

DOC. NO.  
00117053

JOINT USE EASEMENT  
AND  
RESIDENTIAL RESTRICTION AGREEMENT

FILM CODE  
00004435654

Mesa Forest PUD  
CB14-86-008.1A

THE STATE OF TEXAS S  
COUNTY OF TRAVIS S

17.00 INDX  
9:46 AM 3661 1 1 12/22/88  
170.53-DOC#  
58.03-CHK#

This Joint Easement and Residential Restriction Agreement (the "Agreement") is made by and between I. Harold Silberberg and Adele G. Silberberg (collectively "Grantor"), and Irwin Harold Silberberg and Adele G. Silberberg, residents of Travis County, Texas (collectively "Grantee"), in light of the following recitals, to wit:

R E C I T A L S :

Grantor is the owner of that certain tract of land containing 9.477 acres of land, more or less, situated in Travis County, Texas, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Grantor Property"). Grantee is the owner of that certain tract of land containing 5.428 acres, more or less, situated in Travis County, Texas, and more particularly described on Exhibit "B" attached hereto and incorporated herein by reference (the "Grantee Property").

Grantee desires to acquire a nonexclusive easement and right-of-way across the private roads ("the Roadways") to be located on the Grantor property pursuant to the approved preliminary plan for Mesa Forest P.U.D. (the "PUD"). Grantee further desires to have access to the Roadways by means of either or both of the two stubbed-off streets at the northerly end of the PUD, noted on the approved preliminary plan as Westfells and Cotswold Lane. Grantor is willing to grant such easement in accordance with the terms and conditions hereinafter set forth.

Grantor desires that Grantee restrict the use of the approximately 2.5 acres comprising the most southerly portion of Grantee property to residential use as a planned unit development and that Grantee not cause to be constructed a direct connection of a road from the Roadways to Spicewood Springs Road or any successor street. Grantee is willing to place such restrictions on the Grantee Property in accordance with the terms and conditions hereinafter set forth.

Now, therefore, for and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration paid by each to the other, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. Grant of Easement. Grantor has granted and conveyed and by these presents does grant and convey unto Grantee a nonexclusive right-of-way easement (the "Right-of-Way") across the Roadways solely for the purpose of providing access, ingress and egress by Grantee and Grantee's successors and assigns across the Roadways. Said access, ingress and egress to be by means of the two stubbed-off streets at the northerly portion of the PUD, noted on the approved preliminary plan as Westfells and Cotswold Lane.

Grantor shall construct and maintain the Roadways at the time of and in conjunction with development of the PUD on the Grantor Tract. Grantee agrees for Grantee and Grantee's successor or successors in interest, to share in all maintenance and ordinary expenses of the Roadways, including but not limited to repairs, taxes and liability insurance, in an amount equal to a product calculated by multiplying (i) the total amount of said expenses (ii) times a ratio equal to (x) that portion of the total living units (whether or not occupied) on the Grantee Property which will have access to the Roadways, (xx) divided by the sum of the total living units (whether or not occupied) which will exist within the

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

10842 0008

Grantor Property and the total living units (whether or not occupied) within the Grantee Property which will have access to the Roadways. Grantee hereby stipulates that, as of the date hereof, only one (1) living unit exists on the Grantee Property. It is contemplated by Grantee that at some future date additional living units shall be located on the Grantee Property. The PUD on the Grantor Property shall consist of fifty-six (56) living units.

The Right-of-Way shall burden the Grantor Property until the occurrence of either or both of the following: (i) a direct connection of a road from the Roadways to Spicewood Springs Road (or any successor street) [it being the intent of this paragraph to prevent the Roadways from being used as regular, continuing thoroughfares to and from Spicewood Springs Road and to and from properties other than the Grantor Property and the Grantee Property by persons other than Grantor's and Grantee's successors in interest]; and (ii) the use of the approximately 2.5 acre southerly portion of the Grantee Property for other than the residential use contemplated by Section 2 of this Agreement. Except as provided in Section 2, upon the occurrence of either of the aforementioned items, the Right-of-Way shall, automatically and without any further action by any party, terminate and be of no further force and effect.

