

December 8, 1993

93-1135

WHEREAS, the City Council on January 25, 1989 passed Resolution No. 89-0420 providing for the acceptance of a deed restriction instrument submitted in conjunction with an application for a change of zoning to a CR Community Retail District and a CR-D Community Retail-Dry District on property at the southeast corner of Midway Road and Rosemeade Parkway involving Zoning File No. Z878-144/8487-N; and

WHEREAS, application has been made to terminate the deed restrictions in conjunction with a request for a change of zoning to a TH-2(A) Townhouse District on the a portion of the subject property involving Zoning File No. Z923-303/8487-N; and

WHEREAS, new deed restrictions have been submitted in conjunction with the rezoning of the subject property; and

WHEREAS, the City Council at a public hearing on November 10, 1993 approved the termination o f the existing deed restrictions and further approved the acceptance of the new deed restrictions in accordance with the recommendation of the City Plan Commission; and

WHEREAS, an instrument providing for the termination of the existing deed restrictions and an instrument containing the new deed restrictions have been approved as to form; Now Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. That the attached instrument providing for the termination of the existing deed restrictions be and is hereby accepted by the City Council of the City of Dallas, Texas.

Section 2. That the attached instrument providing for the new deed restrictions be and is hereby accepted by the City Council of the City of Dallas, Texas to be used in conjunction with the development of property zoned a TH-2(A) Townhouse District as described in Ordinance No. ~~21911~~.

Section 3. That said instruments shall be filed in the Deed Records of Collin County, Texas.

Section 4. That this resolution shall take effect from and after its passage in accordance with the Charter of the City of Dallas, and it is accordingly so resolved.

APPROVED BY  
CITY COUNCIL

Approved as to form:  
SAM LINDSAY, City Attorney

By *[Signature]*  
Assistant City Attorney

DEC 8 1993

APPROVED

*[Signature]*

APPROVED

HEAD OF DEPARTMENT

DIRECTOR OF FINANCE

*[Signature]*

City Secretary

APPROVED

CITY MANAGER



The Owner agrees to defend, indemnify, and hold harmless the City from and against all claims or liabilities arising out of or in connection with this instrument.

VII.

Unless stated otherwise in this instrument, the definitions and provisions of CHAPTER 51A, "PART II OF THE DALLAS DEVELOPMENT CODE," as amended, apply and are incorporated into this instrument as if recited in this instrument.

VIII.

The invalidation of any provision in this instrument by any court shall in no way affect any other provision, which shall remain in full force and effect, and to this end the provisions are declared to be severable.

EXECUTED this the 9th day of November, 1993.

Donald Huffines  
MIDWAY LOT, L.P. by  
MILLCREEK CROSSING, L.C. the  
General Partner, Donald Huffines,  
President

APPROVED AS TO FORM:

SAM A. LINDSAY, City Attorney

By [Signature]  
Assistant City Attorney

This instrument was acknowledged before me on 12 Nov., 1993, by Donald Huffines, President of Millcreek Crossing, L.C., a Texas corporation as general partner of Midway Lot, L.P., a Texas Limited Partnership, on behalf of said limited partnership.

Jeanne Long 11-12-93  
Notary Public, State of Texas

Printed name of Notary Public:

Jeanne Long

My commission expires: April 6, 1997

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY  
MIDWAY LOT, L.P.

BEING a tract of land situated in the Edwin Allen Survey, Abstract No. 8, City of Dallas, Collin County, Texas, City Block 8740 and being part of the land conveyed to MeraBank, a Federal Savings Bank by deed recorded in Volume 3165, Page 337, Deed Records, Collin County, Texas and being more particularly described as follows:

BEGINNING at a 3/4-inch iron rod at the northwest corner of the Arbors on Rosemeade Apartments Addition, an addition to the City of Dallas as recorded in Cabinet "F", Page 487, Map Records, Collin County, Texas, said iron rod also being in the south line of Rosemeade Parkway (80 foot right-of-way at this point);

