

COUNCIL CHAMBER

April 10, 2002

WHEREAS, the deed restriction in the attached Exhibit 1 has been terminated, and the deed restriction in the attached Exhibit 2 has been volunteered in connection with property located on the south corner of Marsh Lane and President George Bush Turnpike, which is the subject of Zoning Case No. Z989-116/10733-NC(SS); and

WHEREAS, the City Council desires to terminate the deed restriction in the attached Exhibit 1, and accept the deed restriction in the attached Exhibit 2; Now, Therefore,

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

Section 1. That the deed restriction in the attached Exhibit 1 be and is hereby terminated, and the deed restriction in the attached Exhibit 2 be and is hereby accepted by the City Council of the City of Dallas, Texas, in conjunction with the development of property that is the subject of Zoning Case No. Z989-116/10733-NC(SS).

Section 2. That the terminated deed restriction in the attached Exhibit 1, and the deed restriction in the attached Exhibit 2 be filed in the Deed Records of Denton County, Texas.

Section 3. That this resolution shall take effect immediately from and after its passage in accordance with the Charter of the City of Dallas, Texas, and it is accordingly so resolved.

APPROVED AS TO FORM:

MADELEINE B. JOHNSON, City Attorney

By Christine Lannoy
Assistant City Attorney

**APPROVED BY
CITY COUNCIL**

APR 10 2002

Shirley Gray
City Secretary

APPROVED _____ APPROVED _____ APPROVED _____
HEAD OF DEPARTMENT DIRECTOR OF FINANCE CITY MANAGER

EXHIBIT 2

DEED RESTRICTIONS

THE STATE OF TEXAS §
 §
COUNTY OF DENTON §

KNOW ALL PERSONS BY THESE PRESENTS:

I.

The undersigned, Timberglen Company, a Texas general partnership, ("the Owner"), is the owner of the following described property ("the Property"), being in particular a tract of land out of the John Smith Survey, Abstract No. 1225, part of City Block 8749, City of Dallas ("City"), Denton County, Texas, and being that same tract of land conveyed to Owner by William O. Nelson by deed dated September 25, 1992, and recorded in Volume 3334, Page 0934, in the Deed Records of Denton County, Texas, and being more particularly described in the attached Exhibit "A" incorporated herein by reference.

II.

Owner does hereby impress all of the Property with the following deed restrictions ("Restrictions"), to wit:

No portion of the property shall be used for any of the following uses:

1. building repair and maintenance shop;
2. adult day care facility;
3. cemetery or mausoleum;
4. college, university, or seminary;
5. lodging or boarding house;
6. overnight general purpose shelter;
7. ambulance service;
8. animal shelter or clinic; however, an animal clinic that is accessory to a general merchandise or food store, that does not provide boarding or overnight shelter for animals, is permitted;
9. car wash, except as an accessory use to a motor vehicle fueling station;

10. carnival or circus (temporary);
11. private recreation center, club or area;
12. mortuary, funeral home, or commercial wedding chapel;
13. commercial radio or television transmitting station;
14. electrical substation;
15. radio, television, or microwave tower;
16. recycling collection center;
17. pawn shop; [See Section 51A-4.210(b)(22)(E)]
18. accessory helistop;
19. accessory medical/infectious waste incinerator;

III.

These restrictions shall continue in full force and effect for a period of twenty (20) years from the date of execution, and shall automatically be extended for additional periods of ten (10) years unless amended or terminated in the manner specified in this document.

IV.

These restrictions may be amended or terminated only after public hearing before the City Plan Commission and a public hearing before and approval by the City Council of the City. Notice of the public hearings must be given as would be required by law for a zoning change on the Property. The amending or terminating instrument must be approved as to form by the city attorney. If the City Council approves an amendment or termination of these restrictions, the Owner must then file the amending or terminating instrument in the Deed Records of the county or counties where the Property is located at his or her sole cost and expense before the amendment or termination becomes effective.

V.

These restrictions are not intended to restrict the right of the City Council of the City to exercise its legislative duties and powers insofar as zoning of the Property is concerned.

VI.

The Owner agrees that these restrictions inure to the benefit of the City. The Owner hereby grants the City the right to enforce these restrictions by any lawful means, including filing an action in a court of competent jurisdiction, at law or in equity, against the person violating or attempting to violate these restrictions, either to prevent the violation or to require its correction. If the City substantially prevails in a legal proceeding to enforce these restrictions, the Owner agrees that the City shall be entitled to recover damages, reasonable attorney's fees, and court costs. For further remedy, the Owner agrees that the City may withhold any certificate of occupancy or final inspection necessary for the lawful use of the Property until these restrictions are complied with. The right of the City to enforce these restrictions shall not be waived, expressly or otherwise.

