

*Agmt*  
**P308149**

351-55619  
RECORDED AT THE REQUEST OF  
FIRST AMERICAN TITLE

**FENCE AGREEMENT AND RESTRICTIVE COVENANTS**

**163-54-2586**

06/29/93 00258279 P308149 \$ 42.25

The parties to this Agreement are the STONEHENGE III ASSOCIATION, INC., a Texas non-profit corporation (hereinafter referred to as "Association"), WOLFE HOME BUILDERS, INC., a Texas corporation, McDONALD CONSTRUCTION, INC., a Texas corporation, and BRIARPARK HOMES (hereinafter severally and collectively referred to as "Builders"), and STONEHENGE VENTURE, a Texas joint venture, and for mutual consideration set out herein, agree as follows:

*Hd. 2.25*  
WHEREAS, Builders are in the process of purchasing those certain tracts of land, legally described on the attached "Exhibits A and B", and desire to provide for the construction of a fence to be placed on or near the northern property lines of said tracts; and

*M*  
WHEREAS, Association desires to replace the brick and wrought iron fence located on or near the northern property lines of said tracts; and

WHEREAS, Builders have proposed to provide a portion of the funding toward the purchase of labor and materials for the proposed fence construction; and

WHEREAS, Association has agreed to accept payment of the contribution toward the cost of construction of the fence, and has agreed that such fence shall be constructed on or near the northern property lines of said tracts; and

WHEREAS, the parties have agreed that the fence shall be considered as a part of the improvements constituting the real property included in the deed to each tract of land (or any portion thereof) noted on "Exhibits A and B" and title to such shall hereafter transfer to each owner of the tracts of land from the date of construction of the fence onward; and

WHEREAS, it is the express intention of the parties that in having the fence become a component of the real property appurtenant to each tract of land (and each portion thereof) in

"Exhibits A and B", that any and all owners of such tracts of land shall be liable for the repair, maintenance, and replacement of the proposed fence; and

WHEREAS, Stonehenge Venture agrees that it currently owns some of the tracts of land as set forth on the attached "Exhibits A and B", and that it has agreed to join in this Agreement so that the terms and conditions of this Agreement shall become a restriction upon the land and run with the land and bind all subsequent owners of the property for all such lots currently owned; it is

THEREFORE AGREED that the parties shall take the following actions for the mutual considerations herein expressed, subject to the terms of this Agreement:

1. All parties to this Agreement shall cooperate with each other for the purpose of the construction of a fence on or near the northern boundary of the land described in the attached "Exhibits A and B".

2. Stonehenge Venture will allow Association, its agents and assigns, to enter upon the land described in "Exhibits A and B" for the sole purpose of removal of the existing brick and wrought iron fence (if in fact the same is located on the land of Stonehenge Venture) and thereafter to construct a fence at the Association's direction. Stonehenge Venture shall incur no expense as to demolition of the existing fence, nor the erection of the proposed fence. Stonehenge Venture assumes no risk for the repair, maintenance, or replacement of said fence during the time the property described in the attached "Exhibits A and B" remains Stonehenge Venture's property.

Stonehenge Venture hereby acknowledges that the title to the fence, and the obligation to repair, maintain, and/or replace the fence, shall pass with the title to the land, regardless of the location of the fence. It is the intent of the parties to locate the fence upon the property owned by Stonehenge Venture. It is expressly agreed that the above obligations regarding repair, maintenance, and replacement of the fence shall pass to any grantee, devisee, successor, or assign acquiring this property by any means whatsoever, after Stonehenge Venture.

3. Association agrees to provide for the construction of a fence along the northern property line of the tracts of land, described in "Exhibits A" as "Area A", (220 feet, more or less) and in "Exhibit B" as "Area B", (220 feet, more or less), by a contractor of the Association's choice, for the benefit of the Builders.

4. Builders, or the successors and/or assigns of Stonehenge Venture, agree to reimburse the Association ONE THOUSAND, SEVEN HUNDRED SIXTY DOLLARS AND NO/100 DOLLARS (\$1,760.00) as a portion of the cost of the fence along the northern (rear) property line of "Area A", upon or before execution of this Agreement.

5. Builders, or the successors and/or assigns of Stonehenge Venture, agree to reimburse the Association an additional ONE THOUSAND, SEVEN HUNDRED SIXTY DOLLARS AND NO/100 DOLLARS (\$1,760.00) for the cost of the fence along the northern (rear) property line of "Area B", upon approval by the Association's Architectural Committee of the elevations of the first house to be constructed on "Area B".

6. The Association agrees to complete construction of the fence within sixty (60) days after execution of this Agreement, or at such time as may be agreed to by written Agreement between Association and Builders.

7. Construction shall be deemed to be complete upon presentment to and payment by the Association of the final bill from the contractor erecting the portion of the fence to be so reimbursed by Builders.

8. Builders agree, on behalf of Builders, Builders' successors and assigns, and future owners of the tracts of land, to assume all liability associated with the fence, including maintenance, repair, and replacement thereof, and to keep said fence in good repair at all times. The proposed fence, as set out in this Agreement, shall at all times be maintained and preserved by Stonehenge Venture's successors in title (including, but not limited to Builders and their grantees and successors), in substantially the same design, style, and materials. No subsequent owner or successor of the parties named herein shall have any right or privilege to alter or remove the fence, except to repair,

maintain, or replace it within the confines of using substantially the same original design, style, and materials, as used by the Association in initially constructing the fence.

Liability for the specific portions of fence on or adjacent to each lot will pass to any and all future owners of each lot.

