

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WESTMONT
("DECLARATION")

FILED
TARRANT COUNTY TEXAS

2000 AUG 18 P 12:39

SUZANNE HENDERSON
COUNTY CLERK

THE STATE OF TEXAS §
COUNTY OF TARRANT §

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, GOODACRE LIMITED PARTNERSHIP, a Texas limited partnership (the "Declarant"), is the owner of Lots 1 through 12 of Block A, Lots 1 through 24 of Block B, Lots 1 through 22 in Block C, Lots 1 through 22 of Block D, and lots in Blocks E, F, G, H, J and K in Westmont, an Addition to the City of Colleyville (the "City"), Texas, according to the plat thereof (the "Plat") attached hereto as Exhibit A and recorded in Cabinet A, Slide 6060 and 6061 of the Records of Tarrant County (the "County"), Texas (the "Addition").

WHEREAS, Declarant has subdivided the Addition into single-family lots as shown on the Plat. As used herein, "lot" and "lots" shall refer only to the numbered plots shown on the Plat and shall not refer to public areas, parks, esplanades, tracts owned or subsequently acquired by any public body, or any plot or tract shown as a reserve whether designated as unrestricted or not.

WHEREAS, Notice is hereby given that, by this Declaration, Declarant does not intend to contradict, amend, or alter any City Ordinances or Regulations. Any party intending to acquire any interest in the Addition should perform independent investigation of City Ordinances and Regulations to make their own determination that the party's intended use is compatible with the relevant ordinances and regulations.

NOW, THEREFORE, Declarant declares that the Addition shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, conditions, easements, charges and liens hereinafter set forth which are for the purpose of establishing a general scheme for the development of all of the lots and houses to be constructed in the Addition and for the purpose of enhancing and protecting the value, attractiveness and desirability of said lots and houses and which shall run with the land and be binding on all parties having or acquiring any right, title or interest in the Addition or any part thereof (or in Additional Phases, if any, as defined in Section 5.15 of this Declaration), and which shall inure to the benefit of each owner thereof.

ARTICLE I

CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

Section 1.1 Residential Use. All lots shall be used for single-family residential purposes only. No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single-family residence per lot and a private garage as provided below, except as permitted by the Committee (defined in Section 2.1 of this Declaration). Except as permitted by the Committee, the residence may not exceed the maximum height allowed by the City.

Section 1.2 Single-Family Use. Each residence may be occupied by only one family consisting of persons related by blood, adoption or marriage or no more than two (2) unrelated persons living and cooking together as a single housekeeping unit, together with any household servants.

Section 1.3 Garages and Driveways. Unless otherwise approved by the Committee, each residence shall have a detached or attached garage suitable for parking not less than two (2) or more than three (3) standard size automobiles, which garage conforms in design and materials with the main structure. Unless approved otherwise by the Committee, no garage shall have a vehicular access door or opening which faces any public right-of-way. Garage doors shall be closed at all times except to allow the entry and exit of vehicles and persons and except when cleaning of or storing in the garage is occurring. All driveways must be accessed from the front of the lot unless otherwise approved by the Committee. All driveways and driveway aprons or parking aprons must be kept free of any storage of vehicles or other material and must be kept clean of any dirt, debris, or stain. For purposes of this Section, "storage" shall mean the parking or placing of any object or material for more than one day.

Section 1.4 Restrictions on Resubdivision. None of the lots shall be subdivided into smaller lots. None of the lots shall be platted into larger lots without the prior written consent of the Committee.

Section 1.5 Driveways. All driveways shall be surfaced with concrete or other substance approved by the Committee. No circular driveways shall be permitted without the approval of the Committee.

Section 1.6 Uses Specifically Prohibited.

(a) No temporary structure, shop, trailer or mobile home of any kind or any improvement of a temporary character (except children's playhouses, dog houses, greenhouses and gazebos, which may be placed on a lot only in places which are not visible from any public right-of-way, and except for buildings for storage of lawn maintenance equipment which shall be built of materials and be of architectural character compatible with the design of the original building), shall be permitted on any lot except that, with the prior approval of the Committee, one temporary structure shall be permitted for the purpose of allowing the Declarant to coordinate and promote activities directly or indirectly associated with lot and house sales in the Addition and other temporary structures for the use of Declarant or the Association (defined in Section 5.14 of this Declaration). No building material of any kind or character shall be placed or stored upon the Addition until the owner thereof is ready to begin construction of improvements, and then such material shall be placed within the property lines of the lot upon which the improvements are to be erected.

