

THE STATE OF TEXAS X
COUNTY OF BURNET X

1993

TRANSFER AND ASSIGNMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, COUNCIL CREEK PROPERTIES, INC., a corporation duly organized under the laws of the State of Texas, and hereinafter referred to as "CORPORATION" is the initial subdivider of a real estate subdivision known as COUNCIL CREEK SOUTH, hereinafter referred to as "SUBDIVISION", located in Burnet, Burnet County, Texas, including Units I and II, and Lots No. Seventy-three (73) to Seventy-eight (78) inclusive, for which plats have been filed for record in Burnet County, Texas, as follows:

COUNCIL CREEK SOUTH, UNIT I, is recorded in Vol. 1, Page 210, of the Plat Records of Burnet County, Texas, and COUNCIL CREEK SOUTH, UNIT II, is recorded in Vol. 2, Page 28, of the Plat Records of Burnet County, Texas, also including Lots No. Seventy-three (73) to Seventy-eight (78) inclusive,

along with certain covenants and restrictions pertaining to all lots therein filed of record and contained in each instrument of conveyance, including all applicable amendments filed pertaining thereto, and has at this time conveyed the majority of the lots in said SUBDIVISION, and

WHEREAS, a majority of the property owners owning property within the confines of SUBDIVISION, having formed a property owners' association, as provided in the applicable covenants, restrictions and amendments thereto, known as the Council Creek South Property Owners' Association, hereinafter referred to as "ASSOCIATION", a non-profit corporation duly organized under the laws of the State of Texas, and by proper resolution giving ASSOCIATION the authority to do so, attached hereto as "Exhibit A", desire to accept the responsibilities, duties and liabilities of maintaining the roads dedicated to the property owners of SUBDIVISION as per recorded plats, the park areas dedicated to the property owners of SUBDIVISION as per recorded plats applicable thereto, the maintenance and upkeep of these areas and the right to collect and use for these purposes, the assessment fee for

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each lot as required in the applicable paragraph pertaining to assessments of the covenants and restrictions, as amended, of SUBDIVISION and other specified duties and responsibilities as hereinafter stated, viz:

I. STREETS AND ROADS

Total and complete liability and responsibility for the maintenance, expansion and any other construction for the improvement and protection of all of the streets and roads within SUBDIVISION that are fully and completely paved applicable to all units as promulgated in the Plat Records hereinabove referred and any and all streets and roads presently dedicated to public use that are not now but which may become paved at some future date including the right to pursue the formation of a Road District under the applicable laws pertinent thereto for the SUBDIVISION or be a party to the formation of any Road District in the area that would affect SUBDIVISION.

II. PARK AREAS

Total and complete liability and responsibility for the maintenance, expansion and any other construction for the improvement and protection of all of the park areas within SUBDIVISION as promulgated in the Plat Records hereinabove referred, said Transfer and Assignment to include all picnic tables, rest rooms, and any and all facilities connected with the service and maintenance of same, provided, it shall be the liability and responsibility of ASSOCIATION to see that all local, state and federal health and safety laws are strictly adhered to.

III. TAXES

Total and complete liability and responsibility for the payment of any and all valid taxes assessed by any governmental or private agency, if any, on said park areas, or any other common areas; and it is understood and agreed that as a guarantee for the full and complete performance upon the part of the ASSOCIATION with reference to payment of those taxes, ASSOCIATION agrees and obligates itself to pay said

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taxes for the year 1985 and all subsequent years, timely providing CORPORATION with a paid tax receipt or copy thereof when same is paid for a period of ten (10) years, and in the event ASSOCIATION fails to pay said taxes when they become due and owing, then in that event CORPORATION shall have the right to pay the same on behalf of ASSOCIATION and said payments shall become a demand obligation against ASSOCIATION in favor of the CORPORATION subject to any and all remedies for election thereof available under the law during that ten (10) year period.

