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THIRD AMENDED DECLARATION

LONE OAK TOWNE HOMES HOMEOWNERS ASSOCIATION, INC.

STATE OF TEXAS)
)
COUNTY OF MIDLAND)

WITNESSETH:

WHEREAS, Declarants are the owners of the real property described in Clause I of this Declaration, and are desirous of subjecting the real property described in said Clause I to the restrictions, covenants, reservations, easements, liens and charges hereinafter set forth and amending the Second Amended Declaration filed at Vol. ____, Page ____ of the Deed Records of Midland County, each and all of which is and are for the benefit of said property and for each owner thereof, and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest, and any owner thereof,

NOW, THEREFORE, Lone Oak Towne Homes Homeowners Association, Inc. and the other owners hereby declare that the real property described in and referred to in Clause I hereof is, and shall be hereafter, held, transferred, sold and conveyed subject to the conditions, restrictions, covenants, reservations, easements, liens and charges hereinafter set forth.

Definition of Terms

Unit or Building Site shall mean any lot, or portion thereof, or two or more contiguous lots, or a parcel of land of record and in a single ownership and upon which a dwelling may be erected in conformance with the requirements of these Covenants.

Corporation shall mean the Lone Oak Towne Homes Homeowners Association, Inc.

Association shall refer to the Home Owners Association of the tract covered by these Covenants or any extension thereof as herein provided.

CLAUSE I

Property Subject to This Declaration

The real property which is, and shall be, held and shall be conveyed, transferred and sold subject to the conditions, restrictions, covenants, reservations, easements, liens and charges with respect to the various portions thereof set forth in the various clauses and subdivisions of this Declaration is located in the County of Midland, State of Texas and is more particularly described in Attachment "A" and generally consists of residential lots or "units".

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The "Common Areas" are to be available for all reasonable uses by the owners, consistent generally with the use of the property as a residential area.

The real property which is to be held by the Association and hereinafter referred to as "Common Areas" is generally described as follows:

1. All of the streets and alleyways, including Cisco Street, Ranger Street, the private alleys;
2. All of Boyd Street from the Godfrey Street intersection east to the east property line, and from the northern curb south, as shown by the attached replat.
3. The westernmost ten (10) feet of Blocks 8, 9 and 10, and the easternmost ten (10) feet of Blocks 9 and 10;
4. All fences to be established on common area and shown in a plat filed and recorded through the Plat Records of Midland County, Texas and referring to Lone Oak Towne Homes;
5. All street lights.

No property other than that described above shall be deemed subject to this Declaration unless and until specifically made subject thereto.

The Declarant may, from time to time, subject additional real property to the conditions, restrictions, covenants, reservations, liens and charges herein set forth by appropriate reference etc.

No structures, planting, fencing, or paving may be erected or maintained on any part of the Common Area which will interfere with the right of ingress and egress of the Association, its members, or the public to or from the properties adjacent to the Common Area.

CLAUSE II General Purpose of Conditions

The real property described in Clause I hereof is subjected to the covenants, restrictions, conditions, reservations, liens and charges hereby declared to insure the best use and the most appropriate development and improvement of each building site thereof; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to preserve, so far as practicable, the natural beauty of said property; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on building sites; to prevent haphazard and inharmonious improvement of building sites; to secure and maintain proper setbacks from streets, and adequate free spaces

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between structures; and in general to provide adequately for a high type and quality of improvement in said property, and thereby to enhance the values of investments made by purchasers of building sites therein.

CLAUSE III
Party Walls and Fences

A. General Rules of Law to Apply. Each wall which is built as part of the original construction on the building sites upon the Property and placed on the dividing line between the units shall constitute a party wall, and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and of the liability for property damage due to negligent or willful acts or omissions shall apply thereto. Party walls and fences shall not be built in streets or alleyways.

B. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who will make use of the wall in proportion to such use.

C. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the rights of any such owners to call for a larger contribution from the others under any rule of law regarding liability or negligent or willful acts or omissions.

D. Weatherproofing. Notwithstanding any other provision of this clause, an owner who, by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing any necessary protection against such elements.

E. Right to Contributions Runs With Land. The rights of any owner due contribution from any other owner under this clause shall be appurtenant to the land and shall pass to such owner's successor-in-title.

F. Arbitration. In the event of any dispute arising concerning the party wall or under the provisions of this clause, each party shall select one arbitrator and such arbitrator shall choose one additional arbitrator, and the decision of the majority of all the arbitrators shall be final and conclusive of the question involved.

G. Fences. Fences between lots shall be treated as if they are party walls, and the foregoing sections shall be applicable thereto.

CLAUSE IV
Exterior Maintenance of Lots, Building Sites and Residences Thereon

A. Exterior Maintenance. In addition to maintenance upon the Common Areas, the Association shall, at the request of the owner, provide exterior maintenance upon each lot, unit, building site, or dwelling unit which is subject to assessment under this clause as follows: paint,

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repair, replace, and care for the roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements.

B. Payment of Costs. The exterior maintenance of the lots, building sites, or dwelling units shall be requested by the owner in writing. If the Board of Directors of the Association requires, the owner shall execute and deliver a contract, a promissory note, and such other instruments as are, in the opinion of the Board or its attorneys, reasonable and necessary to fix a mechanics and materialmen's lien against the owner's lot, building site or dwelling unit prior to the time that any of the work is done. The note shall be payable as directed by the Board or as part of the assessment or charges provided herein.

