, WITH SUBSTANTIAL EXPERIENCE IN THE SINGLE FAMILY RESIDENTIAL CONSTRUCTION INDUSTRY. IF THERE IS ONLY ONE (1) ARBITRATOR, HIS CONCLUSIONS SHALL BE BINDING AND CONCLUSIVE ON THE PARTIES. IF THERE ARE THREE (3) ARBITRATORS, THE DECISION OF ANY TWO (2) SHALL BE BINDING AND CONCLUSIVE. COSTS OF ARBITRATION

9/01/07

SHALL BE ALLOCATED BETWEEN OR AMONG THE PARTIES AS PROVIDED BY THE APPLICABLE ARBITRATION RULES, OR IN THE ABSENCE OR INAPPLICABILITY OF SUCH RULES, AS DETERMINED BY THE ARBITRATOR(S). IF ANY PARTY COMMENCES LITIGATION IN VIOLATION OF THIS DECLARATION, OR FAILS OR REFUSES TO TIMELY SUBMIT TO ARBITRATION IN ACCORDANCE WITH THIS CONTRACT, SUCH PARTY SHALL REIMBURSE THE OTHER PARTY FOR THE COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES: (A) INCURRED IN SEEKING A STAY, ABATEMENT OR DISMISSAL OF SUCH LITIGATION; OR (B) INCURRED IN JUDICIALLY COMPELLING ARBITRATION. THE FOREGOING DOES NOT PRECLUDE A PARTY FROM SEEKING EMERGENCY RELIEF FROM A COURT OF COMPETENT JURISDICTION AND THE PROSECUTION OF A REQUEST FOR EMERGENCY RELIEF WILL NOT BE DEEMED A WAIVER OF THE ARBITRATION PROVISIONS CONTAINED HEREIN.

E. JOINDER: THE PARTIES AGREE THAT SELLER MAY JOIN IN ANY ARBITRATION PROCEEDING CONDUCTED HEREUNDER, ONE OR MORE OF SELLER'S SUBCONTRACTORS, SPECIALTY CONTRACTORS, MATERIAL SUPPLIERS, ENGINEERS, DESIGNERS AND/OR SUCH OTHER PERSONS OR ENTITIES (COLLECTIVELY WHETHER ONE OR MORE "THIRD-PARTY") WHERE: (A) THE SERVICES PROVIDED, WORK PERFORMED OR MATERIALS SUPPLIED BY SUCH THIRD-PARTY FORMS THE BASIS, DIRECTLY OR INDIRECTLY, IN WHOLE OR PART, OF THE CLAIMS MADE THE SUBJECT OF THE ARBITRATION PROCEEDING; (B) SUCH THIRD-PARTY IS SUBSTANTIALLY INVOLVED IN A COMMON QUESTION OF FACT OR LAW; OR (C) THE PRESENCE OF SUCH THIRD-PARTY IS REQUIRED TO ACCORD THE PARTIES COMPLETE RELIEF IN THE ARBITRATION.

F. FINANCIAL CAPACITY. HOLDER ACKNOWLEDGES AND AGREES THAT IT HAS ADEQUATE FINANCIAL CAPACITY TO AVAIL ITSELF OF THE ARBITRATION REMEDIES PROVIDED HEREIN AND THAT PARTICIPATION IN ARBITRATION WILL NOT CONSTITUTE A FINANCIAL HARDSHIP.

5. WAIVER OF JURY TRIAL: THE PARTIES AGREE THAT IF ANY CLAIM OR CONTROVERSY IS TRIED IN A COURT OF LAW, WHETHER BY MUTUAL CONSENT OF THE PARTIES OR FOR OTHER REASONS, EACH PARTY AGREES TO WAIVE ITS RIGHTS WITH RESPECT TO TRIAL BY JURY. HOLDER ACKNOWLEDGES THAT IT HEREBY WAIVES VALUABLE LEGAL RIGHTS, INCLUDING THE RIGHT TO TRIAL IN A COURT OF LAW AND THE RIGHT TO TRIAL BY JURY.

