

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LEISUREWOODS, SECTION TWO

THE STATE OF TEXAS

KNOWN ALL MEN BY THESE PRESENTS:

COUNTY OF HAYS

THAT WHEREAS, JIM RUBY, INC., hereinafter called the Declarant, is the owner of all that certain property located in Hays County, Texas, described as follows:
Being 124. 711 acres of land, out of a 352. 64 acre tract, more or less, in the Phillip J. Allen Survey Number Four (4) in Hays County, Texas, being platted as Leisurewoods Section Two (2), more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof for all purposes; and WHEREAS, the Declarant will convey the above described properties, subject to certain protective covenants, conditions, restrictions, and charges as hereinafter set forth; NOW, THEREFORE, it is hereby declared that all of the property described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and shall be binding on all parties having any right, title, or interest in or to the above described property or any part thereof, and their heirs, successors and assigns, and which easements, restrictions, covenants, and conditions shall inure to the benefit of each owner thereof.

ARTICLE ONE

DEFINITIONS

1. Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or portion of a lot on which there is or will be built a detached single family dwelling, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
2. Properties and Lot. "Properties" shall mean and refer to that certain real property hereinbefore described. "Lot" shall mean and refer to that portion of any of the plats of land shown upon the plat and subdivision map recorded as Leisurewoods Section One (1), on which there is or will be built a single family dwelling. The term "Lot" shall not include any reserves shown on the said map or plat.

ARTICLE TWO

ARCHITECTURAL CONTROL

1. Architectural Control Committee

An architectural control committee shall be designated and composed of three (3) members appointed by Jim Ruby, Inc. Jim Ruby, Inc. reserves the right to terminate or assign responsibilities in regard to the Architectural Control Committee. In the event Jim Ruby, Inc., terminates its responsibility altogether, then the committee shall be elected by the record owners of a majority of the lots in the subdivision.

2. Approval of Plans and Specifications

No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the properties, nor shall any exterior addition to, or change or alteration therein, be made, nor shall any landscaping of any Lot or Lots be undertaken, until the plans and specifications

showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to, and unanimously approved in writing by, the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography.

3. Committee Action

The Committee must approve or disapprove of submittals in writing. In the event that any plans and specifications are submitted to the Committee as provided herein, and such Committee shall fail either to unanimously approve or reject such plan and specifications within thirty (30) days following such submission, approval by the Committee shall not be deemed to have been had. Failure to act on any submission shall in no event affect requirement of submission of any and all plans and specifications as required hereunder.

4. Control by Owners

Notwithstanding anything else herein to the contrary, within three (3) years from the date of the first sale in this subdivision or after 30% of the lots have been sold, whichever occurs first, the Architectural Control Committee shall thereafter be elected annually by a majority vote of the lot owners in the subdivision. To serve on the committee, the person selected must be an owner in the subdivision. The committee shall be elected on an annual basis with the meeting to be held on the third Tuesday of January of each year, it being understood that Jim Ruby, Inc., shall give notice of the first meeting of lot owners at which time the lot owners shall elect officers and thereafter perpetuate themselves. If for any reason new committee members are not elected each year, then the existing committee members shall continue to serve until their replacement has been selected.

ARTICLE THREE

EXTERIOR MAINTENANCE

In the event an 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 exterior of the buildings and any other improvements erected thereon, all at the expense of the Owner. After, first, having given the Owner of such Lot, at least fifteen (15) days, from time of written notice, to correct the failure of maintenance.

ARTICLE FOUR

USE RESTRICTIONS

I. Type of Buildings Permitted

Lots shall be used for residential purposes only, and no building shall be erected, altered, placed, or permitted to remain on any Lot other than one detached single family not to exceed two stories in height and a private garage for not less than two automobiles with a side or rear entry. No garage will be allowed to open to Leisurewoods Drive. All driveways as well as drainage pipe installation must be approved in writing by the Architectural Control Committee.

