



SWIMMING POOL USE AND FUNDING AGREEMENT

THE STATE OF TEXAS

§

ORIGINAL

COUNTY OF TRAVIS

§

FILED FOR RECORD

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This Swimming Pool Use and Funding Agreement ("Agreement") is entered into as of the dates shown below, between McKinney Park East (Austin) Homeowners' Association, Inc., ("McKinney Park HOA") a Texas non-profit corporation, and Springfield (Austin) Homeowner's Association, Inc. ("Springfield HOA"), a Texas non-profit corporation.

RECITALS

WHEREAS, the McKinney Park HOA has been duly formed under the laws of the State of Texas and in accordance with that certain Declaration of Covenants, Conditions and Restrictions for McKinney Park East ("McKinney Park Declaration") of record as Document 2002199012 of the Official Public Records of Travis County, Texas, which Declaration applies to that certain real property known as McKinney Park East Sections One and Two, as more particularly described in plats of record as Documents Nos. 200200283 and 200300068 in the Official Public Records of Travis County, Texas; and

WHEREAS, the Springfield HOA has been duly formed under the laws of the State of Texas and in accordance with that certain Declaration of Covenants, Conditions and Restrictions for Springfield, Phase "B", Section One ("Springfield Declaration") of record as Document 2001121326 of the Official Public Records of Travis County, Texas, as amended to make Springfield Phase "B", Sections Two through Six subject to the provisions of the Springfield Declaration; and

WHEREAS, pursuant to applicable law of the State of Texas, the McKinney Park Declaration, the Springfield Declaration, and the respective Bylaws of the Associations, the Boards of Directors of the McKinney HOA and the Springfield HOA, respectively, are authorized to manage the business and affairs of their respective Associations and to implement and enforce the provisions of their respective Declarations; and

WHEREAS, the Board of Directors of the McKinney Park HOA is responsible for the use and maintenance of a swimming pool and related amenities located wholly within the McKinney Park East subdivision; and

WHEREAS, the costs of use, maintenance, and repair of the swimming pool and related amenities are currently borne entirely by the owners of Lots within the McKinney Park East subdivision; and

WHEREAS, the Board of Directors of the McKinney Park HOA is of the opinion that allowing access to the McKinney Park East swimming pool and related amenities by residents of the Springfield (Austin) subdivision in exchange for the payment a proportional share of the expenses of operation and maintenance of the pool and related amenities by the Springfield HOA is in the best interests of the members of the McKinney Park HOA; and

WHEREAS, the Board of Directors of the Springfield HOA is of the opinion that paying a proportional share of the expenses of operation and maintenance of the McKinney Park East swimming pool and related amenities in exchange for the residents of the Springfield subdivision being allowed to access and use the McKinney Park East swimming pool and related amenities is in the best interests of the members of the Springfield HOA; and

WHEREAS, the McKinney Park HOA and the Springfield HOA desire to enter into this Agreement to specify the terms on which the McKinney Park HOA will allow members of the Springfield HOA and their guests to access and use the McKinney Park swimming pool and related amenities, the operational obligations and responsibilities of the parties hereto and the compensation to be paid by the Springfield HOA and received by the McKinney Park HOA for allowing such access.

NOW, THEREFORE, for good and valuable consideration, the McKinney Park HOA and the Springfield HOA agree as follows:

1. This Agreement shall inure to the benefit of owners of lots located in Springfield Phase "B", Sections One-Six as more specifically described in Plats of record in the Official Public Records of Travis County, Texas and to the benefit of lots located in McKinney Park East Sections One and Two as more specifically described in Documents of record in the Official Public Records of Travis County, Texas, to wit:

Springfield Phase "B", Section One of record as Document No. 2001121326 of the Official Public Records of Travis County, Texas;

Springfield Phase "B", Section Two of record as Document No. 200100045 of the Official Public Records of Travis County, Texas;

Springfield Phase "B", Section Three of record as Document No. 200100157 of the Official Public Records of Travis County, Texas;

Springfield Phase "B", Section Four of record as Document No. 200100278 of the Official Public Records of Travis County, Texas;

Springfield Phase "B", Sections Five and Six of record as Document No. 2002094363 of the Official Public Records of Travis County, Texas;

and

McKinney Park East Section One of record as Document No. 200200283 in the Official Public Records of Travis County, Texas; and

McKinney Park East Section Two of record as Document No. 200300068 in the Official Public Records of Travis County, Texas;

2. Swimming Pool and Amenity Use. In consideration of the mutual rights, responsibilities and obligations of the McKinney Park HOA and the Springfield HOA recited further herein, the McKinney Park HOA will, during the term of this contract, allow all members

of the Springfield HOA, and their guests, the right to use and access to the McKinney Park East pool and related amenities on the same terms and conditions as provided to the members of the McKinney Park HOA. Notwithstanding the foregoing, McKinney Park HOA will have no obligation to allow such access to the members of Springfield HOA and their guests if the Springfield HOA is in default of its payment obligations set out herein.