VII.

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 the provisions of this document.

VIII.

The provisions of this document are hereby declared covenants running with the land and are fully binding on all successors, heirs, and assigns of the Owner who acquire any right, title, or interest in or to the Property, or any part thereof. Any person who acquires any right, title, or interest in or to the Property, or any part thereof, thereby agrees and covenants to abide by and fully perform the provisions of this document.

IX.

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

X.

The Owner understands and agrees that this document shall be governed by the laws of the State of Texas.

XI.

The Owner certifies and represents that there are no mortgages or liens, other than liens for ad valorem taxes, against the Property if there are no signatures of mortgagees or lienholders subscribed below.

XII.

The invalidation of any provision of 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 20 day of Nov, 2001.

Owner:

TIMBERGLEN COMPANY,
a Texas general partnership

By: Karen MacArthur
Karen MacArthur, Partner

By: Timberglen Company II, L.P.
a Texas limited partnership

By: Karen MacArthur
Karen MacArthur, General Partner

By: Reading Trust
a Texas trust

By: Karen MacArthur
Karen MacArthur, Trustee

CONSENT AND CONCURRENCE OF
LIENHOLDER:

Graham Mortgage Corporation
Property Lienholder of Mortgagee

By: Jerry Donahue

Print Name: Jerry Donahue, Vice Pres.

APPROVED AS TO FORM:

Madeleine B. Johnson

By: Christine Lamm
Assistant City Attorney

EXHIBIT A

BEING a tract of land out of the John Smith Survey, Abstract Number 1225, located in City Block 8749. City of Dallas, Denton County, Texas, and being part of a called 71.990 acre tract of land, interest in said 71.990 acre tract being acquired or held by Sullivan Development Co., Inc., John R. Sullivan, Sullivan Brothers #2 partnership, Property Asset Equity Corp., NCNB Texas National Bank, as assignee from Federal Deposit Insurance Corporation, as receiver of First Republic Bank, Dallas, N.A. and Federal Deposit Insurance Corporation, as evidenced by deeds recorded in Volume 1220, Page 407, Volume 1220, Page 415, Volume 2152, Page 147, Volume 2540, Page 458, Volume 2540, Page 462, Volume 2645, Page 298, and Volume 3112, Page 621, all being recorded in the Deed Records of Denton County Texas, said tract being more particularly described by metes and bounds as follows:

COMMENCING at a point in the original centerline of Marsh Lane and the centerline tangent line of new Marsh Lane (a 100' R.O.W. at this point), said point being the Southeast corner of said 71.990 acre tract:

THENCE, North 89°23'15" West, with the South line of said 71.990 acre tract, some being the North line of a called 280.36 acre tract of land conveyed to Charles C. McKamy by deed dated November 17, 1917 and recorded in Volume 157, Page 104 of the Deed Records of Denton County, Texas, a distance of 62.65 feet to a ½" iron pin with cap set for the POINT of BEGINNING (from which a 3/8" iron pin found bears N 02°28'07" W. 0.23"), said point in the Southwesterly right-of-way line of Marsh Lane in a barb wire fence line, and also being in a circular curve.

THENCE, North 89°23'15" West, departing said Southwesterly line of Marsh Lane, continuing with said South line of 71.990 acre tract and North line of McKamy tract and along said barb wire fence line, a distance of 266.11 feet to a ½" iron pin found for a corner in the Southeasterly right-of-way line of State Highway 190 as shown on Right-of-Way maps dated July 9, 1992;

THENCE, departing said barb wire fence line and common line of 71.990 acre tract; and McKamy tract, with said Southeasterly and Southerly right-of-way line of State Highway 190; North 29°17'01" East, a distance of 142.02 feet to a ½" iron pin found for a corner, and South 88°04'25" East, a distance of 154.67 feet to a ½" iron pin with cap set for a corner in the afore-mentioned Southwesterly line of Marsh Lane (from which a ½" iron pin with red cap marked ABA bears N 70°03'51" E. 1.56);

THENCE, South 22°29'08" East, with said Southwesterly line of Marsh Lane, a distance of 11.11 feet to a 3/8" iron pin found for the beginning of a circular curve to the right having a radius of 905.00 feet, a tangent length of 58.87 feet, and chord which bears South 18°45'49" East, a distance of 117.50 feet;

THENCE, in a Southerly direction with said Southwesterly line of Marsh Lane and circular curve to the right, through a central angle of 07°26'38", a distance of 117.58 feet to the POINT of BEGINNING and CONTAINING 26,045 Square Feet, or 0.5979 Acres of land, more or less.

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Exhibit A - Solo Page