(b) No boat, boat trailer, marine craft, hover craft, aircraft, recreational vehicle, pick-up camper, travel trailer or other trailer of any kind, motor home, camper body or similar vehicle or equipment may be parked for more than two consecutive days within the Addition, unless completely concealed from public view and adjacent lots. No such vehicle or equipment shall be used as a residence or office temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use for the construction, maintenance or repair of a residence in the immediate vicinity.

(c) No trucks with tonnage in excess of three quarters of a ton nor any vehicle with painted advertisement shall be permitted to park overnight within the Addition without the prior approval of the Committee.

(d) No vehicle of any size which transports inflammatory or explosive cargo is permitted in the Addition at any time.

(e) No vehicles or similar equipment shall be parked or stored in an area visible from any public right-of-way except passenger automobiles, passenger vans, and pickup trucks that are in operating condition and have current license plates and inspection stickers and are in daily use as motor vehicles on the streets and highways of the State of Texas.

(f) No structure of a temporary character, such as a trailer, basement, tent, shack, barn or other out-building, shall be used on any property at any time as a dwelling house.

(g) No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted in the Addition, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any part of the Addition. No derrick or other structure designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted within the Addition.

(h) No animals, livestock or poultry of any kind shall be raised, bred or kept on any property in the Addition except that dogs, cats, or other household pets may be kept for the purpose of providing companionship for the private family. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the purpose of these provisions to restrict the use of the property so that no person shall quarter on the premises, cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with the quietude, health or safety of the community. It is the pet owner's responsibility to keep the lot clean and free of pet debris and to conform with all City Ordinances and Regulations affecting animals within the City. All animals must be properly tagged for identification.

(i) No lot or other area in the Addition shall be used as a dumping ground for any waste. Trash, garbage or other waste shall not be kept except in covered sanitary containers in appropriate locations which may be specified by the Committee and, unless otherwise expressly permitted by the Committee, such containers shall be situated and enclosed or screened so as not to be visible from any public right-of-way, private drive or adjacent lot. All equipment for the storage or other disposal of waste material shall be kept clean and in sanitary condition. Materials incident to construction of improvements may be stored on lots during construction so long as construction progresses without undue delay.

(j) No individual water supply system shall be permitted in the Addition, except as may be approved by the Committee for irrigation.

(k) No individual sewage disposal system shall be permitted in the Addition.

(l) No garage, garage-house or other out-building may be occupied by any person prior to the erection of a residence.

(m) No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus shall be attached to any front or side wall or window of a residence, or in any second floor window or wall. All utility meters, outdoor equipment, air-conditioning compressors, air-conditioning and heating units, sprinkler and other control devices, junction boxes, and similar items must be visually screened from rights-of-way and from adjoining lots in a manner approved by the Committee and must be located in areas acceptable to the Committee.

(n) It is the intent of the Committee to insure that antennas, discs, dishes or other similar equipment do not detract from the overall appearance of the neighborhood as they are considered unsightly. No antennas, discs, dishes, or other equipment for sending or receiving sound or video messages shall be permitted in this Addition except antennas for AM or FM radio reception and for UHF and VHF television reception and satellite antennas of size specifically allowed by federal law. All antennas shall be located inside the attic of the main residential structure or otherwise in locations approved by the Committee. No use shall be made of any lot or structure thereon for any other type of radio or television or similar broadcasting system.

(o) No noxious or offensive activity shall be undertaken within the Addition, which is or may become an annoyance or nuisance to the neighborhood. Nothing herein shall prohibit an owner's use of a residence for quiet, inoffensive activities so long as such activities do not materially interfere with adjoining or nearby homeowner's use and enjoyment of their residences and yards. No exterior spotlighting shall be permitted which creates a nuisance for adjacent homeowners.

(p) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three (3) and six (6) feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the public right-of-way lines and a line connecting them at points ten (10) feet from the intersection of the public right-of-way lines, or, in the case of a rounded property corner, from the intersection of the public right-of-way lines are extended. The same sight-line limitations shall apply on any lot within ten (10) feet from the intersection of a public right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight-lines.