2. Minimum Floor Area and Exterior Walls

Any single family dwelling construction on said Lots must have a ground floor area of not less than 1,600 square feet, exclusive of open or screened porches, terraces, patios, drive-ways, carports, and garages, unless adjusted or waived by the unanimous consent of the Architectural Control Committee. The exterior walls of any residence shall consist of not less than 75% masonry construction unless adjusted or waived by the unanimous consent of the Architectural Control Committee.

3. Setbacks

No building shall be located nearer to any street right-of-way line than the minimum building set back line shown and the recorded plat of Hays County, Texas. Both side yards at the front building set back line shall be [not] less than 15 feet unless adjusted or waived by the unanimous consent of the Architectural Control Committee. For the purpose of this covenant, eaves, steps and open porches shall not be considered as a part of the building; provided, however, that this shall not be construed to permit any portion of the building on any lot to encroach upon another lot.

4. Noxious or Offensive Activities Prohibited

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood and no poultry, cattle, horses, or other animals may be kept or maintained on any Lot except ordinary household pets which shall be limited in number to three (3). No trade or commercial activity may be carried on any Lot except that the Developer may maintain an office thereon during the development.

5. Prohibited Residential Uses

No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn, or other outbuilding shall be erected or used on any Lots at any time as a residence, either temporarily or permanently. No used building materials may be used in the construction of buildings on any of the Lots and no existing structure may be moved onto any of the Lots without the written consent of the Architectural Control Committee. No non-operated cars, trucks, or other vehicles shall be kept on the Lots unless parked inside a garage or carport. As used herein non-operative means unable to be operated in the manner in which it was originally designed for thirty (30) consecutive days regardless of cause, or any such vehicle not currently licensed. Recreational vehicles, trailers or boats shall be kept inside the garage or carport or kept behind a privacy fence designed for such purpose.

6. Signs

No signs of any character shall be allowed on any Lot except one sign of not more than five square feet advertising the property for sale or rent; provided, however, that Declarants and any other person or entity engaged in the construction and sale of residences within the subdivision shall have the right, during the construction and sales period, to construct and maintain such facilities as may be reasonably necessary or convenient for such construction and sale, including but not limited to, signs, offices, storage areas, and model units.

7. Oil Development Prohibited

No oil well drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on a Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or

shafts be permitted on any Lot. No derrick or other structure designed for use in boring for oil, natural gas, or other minerals shall be erected, maintained, or permitted on any Lot.

8. Rubbish, Trash and Garbage

No Lot shall be used or maintained as a dumping ground and no garbage or other waste shall be kept except in sanitary containers. All incinerators or other equipment for the storage and disposal of such materials shall be kept in a clean and sanitary condition.

9. Sanitary Regulations

All sanitary regulations set forth by the Public Health Authorities of Hays County, Texas, or other pertinent governmental authorities, must be complied with and no outside toilets may be erected on the premises. A septic tank and a sufficient drainage system must be installed to accommodate the sewerage. No Lot may be occupied until water satisfactory for human consumption is available and each septic tank must meet the capacity and design requirements of the appropriate governmental body.

10. Fences, Walls, Hedges and Utility Meters

No fence, wall, hedge, or utility meter shall be placed, or permitted to remain, on any Lot nearer to the street or streets adjoining such Lot than is permitted for the main residence on such Lot, except for decorative subdivision entry fences. No barbed wire, or "chain link" fence shall be permitted along any Lot within the subdivision.

11. Shrubs and Trees

No shrub or tree planting which obstructs sight lines at elevations between two and six feet above the roadway shall be planted or permitted to remain on any corner Lot within the triangular area formed by the curblines or right of way lines at points twenty five feet from their intersection, or, in the case of a rounded corner, from the intersection of the curblines or right of way lines as extended. The same sight line limitation shall apply on any Lot within ten feet of the intersection of a street curblin and the edge of a driveway or alley. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of more than six feet above ground level.

12. Adjustment, Waiver, or Variances

Any adjustment or waiver of these covenants, conditions and restrictions by the Architectural Control Committee is for the purpose of alleviating any hardships and assisting in the orderly development of the subdivision. Variances may be granted by the Architectural Control Committee for such purposes but all such variances must be granted in writing and signed by all members of the Committee.

