

RESTRICTIVE COVENANTS FOR PENSON POINT

029599

STATE OF TEXAS

I

KNOW ALL MEN BY THESE PRESENTS:

COUNTIES OF RAINS AND WOOD

I

THAT J. PAUL GOLDSMITH and wife, NETA RAE GOLDSMITH (who will be collectively referred to as "DEVELOPERS"), do hereby impose the following covenants, restrictions, conditions, easements, charges and liens upon the real property more particularly described as PENSON POINT SUBDIVISION, a suburban addition located in Wood and Rains Counties Texas more particularly set out and described on the plat of said subdivision recorded in Volume 9 Page 73 Plat Records of Wood County Texas and Volume      Page      Plat Records of Rains County Texas, which restrictions shall be covenants to run with the land and shall be binding on all parties now or hereafter owning or using Lots in PENSON POINT SUBDIVISION, and DEVELOPERS further specify and provide that any person or persons now or hereafter owning any real property situated in said subdivision may enforce these restrictions, at law or in equity, against any person or persons violating or attempting to violate any such covenant or restriction, to-wit:

1. Residential and Business Use. No Lot in PENSON POINT SUBDIVISION shall be used except for single family residential purposes and no building shall be designed for, or erected, placed, occupied, altered, or permitted to remain on any Lot or portion thereof other than a single family residence and attached or separate garage, except those business Lots identified below.

Lots C1 and C2 are hereby specifically reserved for commercial or business use, but not for any manufacturing use and the uses of such business lots shall be confined to those defined as a C-1 Local Commercial in the zoning ordinance of the City of Tyler, Smith County, Texas, as of the date of this instrument. Any business buildings constructed on Lots C1 or C2 shall not be subject to architectural approval by the Architectural Control Committee (created hereinafter) nor shall they be subject to the set-back distances set out hereinafter; however, any such building shall be subject to the building specifications contained herein, relative to manner, time, and composition of construction.

2. Temporary Residences. No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently, and no old, used,

or prefabricated structure of any kind, and no part of an old, used, or prefabricated structure shall be moved onto, placed on, or permitted to remain on any lot. Only a pier and/or boathouse may be constructed on any lot prior to the main residence building. The owner of any Lot on which a residence has been constructed may park one travel trailer, camper, or recreational vehicle on said Lot, provided it is maintained in a neat and inconspicuous manner and further provided that in no case shall the travel trailer, camper, or recreational vehicle be occupied or used as a temporary or permanent residence while parked on said Lot.

3. Architectural Control. No building, fence, wall or other structure shall be erected, placed, or altered on any Lot in PENSON POINT SUBDIVISION, until copies of preliminary sketches, location sketch and cost estimates, and thereafter, when available, copies of final plans, sketch of location on the Lot, and cost estimates have been presented to and approved by the Architectural Control Committee (as such is provided for hereinafter), as to quality of materials and workmanship, as to harmony of exterior design and materials (including color) with existing and proposed structures, as to size and location on Lot, as to topographical location on Lot, as to adequacy of storage space for yard tools, boats and related equipment, yard furniture, and all vehicles, and in general as to all matters of composition, style, and construction which in any way effect the general esthetic continuity of PENSON POINT SUBDIVISION. The approval or disapproval of the Architectural Control Committee as herein required shall be in writing. In the event such Committee fails to approve or disapprove the submitted plans, sketches and estimates within 15 business days after their actual receipt by the Committee, and if no written disapproval has been transmitted to the owner and if no suit to enjoin the erection and construction has been filed, it shall be deemed that the submitted plans, sketches and estimates and other data herein required have been approved by such Committee.

4. Architectural Control Committee. An Architectural Control Committee is hereby created and endowed with the powers conferred upon it by the various provisions of this instrument. The committee members of said Committee are J. PAUL GOLDSMITH, NETA RAE GOLDSMITH and GENE GOLDSMITH. The Committee may act on any matter presented to it by the approval of any two of such members, and the Committee may designate a representative to act for it and on its behalf. In the event of the death or resignation of any member or members of the Committee, the remaining members or member shall have the authority to designate his successor(s). The members shall serve without compensation. The Architectural Control Committee may, at its option, transfer the authority and powers conferred upon it by this instrument to a non-profit corporation

controlled by the Lot owners of PENSON POINT SUBDIVISION. It is expressly contemplated that within 12 months following the execution and recording of this instrument a non-profit civic association will be incorporated to be governed by the Lot owners in this Subdivision and that the power of election of the Architectural Control Committee shall be assigned to said civic association as well as the powers of collection, control and disbursement of the maintenance charge fund which is provided for hereinafter.

