

2005-020195

STATE OF TEXAS

COUNTY OF MONTGOMERY

BY THIS LEASE, entered into between Harbor Point Association, Inc., a Texas corporation with its office in Montgomery County, Texas ("Lessor") and Carl Benton and \_\_\_\_\_ property owners in Harbor Point Subdivision in Montgomery County, Texas, ("Lessee"):

**WITNESSETH:**

1. **Land.** The Lessor lets and leases unto the Lessee and the Lessee hires and leases from the Lessor those certain property and premises situated in Montgomery County, Texas, and described as follows:

Space I of Reserve "R-5 of Harbor Point Partial Replat "A", a resubdivision of 6.1435 acres of land in the William Atkins Survey, A-3, Montgomery County, Texas, according to the map or plat thereof recorded at Clerk's File No. 7713947, Map Records, Montgomery County, Texas, and as being more specifically shown on the attached Metes and Bounds marked Exhibit "A".

2. **Term.** This lease shall begin on March 1<sup>st</sup>, 2005 and continue for a period of 30 years thereafter and shall terminate on March 1<sup>st</sup>, 2034. Upon termination of this lease, Lessee shall surrender possession of the Land the Lessor in the same or similar condition in which the Land was originally leased, reasonable wear and tear allowed. Any and all items of personal property, fixtures, improvements and the like remaining on the property upon termination shall belong to the Lessor exclusively without any further or additional consideration.

3. **Holdover.** If Lessee holds over the continues in possession of the leased premises after expiration of the term of this lease or any extension of that term, other than as provided in paragraph 2, Lessee will be deemed to be occupying the premises on the basis of a month-to-month tenancy, subject to all of the terms and conditions of this lease and requiring **30 days** advance written notice to either party prior to termination of the month-to-month tenancy.

4. **Rental.** The consideration of this Lease shall be an annual rental in the total sum of \$30.00 which shall be due and payable in 30 consecutive yearly installments of \$1.00 each without any deductions or set-offs whatsoever. Each installment of rental shall be due and payable in advance, at the Lessor's address, in Montgomery County, Texas, stated below, to be combined with yearly

Property Owners Association dues, beginning 2005. With the execution of this Lease, Lessee shall tender herewith the first year's rent as specified by this Agreement.

5. **Purposes.** The Lessee shall use the Land for the sole purpose as a portion of the grounds of the Lessee's residential property located on the adjacent lot of the Harbor Point Partial Replat "A", Harbor Point Subdivision described in the map or plat thereof recorded as described above. The Lessee shall not use the Land, or any part thereof, for any other purpose without the prior written consent of the Lessor.

Lessee shall not use the Land or any part thereof for any purpose which will violate or conflict with any statute, law, ordinance, governmental rule or regulation, or any restrictive covenant now in force or hereafter enacted or promulgated to.

6. **Lessee's Construction.** Lessee may not at any time construct, install and maintain on the Land any improvements unless the Lessee shall first obtain the advance, written approval of the Harbor Point Architectural Control Committee, all of which shall be obtained at no cost or expense to Lessor. Lessee shall build and maintain such improvements in full compliance with all applicable laws, statutes, governmental rules and regulations, and shall obtain all necessary permits for such construction, and shall pay all fees, charges, taxes, and assessments necessary for installation and hook-up of all utilities and public services, including but not limited to electricity, gas, water, sanitary sewer, telephone and the like, and when Lessee vacates the Land upon termination hereof, such connection shall be properly sealed and shall remain the property of the Lessor. At the end of this Lease, the improvements shall become the property of the Lessor without any further consideration or compensation. If the Lessor requires the Lessee to remove such improvement. The Lessee shall do so at no cost to the Lessor.

7. **Surrender.** At no expense to Lessor, Lessee shall, prior to termination remove all improvements placed upon the Land, including personal property, and shall restore the Land to the same or similar condition in which the Land was in upon delivery, reasonable wear and tear excepted. Lessee shall leave no dangerous condition on the Land, and shall seal and close up all open holes. In the event the Lessee should leave the Land with any such unrestored or dangerous portions, Lessee agrees and promises to pay all costs and expenses sustained by the Lessor in order to correct or cure such condition.

8. **Rendition.** With regard to any of Lessee's automobile inventory, personal property or improvements placed upon the Land, Lessee shall annually render the same as property belonging to the Lessee. Failure of the Lessee to render such improvements for each year of this Lease shall constitute a default under this Lease.

