

DECLARATION OF RESTRICTIONS
MILWOOD SECTION 35, a Small Lot Subdivision

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS
COUNTY OF WILLIAMSON §

This Declaration of Restrictions ("Declaration") is made this the 4th day of May, 1994, by MILBURN INVESTMENTS, INC., a Texas corporation (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant owns all of the lots in MILWOOD SECTION 35, a small lot subdivision in Williamson County, Texas, according to the map or plat thereof, recorded in Cabinet L, Slides 51-52, Plat Records of Williamson County, Texas, to which plat and its record reference is here made for all purposes (hereinafter called the "Subdivision");

WHEREAS, Declarant desires to encumber the lots in the Subdivision with the covenants, conditions, restrictions, reservations and charges hereinafter set forth, which shall inure to the benefit and pass with the Subdivision, each and every parcel or resubdivision thereof, and shall apply to and bind the successors in interest and any other owner thereof:

NOW THEREFORE, Declarant, who owns the Subdivision in fee simple, hereby declares that all lots in the Subdivision shall be held, transferred, sold and conveyed, subject to the following covenants, conditions, restrictions, reservations and charges, hereby specifying and agreeing that this Declaration and the provisions hereof shall be and do constitute covenants to run with the land and shall be binding on Declarant, its successors and assigns, and all subsequent owners of each lot, and the owners by acceptance of their deeds for themselves, their heirs, executors, administrators, successors and assigns, covenant and agree to abide by the terms and conditions of this Declaration.

I.

PROPERTY SUBJECT TO THE DECLARATION

The property which is and shall be held, transferred, sold and conveyed, subject to the covenants, conditions, restrictions, reservations, easements and charges hereinafter set forth is described as follows:

All of the lots in MILWOOD SECTION 35, a small lot subdivision in Williamson County, Texas, according to the map or plat of record in Volume L, Pages 51-52, Plat Records of Williamson County, Texas (hereinafter referred to as the "Property").

II.

COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS AND CHARGES

The Property described in Section I hereof is encumbered by the covenants, conditions, restrictions, reservations, easements and charges hereinafter set forth to insure the best and highest use and the most appropriate development and improvements of each lot for residential purposes within said subdivision; to protect owners of lots against improper use of surrounding lots; to preserve so far as practicable, the natural beauty of said Property; to guard against the erection of poorly designed or proportioned structures of improper or unsuitable materials; to encourage and secure the erection of attractive improvements on each lot with appropriate location; to prevent haphazard and inharmonious improvements of lots; to secure and maintain proper setbacks from streets and adequate free space; and in general to provide for development of the highest quality to enhance the value of investments made by owners.

A. Land Use and Building Types.

- (1) No lots shall be used except for residential purposes. On each residential lot no building shall be erected, altered, placed or permitted other than a detached, single family dwelling not to exceed thirty five (35) feet in height.
- (2) No building shall remain uncompleted for more than one (1) year after construction has been commenced.
- (3) The minimum area of any lot, except a corner lot, shall be thirty-six hundred (3,600) square feet.
- (4) The minimum area of a corner lot shall be forty-five hundred (4,500) square feet.