5. Building Lines. No building, except business buildings on Lots provided for that purpose, shall be located on any Lot nearer than thirty feet (30') from the front of said Lot, or ten feet (10') from the side of any interior or back line of any such Lot, without the prior written approval of the Architectural Control Committee. Likewise, any residence shall be constructed to face or front on PENSON OAKS DRIVE unless prior written approval is obtained from the Architectural Control Committee. Business buildings are exempt from this frontage rule. For the purposes of this paragraph all Lots shall be deemed to front on PENSON OAKS DRIVE, and eaves, steps, and open porches shall be considered as a part of any building.

6. New Materials. All construction must be of new material, except stone, brick or other materials may be used for antique decorative effect if prior written approval of such use is obtained from the Architectural Control Committee.

7. Cement Slab Construction. All buildings must be constructed on concrete slab foundation.

8. Construction Materials. All building exteriors must be composed of at least 60% brick, brick veneer, or stone except that on split-level and multi-level construction the requirement may be negated by prior written approval of the Architectural Control Committee should the plans and specifications so indicate the desirability of so doing.

9. Minimum Building Areas. No building shall be erected on any Lot in PENSON POINT SUBDIVISION having a living area (exclusive of porches, stoops, carports, patios, and garages) of less than the following:

- A. On Lots 1-17: 1250 square feet,
- B. On Lots 18-44: 1500 square feet, and
- C. No square footage restriction on Lots C1 and C2.

10. Completion Time. Any house, structure, or improvement, commenced on any Lot in PENSON POINT SUBDIVISION shall be completed according to approved plans and specifications within six (6) months after the beginning of such construction, or

within such additional times as may be approved in writing by the Architectural Control Committee and no partially completed house, structure or improvement of any type shall be permitted to remain on said property beyond said period of time. No structure or any part of the property shall be occupied or used as a residence, temporarily or permanently, until the exterior thereof is completely finished and all plumbing connected as required hereinafter.

11. Sanitary Facilities. No outside toilet or privy of any nature shall be installed or maintained on any Lot in PENSON POINT SUBDIVISION and all plumbing shall be connected with a septic tank and adequate drain field, constructed and installed in accordance with the then existing health regulations of the State and County and of any other governmental authority having jurisdiction. Such installations shall be constructed and maintained by the owner of the Lot upon which same is situated so that no effluent from the same shall ever drain or flow upon the ground surface or drain in such manner above or below the surface that it will cause any degree of pollution of this Subdivision.

12. Fences. No fence or wall shall be constructed on any Lot in PENSON POINT SUBDIVISION nearer to PENSON OAKS DRIVE than is permitted for the house or building on said Lot, except that Lots C1 and C2 are exempt from this requirement.

13. Full Lot Required. No structure or improvement of any type shall be erected, placed upon, or maintained on any building area less than one full Lot as designated on the recorded plat of PENSON POINT SUBDIVISION.

14. Gas and Liquid Storage. All tanks for storage of gases or liquids or fuel or otherwise shall be buried beneath the surface of the ground, or placed in a location and/or enclosure acceptable to the Architectural Control Committee.

15. Waste Materials. All Lots shall be kept clean and free of trash, rubbish, garbage, debris or other unsightly objects and materials at all times. All trash, garbage and other waste shall be disposed of in a sanitary manner and all containers or other equipment for the storage of garbage and trash shall be kept covered, and in a clean, sanitary condition inside garages, behind decorative fencing or in some other manner hidden from view from the street. To facilitate garbage removal, refuse may be placed on the front of any Lot, in clean, covered, sanitary containers, on the designated day of trash removal specified by the entity providing sanitary disposal for said Lot, and such containers shall be removed to their permanent storage site on the day of said pick-up.