C. Assessment of Costs. The Board of Directors of the Association, when establishing the annual assessment against each lot, building site, or dwelling unit in any assessment year as required hereunder, may add thereto the estimated costs of the exterior maintenance for that year, but shall thereafter make such adjustment with the owner as is necessary to reflect the actual costs thereof.

CLAUSE V
Conditions

A. All building sites in the tract shall be known and described as residential building sites. No structures shall be erected, altered, placed, or permitted to remain on any building site other than one single family dwelling not to exceed two and one-half stories in height, a private garage for not more than three cars, guest house, servants' quarters, and other outbuildings incidental to residential use of the premises.

B. No building, improvement, fence, wall, driveway, or other structure shall be erected, placed, or altered on any premises in said development until the building plans, specifications, and plot plan showing the location of such building have been approved in writing as to conformity and harmony of external design with existing structures in the development, and as to location of the building with respect to topography and finished ground elevation, by an architectural committee composed of Richard Greth, Tom Garber, and Dene Kelly, or by a representative designated by a majority of the members of said committee. In the event of death or resignation of any member of said committee, the remaining member, or members, shall have full authority to approve or disapprove such design and location, or to designate a representative with like authority. In the event said committee, or its designated representative, fails to approve or disapprove such design and location within 30 days after said plans and specifications have been submitted to it or, in any event, if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this Covenant will be deemed to have been fully complied with. Neither the members of such committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this Covenant.

C. On corner lots the minimum side yard adjacent to a public or private side street (the street opposite the interior side yard) shall be ten feet (10').

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No complex of attached single family dwellings shall exceed four dwelling units in total. A minimum required side yard of five feet (5') shall be provided at the end of each single family attached dwelling complex so that the end of any two adjacent building complexes shall be at least ten feet (10') apart. Building permits for all dwellings in a complex of attached dwellings shall be obtained simultaneously and side yards provided at each end.

E. There shall be no minimum rear yard required, except where a minimum rear yard setback is shown on the site plan as required in City Ordinance #5296.

F. There shall be a front building setback line of not less than four feet (4') along all private streets where a side building setback is not required.

G. The minimum area of each lot shall be 2400 square feet.

H. The minimum width of each lot shall be 25 feet.

I. Lots adjacent to Andrews Highway (State Highway 158) shall not have driveway access to said street. No garages may be constructed adjacent to any streets (public or private) except where such garages are shown and marked "G" in the typical plan for each block where typical plans are shown. No driveway access to the side of any lot shall be permitted.

J. The maximum coverage of buildings on any lot shall be 90% of the area of said lot.

K. No noxious or offensive trade or activity shall be carried on upon any building site nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

L. No trailer, basement, tent, shack, garage, barn, or other outbuilding other than guest houses and servants' quarters erected on a building site covered by these covenants shall at any time be used for human habitation temporarily or permanently, nor shall any structure of a temporary character be used for human habitation.

The keeping of a mobile home or travel trailer, either with or without wheels, on any parcel of property covered by these Covenants is prohibited. A motor boat, house boat or other similar water borne vehicle may be maintained, stored, or kept on any parcel of property covered by these Covenants only if housed completely within a structure which has been architecturally approved by provisions of paragraph B hereof.

M. No main residential structure shall be permitted on any building site covered by these covenants, the habitable floor area of which, exclusive of basements, porches, and garages, is less than 1,200 square feet in the case of a one-story structure or less than 2,000 square feet in the case of a one and one-half, two, or two and one-half story structure.

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W. No animals, livestock or poultry of any kind shall ever be raised, bred or kept on any lot in the addition, except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial purposes and so long as they do not create a condition that is offensive or noxious to the enjoyment of any adjoining properties.

O. No fence, wall, hedge, or mass planting shall be permitted to extend beyond the minimum building setback line established herein except upon prior approval by the architectural committee as provided in Section B.

P. Oil drilling, oil development operations; refining, mining operations of any kind, or quarrying shall not be permitted upon or in any of the building sites in the tract described herein, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any of the building sites covered by these Covenants.

Q. The owner of each building site to which these Covenants apply shall be a member in the Association, obligated to pay the assessments of the Association, and entitled to participate in the operation of the Association in accordance with the bylaws of the said Association filed herewith.

R. No change in the color of steel siding or other siding shall be permitted except on prior approval of the architectural committee as provided herein.

S. No change in the color or quality of a roof shall be permitted except on prior approval of the architectural committee as provided herein.

T. No change in the grade or slope of the ground shall be permitted except on prior approval of the architectural committee as provided herein.

U. No canopies, awnings, or any other similar overhang shall be permitted except on prior approval of the architectural committee as provided herein.

V. No storm doors or screens (either window or door) shall be permitted on any of the buildings except on prior approval of the architectural committee as provided herein.

W. No ancillary lighting, Christmas lights, or other temporary and non-permanent lighting shall be allowed to be in place for more than sixty (60) days, except on approval of the architectural committee as provided herein. For the purposes of this provision, Christmas or other holiday lighting shall be allowed to be placed on the property on December 1st of each calendar year and removed on or before the following January 31st.