IV. UTILITIES

Total and complete liability and responsibility for the payment of any and all utilities formerly assessed against the CORPORATION for its power source in providing for park maintenance, if any. ASSOCIATION hereby agrees to pay all utility bills for the month of December, 1984, and all subsequent utility bills from whatever source for the use of the areas within the confinements of the SUBDIVISION for which this Transfer and Assignment refers and in the event ASSOCIATION fails to pay said utility bills from whatever source applicable to the SUBDIVISION when they become due and owing, then in that event CORPORATION shall have the right to pay the same on behalf of ASSOCIATION and said payments shall become a demand obligation against the ASSOCIATION in favor of the CORPORATION subject to any and all remedies for collection thereof available under the law.

V. ASSESSMENTS

Total and complete liability and responsibility for the collection of and all right, title and interest in the sums collected thereby and the use thereof in accordance with and in whatever amount presently designated in the covenants and restrictions for the particular unit of SUBDIVISION applicable to any lot or lot owner as found in the applicable paragraph referring to assessments of those covenants and restrictions and further, any future amount required to be assessed resulting from amendment to said covenants and restrictions from the execution hereof; all right, title and interest to liens filed against any property for unpaid assessments that accrued after December 1, 1984, and all

subsequent years. With this Transfer and Assignment, CORPORATION hereby relinquishes any and all right, title and interest in the collection and use and all of any assessments collected under the applicable paragraphs referring to assessments of the covenants and restrictions of SUBDIVISION after December 1, 1984, and all subsequent years, and relinquishes all right, title and interest to any liens filed against any property for unpaid assessments that accrued after December 1, 1984, and all subsequent years, and the CORPORATION hereby directs that all assessments due after that date and for subsequent years be paid to Council Creek South Property Owners' Association at Star Route Box 112A, Burnet, Texas 78611, HOWEVER, it is understood and agreed by the parties hereto that the CORPORATION shall be obligated to pay one yearly assessment in the total amount of no less than Twenty (\$20.00) Dollars or in the amount assessed in the future resulting from proper amendment to the COVENANTS and RESTRICTIONS of any subdivision applicable to all other lots or lot owners as to the amount of the assessment only, and this one assessment shall apply for all lots owned now and owned in the future by the CORPORATION and its assigns, notwithstanding the number of lots in a subdivision that may be as a whole owned by the CORPORATION and its assigns, on a one assessment per owner basis rather than a one assessment per lot basis, AND FURTHER, it is understood and agreed that any lot or lots conveyed by the CORPORATION to any subsequent purchasers, shall be conveyed subject to the assessment required as per the particular COVENANTS and RESTRICTIONS applicable to said lot or lots and the manner and method of collection shall be the responsibility of the ASSOCIATION notwithstanding the manner and method of assessment payment for which the CORPORATION had been previously obligated under this Transfer and Assignment Agreement as of the date of that conveyance.

1.2 It is understood and agreed by both parties herein that this Transfer and Assignment is made as set out herein, SAVE AND EXCEPT:

- a. All assessments collected and those sums to be collected

for assessments that are due and owing prior to December 1, 1984, under the applicable paragraph referring to assessments of the COVENANTS and RESTRICTIONS of subdivisions; and it is further understood and agreed by both parties hereto that any assessment, part or portion thereof unconditionally paid to the ASSOCIATION by both parties hereto that any assessment, part or portion thereof unconditionally paid to the ASSOCIATION by property owner that has an assessment balance left due and owing prior to December 1, 1984, shall be directly paid to or endorsed over to the CORPORATION by the ASSOCIATION to be applied to the balance of that assessment due and owing by that particular property owner prior to December 1, 1984, until said assessment balance is fully paid, but it is further understood and agreed in the event said payments are made to the ASSOCIATION implying or conferring on the ASSOCIATION, a fiduciary duty such that the ASSOCIATION cannot unconditionally transfer those payments over to the CORPORATION, then the CORPORATION shall retain the right to proceed collecting for assessments in arrears prior to December 1, 1984, in the manner and method in which it chooses, including but not limited to, the right to file a lien against the property for any assessment or assessments in arrears..