THENCE South 01 deg. 04 min. 00 sec. East along the west line of said Arbors on Rosemeade a distance of 250.00 feet to a 3/4-inch iron rod for corner in the north line of a 15 foot alley right-of-way, said alley being part of Rosemeade Place Addition, an addition to the City of Dallas as recorded in Cabinet "H", page 154, Map Records, Collin County, Texas;

THENCE South 88 deg. 56 min. 00 sec. West along the north line of said alley a distance of 664.89 feet to a 3/4-inch iron rod for corner;

THENCE South 43 deg. 56 min. 00 sec. West continuing along the northerly line of said alley and the west line of a cul-de-sac right-of-way for Voss Hills Place a distance of 110.00 feet to a 3/4-inch iron rod for corner;

THENCE South 01 deg. 04 min. 00 sec. East along the west line of Voss Hills Place and the west line of Lot 17, Block L-8740 a distance of 172.21 feet to a 1/2-inch iron rod for corner in the north line of Bently Court Addition, an addition to the City of Dallas as recorded in Cabinet "D", page 150, Map Records, Collin County, Texas;

THENCE South 88 deg. 56 min. 00 sec. West along the north line of said Bently Court Addition a distance of 271.70 feet to a 1/2-inch iron rod for corner;

THENCE South 00 deg. 02 min. 00 sec. East along a west line of said Bently Court Addition a distance of 618.67 feet to an "X" cut in concrete for corner;

THENCE South 88 deg. 56 min. 00 sec. West along a north line of said Bently Court Addition a distance of 529.30 feet to a 1/2-inch iron rod for corner in the east line of a tract conveyed to the City of Dallas for widening Midway Road by deed recorded under County Clerk's file number 92-0025391, Deed Records, Collin County, Texas, said iron rod also being the beginning of a curve to the right that has a central angle of 14 deg. 17 min. 03 sec., a radius of 900.00 feet, and a chord that bears North 07 deg. 10 min. 32 sec. West;

THENCE along said curve to the right and the east line of said City of Dallas tract a distance of 224.38 feet to a 3/4-inch iron rod at the end of said curve;

THENCE North 00 deg. 02 min. 00 sec. West along the east line of said City of Dallas tract a distance of 396.11 feet to a 3/4-inch iron rod for an angle point;

THENCE North 00 deg. 06 min. 23 sec. West along the east line of Midway Road a distance of 183.44 feet to a 3/4-inch iron rod at a corner clip;

98

THENCE North 44 deg. 27 min. 24 sec. East along said corner clip a distance of 14.26 feet to a 1/2-inch iron rod in the south line of Rosemeade Parkway;

THENCE North 88 deg. 56 min. 00 sec. East along the south line of said Rosemeade Parkway a distance of 179.16 feet to a railroad spike at the beginning of a curve to the left that has a central angel of 42 deg. 15 min. 11 sec., a radius of 630.00 feet, and a chord that bears North 67 deg. 48 min. 24 sec. East;

THENCE Along said curve to the left and the south line of Rosemeade Parkway an arc length of 464.60 feet to a 3/4-inch iron rod at the point of a reverse curve to the right that has a central angle of 42 deg. 15 min. 11 sec., a radius of 550.00 feet, and a chord that bears North 67 deg. 48 min. 24 sec., East;

THENCE along said curve to the right and the south line of Rosemeade Parkway an arc length of 405.60 feet to a 3/4-inch iron rod at the end of said curve;

THENCE North 88 deg. 56 min. 00 sec., East along the south line of Rosemeade Parkway a distance of 585.65 feet to the POINT OF BEGINNING and containing 761,615.79 square feet or 17.4843 acres of land.

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DEED RESTRICTIONS

THE STATE OF TEXAS I  
COUNTY OF COLLIN I

KNOW ALL MEN BY THESE PRESENTS:

624889  
JUN 31 11:10  
COLLIN COUNTY TEXAS  
CLERK

That the undersigned, Emerald Heights Joint Venture, is the owner of the following property situated in Collin County, Texas, being in particular a tract of land out of the Edwin Allen Survey, Abstract No. 8, Collin County, Texas, and being part of the City of Dallas Block No. 8740, which property is recorded in the Deed Records of Collin County, Texas, in Volume 1793, page 177, and Volume 1282, page 520, and being more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes.