3. Operational and Maintenance Obligations of McKinney Park HOA. The McKinney Park HOA will be solely responsible for the maintenance, upkeep and repair of the McKinney Park East swimming pool and related amenities. These responsibilities shall include the obligation to contract for and pay for all reasonably necessary maintenance and operational services and related supplies required to insure that the swimming pool and related amenities are maintained and operated in accordance with any and all applicable state or local statutes, regulations or ordinances applicable to the operation of such a facility. All such contracts shall be in the name of the McKinney Park HOA and the residents of the Springfield Subdivision shall be third party beneficiaries of all such contracts. In furtherance of its responsibilities, the McKinney Park HOA shall adopt an annual budget for the operation and maintenance of the swimming pool and related amenities (the "Annual Budget"). The Annual Budget shall include a reasonable reserve for facility replacement costs and unanticipated repairs and operational expenses. The Annual Budget shall be adopted at least sixty (60) days in advance of January 1 of each calendar year and, upon adoption by the McKinney Park HOA shall be forwarded to the Board of Directors of the Springfield HOA. The McKinney Park HOA shall be responsible for maintaining all operational and maintenance monies collected as provided herein in separate bank accounts solely dedicated for the purpose of operation and maintenance of the pool and related amenities. Records of such accounts and operational income and expenses shall be kept in accordance with generally accepted accounting principles and the McKinney Park HOA, upon request from the Springfield HOA, shall provide the Springfield HOA with access to and copies of, the records of all such bank accounts and accounting records. McKinney Park HOA shall also have the right to adopt and enforce reasonable rules for the use and benefit of the swimming pool and related amenities and may deny any person deemed in violation of those rules access to and the use of the pool and related amenities.

4. Cost Sharing Obligations of the McKinney Park HOA and the Springfield HOA. The McKinney Park HOA shall be responsible for paying into the dedicated accounts its proportional share of the annual operational and maintenance costs as estimated in the Annual Budget. The payments must include all sums required to meet the McKinney Park HOA's share of the Annual Budget calculated as provided herein and must be made in one (1) payment on or before April 1 of each year. The Springfield HOA shall be responsible for paying to the McKinney Park HOA the Springfield HOA's proportional share of the annual operational and maintenance costs as estimated in the Annual Budget. The payments must include all sums required to meet the Springfield HOA's share of the Annual Budget calculated as provided herein and must be made in one (1) payment on or before April 1 of each year. The payments in the first year of the Agreement (2006) will be due on or before April 1, 2006. Each HOA's proportional share of the Annual Budget shall be determined based on the ratio of each subdivision's total lots at full development to the total number of lots in both subdivisions at full development. By way of example, if there are 1000 lots in the McKinney Park subdivision and 500 lots in the Springfield subdivision, then McKinney Park will be responsible for payment of 2/3rd of the costs of operation and maintenance (1000/1500) and Springfield will be responsible for 1/3rd of

the costs of operation and maintenance (500/1500). This ratio is to be determined based on the actual number of lots in each subdivision at full development and shall apply from the commencement of this Agreement whether the subdivisions are fully developed or not. In the event that the actual operational and maintenance expenses exceed those estimated expenses found in the Annual Budget, then McKinney Park HOA shall be responsible for payment of the additional expenses in their entirety, subject to the obligation of Springfield HOA to pay its share of such additional expenses within ninety (90) days of the receipt of written notice of such additional expenses. In the event that such additional expenses are determined in the last quarter of any calendar year, Springfield's share of such expenses shall be added to the sums due from Springfield HOA in the next calendar year and shall be paid By Springfield HOA to McKinney Park HOA on or before April 1 of the next calendar year.

5. Joint Operational Committee. In order to facilitate the reasonable and cooperative joint use of the pool and related amenities by the members of the McKinney Park HOA and the Springfield HOA, the parties agree to establish a Joint Operational Committee for the purpose of advising the Board of Directors of McKinney Park HOA concerning operational and maintenance issues. Members of such Committee shall be appointed in equal numbers by the respective Boards of Directors

6. Term and Termination. This Agreement shall remain in full force and effect and shall inure to the benefit of the McKinney Park HOA and the Springfield HOA and their respective members for so long as the McKinney Park pool and any related amenities are made available to the members of the McKinney Park HOA. In the event of any breach by either party of the obligations assumed hereunder, the other party shall give written notice to the breaching party of such default and the defaulting party shall have a period of thirty (30) days to cure such breach. In the event that such breach involves the obligation to maintain or repair the pool or related amenities and the breaching party commences the maintenance or repair within the thirty day period and continues such maintenance or repair in a reasonable manner to conclusion, the party performing such maintenance or repair shall not be deemed to be in breach. In the event that a breach of an obligation remains uncured after notice and opportunity to cure as provided herein, then the non-breaching party may elect to either terminate this Agreement or utilize the Alternate Dispute Resolution procedures established by Paragraph 10 hereof.

7. Entire Agreement. This Agreement contains the entire agreement of the parties hereto regarding the subject matter hereof. This Agreement can be amended only by written agreement signed by the parties hereto, and by reference made a part hereof.