9. **Taxes and Assessments.** In addition to the Lessee's rental obligations, Lessee shall pay those taxes, assessments and governmental charges of every kind and character imposed and levied during the term of this Lease only insofar as such taxes, assessments and charges apply to the land leased to the Lessee, and the Lessee's furniture, fixtures, equipment, machinery and personal property placed in the premises by the Lessee. If this Lease should terminate during any calendar year, Lessee shall pay the taxes and assessments levied against such furniture, fixtures, equipment, machinery and personal property for the final year without proration and in addition to all rental

obligations. Lessee shall pay such taxes and assessments prior to delinquency, and failure to pay any tax or assessment before delinquency shall constitute a default under this Lease. Lessor shall pay all taxes and assessments assessed and levied against the land and building.

10. Payment of Taxes by Lessor. Subject to the right of Lessee to contest taxes, assessments, and governmental charges, as hereinabove provided, Lessor may at any time that the payment of any item of taxes, special assessments, or governmental charges which Lessee is obligated to pay under the provisions hereof remains unpaid, give written notice to Lessee of its default, specifying the same, and if Lessee continues to fail to pay such item of taxes, special assessments, or governmental charges or to contest the same in good faith, then at any time after **ten days** from such written notice, Lessor may pay the items specified in the notice, and Lessee covenants thereupon on demand to reimburse and pay Lessor any amount so paid or expended in the payment of the items specified in the notice, with interest thereon at the rate of **18%** per annum from the date of such payment by Lessor until paid by Lessee. Provided, however, if Lessor without giving the requisite **ten days** notice above provided for, pays any such item which has not been paid by Lessee within the time required in subparagraph (a) above, or which has not then or thereafter been successfully contested by Lessee, Lessee shall nevertheless reimburse Lessor for such item, but without interest.

11. Utility Charges. Lessee shall pay all utility hook-up charges and all utility charges, including, but not limited to, water, electricity, heat, gas and power used in and about the leased premises, all such charges to be paid by Lessee to the utility company or municipality furnishing the same, before the same shall become delinquent.

12. Insurance. Lessee, at its own expense, shall obtain, from responsible insurance companies duly authorized to transact business in Texas, policies covering personal injury, liability and property damage liability insurance as part of the Lessee's homeowners policy. Lessee shall add Lessor as an additional insured and shall furnish Lessor with certificates of all insurance required by this section. If Lessee does not maintain such insurance in full force and effect, Lessor may notify Lessee of such failure and if Lessee does not deliver to Lessor within **15 days** after such notice certification showing all such insurance to be in full force and effect, Lessor may, at its option, take out the necessary insurance to comply with the provisions hereof and pay the premiums on the items specified in such notice, and Lessee covenants thereupon on demand to reimburse and pay Lessor any amount so paid or expended in the payment of the insurance premiums required hereby and specified in the notice, with interest thereon at the rate of **10%** per annum from the date of such payment by Lessor until repaid by Lessee.

Proof must also be given by Lessee to Lessor that each of the policies provided for hereinabove expressly provides that the policy shall not be cancelled or altered without **30 days** prior written notice to Lessor.

Lessor and Lessee agree that, in the event of loss due to any of the perils for which they have agreed to provide insurance, each party shall look solely to its insurance for recovery. Lessor and Lessee hereby grant to each other, on behalf of any insurer providing insurance to either of them with respect to the demised premises, waiver of any right of subrogation which any insurer of one party may acquire against the other by virtue of payment of any loss under such insurance.

13. Condemnation. If during the term of this lease or any extension or renewal thereof, all of the leased premises should be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this lease shall terminate and the rent shall be abated during the unexpired portion of this lease, effective as of the date of the taking of said premises by the condemning authority.

If less than all of the leased premises shall be taken for any public or quasi-public use under any governmental law, ordinance, or regulation, or by right of eminent domain, or should be sold to the condemning authority under threat of condemnation, this lease shall not terminate but Lessor, at its option, may terminate the lease, whereupon Lessee shall have no further obligation hereunder.

If all or any part of the leased premises shall be taken by condemnation or eminent domain proceedings, Lessee shall not be entitled to any award or portion thereof for loss in value of the leased premises, and Lessor shall be entitled to all such awards. Lessor shall owe no sum to Lessee for loss of business or diminution of the leasehold resulting from any such public taking.

14. Indemnity. Lessee agrees and promises to indemnify and hold Lessor harmless against any and all claims, demands, damages, costs and expenses, including reasonable attorney's fees for the defense thereof, arising from the conduct or management of Lessee's business on the leased premises or from any breach on the part of Lessee of any conditions of this Lease, or from any act or negligence of Lessee, its agents, contractors, employees, subtenants, concessionaires, or licensees in or about the leased premises. In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, covenants to defend such action or proceeding by counsel acceptable to Lessor.

15. Default by Lessee. If Lessee shall allow the rent to be in arrears more than **ten days** after written notice of such delinquency, or shall remain in default under any other condition of this Lease for a period of **ten days** after written notice from Lessor, or should any other person than Lessee secure possession of the premises, or any part thereof, by reason of any receivership, bankruptcy, proceedings, or other operation of law in any manner whatsoever, Lessor may at its option, without notice of Lessee terminate this Lease, or in the alternative, Lessor may reenter and take possession of said premises and remove all persons and property therefrom, without being deemed guilty of any manner of trespass, and relet the premises or any part thereof, for any part of the remainder of said term, to a party satisfactory to Lessor, and at such monthly rental as Lessor may with reasonable diligence be able to secure. Should Lessor be unable to relet after reasonable efforts to do so, or should such monthly rental be less than the rental Lessee was obligated to pay under this Lease, or any renewal thereof, plus the expense of reletting, then Lessee shall pay the amount of such deficiency to Lessor.

16. Inspection by Lessor. Lessee shall permit Lessor and its agents to enter into and upon the leased premises at all reasonable times for the purpose of inspecting the same. **TIME TO BE DETERMINED BY PRIOR WRITTEN REQUEST AND LESSEE CONSENT.**

17. Assignment and Subletting by Lessee. Lessee shall not without prior written consent of Lessor either assign this Lease, or any interest therein, or to sublet the leased premises, or any part thereof, or any right or privilege pertinent thereto.

18. **Assignment by Lessor.** Lessor is expressly given the right to assign any or all of its interest under the terms of this Lease.

19. **Quiet Possession.** It is the intention of Lessor to place Lessee in quiet possession of the leased premises on the commencement date thereof and secure them in the quiet possession thereof against all persons lawfully claiming the same during the entire lease term and any extensions thereof. However, Lessor shall not be liable to Lessee for failure to give possession of the leased premises upon the commencement date hereof if such failure is due to the fact that the leased property is not ready for occupancy, or is being held over by a prior tenant or is otherwise in the wrongful possession of another person, or is not available for any other reason. In such event the rent shall not commence until possession is given to or is made available to Lessee, but the term of this lease shall not be extended.

20. **Acceptance of Property.** Lessee has inspected the leased premises in its existing condition. No representation, statement, or warranty, express or implied, has been made by or on behalf of the Lessors as to such condition, or as to the use that may be made of such property. In no event shall the Lessor be liable for any defect in such property or for any limitation on its use.

21. **Notices and Addresses.** All notices provided to be given under this agreement shall be given by certified mail or registered mail, addressed to the proper party, at the following address:

Lessor:

Lessee:

**Harbor Point Association, Inc.**

3500 W. Davis St 2ND  
COLLEGE, TX 7704

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

22. **Parties Bound.** This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this agreement.

23. **Texas Law To Apply.** This agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Montgomery County, Texas.

24. **Legal Construction.** In case any one or more of the provisions contained in this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

25. **Prior Agreements Superseded.** This agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

26. Amendment. No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

27. Rights and Remedies Cumulative. The rights and remedies provided by this lease agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

28. Waiver of Default. No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this lease shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.

29. Attorney's Fees. In the event Lessor or Lessee breach any of the terms of this agreement whereby the party not in default employees attorneys to protect or enforce its right hereunder and prevails, then the defaulting party agrees to pay the other party reasonable attorneys' fees so incurred by such other party.

30. Force Majeure. Neither Lessor nor Lessee shall be required to perform any term, condition, or covenant in this lease so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of Lessor or Lessee and which by the exercise of due diligence Lessor or Lessee are unable, wholly or in part, to prevent or overcome.