That the undersigned, Emerald Heights Joint Venture, does hereby impress all of the described property (hereafter "Subject Property") with the following restrictions, to-wit:

CONCEPTS AND DEFINITIONS

The following words, when used in these Covenants (unless the context shall otherwise clearly indicate or prohibit) shall have the following respective concepts, definitions and meanings:

- (a) "Plan" (the "PLAN") shall mean and refer to that particular site plan attached hereto as Exhibit "B" and incorporated herein by reference for all purposes.
- (b) "Zone 1", "Zone 2", "Zone 3", "Zone 4" and "Zone 5" shall mean and refer respectively to such zones of the Subject Property as depicted on the PLAN.

2878-144/8481-N

11-2-11-23

2993 232

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II. LOCATION, HEIGHT, SETBACK AND OTHER REQUIREMENTS

The following limitations shall apply to any construction, development or use of the Subject Property from time to time or at any time:

(a) No building, structure or improvement of any kind or character in Zone 1 or Zone 5 may exceed twenty feet (20') in height and one (1) story.

(b) No building, structure or improvement of any kind or character in Zone 2 or Zone 3 may exceed twenty-four feet (24') in height and one (1) story.

(c) No building, structure or improvement of any kind or character in Zone 4 may exceed eighteen feet (18') in height and one (1) story.

(d) No more than two hundred forty thousand (240,000) gross square feet of building floor area (excluding parking structures) may be constructed, used or occupied on the Subject Property.

(e) Any mechanical equipment placed on the roof of a building on the Subject Property must be screened from the view of any single-family homes adjacent to the Subject Property and placed on the front one-half of such building. Equipment may also be placed on the ground immediately adjacent to a building, but must be enclosed with a wall around the equipment area, such wall being, at a minimum, the same height as the equipment, and no less than forty feet (40') from any property line adjacent to residentially zoned property. No trash disposal devices are considered as mechanical equipment.

(f) Attached signs must be affixed to the buildings and not face toward any single-family lots adjacent to the Subject Property. Signs must not extend above the top of the building.

(g) Detached signs (pole signs) may not exceed twenty-four feet (24') in height and may not be located within two hundred feet (200') of any single-family zoned lot.

(h) Parking lot lighting must be on poles no taller than the height of the buildings. Any lighting on the side of a building may not be directed toward any single-family zoned lot.

(i) No building occupied by a restaurant may be located in Zone 1, Zone 2 or Zone 4 as shown on the PLAN.

(j) There shall be a "no building zone" of fifty feet (50') (including the Landscape Buffer Zone described in III below) along the common boundary line of the Subject Property and any property zoned single-family.

2993 233

890420

(k) Trash receptacles must be screened from view from any residentially zoned lot and must be located immediately adjacent to the buildings. No trash receptacle may be located within thirty-five feet (35') of any common boundary line between residentially zoned lots and the Subject Property. In addition, grocery stores must have fully enclosed trash receptacles.

(l) Garbage pick up and parking lot cleaning and maintenance are limited to the hours of 7 A.M. to 7 P.M.

(m) No building occupied by an anchor tenant (defined as a tenant occupying over twenty thousand (20,000) square feet of floor area) may be located in Zone 1 or Zone 4 as shown on the PLAN.

(n) Vehicular ingress and egress is prohibited from the community retail-zoned property to any single-family zoned lots.

