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October 4, 2011

Rodney M. Robinson
P.O. Box 5817
Midland, Texas 79710

Via email: rodney@rodneYROBINSON.COM

Re: Meadowpark Homeowner's Association Common Area Conversion

**Brian Martin gave opinion that MPHOA
can convert and sell common area as
residential lots with the proper approvals.**

Dear Rodney:

Can the Association amend the Restrictions?

I have reviewed the materials that you have provided me plus those certain documents that we have on file at Lone Star Abstract and have determined that Section 3 General Plan of Development, subparagraph b allows that that the development plan may be amended at any time provided adequate notice is given to the Association members in accordance with the Restrictive Covenants and approval of the City of Midland is secured. (see Article II, Section 3 b). In addition under Article 8, subparagraph section 2, of the restrictive covenants provided that the developer at the time had until March 1, 1981 to convey all the common areas to the homeowners association. That was eventually accomplished by Warranty Deed on February 28, 1986 as is reflected by recording in Volume 885, Page 581 of the Deed Records of Midland County, Texas.

Can the Association Sell any portion or all of the common areas?

Article I of the definitions of the Restrictive Covenants at subparagraph j indicates that the "general plan of development may be amended from time to time as further defined in Article II, Section 3." That gives an inherent power of the Association to change boundaries of the associated properties inside of the subdivision including common areas. Throughout the Restrictive Covenants, the authors indicated that it is the duty of the association management to preserve and protect the association to the best of its abilities using prudent management tactics. Furthermore, § 20.010 of the Texas Property Code at subparagraph (a) 20 & 21 indicates that the homeowners' association may exercise other powers that may also be exercised in this state by a corporation of the same type as the property owners association; and in subparagraph 21, the Association may exercise other power necessary and proper for the governance and operation of the property owners' association. This indicates that there is a power of sale and that was confirmed in an opinion of the Houston Court of Appeals in Texas under *Rutherford vs. Norad* (Number 14-05-00571-CV)(March 28, 2006) wherein the court confirmed that the property owners'

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association may sell portions or all of the common area if it is deemed in the best interest of the subdivision and the association.

Can any of the parking areas be sold?

In this regard the City of Midland's zoning and development requirements for a residential subdivision like yours override any need or interest that an association may have in selling parking areas of the association. The reason why those cannot be sold (without express City of Midland permission) is that there are minimum occupancy amenity requirements that dictate minimum parking facilities. Therefore it is not (at the present time) acceptable to reduce your parking minimum requirements set up by the City.

I hope this helps you in your endeavor with your Association and I am looking forward to working with you.

Very truly yours,

J. Brian Martin

jbm/wp

NOTE FROM RODNEY ROBINSON TO FILE:

The above question about parking area conversion was posed by Steve Taylor, MPHQA President at the time, who wanted to sell some of the larger parking areas as residential lots. No others on the Board at the time thought that was a viable idea.