31. Time of Essence. Time is of the essence of this agreement.

IN WITNESS WHEREOF, the undersigned Lessor and Lessee hereto executed this Agreement on the 28 day of February, 2005.

LESSOR:

LESSEES:

HARBOR POINT ASSOCIATION, INC.

By: Rex Phillips

Signature: Curt Bentzel

Name: REX PHILLIPS

Name: Curt Bentzel

Title: Pres. HOA

Address: 17392 Harbor Dr

Address: 3500 West Davis St 250

Montgomery TX 77256

Course, TX 77304

Phone: \_\_\_\_\_

Phone: 936-756-0032

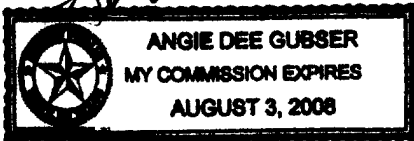
Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

ADG



**RECORDER'S MEMORANDUM:**

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All black-outs, additions and changes were present at the time the instrument was filed and recorded.

772-10-0197  
729-10-1132

# glezman surveying, inc.

1938 Old River Road  
Montgomery, Texas 77356

936-582-6340  
Fax: 582-6344

**TRACT I**  
**0.036 ACRE OUT OF RESERVE 5**  
**BLOCK 1 OF HARBOR POINT PARTIAL REPLAT "A"**  
**WILLIAM ATKINS SURVEY, A-3**  
**MONTGOMERY COUNTY, TEXAS**

*Being 0.036 acre of land out of Reserve 5, Block 1 of Harbor Point Partial Replat "A", a subdivision situated in the William Atkins Survey, Abstract Number 3 in Montgomery County, Texas with the map or plat thereof recorded in Cabinet B, Sheet 57 of the Map Records of Montgomery County, Texas; said tract being more particularly described by metes and bounds as follows with all bearings referenced to the South line of Waterview Drive:*

**COMMENCING** at the Southwest corner of Reserve 5 at the Northwest corner of Lot 15 in the East line of Fathom Drive, a 50 foot wide public right-of-way;

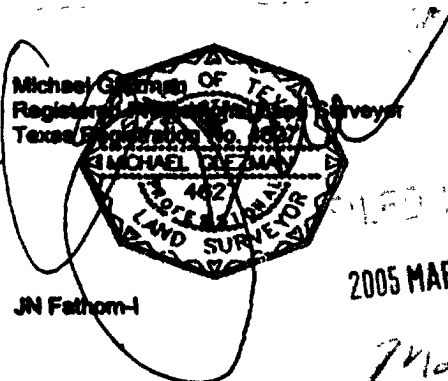
**THENCE** North 76°57'59" East along the South line of Reserve 5 and the North line of Lots 14 & 15, a distance of 101.32 feet to the Northwest corner of Lot 13 and the Northeast corner of Lot 14 in the South line of Reserve 5 for the Southwest corner and **POINT OF BEGINNING** of the herein described tract;

**THENCE** North 13°02'01" West, severing Reserve 5, a distance of 31.08 feet to a 5/8 inch iron rod with a survey cap marked "Glezman, RPLS 4627" for the Northwest corner of the herein described tract;

**THENCE** North 75°39'21" East, severing Reserve 5, a distance of 50.01 feet, to a 5/8 inch iron rod with a survey cap marked "Glezman, RPLS 4627", set for the Northeast corner of the herein described tract;

**THENCE** South 13°02'01" East, severing Reserve 5, a distance of 32.22 feet, to the Southeast corner of the herein described tract at the Northwest corner of Lot 12 and the Northeast corner of Lot 13;

**THENCE** South 76°57'59" West, along the South line of Reserve 5, and the North line of Lot 13, a distance of 50.00 feet, back to the Point of Beginning and containing 1582.6 square feet of land based on the survey and plat prepared by Glezman Surveying, inc. ©2004. All Rights Reserved.



Date: 05/30/05 OF TEXAS  
COUNTY OF MONTGOMERY  
I hereby certify this instrument was filed in  
File Number Sequence on the date and at the time  
stamped herein by me and was duly RECORDED in  
the Official Public Records of Real Property at  
Montgomery County, Texas.

FILED FOR RECORD  
2005 MAR -1 AM 10: 34

Mark Turnbull  
COUNTY CLERK  
MONTGOMERY COUNTY TEXAS



MAR - 1 2005

Mark Turnbull  
County Clerk  
Montgomery County, Texas