All repairs, maintenance, and replacement of the fence are duly subject to the architectural control provisions of the deed restrictions for Stonehenge Section III, recorded under Harris County Clerk's File No. F862091, Film Code No. 112-97-1684, of the deed records of Harris County, Texas, and all restrictive covenants of record regarding STONEHENGE III, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 269, Page 129, of the Plat Records of Harris County, Texas.

9. The parties agree that after the construction of the fence the Association shall have no obligation to repair, maintain, or replace the fence, nor shall it have any liability for the existence of said fence.

10. Builders and their successors, assigns, and all subsequent title holders of any portion or all of the tracts of land described on the attached "Exhibits A and B" agree to indemnify and hold harmless Association, its employees, agents, directors, and officers from any actions or causes of action, and from any resulting costs including costs of defense, as a result of the existence of the fence after the fence is completed.

11. Notwithstanding anything to the contrary contained elsewhere herein, all parties to this agreement acknowledge and agree that, should any party willfully, intentionally, or negligently cause any damage to the new fence, that party shall be liable for the immediate repair or replacement of the portion so damaged.

12. Builders agree that if they take title in a name other than those defined as the Builders herein that they will execute an amendment to this fence Agreement agreeing to bind said additional parties to this Agreement.

13. All duties for the enforcement of this document shall be assumed by the Association.

14. It is the intent of all of the parties to this Agreement that this Agreement be considered a restriction upon the land and be enforceable as a deed restriction, subject to enforcement by the Association or any member thereof.

15. All obligations, responsibilities, and liabilities of Builders shall become the obligations, responsibilities, and liabilities of any subsequent purchasers or devisees of Stonehenge Venture, if the Builders do not take title as anticipated herein, or if Builders fail to fulfill the obligations, responsibilities and liabilities stipulated under this Agreement.

16. All provisions of Texas law dealing with the enforcement of deed restrictions and Dedicatory Instruments as described in the Texas Property Code shall be applicable to the enforcement of this Agreement.

17. Any party seeking to enforce this Agreement shall be entitled to recover all reasonable costs and attorneys fees incurred in said enforcement.

EXECUTED, this 15<sup>th</sup> day of June, 1993.



STONEHENGE III ASSOCIATION, INC.

BY: E.D. Haymond  
E.D. HAYMOND, PRESIDENT

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7.02  
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WOLFE HOME BUILDERS, INC.

BY: [Signature]  
MYRON L. WOLFE, PRESIDENT

McDONALD CONSTRUCTION, INC.

BY: [Signature]  
W.H. McDONALD, PRESIDENT

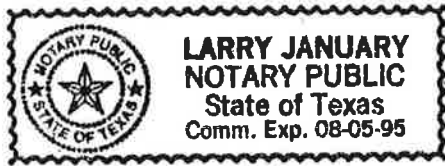
BRIARPARK HOMES

BY: [Signature]  
W.H. McDONALD

STONEHENGE VENTURE

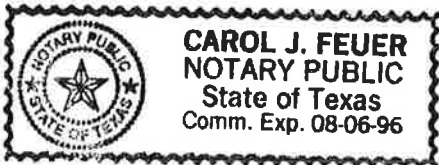
BY: [Signature]  
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ACKNOWLEDGED before me on this the 20<sup>th</sup> day of April, 1993, by E.D. HAYMOND, PRESIDENT of STONEHENGE III ASSOCIATION, INC., a Texas non-profit corporation in his representative capacity.



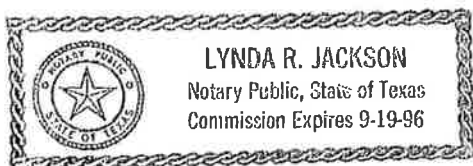
[Signature]  
Notary Public, State of Texas

ACKNOWLEDGED before me on this the 15<sup>th</sup> day of June, 1993, by MYRON L. WOLFE, president of WOLFE HOME BUILDERS, INC., a Texas corporation in his representative capacity.



[Signature]  
Notary Public, State of Texas

ACKNOWLEDGED before me on this the 14<sup>th</sup> day of June, 1993, by W. H. McDONALD, president of McDONALD CONSTRUCTION, INC., Texas corporation in his representative capacity.



[Signature]  
Notary Public, State of Texas

ACKNOWLEDGED before me on this the 14<sup>th</sup> day of June, 1993, by  
W. H. McDONALD, of BRIARPARK HOMES in his representative capacity.



Lynda R. Jackson  
Notary Public, State of Texas

ACKNOWLEDGED before me on this the 3<sup>rd</sup> day of May, 1993, by  
SAEED SADEGHYAN, & STONEHEDGE VENTURE in his representative capacity.



Cathryn L. Stafford  
Notary Public, State of Texas

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After filing, return to:

INNOVATIVE MANAGEMENT SERVICE  
623 West 25th Street  
Houston, TX 77008





EXHIBIT "A"

That portion of land comprising those five (5) certain tracts of land known as Lot Seventy-Five (75), Lot Seventy-Six (76), Lot Seventy-Seven (77), Lot Seventy-Eight (78), and Lot Seventy-Nine (79), of STONEHENGE, SECTION THREE (3), more fully described as follows:

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EXHIBIT "B"

163-54-2599

That portion of land comprising those five (5) certain tracts of land known as Lot Seventy (70), Lot Seventy-One (71), Lot Seventy-Two (72), Lot Seventy-Three (73), and Lot Seventy-Four (74), of STONEHENGE, SECTION THREE (3), more fully described as follows: