

Balcones Village Subdivision, Section 9

Deed Records, Volume 4080, Pages 37 - 43

THE STATE OF TEXAS |

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS |

That, FAIRWAY ESTATES, INC., owner of all of the lots in BALCONES VILLAGE, SECTION IX, a subdivision in Travis County, Texas, as shown by plat thereof recorded in Book 54, Page 7, of the Plat Records of Travis County, Texas, does hereby impress all of the property included in said subdivision, except Lot No. One (1), Block C, with the following restrictions, covenants, conditions and uses:

1. DESIGNATION OF USE. All plots as shown on the plat of said subdivision shall be used for single family residential purposes with not more than one residence on any plot. No trade, profession, business or commercial purpose of any kind shall be carried on, within or on any of said plots, nor shall anything be done thereon which may create or become an annoyance or a nuisance to the neighborhood, nor shall storage tanks containing inflammable fluids or gases be maintained above the surface of the ground.
2. RETENTION OF EASEMENTS. Easements are reserved as indicated on the recorded plat for utility installation and maintenance.
3. TEMPORARY STRUCTURES AND GARAGE APARTMENTS. No tent, shack, mobile home, house trailer, garage apartment or other outbuilding shall be placed, erected or permitted to remain on any of said plots, nor shall any structure of any temporary character be used at any time as a residence thereon.
4. SIZE AND CONSTRUCTION OF DWELLINGS, GARAGES, AND GUEST HOUSES. All dwellings shall be of recognized standard construction with outer walls of at least seventy-five percent (75%) by area composed of masonry. The dwelling, if one story, erected on any plot shall cover not less than sixteen hundred (1,600) square feet of floor area of which not less than fourteen hundred (1,400) square feet shall be in the house proper, exclusive of garage and porches; if the dwelling is one and one-half stories, not less than twelve hundred (1,200) square feet in the house proper, exclusive of garage and porches, and if full two stories, not less than one thousand (1,000) square feet of floor area in the house proper, exclusive of garage and porches. A separate garage building, servants' quarters of one story, or a one-story guest house not to exceed

six hundred (600) square feet of floor area will be permitted provided that such structure or structures be attached to the main residence by common wall or by a covered passage way, and the outer walls of such structure be the same construction and percentage by area of masonry as the main dwelling; provided that all such garages shall not front or have the automobile passage opening face the front of the plot and the main dwelling be substantially completed prior to erection of such structures and provided further that all other restrictions, covenants, conditions and uses herein are complied with.

5. MINIMUM PLOT SIZE. No structure shall be erected or placed on any plot which plot has an average width of less than eighty (80) feet, nor shall any plot be re-subdivided into plots facing a side street, or into plots any one of which shall have a width of less than eighty (80) feet at the front property line. For the purpose of these restrictions, a "plot" shall consist of a lot or lots having contiguous frontage and an average width of not less than eighty (80) feet. Notwithstanding the foregoing, any plot as now subdivided and delineated on the plat of said subdivision shall be considered a plot.
6. SET-BACK, FRONT LINE AND REAR LINE. No structure shall be located or erected on any plot nearer to the front plot line than as indicated by the "building line" shown on the recorded plat of said subdivision, nor nearer than five (5) feet to any side plot line except that the total combined set-back from both sides shall in no event be less than fifteen (15) feet nor nearer than thirty-five (35) feet to the rear plot line unless first approved by the architectural committee.
7. ORNAMENTAL STRUCTURES, FENCES, WALLS AND APPURTENANCES. No wire type fence of any description shall be permitted to be erected or maintained on any plot, nor shall any fence, wall or hedge be maintained forward of the front wall line of the respective dwelling except retaining walls of not over six (6) inches above plot grade.

Ornamental structures, fences and walls are permitted subject to approval in writing of the architectural committee referred to under Paragraph No. 8.

No radio or television or guy wires shall be maintained on any portion of any plot forward of the front wall line of the respective dwelling.