X. Each owner of a lot or building site shall cut the grass and weeds on his land as often as necessary to maintain the same in a neat and attractive condition, and shall keep his land free at all times of trash, garbage, and debris, except for that placed in closed sanitary containers awaiting regular garbage pick-up services. No such material shall be burned.

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Y. No lot or building site shall be used for the storage of any material except that required for landscaping or the construction of authorized buildings, which material shall be used or removed within a reasonable length of time after it is placed on the premises, and in no event more than 30 days.

Z. No sign, advertisement, billboard, or advertising structure of any kind shall be placed on any lot or building site without the written consent of the Association.

AA. No radio or television aerial, pole, structure, or device which will project more than ten (10) feet above the uppermost roof line of the main residence shall be erected on any lot or building site, or attached to any of the improvements thereon, without the written consent of the Association.

BB. Landscaping installed in flower beds by the corporation or subsequently installed by the Association shall be maintained by the Unit owners to preserve the continuity, conformity, and harmony of the landscaping with all other landscaping of the property subject to this Declaration. No change in the type of landscaping, extent of landscaping, or maintenance of the landscaping out of conformity or harmony with existing landscaping will be permitted, except on prior approval of the architectural committee as provided herein.

CC. No privy, cesspool, septic tank, or other individual sewerage disposal system shall be permitted on any lot or building site, except that temporary facilities approved by the Association may be used by workmen during the construction of improvements on the lot or building site.

DD. If the owner of any lot or building site fails to abide by any of the foregoing restrictions, stipulations, obligations and if such failure or default continues uncured for ten (10) days after written notice thereof is mailed to the owner of the lot or building site at his last known address, the Association, or its agent(s), may go upon such lot or building site and correct the default. The Association shall not be guilty of any manner of trespass or liable to the land owner in any respect as a result thereof, and the land owner shall be obligated to reimburse said Association for all expenses incurred by it in performing such work, and the amount to be reimbursed shall bear interest at the rate of ten percent (10%) per annum from the date such work is performed or caused to be performed by the Association until the Association is reimbursed by the land owner therefor, and shall be secured by a lien against the lot or building site in the same manner as the maintenance charge hereinafter provided for.

EE. The City of Midland, Texas Utilities Department is hereby granted general public utility easements in and over all private streets and alleys to be used by the City and those franchised by the City to provide utility services, for the maintenance of sewer lines, water lines, and for refuse collection, and in addition thereto the City of Midland, Texas shall have access to Lone Oak Towne Homes for purposes of providing police and fire protection and other emergency services. All owners of land in Lone Oak Townhomes are also hereby granted the right of access on, over and across all private streets, alleys and common areas of Lone Oak Townhomes as depicted on the plat affecting Lone Oak Townhomes.

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CLAUSE VI
Membership and Voting Rights

A. Every owner of a lot which is subject to assessment shall be a member of this Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

CLAUSE VII
Covenant for Maintenance Assessment

A. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each lot owned within the property hereby covenants, and each owner of any lot by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed a covenant and agrees to pay the Association: (1) annual assessment or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as provided by the bylaws of the Association. The annual and special assessment and charges, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien on the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who is the owner of such property at the time when the assessments fall due. The personal obligation for delinquent assessments shall not pass to an owner's successor-in-title unless expressly assumed by such successor.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively as provided in the Declaration or the bylaws of the Association and to promote the health, safety and welfare of the residences of the properties, and for the improvement and maintenance of the Common Areas.

C. Payment and Notice of Assessments. Annual dues shall be the obligation of each unit owner. The annual dues shall be in the initial amount of \$300 per year per unit (excluding any unimproved units or units upon which homes or other improvements are under construction) and shall be payable on a yearly basis with payments to be due and payable on or before January 1st of each calendar year; or the owners may pay two equal semi-annual payments, the first being due on or before January 1st of each calendar year and the second payment being due on or before the following June 1st. In the event a unit owner sells the unit, each subsequent unit owner shall continue to make the next regularly scheduled assessment payment, whether it be a single annual payment or two equal semi-annual payments.

D. Special Assessments for Capital Improvements. Special assessments for capital improvements shall be established and collected as provided in the bylaws of the Association.

E. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within 30 days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive

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or otherwise escape liability for the assessments provided herein by non-use of the Common Areas or abandonment of his unit.

**CLAUSE VIII
General Provisions**

A. **Enforcement.** The Association or any other owner shall have the right to enforce by proceedings at law or in equity, all restrictions, covenants, conditions, reservations, liens or charges now or hereinafter imposed by the provision of the Declaration or the bylaws or any amendment thereto, including the right to prevent the violation of any restrictions, conditions, or covenants and the right to recover damages or other dues or assessments for such violation. With respect to architectural control, assessments or other liens or charges determined by the Association, the Association shall have the exclusive right to enforcement thereof.

B. **No Waiver.** Failure by the Association or any member to enforce any of the provisions of these bylaws or the rights or obligations created thereby, including but limited to actions to collect assessments provided for herein, in any certain instance or in any particular occasion, shall not be deemed a waiver of such right nor a waiver of a right to enforce any future breach, so long as there exists no other legal or equitable time limitation for enforcement.