(q) Except for children's playhouses, dog houses, greenhouses and gazebos, no building previously constructed elsewhere shall be moved onto any lot, except for buildings for storage of lawn maintenance equipment which shall be built of materials and be of architectural character compatible with the design of the original building, it being the intention that only new construction be placed and erected thereon. All such improvements and their locations on a lot require Committee approval. Children's play equipment such as sandboxes, temporary swimming pool having a depth of less than 24 inches, playhouses and tents shall not require approval of the Committee provided that such equipment is not more than six (6) feet high, in good repair (including painting), and every reasonable effort has been made to screen or shield such equipment from view. Equipment higher than six (6)

feet shall require approval as to design, location, color, material, and use. Any addition, exterior alteration, or change to an existing building shall be compatible with the design character of the original building and any new detached structure shall be compatible with the parent structure, as approved by the Committee.

(r) No structures, planting or materials shall be placed or permitted to remain on any lot which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow within drainage channels or swales or which may obstruct or retard the flow of water through drainage channels, swales, or easements.

(s) The grading, slope and drainage plan of all lots, as shown on the Grading Plan defined in Section 3.1 of this Declaration may not be altered without the prior written approval of the Committee, the City and other appropriate agencies having authority to grant such approval.

(t) Unless approved otherwise by the Committee, no sign of any kind shall be displayed to the public view on any lot except one (1) professional sign of not more than five (5) square feet advertising the property for sale. Declarant and its agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the foregoing requirements, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal. All signs are subject to the approval of the Committee and may be required by the Committee to be removed, if, in the sole judgment of the Committee, same are found to be inconsistent with the high standards of the Addition.

(u) The drying of clothes in a location visible from any public right-of-way is prohibited. The owners and occupants of any lots at the intersections of streets or adjacent to parks, playgrounds, common open space, school grounds, or other facilities where the rear yard is visible to public view shall construct a suitable enclosure to screen from public view the equipment which is incident to normal residences, such as clothes drying equipment, yard equipment and storage piles.

(v) Except within fireplaces in the main residential dwelling and except for outdoor cooking, no outdoor burning of anything shall be permitted anywhere within the Addition without approval of the Committee.

(w) No carport shall be permitted on a lot. No porte cochere shall be permitted on a lot without the approval of the Committee.

(x) No abandoned, derelict or inoperative vehicles may be stored or located on any lot unless approved by the Committee and stored in the garage at all times with the garage door closed.

(y) No retaining walls visible from any public right-of-way or easement shall be permitted without the prior written approval of the Committee. Under no circumstances shall wooden retaining walls be permitted without the approval of the Committee. Materials used in retaining walls must be complementary to materials used in construction of the home on the lot, as determined by the Committee. All aspects of retaining walls must receive Committee approval.

Section 1.7 Minimum Floor Area. The total air-conditioned living area of the main residential structure, as measured to the outside of exterior walls but exclusive of open porches, garages, patios and detached accessory buildings, shall be not less than 3,500 square feet, except that the Committee may grant variances permitting houses of smaller size in Blocks A and B. The first story of two story houses must contain at least 1,800 square feet, unless approved otherwise by the Committee.

Section 1.8 Structure Materials; Exterior Items and Surfaces. The total exterior vertical wall area of each structure exclusive of doors and windows, shall be at least 80% masonry (brick, stone, or, with Committee approval, stucco). The exterior of chimney flues shall be of masonry material acceptable to the Committee. Installation of all types of exterior items and surfaces such as address numbers or external ornamentation, lights, mail chutes, mailboxes, roofing materials and exterior paint or stain, shall be subject to the approval of the Committee as to size, design, materials and location. Roofing material of each home shall be that specifically ap-

proved by the Committee for that home.

Section 1.9 Side Line and Front Line Setback Restrictions. Except as otherwise approved by the Committee, no structure shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum setback lines shown on the Plat. For the purposes of these covenants, caves and steps and open porches shall not be considered as a part of the structure, provided however, that this shall not be construed to permit any portion of a structure on a lot to encroach upon another lot or to violate any City Ordinance.

Section 1.10 Waiver of Setback Requirements. With the prior written approval of the Committee, any structure may be located further back or closer to any property line of a lot than provided above, where, in the opinion of the Committee, the proposed location of the structure will not substantially detract from the appearance and value of the lot and will not substantially detract from the appearance of the adjoining lots. The Committee may require that any structure be located further back or closer to any property line than provided above or on the Plat.

Section 1.11 Fences and Walls.