The location and configuration of the Roadways may be changed, moved or altered by Grantor from time to time provided that at all times the Roadways provide the access contemplated by this Agreement in a substantially similar manner.

2. Residential Restrictions. Grantee hereby agrees that at all times the Grantee Property shall be used, and developed to be used, for residential purposes and if Grantee shall develop the Grantee Property (if Grantee so decides to develop the Grantee Property but with Grantee being under no obligation to develop the Grantee Property), Grantee shall develop a single family residential planned unit development at a density not to exceed seven (7) living units per acre on the Grantee Property.

The aforementioned restrictions contained in this Section 2 (the "Residential Restrictions") shall burden the Grantee Property until a simple majority (on a one vote per one living unit basis) of the landowners within the Grantor Property and the Grantee Property vote to terminate the Residential Restrictions.

3. Indemnity. Except to the extent Grantor shares in the cost of the maintenance and other normal expenses related to the Roadways, Grantee agrees to and hereby indemnifies Grantor from all loss, claim, damage or expense incurred by Grantor resulting from use of the Roadways by Grantee's guests, invitees, licensees, and successor or successors in interest.

4. Binding Effect. The covenants and obligations of Grantor set forth herein (i) shall be binding upon Grantor only for so long as Grantor shall own the Grantor Property and thereafter shall be binding on Grantor's successor or successors in interest to the Grantor Property, and (ii) shall run with the Grantor Tract. The covenants and obligations of Grantee set forth herein (i) shall be binding upon Grantee only for so long as Grantee shall own the Grantee Property and thereafter shall be binding on Grantee's successor or successors in interest to the Grantee Property, and (ii) shall run with the Grantee Property.

5. Severability. Invalidation of any one of the terms of provisions herein stated by judgment or court order shall in no way affect any other term or provision hereof, and all other provisions hereof shall remain in full force and effect.

6. Applicable Law. This Agreement shall be construed under the laws of the State of Texas and all obligations of the parties hereunder are performable in Travis County, Texas.

7. No Third Party Rights. Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, is intended to confer upon any person other than the parties stated herein and their heirs, personal representatives, successors and assigns, any benefits, rights or remedies under or by reason of this Agreement.

8. Exhibits. All recitals and all exhibits referred to in this Agreement are incorporated herein by reference and shall be deemed a part of this Agreement for all purposes as if set forth at length herein.

9. Conflicts with Other Restrictions. In the event any of the herein described covenants, conditions and restrictions conflict with any other covenants, conditions or restrictions which may now or hereafter apply to the Grantee Property and the Grantor Property, the more restrictive provision or provisions shall govern the Restricted Lots.

IN WITNESS WHEREOF, this Agreement is executed effective as of November 30, 1988.

GRANTOR:

I. Harold Silberberg  
I. Harold Silberberg

Adele G. Silberberg  
Adele G. Silberberg

GRANTEE:

Irwin Harold Silberberg  
Irwin Harold Silberberg

Adele G. Silberberg  
Adele G. Silberberg

THE STATE OF TEXAS     §  
  §  
COUNTY OF TRAVIS     §

This instrument was acknowledged before me on November 30 1988, by I. Harold Silberberg and Adele G. Silberberg.



Vana H. Proffitt  
Notary Public in and for  
the State of TEXAS  
Name: Vana H. Proffitt  
(printed)  
My commission expires: 11/8/89