C. **Severability.** Invalidation of any one or a portion of these bylaws, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

D. **Amendment.** The covenants and restrictions of this Declaration are to run with the land and shall be binding on all parties and all persons claiming under them until June 1, 1999 (25-year period), at which time such covenants and restrictions shall be automatically extended for successive periods of ten years unless, by a vote of the majority of the owners of the building sites covered by these covenants and restrictions, it is agreed to change such covenants in whole or in part. This Declaration may be amended during the first 20-year period by an instrument signed by not less than 90% of the unit owners (including units owned by the developer, Architectural Contractors Co., Inc.). Any amendment must be recorded.


E. **Review by City of Midland.** In the event this Second Amended Declaration is subsequently amended, modified, or changed, then such amendments, modifications, or changes are subject to review by the City of Midland, including applicable entities within the City, such as the Planning and Zoning Commission.

F. In the event there is conveyance of any of the Common Areas covered by this Declaration to any other entity, then such conveyance is subject to prior approval of the appropriate City of Midland entity, such as the Planning and Zoning Commission.

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In Witness Whereof, the undersigned, being the Declarant herein, has hereunto set his hand and seal this 21 day of August, 1996.


Declarant -- Richard Greth, President
Lone Oak Towne Homes Homeowners Association, Inc.


Declarant -- Richard Greth, President
Architectural Contractors Co., Inc.


Declarant -- Lillo Baker


Declarant -- Elaine Baker


Declarant -- Lovera Geraldine Terrell

Declarant -- Robyn Maria Kedzie

X 
Declarant -- Mike Morse

X 
Declarant -- Eleanor Morse


Declarant -- Mike Rhoden

Declarant -- Linda Way

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Declarant -- Homer Beck

Carroll Murphy
Declarant -- Carroll Murphy

Jewell Murphy
Declarant -- Jewell Murphy

Bill Tidwell
Declarant -- Bill Tidwell

Marie Tidwell
Declarant -- Marie Tidwell

STATE OF TEXAS

COUNTY OF MIDLAND)

This instrument was acknowledged before me on 9-17, 1996 by Richard Greth as President of Lone Oak Towne Homes Homeowners Association, Inc.

STATE OF TEXAS)
COUNTY OF MIDLAND)



CAROL A. HOPKINS
Notary Public, State of Texas
My Commission Expires 08-30-1998

Carol A. Hopkins
Notary Public, State of Texas

COUNTY OF MIDLAND)

This instrument was acknowledged before me on 9-17, 1996 by Richard Greth as President of Architectural Contractors Co., Inc.

STATE OF TEXAS)
COUNTY OF MIDLAND)



CAROL A. HOPKINS
Notary Public, State of Texas
My Commission Expires 08-30-1998

Carol A. Hopkins
Notary Public, State of Texas

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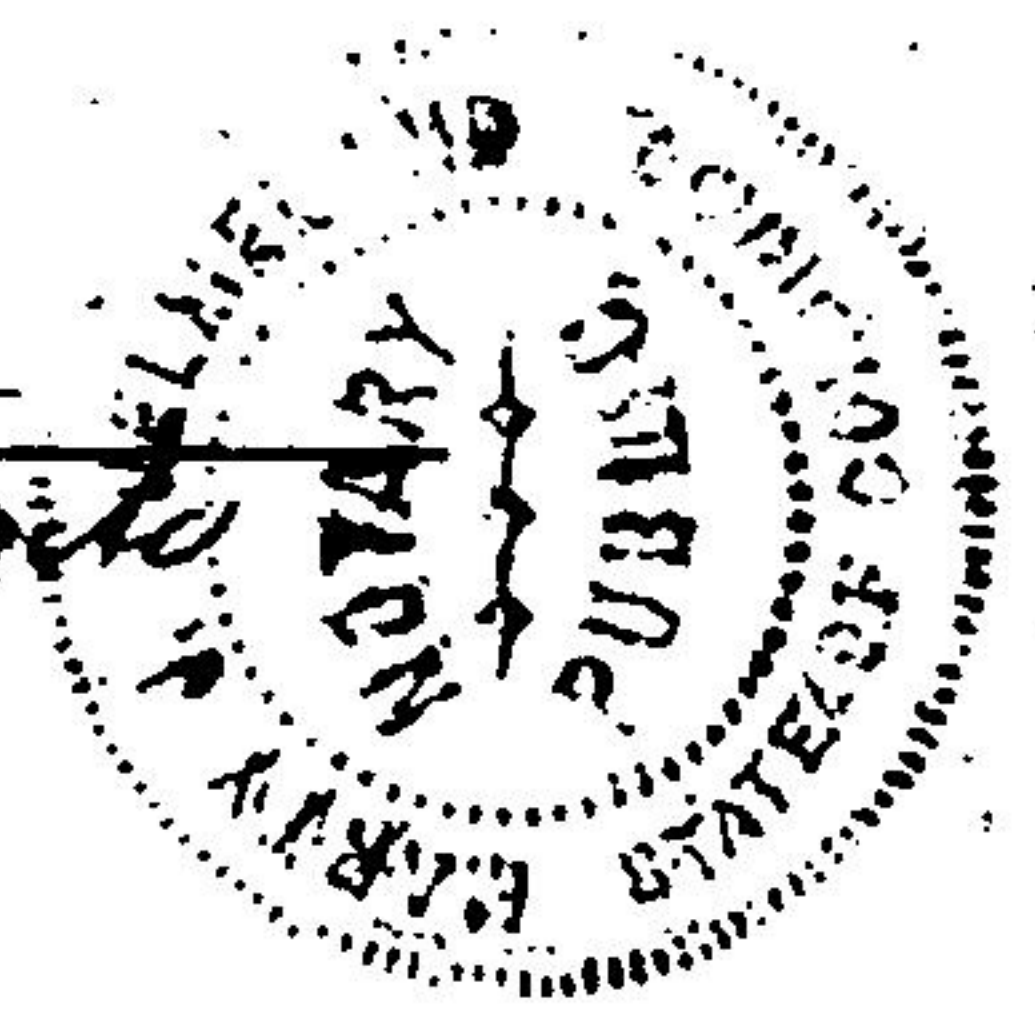
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STATE OF ~~TEXAS~~ Colorado)
COUNTY OF ~~MIDLAND~~ Larimer)