- (5) Except as provided below, the minimum width of any lot shall be forty (40) feet.
- (6) The minimum width of a corner lot shall be fifty (50) feet.
- (7) Lots fronting on a cul-de-sac may have a minimum chord width of thirty-three (33) feet at the arc formed by the street line, a minimum chord width of forty (40) feet at the front building setback line, and shall have a minimum width between side lot lines of forty (40) feet at all points fifty (50) feet or more to the rear of the street line.
- (8) The minimum front yard setback for any lot shall be twenty (20) feet.
- (9) The minimum street side yard setback for any corner lot shall be ten (10) feet.
- (10) Each Lot may have one zero lot line, provided that the combined side yard setback of any lot is not less than ten (10) feet.
- (11) The minimum distance between dwellings on adjoining lots shall not be less than ten (10) feet. A patio and patio cover may be constructed in a dominant side yard within this ten (10) foot area, but at least six (6) feet unobstructed clearance between the patio cover and the roof line of the dwelling on the adjoining lot shall be maintained.
- (12) The wall of any dwelling built on a zero lot line or within less than five (5) feet of the common side lot line shall be constructed and maintained as a solid opaque plane, containing neither window nor door openings nor any other type of openings.
- (13) The minimum rear yard setback shall be five (5) feet, exclusive of drainage easements. Provided, however, when there is a private access easement at the rear of the lot there shall be a minimum setback of ten (10) feet between such access easement and any building or fence.
- (14) The maximum building coverage on any lot shall be forty-five percent (45%) of the lot area.
- (15) The maximum impervious coverage on any lot shall be fifty-five percent (55%) of the lot area.
- (16) Three (3) off-street parking spaces, one of which shall be covered, shall be required for each dwelling/unit.
- (17) A maintenance easement shall be required on the dominant side of any common side lot line which is adjacent to a small lot having a dwelling unit constructed on or within less than five (5) feet of the common lot line in order to facilitate the customary maintenance of the structure and fixtures, including site drainage, located on the subordinate side of such common lot line. Each required maintenance easement shall be a minimum of five (5) feet in width and extending the full length and parallel to the common side lot line.
- (18) A use easement shall be required on the subordinate side of any common side lot line which is adjacent to a dwelling on the dominant side lot, the foundation of which is on or within less than five (5) feet from the common side lot line. Any required use easement shall be of a width of five feet (5) or extend from the common side lot line to the outer wall of the dwelling located on the subordinate side lot, whichever is less, and shall extend the full length and be parallel to the common side lot line. The purpose of any such use easement hereby required is to facilitate the use, enjoyment and privacy of the dominant side yard by the occupant(s) of the dwelling on the side of the common side lot line having the dominant yard. Such use easement shall be subject to the subordinate side lot owner's right to reasonably maintain the dwelling located on the subordinate side lot encumbered by such use easement.
- (19) Public utility easements may be established along the rear, front or side lot lines. Underground utility service to all lots shall be required.
- (20) The maintenance of all common areas and access easements shall be the responsibility of the abutting property owners.

B. Dwelling Size.

- (1) Single Family Dwelling. The ground floor area of the main structure of the single story, single-family residence shall be not less than seven hundred (700) square feet, excluding all open and covered porches and garage units. If more than one (1) story, the combined area for the first and second floors shall be not less than nine hundred (900) square feet. The Architectural Control Committee may, in its sole discretion, approve a dwelling size containing less square feet, but such approval must be in writing.

C. Masonry. Each dwelling shall have not less than five percent (5%) of the exterior walls of masonry construction; provided, however, the Architectural Control Committee may waive this requirement in whole or in part, but any such waiver must be in writing.

D. Fences. No fence, wall or hedge shall be erected, placed or altered on any lot nearer to any street than the front wall of any house.

E. Architectural Control. No building, wall, fence or any other improvement shall be erected or placed on, nor shall any building, wall fence or any other improvement be altered, modified, added to or removed from any lot until the construction plans and specifications thereof and a plan showing the location of all buildings, walls, fences and other improvements, including, but not limited to driveways and setbacks, have been approved in writing by the Architectural Control Committee, hereinafter called "Committee". Nor shall the topography of the lot be enlarged in any way which will impede, restrict or in any way divert the flow of water without the prior written approval of the Committee. The approval of the Committee shall not be unreasonably or whimsically withheld.

The Committee shall be composed of three (3) members. The original members of the Committee shall be Bryan Rome, Steve Herring and Terry E. Mitchell. Each Committee member shall serve at the pleasure of Declarant, or its successors. In the event of the death, resignation or removal of any member of said Committee, the remaining member or members will have full authority to act until the member or members have been replaced. A decision of a majority of the Committee shall be binding on all members thereof. Upon the death or resignation of all three (3) members at one time, a majority of the lot owners shall select three (3) new members of the Committee.

The Committee in considering each set of plans and specifications and the plan showing the location of all improvements shall consider, among other things, the quality of design and materials, harmony of the design with existing structures and location with respect to topography and finished grade elevation.

The Committee's approval or disapproval of the plans and specifications and plot plan for the improvements to be erected or placed on a lot, or the plans and specifications for the alteration, modification, addition to or removal of any improvements located on a lot, shall be granted within thirty (30) days after the same have been submitted to the Committee; if the Committee's approval or disapproval is not so granted within such thirty (30) days, then in that event the same shall be deemed approved and this covenant complied with. All plans and specifications shall be delivered to the Committee not less than thirty (30) days prior to the date construction is to be commenced at its office at 11911 Burnet Road, Austin, Travis County, Texas 78758, or any such other address as it may designate, by certified mail, return receipt requested, or delivered and a written receipt received therefor, and the date received by the Committee shall be considered the date of delivery to the Committee.

Anything herein to the contrary notwithstanding, the Committee is hereby authorized, at its sole discretion, to waive any requirements relating to carports, dwelling size, masonry requirements, fences and setbacks and such decision shall be binding on all owners of lots encumbered by this Declaration.

