

Declaration of Covenants

(Please note that this document was reproduced for the purpose of readability. The original document is on file, Deed of Records, Travis County.)

On this 9th day of July, 1973, Onion Creek Development Company (a joint venture composed of Lumbermen's Investment Corporation and C & D Investments, a partnership of which James N. Demaret and James D. Connolly are the General Partners), herein collectively 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 Travis 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 has subdivided, the Land into lots according to the Plat thereof recorded in Book 65, page 5, Plat Records of Travis county, Texas, to which Plat and its record reference is made for all purposes. Developer plans to create a residential community by selling the lots for the construction of single-family residences, condominium units, townhouse-patio dwellings, planned unit developments, apartments and commercial and industrial buildings, pursuant to the Declaration of Restrictions of even date and this Declaration of Covenants.

3. Purpose

The purpose of these covenants is to provide a method and agency to develop and maintain such parks, open spaces and other common areas and facilities as may be owned or controlled by the Association and to furnish services to the residential community for its common safety, welfare, health, and recreation.

4. Association

Developer has organized Onion Creek Homeowners Association (herein called "Association"), a non-profit Texas corporation, which shall be the agency to own and improve any properties that may be conveyed to it for the common use of the community and its homeowners (herein called "Common Property"), to maintain any property dedicated to the public within the subdivision which is not being maintained by a public entity, and to provide the services enumerated herein, and in general to carry out these covenants.

5. Membership

The record owner of each lot to which this declaration applies shall be a member of the Association. The membership shall be appurtenant to and may not be separated from record 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 five classes of voting membership:

- (a) Class A Members shall be the owners of lots on which single-family residences are to be or have been constructed. Class A 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.
- (b) Class B Members shall be the owners of all or a part of a lot on which a townhouse-patio dwelling or condominium unit is to be or has been constructed. Class B members shall be entitled to one vote for each lot or unit owned. When more than one person owns a lot or unit, all are members of the Association and one vote for such lot or unit shall be cast as the owners determine among themselves.
- (c) Class C Members shall be the owners of commercial and/or industrial properties which have become subject to this Declaration of Covenants. Class C members shall be entitled to one vote for each building used for commercial or industrial purposes, up to 10,000 square feet under enclosed roof, and one additional vote for each additional 5,000 square feet or any part thereof, in the same structure under enclosed roof. When more than one person owns a building or structure, all owners shall be considered members of the Association and the votes allocable to the building or structures shall be cast as the owners determine among themselves.
- (d) Class D Members shall be the owners of a lot or portion thereof which has become subject to this Declaration of Covenants on which an apartment unit or units have actually been constructed and occupied. The Class D member shall be entitled to one whole vote for each four apartment units constructed and occupied at the time of such vote and no fractions of votes. When more than one person owns such units, all are members of the association and one vote for each four units shall be cast as the owners determine among themselves.
- (e) Class E Members shall be the developer. The Class E Member shall be entitled to four votes for each single-family lot owned and seven votes for each acre owned in Lot 2, Block B, Lot 1, Block E, Lot 19A and Lot 20, Block F, and any additional land which becomes subject hereto for the same purposes. If Developer shall subject additional adjacent (but not necessarily contiguous) property to the terms of this Declaration of Covenants but such land has not been subdivided or platted, Developer shall be entitled to four votes for each 15,000 square feet of such land so added.

7. Easements

- (a) Owners' Easements of Enjoyment. Every owner shall have a non-exclusive right and easement of enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:
 - (1) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Property;
 - (2) The right of the Association to suspend the voting rights and right to use the recreational facilities by an owner for any period during which any assessment against his lot or unit remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(3) The right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility for the purposes and subject to the conditions as may be agreed to by the members.

(b) Delegation of Use. Any owner may delegate, in accordance with the bylaws, his right of enjoyment to the Common Property and facilities to the members of his family, tenants, or contract purchasers who reside on the property.

8. 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 (i) annual assessments and (ii) capital 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 promote the recreation, health, safety and welfare of the lot and unit owners and, in particular, to improve and maintain common properties and facilities and to provide essential services, including without limitation improving and maintaining street lighting, streets, parks, parkways, esplanades, curbs, sidewalks, gates, walls and fences; collecting and disposing of garbage, ashes, rubbish and other refuse; paying the costs of operating the sewage treatment plant to which the subdivision is connected; caring for vacant lots; providing need security; cleaning of streets, and providing such services as are needed to maintain the subdivision as a first-class residential community; paying of legal and other expenses incurred in connection with the collection, enforcement, and administration of assessments; enforcing of all covenants and restrictions for the subdivision.

(c) Basic Annual Assessment. The total basic 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 classes of members. The total estimated cost shall be allocated among the membership classes as provided herein and shall be allocated to the property in each class as provided in (e) below. The amount thus estimated and allocated shall be the basic annual assessment. The estimated total costs shall be allocated among the different classes of membership based on the estimate of the Board of Directors as to the cost of providing the services to the property within each class and a determination by such Board as to the benefit conferred on the property in each class 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 the proper allocation. After the allocation is made by the Board of Directors, any aggrieved owner may with 30 days thereafter appeal such allocation to the District Court of Travis 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 annual 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 10% thereof at any time after July 1 of a year, without approval of the members.