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS  
10842 0010



REVISED FIELD NOTES  
FOR 9.477 ACRES

ALL OF THAT CERTAIN PARCEL OR TRACT OF LAND OUT OF THE JAMES M. MITCHELL SURVEY NO. 17 AND THE GEORGE W. DAVIS SURVEY NO. 15, CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; AND BEING PORTIONS OF A 11.3-ACRE AND 3.38-ACRE TRACT AS CONVEYED TO I. HAROLD AND ADELE G. SILBERBERG BY DEEDS RECORDED RESPECTIVELY IN VOLUME 2223, PAGE 411 AND VOLUME 7726, PAGE 934 OF THE DEED RECORDS OF TRAVIS COUNTY AND ALL OF A 2.254-ACRE TRACT AS CONVEYED TO IRWIN HAROLD SILBERBERG BY DEED RECORDED IN VOLUME 8188, PAGE 557 OF THE DEED RECORDS OF TRAVIS COUNTY; AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron pin found in the east right-of-way line of Ridgestone Drive at the northwest corner of Lot 9, Block "G" of Northwest Hills Northwest Oaks-II, a subdivision as recorded in Book 58, Page 11 of the Plat Records of Travis County, for the southeast corner and POINT OF BEGINNING of the herein described tract;

THENCE, with the north line of said Northwest Hills Northwest Oaks-II, the following four (4) courses:

N 70°09'05" W a distance of 50.73 feet to an iron pin set in the west right-of-way line of Ridgestone Drive at the northeast corner of Lot 7, Block "A" of said Northwest Hills Northwest Oaks-II at an angle point;

N 65°46'20" W a distance of 341.72 feet to a 1/2" iron pin set at an angle point;

N 50°32'08" W a distance of 300.16 feet to a 1/2" iron pin reset at an angle point; and

N 50°44'11" W a distance of 126.91 feet to a 1/2" iron pin found in the curving east right-of-way line of Stoneywood Drive for the southwest corner of this tract;

THENCE, with the east right-of-way line of Stoneywood Drive, the following two (2) courses:

Along a curve to the right an arc distance of 35.20 feet, having a radius of 574.70 feet and a chord which bears N 36°30'33" E a distance of 35.19 feet to a 1/2" iron pin found at a point of non-tangency; and

N 38°14'17" E a distance of 156.05 feet to a 1/2" iron pin found at the intersection with the north right-of-way line of Myrick Drive for an outside corner of this tract;

THENCE, with the south line of Lot 10, Mesa Trails I-A, a subdivision as recorded in Book 80, Pages 35-36 of the Plat Records of Travis County, S 53°19'54" E a distance of 130.05 feet to a 1/2" iron pin found for an inside corner of this tract;

THENCE, with the east line of said Mesa Trails I-A, N 30°40'00" E a distance of 579.38 feet to a 2" iron pipe found in the south line of Spicewood Springs Road Office Park, a subdivision as recorded in Book 85, Pages 124A-B of the Plat Records of Travis County, for the northwest corner of this tract;

THENCE, with the south line of said Spicewood Springs Road Office Park along a chain link fence and extension thereof, S 62°53'19" E, pass a 1/2" iron pin found at the northeast corner of the above described Silberberg 2.254-acre tract at 202.85 feet pass a 1/2" iron pin found at the southeast corner of said Spicewood Springs Road Office Park at 204.86 feet, and continuing on for a total distance of 230.42 feet to a 60D nail found for the most northerly northeast corner of this tract;

THENCE S 34°16'31" W a distance of 326.02 feet to an iron pin set for an inside corner of this tract;

REAL PROPERTY RECORDS  
Travis County, Texas

10842 0012

Exhibit "A" cont.

THENCE S 55°17'44" E a distance of 123.03 feet to an iron pin set at an angle point;

THENCE S 67°17'29" E a distance of 282.79 feet to an iron pin set in the west line of Charleston Place I-B, a subdivision as recorded in Book 85, Pages 178A-B of the Plat Records of Travis County, for the most easterly northeast corner of this tract;


THENCE, with said west line of said Charleston Place I-B and the extension thereof, the following two (2) courses:

S 22°42'31" W a distance of 192.40 feet to a 1/2" iron pin found in concrete at an angle point; and

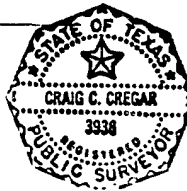
S 28°11'18" W, pass a point at the northeast corner of the above described Silberberg 3.38-acre tract at 163.41 feet, and continuing on for a total distance of 193.46 feet to a 5/8" iron pin found in the south right-of-way line of Chimney Corners at an angle point;

THENCE S 24°58'23" W a distance of 108.64 feet to the POINT OF BEGINNING, and containing 9.477 acres of land, more or less.