This instrument was acknowledged before me on 8/7, 1996 by ~~Elaine Baker~~ ^{Mike + Mose}

[Signature]
Notary Public, State of ~~Texas~~ Colorado



STATE OF TEXAS)
COUNTY OF MIDLAND)

This instrument was acknowledged before me on 9-17, 1996 by Loversa ~~Geraldine Terrell~~ X

CAROL A. HOPKINS
Notary Public, State of Texas
My Commission Expires 08-30-1998

Carol A. Hopkins
Notary Public, State of Texas

STATE OF TEXAS)
COUNTY OF MIDLAND)

This instrument was acknowledged before me on _____, 1996 by Robert Maria ~~Gertie~~

Notary Public, State of Texas

STATE OF TEXAS)
COUNTY OF MIDLAND)

This instrument was acknowledged before me on 9-17, 1996 by ~~Mike + Mose~~ ^{Lillo and Elaine Baker}

CAROL A. HOPKINS
Notary Public, State of Texas
My Commission Expires 08-30-1998

Carol A. Hopkins
Notary Public, State of Texas

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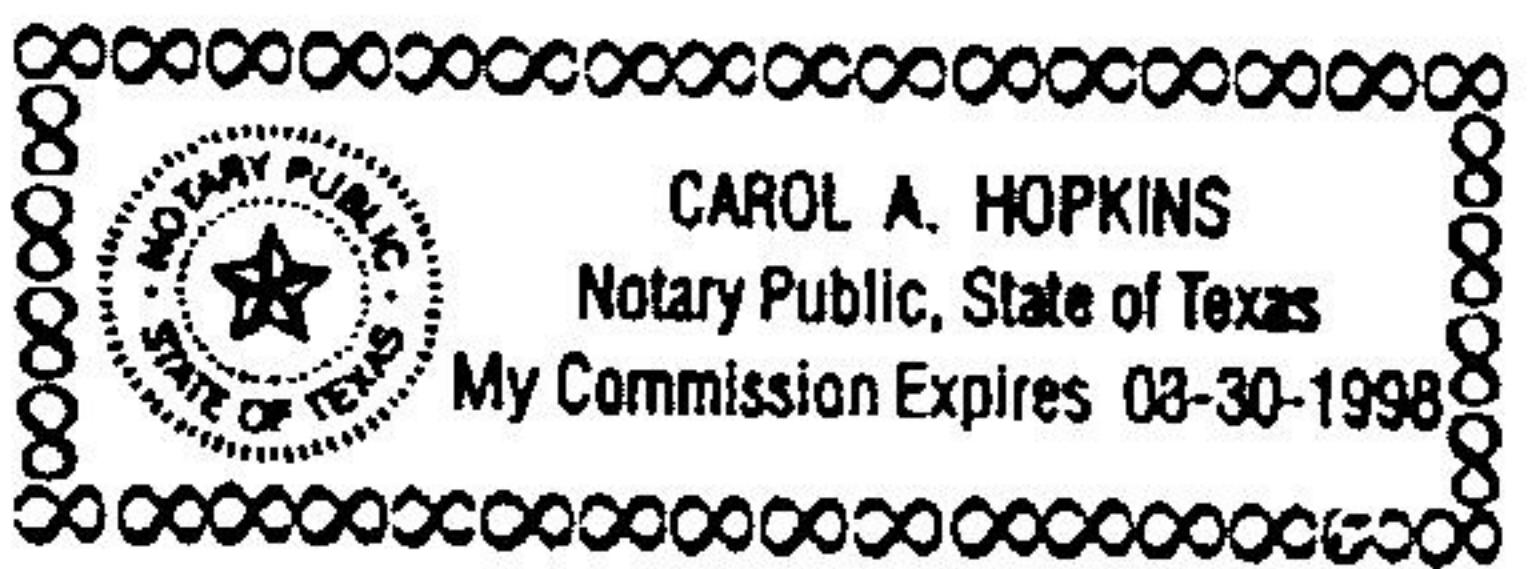
STATE OF ~~TEXAS~~ *Edwards*
COUNTY OF ~~MIDLAND~~ *Lovine*

This instrument was acknowledged before me on 8/21, 1996 by Elmer

[Signature]
Notary Public, State of ~~Texas~~ *Edwards*

STATE OF TEXAS)
COUNTY OF MIDLAND)

This instrument was acknowledged before me on 9-17, 1996 by Mike Rhoden



Carol A. Hopkins
Notary Public, State of Texas

STATE OF TEXAS)
COUNTY OF MIDLAND)

This instrument was acknowledged before me on _____, 1996 by Linda Way.