- (d) Special Annual Assessment. A special annual assessment may be made for services in addition to those set forth under subparagraph (b) above which are provided solely to property of one particular class of members and not to all property of all classes of members. This assessment shall be made only if and when two-thirds of the members of a class have petitioned the Association to provide a particular service and have agreed to pay the resulting special annual assessment, and the Board of Directors has agreed to provide such service. When these conditions are met, the Board of Directors shall estimate the cost of providing such service for the coming year and allocate the costs among the members of the class as provided herein. In the event that the estimate 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 10% thereof at any time after July 1 of a year, without approval of the members. The special annual assessment shall be borne only by the members of the petitioning class of members.
- (e) 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 1973. Until 1975, the basic annual assessment shall not exceed \$150.00 for any owner. The basic annual assessment and any special annual assessment shall be divided among the owners of a particular class of members on the following basis:

(1) Class A

All single-family residence lots without completed, occupied improvements as of January 1 of a year shall bear a charge of \$3.00 per month and all single-family lots with completed improvements as of January 1 shall bear the balance of the assessment equally. When improvements are completed during a year the lot will bear a pro rata portion of the annual charge for an improved lot.

(2) Classes B and D

All land in this category without completed, occupied improvements as of January 1 of a year shall bear a charge of \$3.00 per month for each 10,000 square feet or fraction thereof of area; completed living units shall bear the balance of the assessment within the class on a per-unit basis equally. When improvements are completed during a year the lot or unit will bear a pro rata portion of the annual charge for an improved lot.

(3) Class C

All land in this category without completed, occupied improvements as of January 1 of a year shall bear a charge of \$3.00 per month for each 10,000 square feet of area; the balance of the assessment shall be borne by completed improvements as of January 1 of a year on the basis of square footage under air conditioning. When improvements are completed during a year the lot or unit will bear a pro rata portion of the annual charge for an improved lot.

The charge of \$3.00 per month for land without improvements may be increased or decreased by the Board of Directors of the association after January 1, 1975.

For the purposes hereof, lots owned by Developer shall be considered to be a part of the class to which it would otherwise belong and shall bear its appropriate charge as other land in the same category.

10. Exterior Maintenance

- (a) Obligation. Each owner of a lot or part thereof with an improvement thereon shall be responsible to keep the same in good repair and perform such maintenance as will not cause the improvements to detract from the appearance or value of the subdivision. If the Board of Directors of the Association considers that an owner is not in compliance with this provision, it may give him notice of such non-compliance. If such owner is not in compliance within thirty (30) days after such notice, the Association may provide exterior maintenance to the extent of paint, repair or replacing of roofs, gutters, downspouts, repair of exterior building surfaces, trees, shrubs, grass, walks and other exterior improvements.
- (b) Assessment. The cost of such exterior maintenance shall be assessed against the lot or living unit upon which such maintenance is done and shall be added to and become a part of the annual assessment applicable to such lot or living unit and shall be a lien and obligation of the owner and become due and payable in all respects as any other assessment.
- (c) Access. For the purpose of performing the exterior maintenance required or authorized by this article, the Association, through its duly authorized agents or employees, shall have the right after reasonable notice to the owner to enter upon any lot or exterior of any living unit at reasonable hours on any day except Sunday.

11. General Provisions

- (a) Additions. The Developer may bring within the scheme of this Declaration additional properties through the execution and filing of a supplementary Declaration of Covenants, which shall extend the scheme of the covenants and restrictions of this Declaration to such property. The supplementary Declaration may contain any modifications of the covenants which shall be applicable to the additional property.
- (b) 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, 1984, at which time said covenants shall be automatically extended for successive periods of ten years each 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.
- (c) 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 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 covenant. The failure of the owner or tenant to perform his obligation hereunder would result in irreparable damage to 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 and reasonable attorney's fees shall be assessed against the violator.
- (d) 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 affect the validity and enforceability of the other covenants, conditions, restrictions, reservations or charges. If one of the foregoing is subject to more than one interpretation, the interpretation which more clearly reflects the intent hereof shall be enforced.

- (f) Capital Assessments. In addition to annual assessments, the Association may levy a capital assessment for capital improvements to the Common Property, which are approved by the members of the Association.
- (g) Due Date. The annual assessments shall commence on the date fixed by the Board of Directors of the Association. The first annual assessment shall be for the balance of the calendar year and shall become due on the date fixed for commencement. After the first year, the assessment shall be made as of January 1 of a year on a calendar year basis and shall be paid monthly 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.
- (h) 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.
- (i) Non-payment of Assessment. 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 successors in title unless expressly assumed. All unpaid assessments shall bear interest from due date at the rate of 10% 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 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 obligated to pay the same or to foreclose the lien against the lot or unit which shall be foreclosed as a recorded vendor's lien.

- (j) 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.

9. Party Walls

- (a) General Rules. Each wall built as a part of the original construction placed on a dividing line between living units in connection with the construction of townhouse-patio dwellings or condominium units shall constitute a party wall and, to the extent not inconsistent herewith, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts shall apply thereto.
- (b) Repair. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.
- (c) Destruction. If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if other owners thereafter make use of the wall, they shall contribute to the cost of restoration in proportion to such use, without prejudice to the right of an owner to call for a larger contribution under rules of law regarding liability for negligent or willful acts or omissions.
- (d) Weather-Proofing. Notwithstanding any other provision of this section, an owner, who by his negligence or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing necessary protection against such elements.