8. Notice. Any notice or other communication ("Notice") given under this Agreement must be in writing and may be given: (i) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the party to be notified with return receipt requested; or (ii) by delivering the Notice to the party, or an agent of the party. Notice deposited in the mail in the manner specified will be effective three days after deposit. Notice given in any other manner will be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

McKinney Park East (Austin) Homeowners Association, Inc.

C/o Gregory Boling
Registered Agent
3355 Bee Caves Road
Ste. 510
Austin, TX 78746

Springfield (Austin) Homeowners Association, Inc.
C/o Gregory Boling
Registered Agent
3355 Bee Caves Road
Ste. 510
Austin, TX 78746

The parties may change their respective addresses for purposes of notice by giving at least five days written notice of the new address to the other party.

9. Assignment. This Agreement may not be assigned by any party without the consent of the other party.

10. Alternate Dispute Resolution. Both parties to the Agreement agree to negotiate in good faith in an effort to resolve any dispute related to the Agreement that may arise between the parties. If the dispute cannot be resolved by negotiation, the dispute shall first be submitted to mediation before a mediator practicing in Austin, Texas mutually agreed upon by the parties. If the parties are unable to agree upon a mediator, a mediator assigned by the Dispute Resolution Center in Austin, Texas shall conduct the mediation. The costs of the mediation shall be split equally by the parties. If mediation is unsuccessful, then any controversy, whether contractual or otherwise, arising out of or related in any way to this Agreement, shall be subject to final and binding arbitration in lieu of litigation. Any such arbitration proceedings shall be held in Austin, Texas before a single arbitrator selected by the parties from the panel of arbitrators of The Arbitration Group in Austin, Texas or other similar arbitration organization and subject to the procedural rules of such organization. In deciding the substance of the parties' claims, the arbitrator shall apply the substantive laws of the State of Texas (excluding Texas choice-of-law principles that might call for the application of some other state's law). The arbitrator will not have the power to add to or ignore any of the terms and conditions of this Agreement. His or her decision shall not go beyond what is necessary for the interpretation and application of this Agreement and obligations of the parties under this Agreement. If any controversy regarding this Agreement is submitted to arbitration, Employee and Company agree that the arbitrator's decision shall be final and legally binding on both parties. The costs of the arbitration shall be borne in their entirety by the losing party unless otherwise allocated by the arbitrator as part of the arbitrator's award.

11. Authority Each person executing this instrument on behalf of the Springfield HOA and the McKinney Park HOA, respectively, represents that he is an authorized representative and has the authority to sign this document on behalf the respective party.

Approved and executed this the 10th day of January, 2006.

MCKINNEY PARK EAST (AUSTIN)
HOMEOWNERS ASSOCIATION INC., a
Texas non-profit corporation

By: _____

John H. Zinsmeyer, President
Board of Directors

ATTEST:

Francine Kula
Francine Kula Secretary
Board of Directors

SPRINGFIELD (AUSTIN) HOMEOWNERS
ASSOCIATION, INC., a Texas non-profit
corporation

By: _____

_____, President
Board of Directors

ATTEST:

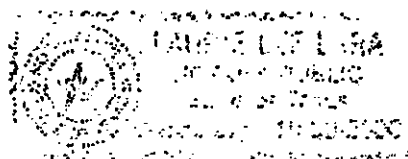
Pamela Mills
Pamela Mills Secretary
Board of Directors

STATE OF TEXAS

COUNTY OF Williamson

BEFORE ME the undersigned Notary Public on this the 10th day of January, 2006, personally appeared John H. Zinsmeyer known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purpose and in the capacity set out therein.

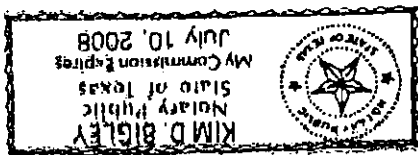
Francine Kula
Notary Public, State of Texas



STATE OF TEXAS

COUNTY OF Travis

BEFORE ME the undersigned Notary Public on this the 10th day of January, 2006, personally appeared Laurie Lara known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purpose and in the capacity set out therein.

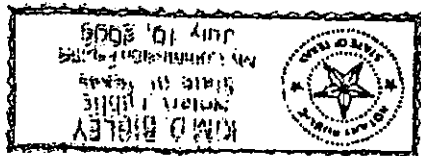


Kim D. Bigley
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF Travis

BEFORE ME the undersigned Notary Public on this the 10th day of January, 2006, personally appeared John H. Zinsmeyer known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purpose and in the capacity set out therein.

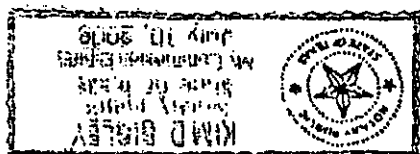


Kim D. Bigley
Notary Public, State of Texas

STATE OF TEXAS

COUNTY OF Travis

BEFORE ME the undersigned Notary Public on this the 10th day of January, 2006, personally appeared Pamela Mills known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purpose and in the capacity set out therein.



Kim D. Bigley
Notary Public, State of Texas

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2006 Jan 31 09:30 AM 2006016478

BENAVIDESV \$40.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

Return: Att. R. : Kirska
& Alliance Assoc.

3335 Bee Cave Rd
Austin, TX 78746