Notary Public, State of Texas

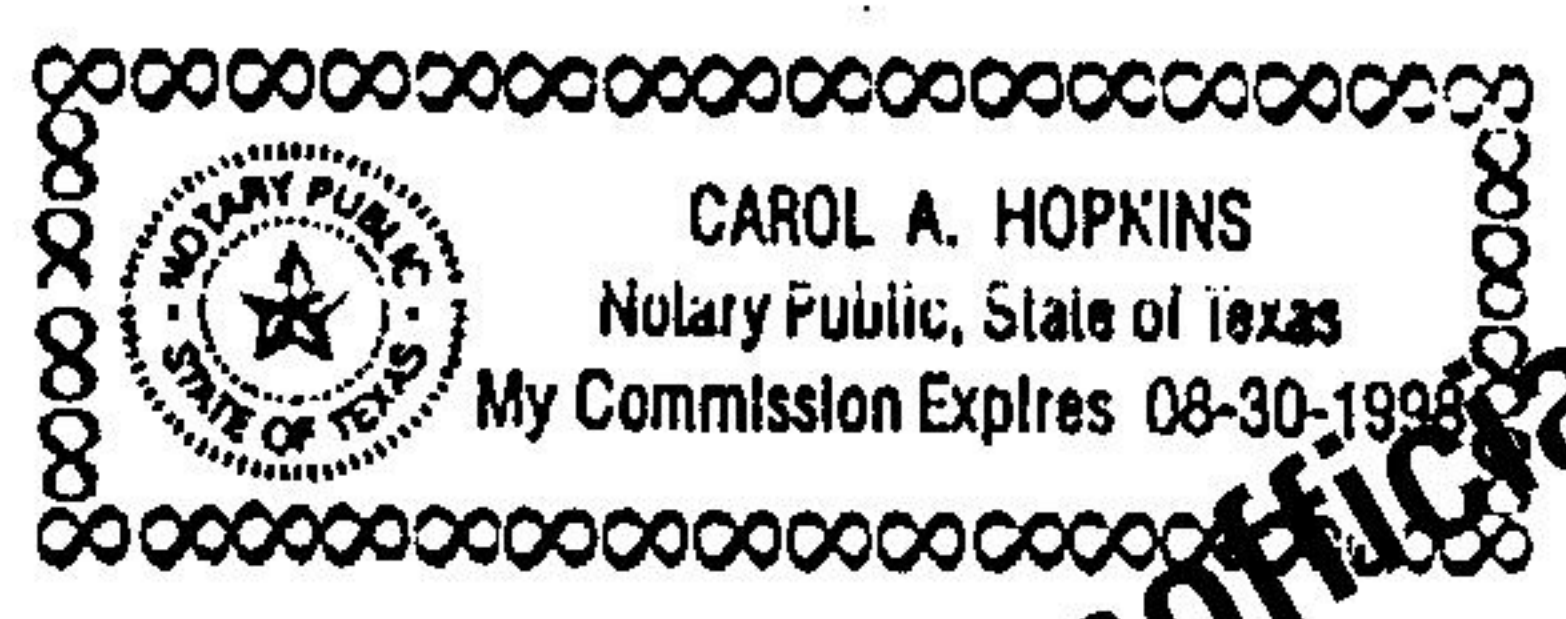
STATE OF TEXAS)
COUNTY OF MIDLAND)

This instrument was acknowledged before me on _____, 1996 by Homer Beal.

Notary Public, State of Texas

STATE OF TEXAS)
COUNTY OF MIDLAND)

This instrument was acknowledged before me on 9-17, 1996 by Carroll Murphree



Carol A. Hopkins
Notary Public, State of Texas

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STATE OF TEXAS)
COUNTY OF MIDLAND)