I HEREBY CERTIFY that these notes were prepared by Jeryl Hart Engineers, Inc. from a survey made on the ground under my supervision and are true and correct to the best of my knowledge.

  
Craig C. Cregar, R.P.S. #3936

84089a



10/18/85  
Date

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

10842 0013

EXHIBIT "B"

FIELD NOTES FOR  
5.428 ACRES OF LAND

FIELD NOTES DESCRIBING 5.428 ACRES OF LAND, MORE OR LESS, OUT OF THE JAMES M. MITCHELL SURVEY NO. 17 IN THE CITY OF AUSTIN, TRAVIS COUNTY, TEXAS; SAID 5.428 ACRES BEING OUT OF AND A PART OF THAT CERTAIN 11.3-ACRE TRACT DESCRIBED IN A DEED TO I. HAROLD SILBERBERG AND WIFE, ADELE G. SILBERBERG AS RECORDED IN VOLUME 2223, PAGE 411 OF THE TRAVIS COUNTY, TEXAS DEED RECORDS; SAID 5.428 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2" iron pin found for the most southerly corner of Spicewood Springs Road Office Park, a subdivision of record in Plat Book 85 Pages 124A-124B of the Plat Records of Travis County, Texas; said point also being in the northwest line of said 11.3-acre Silberberg tract;

THENCE, with the east line of said Spicewood Springs Road Office Park, N 39°24'08" E, a distance of 466.67 feet to an iron pin found for the most easterly corner of said Spicewood Springs Road Office Park, same being in the south right-of-way line of Spicewood Springs Road;

THENCE, with said south right-of-way line of Spicewood Springs Road the following two (2) courses:

- 1) S 13°28'43" E, a distance of 116.47 feet to a 1/2" iron pin at a point of curvature to the left;
- 2) Along a curve to the left an arc distance of 288.78 feet, having a radius of 826.00 feet and a chord which bears S 23°52'30" E, a distance of 287.31 feet to a 1/2" iron pin for the most northerly corner of Common Area Lot 3 of Charleston Place I-B, a subdivision as recorded in Book 85, Pages 178A and 178B of the Travis County, Texas Plat Records;

THENCE, with said west line of said Charleston Place I-A, the following three (3) courses:

- 1) S 32°40'42" W, a distance of 163.35 feet to a 1/2" iron pin;
- 2) S 27°08'50" W, a distance of 258.35 feet to a 1/2" iron pin found;
- 3) S 22°42'31" W, a distance of 84.00 feet to a 1/2" iron pin at the southeast corner of the herein described tract;

THENCE, through the interior of said 11.3-acre Silberberg tract for the southerly and westerly lines of the herein described 5.428 acre tract, the following four (4) courses:

- 1) N 67°17'29" W, a distance of 282.79 feet to an iron pin;
- 2) N 55°17'44" W, a distance of 123.03 feet to an iron pin;
- 3) N 34°16'31" E, a distance of 326.02 feet to an iron pin;
- 4) N 62°53'19" W, a distance of 25.56 feet to the POINT OF BEGINNING and containing 5.428 acres of land, more or less, as computed by Jeryl Hart Engineers, Inc. in November, 1988.

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

10842 0014

I HEREBY CERTIFY that these notes are based on records and partial surveys made on the ground under my supervision and do declare they are true and correct to the best of my knowledge.

*Jeryl D. Hart*  
Jeryl D. Hart, R.P.S. #2377

*12/7/88*  
Date

236,85072b



*After recording  
Return to:  
F. Lemell, rec Dept.*

*Forward to:  
Lemell Div.  
City of Austin*

STATE OF TEXAS COUNTY OF TRAVIS  
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 Travis County, Texas, on

DEC 22 1988

*Sam Robinson*  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

FILED  
1988 DEC 22 AM 10:43  
SARA S. BEAUBOIR  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

REAL PROPERTY RECORDS  
TRAVIS COUNTY, TEXAS

10842 0015