8. ARCHITECTURAL CONTROL. For the purpose of insuring the development of the subdivision as a residential area of high standards, an architectural committee, composed of James H. McCullick, W. B. Cotton and Ras Redwine, reserves the right to regulate and control the dwellings

or structures or other improvements placed on each plot. No dwelling, wall, fence or other structure shall be placed upon such plot until the plan therefor and the plat plan have been approved in writing by the developer or the architectural committee or by an appointee of the architectural committee. Refusal of approval of the plans and specifications by the architectural committee may be based on any ground including purely aesthetic grounds which in the sole and uncontrolled discretion of the architectural committee shall seem sufficient. No alterations in the exterior appearance of any dwelling or structure shall be made without like approval. No dwelling or other structure shall remain unfinished for more than one (1) year after the same has been commenced.

9. ANIMALS. No animals, livestock or poultry shall be raised, bred or kept on any lot except that cats, dogs or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes.
10. CLEANLINESS. No trash, ashes or any other refuse may be thrown or dumped on any vacant plot, park or drainage area in said subdivision.
11. SEWAGE. No dwelling in this subdivision shall be serviced other than by a public utility sanitary system or a septic tank of not less than five hundred (500) gallon capacity with connecting drain field having not less than one hundred fifty (150) feet of lateral lines and the construction and installation thereof meeting the approval of the City/County Health Department.
12. GENERAL PROVISIONS. These provisions are hereby declared to be restrictions, conditions, covenants and uses running with the land and shall be fully binding on all persons acquiring property in BALCONES VILLAGE, SECTION IX, whether by descent, devise, purchase or otherwise, and every person by the acceptance of title to any plot in this subdivision shall thereby agree to abide by and fully perform the foregoing restrictions, conditions, covenants and uses which shall be binding until January 1, 1987. On and after January 1, 1987, said restrictions, conditions, covenants and uses shall be automatically extended for successive periods of ten (10) years unless changed in whole or in part by a vote of three-fourths (3/4) majority of the then owners of the plots in BALCONES VILLAGE, SECTION IX, each plot to admit of one (1) vote.
13. PENALTY PROVISIONS. If any person or persons shall violate or attempt to violate any of the above restrictions, conditions, covenants and uses, it shall be lawful for any other person or persons owning any of the plots in BALCONES VILLAGE, SECTION IX, to prosecute proceedings in law or in equity against the person or persons violating or attempting

such violation to prevent him or them from so doing, or to recover damages for such violation. No act or omission on the part of any of the beneficiaries of the covenants, conditions, restrictions and uses herein contained shall ever operate as a waiver of the operation of or the endorsement of any such covenants, conditions, restrictions and uses.

14. RESTRICTIONS APPLICABLE TO LOT NO. ONE (1), BLOCK C. Except as provided in subparagraph (d) hereof, the foregoing restrictions, covenants, conditions and uses shall not be applicable to Lot No. One (1), Block C, BALCONES VILLAGE, SECTION IX, and the following restrictions, covenants, conditions and uses shall be applicable to said lot:

- (a) Designation of Use. Lot No. One (1), Block C, shall be used for residential purposes only; however, such lot may be used for single family residential purposes or multi-family residential purposes, including but not limited to apartments and condominiums. No trade, profession, business or commercial use of any kind shall be carried on within or on said lot, nor shall anything be done thereon which may create or become an annoyance or nuisance to the neighborhood, nor shall storage tanks containing inflammable fluids or gas be maintained above the surface of the ground.
- (b) Ornamental Structures, Fences, Walls and Appurtenances. No wire type fence of any description shall be permitted to be erected or maintained on said lot, and ornamental structures, fences and walls are permitted subject to approval in writing of the architectural committee, as provided for in these restrictions.
- (c) Storage. No structure on this lot shall be serviced other than by a public utility sanitary system or a septic tank connected with drain fields, approved by a registered professional engineer, and the construction and installation thereof shall meet the approval of the City/County Health Department.
- (d) Other Restrictions. The restrictions, covenants, conditions, and uses provided for in the following numbered paragraphs copied at length above shall also apply to Lot No. One (1), Block C: 2. Retention of Easements; 3. Temporary Structures and Garage Apartments; 6. Set-Back, Front Line and Rear Line; 8. Architectural Control; 9. Animals. 10. Cleanliness; 12. General Provisions; and 13. Penalty Provisions.

Invalidation of any one or part of these conditions, restrictions, covenants, and uses by judgment or court order shall in no wise affect any of the others which shall remain in full force and effect.