ARTICLE FIVE

EASEMENTS

Easements of ten feet along the side and rear lines of all Lots are hereby reserved for the installation and maintenance of utilities and drainage facilities unless otherwise shown on recorded plats or otherwise designated by the Architectural Control Committee by written acknowledged instrument of record in the Deed Records of Hays County, Texas. Furthermore, drainage easements are reserved as shown on the recorded plat of this subdivision. No utility company, water district, political subdivision, private water or utility company or other authorized entity using the easement herein referred to shall be liable for any damage done by

them or their assigns, agents, employees, or servants, to shrubbery, trees, or flowers, or to other property of the Owner situated within any such easement. Right of use for ingress and egress shall be had at all times over any such easement together with the right to remove any obstruction that may be placed in such easement which would constitute interference with the use, maintenance, operation or installation of such utility.

**ARTICLE SIX
GENERAL PROVISIONS**

1. Enforcement

The Declarants, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, and reservations now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

3. Duration and Amendment

The covenants, conditions, and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of, and be enforceable by, the Declarants or the Owner of any Lot subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns, and, unless amended as provided herein shall be effective for a term of fifteen (15) years from the date this Declaration is records, after which time said covenants, conditions, and restrictions shall be

automatically extended for successive periods of ten (10) years. The covenants, conditions, and restrictions of this Declaration may be amended by an instrument signed by all of the lot owners. No amendment shall be effective until recorded in the Deed Records of Hays County, Texas, nor until the approval of any governmental, regulatory body which is required shall have been obtained.

EXECUTED by the said Declarant this 13th day of MARCH, A. D. 1979.

JIM RUBY, INC.

[Volume 323, Page 483]

[#126897]

**AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR LEISUREWOODS, SECTION 2
DECLARATION OF COVENANTS**

On this 13th, day of March, 1979, JIM RUBY, INC., a Texas Corporation, herein called Developer", hereby declares that the land described below shall be held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens, herein called "covenants", by 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 upon Developer; its successors and assigns and all subsequent owners of each lot; and the owners by their 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.

1. Land. Developer is the owner of real property located in Hays County, Texas (herein called the "Land"), more particularly described in the attached Exhibit "A" which is attached hereto and made a part hereof for all purposes.

2. Subdivision. Developer had subdivided the Land into lots according to the plat of record in Volume 2, Pages 50-54, Hays County Plat and Deed Records.

3. Purpose. The purpose of these covenants is to provide a method and agency to develop and maintain the entrance and architectural control within the Subdivision, upon the easement as platted.

4. Association. Developer has organized Leisurewoods Property Owner's Association (herein called "Association"), a non-profit Texas Corporation which shall be the agency to maintain the common facilities within the subdivision and in general enforce these covenants.

5. Membership. The record owner of each lot to which this Declaration applied shall be a member of the association. The membership shall be appurtenant to and may not be separated from the ownership of any lot. Record ownership of a lot shall be the sole qualification for being a member of the Association.

6. Voting. The Association shall have a single class of voting membership which shall be the owners of lots within the subdivision. Members shall be entitled to one vote for each lot owned. When more than one person owns a lot, all are members of the Association and the one vote for each lot shall be cast as the owners determine among themselves.

7. Assessments.

a. Obligation. Developer, for each and all lots and each owner of a lot or living unit located thereon by acceptance of a deed, therefor, hereby covenants and agrees to pay the Association such annual assessments as are fixed and established herein. The assessments, together with interest and cost of collection shall be the personal obligation of the record owner of a lot or unit at the time the assessments become due and shall be a charge on the lot or unit constituting a lien thereon.

b. Purpose. The assessments shall be used exclusively to maintain the common facility of the subdivision.