(a) Any fence or wall shall (i) comply with City requirements, including those regarding height, location and materials; (ii) not extend nearer to the front street than five (5') feet behind the front of the house without the prior written approval of the Committee; (iii) be constructed of material approved by the Committee; (iv) be constructed so that the sides containing the structural supports are not visible from any public right-of-way unless approved by the Committee; (v) be not less than six (6') feet in height or more than eight (8') feet in height as measured from existing ground level unless approved by the Committee; (vi) for any fence on the side of a corner lot adjacent to a street, be at least five (5') feet inside the property line of such lot, unless otherwise approved by the Committee. However, on corner lots, special, more restrictive fencing requirements may be imposed on the lot side contiguous to the street by the Committee; (vii) if stained, be stained with a stain approved by the Committee. Fences may be privately installed but must be constructed to professional levels of quality. The design, specifications and contractors for building fences may be specified by the Committee.

(b) As to corner lots, any fence visible from a public right-of-way shall be a uniform fence of a design, material and color and in the specific location to be determined by the Committee for each lot, which shall generally include but not be limited to the following: (i) the location between the structure and the side street property line of such fence; (ii) how close the fence may be built to the street the lot fronts on; (iii) whether a formal foundation planting along the outside of the fence is required; (iv) whether such fence shall be constructed of cedar or similar material, have trim boards, metal posts, and masonry columns constructed of a material required by the Committee; (v) the height of such fence; and (vi) other design criteria of such fence.

(c) The Committee may require that some or all retaining walls in the Addition be constructed of a uniform color, material and/or design.

Section 1.12 Sidewalks. All sidewalks shall, at a minimum, conform to City specifications and regulations. The Committee may impose more restrictive standards than those required by the City.

Section 1.13 Mailboxes. As required or approved by the Committee, mailboxes shall be constructed in accordance with City specifications of a material, color and design approved by the Committee and shall be made by a contractor specified by the Committee and placed in locations in the Addition approved by the Committee. No mailboxes may be constructed or installed without the prior written consent of the Committee.

Section 1.14 Commencement of Construction. Each residence constructed on each lot, and any other improvements thereto, shall be commenced promptly after conveyance of the lot by Declarant and completed with due diligence but only after approval by the Committee of the plans and specifications prepared in connection with such construction.

Section 1.15 Utilities. Except as to special street lighting or other aerial facilities which may be required by the City or which may be required by the franchise of any utility company or which may be installed by Declar-

ant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals, transformers and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed in the Addition whether upon individual lots, easements, streets or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the Addition, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground unless otherwise required by a public utility or unless said aerial utilities are approved by the Committee.

Section 1.16 Conservation Area. Notwithstanding any provision in this Declaration to the contrary, any and all property, including without limitation any portions of lots, within the wetland and riparian mitigation area, more particularly described on Exhibit C, which is attached hereto and incorporated herein for all purposes (the "Conservation Area"), shall be subject to all conditions, limitations and restrictions on the use of the Conservation Area, as outlined in special condition number 4 of the letter dated October 4, 1999, from the Department of the Army, Fort Worth District, Corps of Engineers ("USACE"), authorizing Project Number 199800603 (the "Project"), which is attached hereto as Exhibit D and is incorporated herein for all purposes. Declarant shall retain the right to access the Conservation Area and any portions thereof, including without limitations any portions of lots within the Conservation Area, for purposes of carrying out any and all activities of the permittee responsible for the Project, now or hereafter authorized or required by USACE within the Conservation Area. Notwithstanding any provision in this Declaration to the contrary, this Section 1.16 may not be amended or abolished without the written approval of USACE.

ARTICLE II

ARCHITECTURAL CONTROL

Section 2.1 Appointment. Declarant may designate and appoint an Architectural Control Committee (herein called [the "Committee"]) composed of two (2) or more individuals, each generally familiar with residential and community development design matters and knowledgeable about Declarant's concern for a high level of taste, design, materials, construction, and landscaping standards within the Addition. In exercising its authority herein, the Committee shall use its reasonable best efforts to ensure a high level of taste, design, quality, harmony and conformity throughout the Addition consistent with this Declaration.

Section 2.2 Successors. In the event of the death, resignation or removal by Declarant of any member of the Committee, Declarant may appoint a successor member. Declarant shall have full authority to designate and appoint a successor. No member of the Committee shall be entitled to compensation for, or be liable for claims, cause of action or damages arising out of, services performed, or not performed, pursuant to this Declaration.