EXECUTED this the 10th day of May, 1971.

FAIRWAY ESTATES, INC.

By William B. Cotton, President

ATTEST:

Ras Redwine, Secretary

NOTARY ACKNOWLEDGMENT

Official Public Records 2003060103

RESTRICTIVE COVENANT

STATE OF TEXAS §
 § KNOW ALL PERSONS BY THESE PRESENTS:
COUNTY OF TRAVIS §

THIS RESTRICTIVE COVENANT is made on the effective date as set forth below, by TERRY MILLER, TRUSTEE of TMM Trust (“**Declarant**”).

RECITALS:

A. Declarant is the owner of Lot 1, Block C of BALCONES VILLAGE, SECTION IX, a subdivision in Travis County, Texas according to the map or plat thereof recorded in Book 54, Page 7 of the Plat Records of Travis County, Texas (the “**Property**”).

B. The Property is subject to certain covenants, conditions and restrictions set forth in the instrument recorded in Volume 4080, Page 37 of the Deed Records of Travis County, Texas (the “**Restrictions**”), which also sets forth certain covenants, conditions and restrictions to which the single-family lots in the above-described Balcones Village, Section IX subdivision are subject.

C. Declarant intends to develop the Property as a garden home condominium project and desires to impose certain covenants and restrictions upon the Property and to confirm and restate the provisions of the Restrictions applicable to the Property. In consideration for these additional benefits to other property owners of Balcones Village Section IX and the Balcones Village/Spicewood Homeowners Association, Inc., both these benefiting parties have provided their approval and support for a change in this property’s zoning classification.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, owned and conveyed subject to the following restrictive covenants:

1. **DESIGNATION OF USE.** The Property shall be used for no more than twelve (12) single family residential dwelling units of which no more than four (4) may be two story units. No trade, profession, business or commercial use of any kind shall be carried on within or on the Property, nor shall anything be done thereon which may create or become an annoyance or nuisance to the neighborhood, nor shall storage tanks containing flammable fluids or gas be maintained above the surface of the ground.

2. **RETENTION OF EASEMENTS.** Easements are reserved as indicated on the recorded plat of the Balcones Village, Section IX subdivision for utility installation and maintenance.

3. **TEMPORARY STRUCTURES AND GARAGE APARTMENTS.** No tent, shack, mobile home, house trailer, garage apartment or other outbuilding shall be placed, erected or permitted to remain on the Property, nor shall any structure of any temporary character be used at any time, as a residence thereon.

4. **SIZE AND CONSTRUCTION OF DWELLINGS.** All dwellings shall be of recognized standard construction with outer walls composed of one hundred percent (100%) masonry with a minimum of seventy-five percent (75%) of natural stone or fired brick. “Masonry” is defined to be natural stone, fired brick or stucco. The remaining portions of the exterior surfaces (except windows and doors) of the dwelling buildings may be constructed of a concrete composition board material (e.g. “Hardiboard”). The dwelling building, if one-story, shall have not less than eighteen hundred (1,800) square feet of floor area in the dwelling proper, exclusive of garage and porches, and if the dwelling building is two stories, it shall have not less than twenty three hundred (2,300) square feet of floor area in the dwelling proper, exclusive of garage and porches. Windows on the second story of any dwelling shall be placed on the side walls to minimize direct sight lines to the lots immediately adjacent to the dwelling.

5. GARAGES AND AUXILIARY BUILDINGS. All dwelling units must have an attached garage with a minimum of four hundred thirty (430) square feet of area. No automobile passage opening on any garage shall open toward the lots immediately adjacent to the southerly and westerly boundaries of the Property. The height of the exterior walls of any auxiliary building shall not exceed eight (8) feet in height measured from the elevation of the finished floor. Any auxiliary building shall have outer walls composed of masonry, as defined in paragraph 4 above; shall have roof materials that match the roofing materials of the residential dwellings; and shall have garage doors for individual auxiliary building areas of a quality consistent with, and of material that match, the garage doors of the residential dwellings.

6. MINIMUM LOT SIZE. The Property shall not be subdivided without written approval by a three-fourths (3/4) majority of the then owners of the lots in the Balcones Village, Section IX subdivision, with each lot having one (1) vote.