F. Easements and Setbacks. Easements reserved and setback requirements are those set forth on the plat of record of the Subdivision on file in the Plat Records of Williamson County, Texas, and other such easements dedicated by separate instrument on file in the Official Records of Williamson County, Texas. Within these easements, no structure, planting or other material shall be placed, or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easements, or which may obstruct or retard the flow of water. Except for use easements described in Section III A (18) above, the easement area of each lot shall not be fenced out of the lot and shall be maintained continuously by the owner of the lot. Any easement area of a use easement created pursuant to Section III A (18) above may, subject to the subordinate side owner's right to reasonably maintain his or her dwelling, be fenced as part of the yard of the dominant side lot and shall be maintained continuously by the owner of the dominant side lot.

G. Nuisances. No noxious or offensive activities shall be conducted on or upon any lot, nor shall anything be done thereon which may be or may become an annoyance to the neighborhood, or which is opposed to the purpose of these restrictions. Without limiting the foregoing, no vehicle or motor repair work, other than minor emergency repair, shall be conducted on any lot or in the street or streets adjoining any lot; no "A" frame, hoist or other device for lifting vehicles or parts thereof, and no disabled vehicle shall be stored or parked in the open on any lot or any street adjoining any lot; and notwithstanding any of the above, no vehicle of any type shall be parked in the open on a portion of any lot other than a private driveway constructed with the approval of the Committee.

H. Temporary Structures. No structure of a temporary character, mobile home, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporary or permanent. No building may be moved onto any lot. No racing vehicle, or any vehicle without a current license plate shall be permitted to remain on any lot or be parked on a street adjoining a lot.

I. Signs. No signs of any kind shall be displayed for public view on any lot, except one (1) sign of not more than five (5) square feet advertising the Property for sale or rent, or signs used by builders to advertise the Property for sale. All merchandising, advertising and sales programming shall be subject to the approval of the Committee.

J. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any character shall be permitted upon any lot.

K. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except any owner may keep no more than two (2) dogs, two (2) cats, or two (2) other household pets, provided they are not kept, bred or maintained for any commercial purpose.

L. Garbage and Refuse. No lot shall be used or maintained as a dumping ground for trash, garbage or other waste and the same shall not be kept, except in sanitary containers. Each lot owner shall contract with an independent disposal service to collect all garbage or other waste, if such service is not provided by the City of Austin.

M. Antennae. No exterior radio, television antenna or aerial, guy wire, or satellite dish antenna shall be erected or maintained without the prior written approval of the Architectural Control Committee.

III.

SIDEWALKS

The owner of each lot shall construct, at his cost and expense and prior to his occupancy of the dwelling, sidewalks, if any are required (i) by the City of Austin, or (ii) by any other political subdivision in the State of Texas in which the lot is located, or (iii) by the recorded subdivision plat.

IV.

TERM

These covenants are to run with the land and shall be binding on all persons and parties claiming under them until January 1, 2023, at which time said covenants shall be automatically extended for successive periods of ten (10) years each, unless by a vote of a majority of the then owners of the lots encumbered by this Declaration, and by a majority vote of the then members of the City Council for those provisions required by Chapter 13-3 of the Austin City Code of 1981, as amended, it is agreed to change said Declaration in whole or in part.

Any such instrument of amendment or termination described above must be executed and acknowledged by fifty-one percent (51%) of the then owners of lots encumbered by this Declaration and filed of record in the Official Records of Williamson County, Texas. The instrument of amendment or termination shall be effective to amend or terminate this Declaration at the expiration of the initial year term, if such instrument is filed of record as set forth above during the initial term hereof; or if such instrument is filed of record as set forth above during any ten (10) year period of extension, this Declaration shall be amended or terminated (as the case may be) at the end of such ten (10) year period of extension. Notwithstanding anything contained herein to the contrary, Declarant, or its successor entity, its successors or assigns, may amend these covenants at any time, or from time to time, in order to correct any typographical errors or other errors or omissions in form, which in the discretion of Declarant, or its successor entity, its successors or assigns, may require amendment in order to properly reflect the intent hereof. Such amendments to correct typographical or other errors shall be effective on the date that such an amendment is filed of record in the Official Records of Williamson County, Texas, by the Declarant, its successors or assigns. Notwithstanding anything hereinabove, no amendment shall be effective until the approval of any governmental regulatory body which is required shall have been obtained.

V.

EXTERIOR MAINTENANCE

In the event the owner of any lot shall fail to maintain the premises and the improvements situated thereon in a neat and orderly manner, the Architectural Control Committee shall have the right, through its agents and employees, to enter upon said lot and to repair, maintain and restore the lot and exteriors of the buildings and any other improvements erected thereon, all at the expense of the owner.