b. All liens attached to any property in the subdivision by virtue of assessments in arrears prior to December 1, 1984, which shall remain the property of the CORPORATION, including all retained liens resulting from these arrearages until the balance of all assessments prior to December 1, 1984, are fully paid. The CORPORATION agrees to execute and transfer to any property owner, a release of lien for payment of assessments in arrears as soon as possible after the balance of all assessments due prior to December 1, 1984, are fully paid, HOWEVER, the CORPORATION shall bear the responsibility only for releasing liens attached to property for assessment arrearages collected that accrued prior to December 1, 1984.

c. Any and all acreage tracts or properties, whether by

lots or described by metes and bounds, not dedicated and recorded in appropriate records for the applicable units as set out hereinabove and Unit I, Unit II, and also including Lots No. Seventy-three (73) to Seventy-eight (78) inclusive.

d. All road equipment and any and all other maintenance equipment not specifically used for the upkeep of the park areas.

e. All water meter connections, pipes, pipe connections and related fixtures used for the storage and supply of potable water now provided to the participating property owners by COUNCIL CREEK PROPERTIES, INC., that are located above or under the ground of certain lots and certain streets in the subdivision which shall remain in the ownership of the CORPORATION and said items shall not be removed, repaired, or altered in any way or shall the ASSOCIATION cause to be removed, repaired or altered in any way said items without the written approval of the CORPORATION; and it is further understood and agreed by the parties herein that any time a written approval is granted to the ASSOCIATION, its servants, agents or assigns to change the water service system by alteration, construction or repair for whatever reason and in whatever manner so granted the ASSOCIATION, the ASSOCIATION agrees that no alteration, construction or repair to said system shall be made other than under the close personal supervision of the CORPORATION either by its own or other CORPORATION approved personnel and the expense of this supervision shall be borne by the ASSOCIATION.

In the event the ASSOCIATION commits an act or causes an act to be committed resulting in the alteration, construction, repair or damage of any water meter connections, pipes, pipe connections, and related fixtures used for the storage and supply of potable water located above or under any of the subdivision service areas including the streets, without written approval of CORPORATION as provided in Paragraph V, (e) above, then ASSOCIATION agrees to indemnify and hold harmless CORPORATION of, from and against all suits, claims and actions of every kind by reason of any act or

failure to act of ASSOCIATION including any temporary or permanent halt to water service, changes in the quality and quantity of water supplied and ASSOCIATION further agrees to compensate CORPORATION for any other damages resulting from said acts or failure to act, SAVE AND EXCEPT any act or acts of third parties over which the ASSOCIATION has no authority or control nor for which the ASSOCIATION would be vicariously liable.

VI. INDEMNIFICATION

The CORPORATION does hereby and henceforth from the execution hereof, covenant and agree to indemnify and hold harmless the ASSOCIATION of, from and against, all suits, claims, and actions of every kind by reason of any act or failure to act of CORPORATION with reference to the filing of any lien against any property for failure of its owner to make an assessment payment or payments up to December 1, 1984.

IT IS FURTHER UNDERSTOOD and agreed by the parties hereto that the COUNCIL CREEK PROPERTIES, INC., is to retain all right, title and full control of the service of supplying water to participating subdivision customers on a rate schedule now in use subject to allowable changes in the future, and that this Transfer is not intended to confer any right, title or interest in the water company to the ASSOCIATION and it is understood and agreed by the parties herein that the CORPORATION makes no for whatever reason to said system shall be made representation to the ASSOCIATION by this Agreement with reference to the supplying of potable water to their subdivision customers in the future either as to quantity, quality or whether CORPORATION will continue to supply water to any property owner of the subdivision and that the maintenance of the roads and parks to be tranfered and assigned as provided herein shall be hereinafter a duty of the ASSOCIATION'S separate and apart from the maintenance and operation of the water company.