6. Attorneys' Fees. If Seller is a prevailing party in any legal or arbitration proceeding arising out of or relating, directly or indirectly, to the Contract, the sale, conveyance, construction or repair of the home which is the subject of this Contract and/or the Property, Seller shall be entitled to recover from Holder, Holder's successors, assigns and subrogating parties, all costs of such proceeding, investigative costs, expert fees, reasonable attorneys' fees and other related costs and expenses. Seller shall be considered a prevailing party in any

9/01/07

proceeding in which Seller successfully prosecutes the action or successfully defends against it, as well as in any proceeding subject in whole or in part to the Texas Deceptive Trade Practices--Consumer Protection Act, TEX. BUS. & COMM. CODE ANN. § 17.41, *et seq.* ("DTPA") and/or the Texas Residential Construction Liability Act, TEX. PROP. CODE ANN. § 27.001, *et seq.* ("RCLA"), where a determination is made: (i) pursuant to DTPA Section 17.5052 that a settlement offer made is the same as, substantially the same as, or more than the damages found by the trier of fact; or (ii) pursuant to RCLA Section 27.004 that the Buyer rejected a reasonable settlement offer or that Seller was not given a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement; or (iii) that the Holder rejected offered work.

7. Miscellaneous.

(a) Invalidity. If any portion of this Declaration is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Declaration shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure of either party to enforce against the other party any term or provision of this Declaration shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other term or provision.

(b) Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Texas (except as to construction and enforcement of the foregoing arbitration provisions, which shall be governed by the laws of the United States).

(c) Counterparts. This Declaration may be executed in multiple counterparts, each of which shall constitute an original and all of which when taken together shall constitute one instrument.

(d) Attorney's Fees. Declarant shall be entitled to recover from Holder, Holder's successors, assigns and subrogating parties, Declarant's reasonable and necessary attorney's fees and litigation expenses incurred in enforcing this Declaration.

(e) Recording. This Declaration shall be recorded in the Real Property Records of each county in which the Property is located.

(Remainder of page blank. Executions appear on the following page.)

IN WITNESS WHEREOF, this Declaration of Restrictive Covenants has been executed to be effective as of the Closing Date stated above.

DECLARANT:

MHI Partnership, LTD.,
a Texas limited partnership,

By: McGuyer Homebuilders, Inc.,
a Texas corporation,
its general partner

By: _____
Name: _____
Title: Closing Agent

ACCEPTED AND AGREED:

BUYER(S):

MORRIS DEAN WHITENER

CONNIE JEAN WHITENER

Unofficial Copy

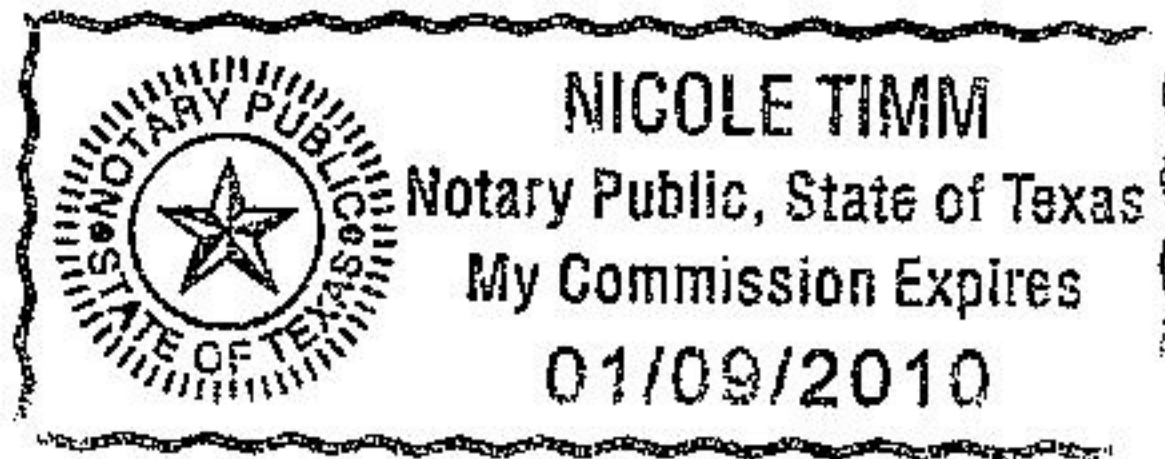
9/01/07

STATE OF TEXAS

COUNTY OF Dallas *Tarrant*

§
§
§

This instrument was acknowledged before me on Nov 24, 2009,
by Ken Gerelt, Closing Agent of McGuyer Homebuilders, Inc.,
a Texas corporation and general partner of MHI Partnership, Ltd, a Texas limited partnership,
on behalf of said entities.



[Signature]
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF Tarrant

§
§
§

This instrument was acknowledged before me on Nov. 24th, 2009,
by the above signed "Buyer(s)".



[Signature]
Notary Public, State of Texas

**AFTER RECORDATION
RETURN ORIGINAL TO:**

**Ray Holan
McGuyer Homebuilders, Inc.
7676 Woodway, Suite 104
Houston, Texas 77063**

9/01/07