VI.

ENFORCEMENT

If the owner of any lot, or his heirs, executors, administrators, successors, assigns or tenants shall violate or attempt to violate any of the covenants set forth in this Declaration, it shall be lawful for any person or persons owning any lot encumbered by this Declaration, or Declarant, or its successor entity to prosecute any proceedings against the person or persons violating or attempting to violate any such covenants. The failure of the owner or tenant to perform his obligations hereunder would result in irreparable damage to the Declarant and other owners of lots in the Subdivision, thus the breach of any provisions of this Declaration may not only give rise to an action for damages at law, but also may be enjoined by an action for specific performance in equity in any court of competent jurisdiction. Such action may be brought against any person, firm or corporation violating or attempting to violate any of these covenants, either before such violation occurs or within a reasonable time thereafter, for an appropriate order or injunction of either a restraining or mandatory nature or both and of either a temporary or permanent nature or both, including, but not limited to, one restraining construction of any improvements commenced, or about to be commenced, without the prior written approval of the Committee or for the removal of

any improvement constructed without the prior written approval of the Committee. In the event enforcement actions are instituted and the party bringing such action is successful in obtaining any relief, then in addition to the remedies specified above, the party or parties against whom such relief was granted shall pay to the enforcing party costs and reasonable attorney's fees in such amount as the court may determine. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

VII.

SEVERANCE

In the event any of the foregoing covenants, conditions, restrictions, reservations, easements or charges is held invalid or unenforceable by a court of competent jurisdiction, it shall not affect the validity and enforceability of the other covenants, conditions, restrictions, reservations or charges. If one of the foregoing is subject to more than one interpretation, the interpretation which more clearly reflects the intent hereof shall be enforced.

XIII.

NUMBER AND GENDER

The singular shall be treated as the plural and vice versa, if such treatment is necessary to interpret this Declaration. Likewise, if either the feminine, masculine or neuter gender should be any of the other genders, it shall be so treated.

IX.

DEFINITIONS

A. For the purpose of the Declarations, the following terms shall have the special meanings respectively ascribed to them below:

Small Lot: A small lot is a lot having an area of less than fifty-seven hundred fifty (5,750) square feet, but not less than thirty-six hundred (3,600) square feet, and which conforms to the requirements of Section 13-3-107, Austin City Code.

Common Side Lot Line: A Common side lot line is a side lot line between two (2) or more small lots.

Zero Lot Line: A zero lot line is a common side lot line on which a wall of a structure may be constructed.

Dominant Side Yard: The dominant side yard is the side yard of a small lot having the larger width.

Subordinate Side Yard: The subordinate side yard is the side yard of a small lot having the smaller width.

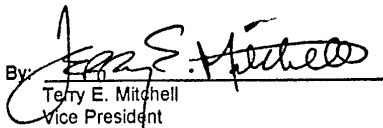
Maintenance Easement: A maintenance easement is an easement granted by owner of one lot to the owner of an adjoining lot in a small lot subdivision exclusively for the purpose of allowing the occupant of a dwelling unit constructed on or within less than five (5) feet of the common side lot line access to the adjoining property in order to maintain that portion of his dwelling situated on or near the common side lot line.

Use Easement: A use easement is an easement granted by the owner of one lot to the owner of an adjoining lot in a small lot subdivision exclusively for the purpose of allowing the occupant of a dwelling unit, which unit has been constructed on or within less than five (5) feet of the common lot line and has the dominant side yard, the use, enjoyment and privacy of such dominant side yard.

Off-Street Parking: Off-street parking for the purposes of this section shall mean the parking area in a garage, carport or on the driveway between the street right-of-way or access easement and the dwelling unit.

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Restrictions effective as of the date first set forth above.

MILBURN INVESTMENTS, INC.,
a Texas corporation

By: 
Terry E. Mitchell
Vice President

STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 4th day of May, 1994, by Terry E. Mitchell, Vice President of Milburn Investments, Inc., a Texas corporation, on behalf of said corporation.



Sharon Stephens
Notary Public, State of Texas

303
MAY 11 2 11 PM '94

STATE OF TEXAS COUNTY OF WILLIAMSON
I hereby certify that this instrument was FILED
on the date and at the time stamped hereon
by me, and was duly RECORDED in the Volume
and Page of the named RECORDS of Williamson
County, Texas, as stamped hereon by me, on



MAY 5 1994

Alene Proje
COUNTY CLERK
WILLIAMSON COUNTY, TEXAS

Alene Proje
COUNTY CLERK

FILED FOR RECORD
WILLIAMSON COUNTY, TX.
1994 MAY -5 PM 4:38