III. LANDSCAPE BUFFER ZONE AND REQUIREMENTS

Any development, construction and/or use of the Subject Property shall include the construction, installation and maintenance of a ten foot (10') wide Landscape Buffer Zone contiguous and adjacent to the common boundary between the Subject Property and any single-family zoned property as shown on the PLAN. This area shall be considered the "Landscape Buffer Zone" and shall be limited to dirt, grass, trees, shrubbery, ground cover and retaining walls and shall include an eight foot (8') reinforced masonry screening wall along the side of the Landscape Buffer Zone adjacent to the Subject Property. Said Landscape Buffer Zone is set forth in more detail on the PLAN. As part of any future development of the Subject Property, and prior to applying for any Certificate of Occupancy by the City of Dallas relative to the Subject Property, the Subject Property Owner (and its heirs, successors and assigns) shall:

(a) Plant and cultivate the Landscape Buffer Zone adjacent to the area being developed with:

(1) Live Oak trees, 3 1/2" caliper, thirty-five feet (35') on center on the outside of the screening wall referred to above.

(2) Some type of evergreen vertical hedge between the trees.

(3) Grass or gravel on the ground.

(b) Install an irrigation or sprinkler system within the Landscape Buffer Zone

2993 234

890420

The Landscape Buffer Zone shall be watered, clipped, trimmed and maintained on a regular basis so that it at all times appears in healthy condition (including replacement of dead trees and plants). The screening wall must also be maintained on a regular basis.

No signs, monuments, structures or improvements, save and except fences and retaining walls, landscape lighting, and signs or improvements required by a governmental entity shall be constructed in the Landscape Buffer Zone.

#### IV. GRADING AND RETAINING WALL

In order to lower the heights of the buildings constructed in Zone 1 and Zone 2 of the Subject Property, the following must be accomplished:

- (a) The Subject Property will be graded in such a manner that the ground level of the Subject Property will be lowered below grade of the adjacent single-family lots as shown on the PLAN.
- (b) A retaining wall will be constructed along the retail side of the Landscape Buffer Zone, as shown on the PLAN, in all areas where the ground level of the Subject Property is lowered.

#### V. PROHIBITED USES

The following uses, as defined in the Dallas Development Code, are prohibited on the Subject Property:

- (a) Pawn Shop
- (b) Building repair and maintenance shop
- (c) Establishments for the care of alcoholic, narcotic or psychiatric patients
- (d) Group home or shelters for disabled, indigent or abused persons
- (e) Half-way house
- (f) Hotel or motel
- (g) Lodging or boarding house
- (h) Radio, television or microwave tower

2993 235

890420

- (i) Recycling collection center
- (j) Amateur communication tower
- (k) Helistop
- (l) Bar, lounge or tavern
- (m) Commercial amusement (outside)
- (n) Commercial parking lot or garage
- (o) Liquor store

VI. TRAFFIC IMPROVEMENTS

No person may apply for a Certificate of Occupancy until Midway Road is completed as a six-lane divided thoroughfare from Windhaven to Rosemeade Parkway and including a right-turn lane from northbound Midway Road to eastbound Rosemeade Parkway.

These restrictions shall continue in full force and effect for a period of twenty-five (25) years from the date of execution, and shall automatically be extended for additional periods of ten (10) years unless terminated in the manner specified herein.

These restrictions shall not be altered, amended or terminated without a public hearing before the City Plan Commission and the City Council of the City of Dallas. Notice of such public hearings shall be given as would be required by law for a zoning change on the property described herein.

2993 236

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The restrictions contained herein are not in any manner intended to restrict the right of the City Council of the City of Dallas to exercise its legislative duties and powers insofar as zoning of the property is concerned.

These restrictions inure to the benefit of the City of Dallas, and the undersigned owner hereof does hereby grant to the City of Dallas the right to prosecute, at law and in equity, against the person violating or attempting to violate such restrictions, either to prevent him from so doing and to correct such violation and for further remedy, the City of Dallas may withhold the Certificate of Occupancy necessary for the lawful use of the property until such restrictions described herein are fully complied with.

These restrictions are hereby declared covenants running with the land and shall be fully binding upon all persons acquiring property with- in the above described tract, and any person by acceptance of title to any of the above described property shall thereby agree and covenant to abide by and fully perform the foregoing restrictions and covenants.

EXECUTED this 16<sup>th</sup> day of January, 1989.