c. Basic Annual Assessment. The total annual assessment for each year shall be set by the Board of Directors of the Association, based on the estimated costs of performing such of the services set forth in subparagraph b above as the Board of directors shall in its discretion

determine to provide during the coming year to the property of all members. The total estimated cost shall be allocated among the membership as provided in d. below. The amount thus estimated and allocated shall be the basic annual assessment. The estimated total costs shall be allocated among the membership based on the estimate of the Board of Directors as to the cost of providing the services to the property and a determination by such Board as to the benefit conferred on the property by the services to be rendered. This estimate shall be arrived at after notice to all members and the holding of a public hearing as to proper allocation. After the allocation is made by the Board of Directors, any aggrieved owner may within thirty (30) days thereafter appeal such allocation to a District Court in Hays County, Texas, and the standard on appeal shall be whether or not the allocation is arbitrary, unreasonable or capricious. Pending any such appeal the allocation shall stand and payment shall be based thereon. If it should appear that the basic monthly assessment estimated by the Board of Directors is insufficient to cover the cost of the services to be rendered, the Board of Directors may increase such assessment by an amount up to ten (10%) percent any time after July 1 of a year without approval of the members.

d. Allocation of Assessment. The basic annual assessment and any special annual assessment will be paid by each owner on the lots or portions thereof owned by him. There will be no assessment for 1979. Until 1982 the basic monthly assessment shall not exceed \$10.00 for any lot. The basic monthly assessment and any special monthly assessment shall be divided among the owners equally on a per lot basis.

f. Due Date. The annual assessments shall commence on the date fixed by the Board of Directors of the Association. The first annual assessments shall be for the calendar year 1979 and shall become due on the date fixed for commencement. After the first year, the assessment shall be paid yearly as billed by the Board of Directors of the association. Capital assessments shall be due thirty (30) days after notice thereof is given by the Board of Directors of the Association.

g. Change in Assessments. The Board of Directors may change the specified amount and the manner of calculating assessments without regard to the limitations of subparagraph c above, upon the favorable vote of two thirds of the members of the Association voting at an annual or special meeting if notice of such change has been given in connection with the notice of the meeting.

h. Non-Payment of Assessments. An assessment is the personal obligation of the owner of the lot or unit at the time the assessment becomes due and payable and shall become a continuing lien on the lot or unit which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the owner shall not pass to his successor in title unless expressly assumed. All unpaid assessments shall bear

interest from due date of the rate of ten (10%) per cent per annum and if the Association refers an unpaid assessment to an attorney for collection purposes, there shall be added the cost of collection to include court costs and a reasonable attorney's fee which when incurred shall likewise bear interest, and such interest and all costs of collection shall become part of the assessment. If an assessment is not paid when due, the Association may bring an action against the owner personally an action against the owner personally obligated to pay the same or to foreclose the lien against the lot or unit which shall be foreclosed as recorded vendor's lien.

i. Subordination. The lien of an assessment hereunder shall be subordinate to an express prior recorded lien which was valid and subsisting on the date such assessment became due.

8. General Provisions.

a. Duration. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until December 31, 1989, at which time said covenants shall automatically be extended for successive periods of ten years unless an instrument signed by the majority of the then owners of the lots has been recorded, agreeing to change such covenants in whole or in part.

b. Enforcement. If the owners of any lot or their 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 the Association or the Developer, or if the Association or Developer shall fail to do so after sixty (60) days' written notice from a person owning any lot encumbered by this Declaration, then for any such owner 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 obligation hereunder would result in irreparable damage to the Developer and other owners of lots in the subdivision; thus the breach of any provision 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. In the event enforcement actions are instituted and the enforcing party recovers, then in addition to the remedies specified above, court costs are reasonable attorneys' fees shall be assessed against the violator.

c. Severance. In the event any of the foregoing covenants, conditions, restrictions, reservations or charges is held invalid or unenforceable by a court of competent jurisdiction, it shall not effect 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.

d. Divestiture by Developer. Notwithstanding any other provisions of these covenants, the Developer shall cease to vote any lots which the Developer may still own, in the election of the Directors controlling the Association within three (3) years of the date of the first sale of any lot in the subdivision or when thirty (30%) percent of the lots are sold, whichever occurs first.