Section 2.3 Authority. No structure, fence, wall, landscaping (including tree removal, exterior lighting, sculpture and other outdoor art, and outdoor recreational equipment), lot grading, flatwork (sidewalks, driveways, porches), or other improvements shall be commenced, erected, placed, maintained or altered on any lot, nor shall any exterior painting of, exterior addition to, or alteration of, such items be made until all construction and landscaping plans and specifications and a plot plan have been submitted to and approved in writing by a majority of the members of the Committee which may consider and decide upon:

- (a) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, proper facing of main elevation with respect to nearby streets;
- (b) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping in relation to the various parts of the proposed improvements and in relation to improvements on other lots in the Addition; and
- (c) the other standards set forth within this Declaration (and any amendments hereto) or matters in which the Committee has been vested with the authority to render a final interpretation and decision.

The Committee is authorized and empowered, but not obligated, to consider, review and approve any and all aspects of construction and landscaping which may, in the reasonable opinion of the Committee, adversely or positively affect the living enjoyment of one or more lot owners or the general value of lots in the Addition and, pursuant thereto, the Committee may require the submission of plans and specifications therefore prior to the commencement, or during the process, of such construction or landscaping. In considering the harmony of external design between existing structures and the proposed building being erected, placed or altered, the Committee shall consider the general appearance of the proposed building as that can be determined from front, rear and side elevations on submitted plans.

Section 2.4 Procedure for Approval. Final construction plans and specifications and landscaping plans and specifications shall be submitted in triplicate to the Committee. The plans and specifications shall show the nature, kind, shape, height, color, materials and location of all structures, landscaping and improvements, and such other information as may be required by the Committee. The documents shall specify any requested variance from the setback lines, garage location or any other requirement set forth in this Declaration. The Committee is authorized to require the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans shall be marked "Approved", signed by a member or representative of the Committee and returned to the lot owner or his designated representative. If disapproved by the Committee, one set of such plans shall be returned marked "Disapproved" and shall be accompanied by a reasonable statement of the reasons for disapproval, which statement shall be signed by a member or representative of the Committee. Any modification of the approved set of plans and specifications must again be submitted to the Committee for its approval. The Committee's approval or disapproval, as required herein, shall be in writing. In no event shall any verbal approval of the Committee or of any member thereof be effective. If the Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the date of submission of all required plans and specifications and any samples of proposed construction materials required by the Committee, written approval of matters submitted shall not be required and compliance with this Article shall be deemed to have been completed as to matters submitted. In case of a dispute about whether the Committee responded within such time period, the person submitting the plans, specifications, and samples shall have the burden of establishing that the Committee actually received the plans. The Committee's receipt of the plans, specifications and samples may be established by a signed certified mail receipt or by other receipt signed by a Committee representative. If only one set of plans and specifications are submitted to the Committee, the Committee may retain that set in its files.

Section 2.5 Standards. The Committee shall have sole discretion with respect to taste, design and all standards and matters requiring approval as specified herein. One objective of the Committee is to prevent unusual, radical, curious, odd, bizarre, peculiar or irregular structures, materials, or colors from being built in the Addition and to promote excellence in architecture, materials, construction, and landscaping. For this purpose, the Committee shall have the authority to make certain requirements with respect to design, materials, construction, and landscaping, including but not limited to, requiring 12/12 or greater roof slope, that chimney flues be covered with brick or masonry, that chimney caps be approved by the Committee, that non-chimney roof ventilation be hidden from view from rights-of-way and common areas, that specific types of divided light windows be used, restricting the use of skylights, solar heating panels, and prefabricated fireplace boxes, chimney flues and caps, requiring certain types of front and side window interior treatments (drapes, shutters, etc.) complementary to the architecture of the house, and generally requiring that plans submitted for approval meet or exceed the standards of the existing improvements on neighboring lots. The Committee may from time to time publish and promulgate Westmont Architecture and Landscape Standards and Requirements ("Standards"), which shall carry forward the spirit and intention of this Declaration and of Declarant. Committee approvals and requirements may be based all or in part upon these Standards. CONSTRUCTION MUST STRICKLY ADHERE TO COMMITTEE APPROVALS AND BE BUILT STRICTLY IN OBSERVANCE OF SCALE OF APPROVED DRAWINGS.

Section 2.6 Termination. The Committee shall cease to exist on the earlier of (a) the date on which all the members of the Committee file a document declaring the termination of the Committee, or (b) ten (10) years after the date hereof. Upon termination of the Committee, the record owners of a majority of the lots in the Addition (the "Record Owners") shall have the authority to record an instrument which provides for a committee elected by the Record Owners to continue the functions of the terminated committee, which instrument shall establish election or