Approved as to form:  
ANALESLIE MUNCY, City Attorney.  
By Angela N. Bauer  
Assistant City Attorney

EMERALD HEIGHTS JOINT VENTURE  
BY: Joseph M. Lueddeman  
MANAGING VENTURER

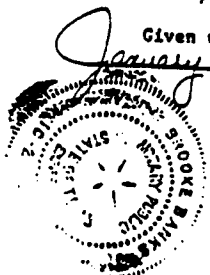
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THE STATE OF TEXAS  
COUNTY OF COLLIN

Before me, the undersigned authority, on this day personally  
appeared Joseph M. Friedheim, Managing Venturer in  
Emerald Heights Joint Venture, known to me to be the person whose  
name is subscribed to the foregoing instrument, and acknowledged  
to me that he executed the same for the purposes and consideration  
therein expressed and in the capacity therein stated.

Given under my hand and seal of office on this 16th day of  
January, 1989.



Brooke Banks  
Notary Public, State of Texas

10-28-97  
My Commission Expires:

2993 238

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## EXHIBIT "A"

Being a tract of land situated in the City of Dallas, Collin County, Texas, and being out of the Edwin Allen Survey, Abstract No. 8, and being part of Dallas City Block No. 8740 and being more particularly described as follows:

COMMENCING at a point in the Denton-Collin County line, said point being in the North right-of-way line of a 100 foot Texas Power & Light Company easement and the West right-of-way line of a variable width Texas Power & Light Company easement as recorded in Volume 1282, Page 320, Collin County Deed Records, THENCE North 0° 02' 00" West, along said County line a distance of 356.39 feet to the POINT OF BEGINNING, an iron pin found for corner;

THENCE North 0° 02' 00" West, continuing along said County line a distance of 618.67 feet, an iron pin found for corner;

THENCE North 88° 56' 00" East, departing said County line, a distance of 61.50 feet, an iron pin found for corner;

THENCE North 0° 06' 23" West, a distance of 183.44 feet, an iron pin found for corner;

THENCE North 44° 27' 24" East, a distance of 14.26 feet, to a point in the South line of Rosemeade Road an 80 foot right-of-way, an iron pin found for corner;

THENCE North 88° 56' 00" East, along said South line of Rosemeade Road, a distance of 179.16 feet, to the beginning of a curve to the left having a central angle of 42° 15' 11", a radius of 630.00 feet, a tangent of 243.43 feet, a railroad spike found for corner;

THENCE along said curve to the left and along said South line of Rosemeade Road an arc distance of 464.60 feet to the end of said curve and the beginning of a reverse curve to the right having a central angle of 42° 15' 11", a radius of 550.00 feet, a tangent of 212.52 feet, an iron pin found for corner;

THENCE along said curve to the right and along said South line of Rosemeade Road an arc distance of 405.60 feet to the end of said curve, an iron pin found for corner;

THENCE North 88° 56' 00" East, along said South line of Rosemeade Road a distance of 585.55 feet, an iron pin found for corner;

THENCE South 1° 04' 00" East, leaving said South line of Rosemeade Road, a distance of 250.00 feet, an iron pin found for corner;

2993 239

890420

THENCE South 88° 56' 00" West, a distance of 664.89 feet, an iron pin found for corner;

THENCE South 43° 56' 00" West, a distance of 110.00 feet, an iron pin found for corner;

THENCE South 1° 04' 00" East, a distance of 172.21 feet, to a point in the most Northerly North line of the Bently Court Addition as recorded by plat in Cabinet "D", Page 150, Collin County Deed Records, an iron pin found for corner;

THENCE South 88° 56' 00" West, along said North line of Bently Court Addition a distance of 271.70 feet, to the most Northerly Northwest corner of said Bently Court Addition, an iron pin found for corner;

THENCE South 0° 02' 00" East, along the West line of said Bently Court Addition a distance of 518.67 feet, a chisled "+" found for corner;

THENCE South 88° 56' 00" West, along the North line of said Bently Court Addition a distance of 618.63 feet to the POINT OF BEGINNING and CONTAINING 18.405 acres of land, more or less.



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

No. 89-0420  
Return to City Secretary  
City Hall  
Dallas, Texas 75201