VII. GENERAL SUBSTITUTION

IT IS UNDERSTOOD and agreed by the parties herein that the ASSOCIATION shall from the date hereof "stand in the shoes" of

the subdivider with reference to the total and complete duty and responsibility set out and designated hereinabove, all of the responsibilities, including but not limited to all of the rights and duties given the SUBDIVISION in the COVENANTS and RESTRICTIONS applicable to SUBDIVISION subdivision and its units, SAVE AND EXCEPT those items excluded hereinabove in Paragraph V, and that the property owners of the COUNCIL CREEK SOUTH SUBDIVISION, whether or not members of the ASSOCIATION are hereby placed on notice that they shall look to the ASSOCIATION for providing maintenance for all items mentioned hereinabove.

General Indemnity

The ASSOCIATION hereby covenants and agrees to indemnify and hold harmless the CORPORATION of, from and against all suits, claims and actions of every kind by reason of any act or failure to act of ASSOCIATION in performing the duties and responsibilities set in this Transfer and Assignment Agreement, from this day forward and that the two entities shall be separate and apart in their activities and responsibilities except where they mutually exist and where mutual negotiations between the two entities occur voluntarily for the common good of the SUBDIVISION.

VIII. CURRENT PROPERTY OWNER LIST

The CORPORATION covenants and agrees that upon execution of this Transfer and Assignment Agreement, CORPORATION will furnish to ASSOCIATION the most current list at their disposal of the property owners, the most current addresses known by the CORPORATION of each property owner for which an assessment is charged, the amount of the assessment which this property owner owes now and has been paying in the past annually, and a description of the property owned by each property owner, either as to lot and unit number or metes and bounds, which ever description that would be suitable for filing of record in any Texas County Clerk's office and the payment record of each property owner up to December 1, 1984.

Survival Clause

Should any part or portion of this Transfer and Assignment

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Agreement fail or be declared unenforceable and of no force and effect, then same shall not cause the remaining part and portion of this Transfer and Assignment Agreement to fail and the balance thereof shall continue in full force and effect as provided herein.

IX. ASSIGNMENT

This Transfer and Assignment Agreement shall be binding upon and innure to the benefits of the heirs, executors, transferees and assignees of any party hereto.

EXECUTED in duplicate originals, this 22nd day of FEBRUARY, 1985.

ATTEST:

H. W. Owen
Secretary, H. W. Owen

COUNCIL CREEK SOUTH

By: J. E. Owen
President, J. E. Owen

ATTEST:

L. L. Baker
Vice-President, L. L. BAKER

COUNCIL CREEK PROPERTIES, INC.
Council Creek South Property
Owner's Association

By: C. H. Beckworth
President, C. H. BECKWORTH

I, Janet Parker, County Clerk, Burmet County, Texas do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on Sept 5, 2004



JANET PARKER
BURMET COUNTY CLERK
By Michael Lee

STATE OF TEXAS I
COUNTY OF TRAVIS I

BEFORE ME, the undersigned authority, on this day personally appeared A. W. Owen and J. E. Owen, Secretary and President of COUNCIL CREEK SOUTH, consecutively, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN under my hand and seal of office on this 22nd day of February, 1985.

Sara Louks
Notary Public, State of Texas

Sara Louks, Notary
My Commission Expires: 8-27-88

STATE OF TEXAS I
COUNTY OF LLANO I

BEFORE ME, the undersigned authority, on this day personally appeared L. L. Baker and C. H. Beckworth, Vice-President and President of COUNCIL CREEK PROPERTIES, INC., Council Creek South Property Owner's Association, consecutively, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for purposes and consideration therein expressed.

GIVEN under my hand and seal of office on this 19th day of February, 1985.



Dawn Simpson
Notary Public, State of Texas

Dawn Simpson
My Commission Expires 9-20-87.

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FILED FOR RECORD 8 DAY OF MARCH, A.D., 1985, AT 11:40 O'CLOCK A. M.
RECORDED THIS THE 11TH DAY OF MARCH, A.D., 1985, AT 9:04 O'CLOCK A. M.
MILLIE WILLIAMS, COUNTY CLERK, BURNET COUNTY, TEXAS. BY: Op Betic DEPUTY.

I, Janet Parker, County Clerk, Burnet County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on Sept 5, 2004



JANET PARKER
BURNET COUNTY CLERK
By Op Betic Deputy

U. Nichols RH