7. SETBACK, FRONT LINE AND REAR LINE. No structure shall be located or erected on the Property nearer to the front lot line than as indicated by any "building line" shown on the recorded plat of the Balcones Village, Section IX subdivision. No structure shall be located nearer than thirty-five (35) feet to the rear lot line unless first approved by the Architectural Committee. For purposes hereof, the rear lot line (rear setback) is defined to be that line that is adjacent to the rear lines of existing lots immediately adjacent to the Property. The rear setback area shall be maintained as green space with appropriate landscaping. No sidewalks, pathways or other impervious cover or storage facilities shall be located within the rear setback, green space area.

8. ORNAMENTAL STRUCTURES, FENCES, WALLS AND APPURTENANCES. No wire type fence of any description shall be permitted to be erected or maintained on the Property, and ornamental structures, fences and walls are permitted subject to approval in writing of the Architectural Committee. No radio or television or guy wire shall be maintained on any portion of the Property forward of the front wall of a dwelling structure. The fence along the rear lot line (as defined in paragraph 7. above) shall be constructed of masonry, as defined in paragraph 4. above, or masonry products (e.g., Hardiboard, or precast concrete material) and shall be approved by the Architectural Committee.

9. ARCHITECTURAL CONTROL. For the purposes of insuring the development and continued use of the Property in accordance with the Restrictions and this Restrictive Covenant, no dwelling, wall, fence or other structure shall be placed upon the Property until the plan therefor and the site plan has been approved in writing by the Architectural Committee created under the Restrictions. It is acknowledged that the Restrictions provide that the refusal of approval of the plans and specifications by the Architectural Committee may be based on any ground including purely aesthetic grounds which in the sole and uncontrolled discretion of the Architectural Committee shall deem sufficient. No alterations in the exterior appearance of any dwelling or structure shall be made without like approval. No dwelling or other structure shall remain unfinished for more that one (1) year after the same has been commenced.

10. ANIMALS. No animals, livestock or poultry shall be raised, bred or kept on the Property except that cats, dogs or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purposes.

11. CLEANLINESS. No trash, ashes or any other refuse may be thrown or dumped on the Property while it is vacant.

12. SEWAGE. No dwelling on the Property shall be serviced other than by a public utility sanitary system approved by the City/County Health Department.

13. GENERAL PROVISIONS. These provisions are hereby declared to be restrictions, conditions, covenants and uses running with the land and shall be full binding on all persons acquiring the Property, or any interest therein, whether by descent, devise, purchase or otherwise, and every person by the acceptance of title to the Property, or any interest therein, shall thereby agree to abide by and fully perform the foregoing restrictions, conditions, covenants and uses which shall be binding until January 1, 2017. On and after January 1, 2017, said restrictions, covenants and uses shall be automatically extended for successive periods of ten (10) years unless changed in whole or in part by a vote of three-fourths (3/4) majority of the then owners of the lots in the Balcones Village, Section IX subdivision with each lot having one (1) vote.

14. SEVERABILITY. If any paragraph, section, sentence, clause or phrase of this Restrictive Covenant shall be or become illegal, null, or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null, or void, the remaining paragraphs, sections, sentences, clauses, or phrases of this Restrictive Covenant shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses, and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses, or phrases shall become or be illegal, null or void.

15. PENALTY PROVISIONS. If any person or persons shall violate or attempt to violate any of the above restrictions, conditions, covenants and uses, it shall be lawful for any other person or persons owning any of the lots in the Balcones Village, Section IX subdivision, Balcones Village/Spicewood Homeowners Association, Inc. or the Architectural Committee to prosecute proceedings in law or in equity against any person or persons violating or attempting such violation to prevent him or them from so doing, and/or to recover damages for such violation. No act or omission on the part of any of the beneficiaries of the covenants, conditions, restrictions and uses herein contained shall ever operate as a waiver of the operation of or the endorsement of any such covenants, conditions, restrictions and uses.

Executed this the 6 day of March, 2003, to be effective the date this Restrictive Covenant is filed for record with the County Clerk of Travis County, Texas.

TERRY MILLER, TRUSTEE of the TMM Trust

NOTARY ACKNOWLEDGMENT