This instrument was acknowledged before me on 9-17, 1996 by Murphy Jewell

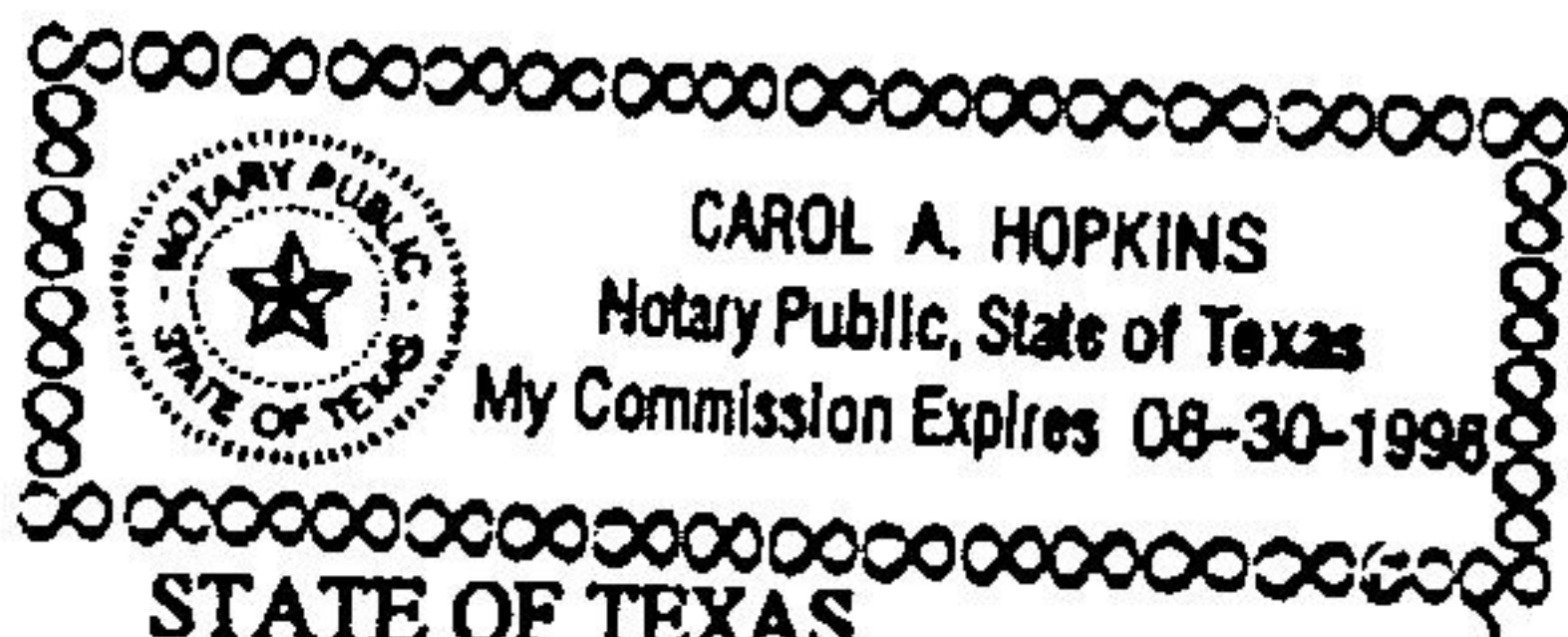


CAROL A. HOPKINS
Notary Public, State of Texas
My Commission Expires 08-30-1998

Carol A. Hopkins
Notary Public, State of Texas

STATE OF TEXAS)
COUNTY OF MIDLAND)

This instrument was acknowledged before me on 9-17, 1996 by Bill Tidwell.

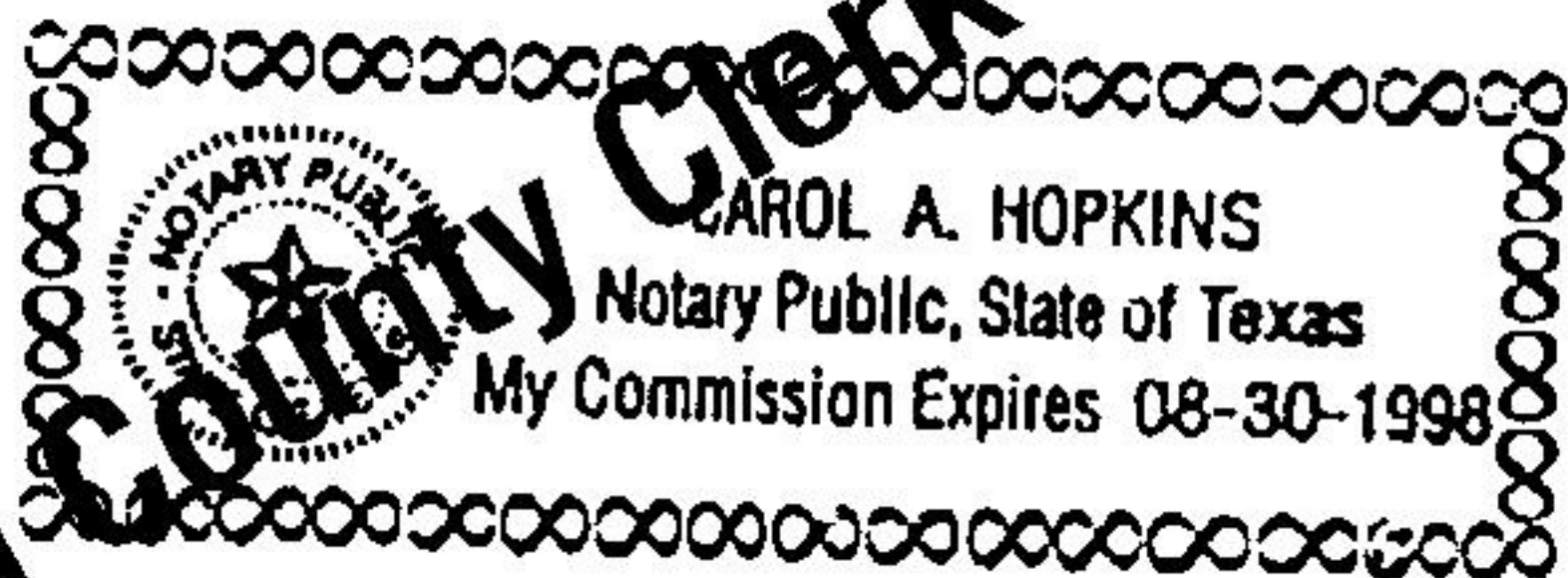


CAROL A. HOPKINS
Notary Public, State of Texas
My Commission Expires 08-30-1998

Carol A. Hopkins
Notary Public, State of Texas

STATE OF TEXAS)
COUNTY OF MIDLAND)

This instrument was acknowledged before me on 9-17, 1996 by Marie Tidwell.



CAROL A. HOPKINS
Notary Public, State of Texas
My Commission Expires 08-30-1998

Carol A. Hopkins
Notary Public, State of Texas

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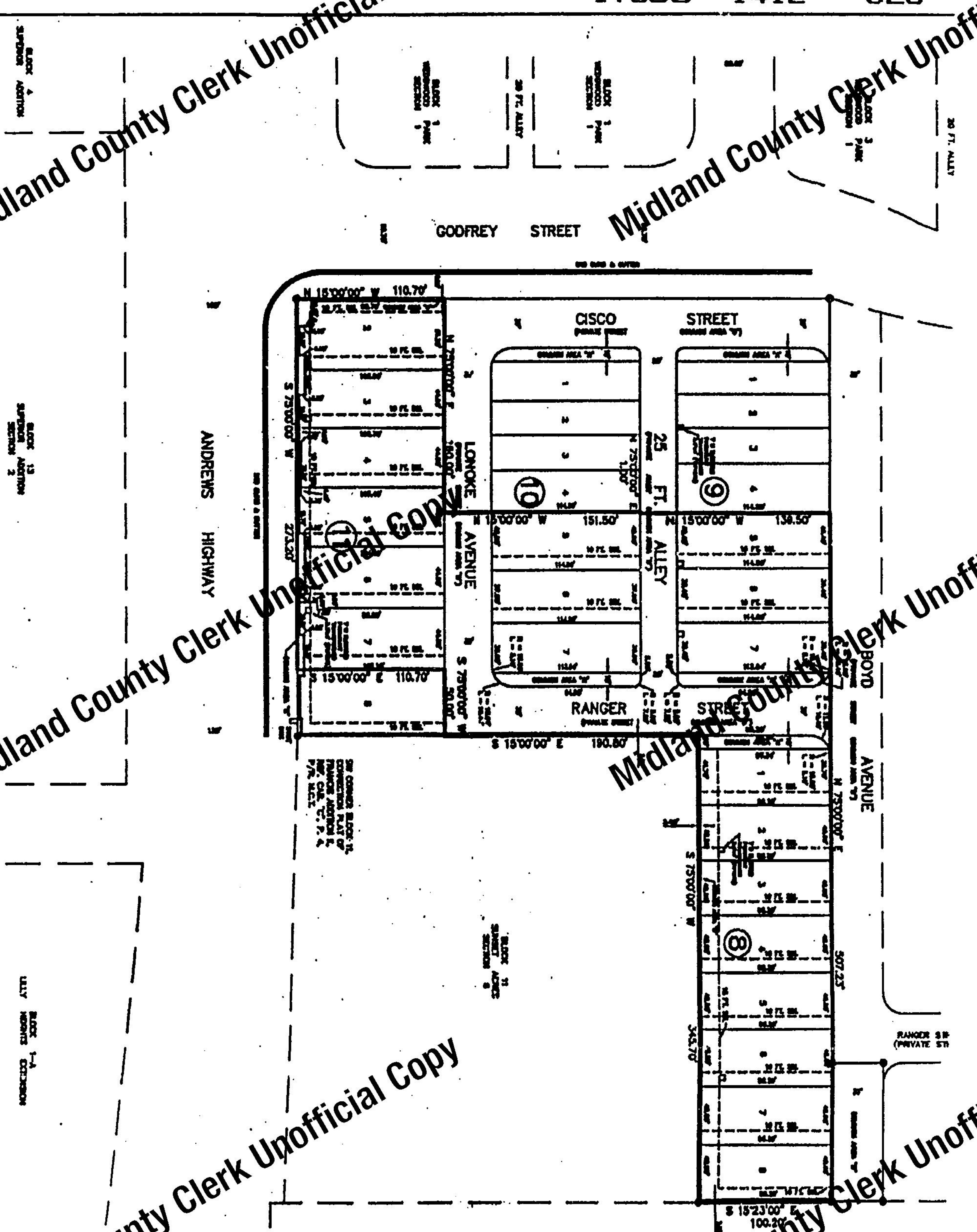
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Filed for Record on the 25 day of September, A.D. 1996 at 1:28 o'clock P.M.
 Duly Recorded this the 25 day of September, A.D. 1996 at 3:02 o'clock P.M.

INSTRUMENT NO. 17333

ROSENELLE CHERRY, COUNTY CLERK
 MIDLAND COUNTY, TEXAS
 By Guadalupe Torres, Deputy

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