16. Right of Way Restriction. No Lot or part of a Lot shall be used for a street, access road or public thoroughfare without the prior written consent of the

## Architectural Control Committee.

17. Garage Storage. Any garage used for storage will be kept closed at all times except when in immediate use for ingress and egress.
18. Unused Vehicles. No unused automobile or vehicle of any kind, except as provided in Paragraph 2, shall be stored or parked on any Lot except in a closed garage, or on any residential street. "Unused Vehicle" is defined as any vehicle which has not been operated for a period of one week or longer.
19. Animals. No animal, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats, and other household pets may be kept, provided that they are not kept, bred, or maintained for commercial purpose, or kept in such numbers as to be a nuisance to area property owners.
20. Nuisances. No noxious, offensive, or unlawful activity shall be carried on upon any Lot in PENSON POINT SUBDIVISION, nor shall anything be done thereon which shall become an annoyance or nuisance to any part of this Subdivision.
21. Easements. All common or community utilities, water lines, and drainage facilities shall be located within the streets or easements as herein provided for and the Architectural Control Committee or its designee shall have the sole right of determining the specific location and manner of installation of the various utilities within PENSON POINT SUBDIVISION. All utility connections including but not limited to telephone and electric power service shall be underground and no owner of any Lot shall erect any poles on any Lot for aerial erection of power or telephone lines. There is hereby expressly reserved and created by DEVELOPERS an easement fifteen feet (15') in width across the front of each of Lots 1-44, as shown on the recorded plat of PENSON POINT SUBDIVISION, for the use of installing utilities including pipelines and related equipment for the common accommodation of the owners of the Lots in PENSON POINT SUBDIVISION and for the development of the Subdivision and adjacent areas. There is a like easement fifteen feet (15') in width reserved for the same purposes along the side of each of Lots C1 and C2 which abuts PENSON OAKS DRIVE. Further, there is a like easement five feet (5') in width reserved for the same purposes along the sides of each of Lots 1-44 (not Lots C1 and C2). It is expressly understood that by acceptance of a deed to any one or more Lots within PENSON POINT SUBDIVISION the owner thereof covenants and agrees to keep and maintain in a neat and clean condition any easement which may traverse a portion of the lot conveyed by deed, including the keeping of weeds and grass mowed within such area.
22. Drainage. There is hereby expressly reserved and created by DEVELOPERS two (2) drainage easements each twenty feet (20') in width, as same are shown on the recorded plat of PENSON POINT SUBDIVISION, for the purpose of allowing

discharge of natural water run-off. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may change the direction of flow of drainage in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot shall be maintained continuously by the owner of the Lot.

No Lot owner shall install any bridge or culvert in any drainage ditch in PENSON POINT SUBDIVISION without prior written approval of the Architectural Control Committee, as to the adequacy and design of said bridge or culvert.

23. Common Use Areas. There are hereby reserved and created by DEVELOPERS, subject to the terms and conditions set out below, three (3) Common Use Areas, as same are shown on the recorded plat of PENSON POINT SUBDIVISION, for the common use and enjoyment of the parties identified in the following terms and conditions:

A. The Common Area located within the interior of the cul-de-sac on PENSON OAKS DRIVE is for the common use of all persons owning a Lot or Lots within PENSON POINT SUBDIVISION, and their guests, except that said common use rights shall not extend to the owner(s) of Lots C1 and/or C2;

B. The Common Use Area upon which the proposed boat ramp is located is for the common use of all persons owning a Lot or Lots within PENSON POINT SUBDIVISION, and their accompanied guests, except that said common use rights shall not extend to the owner(s) of Lots C1 and/or C2. This area is limited to use for egress and ingress to the boat ramp and parking (while boat is in the water) subject to availability. The term "accompanied guest" indicates that the Lot owner must be present and accompany the guest while using the ramp, and

C. The Common Use Area which abuts the one foot (1') reserved buffer along the back line of Lots 19-23A (reserved hereinafter) is for the common use of the owner or owners of Lots 19-23A only.

There is hereby reserved and created by DEVELOPERS, a right of way easement across Lot 18, as same is shown on the recorded plat of PENSON POINT SUBDIVISION, for the purpose of egress and ingress to the proposed boat ramp, by the parties entitled to use same.

24. Private Roads. All roads within PENSON POINT SUBDIVISION are private roads for the use of the owners of Lots in said Subdivision, their guests, and other parties specified herein to have such rights, and there is expressly no public dedication of any road, easement, common use area, or any other area within said Subdivision.

25. Reservations By DEVELOPERS. There are hereby expressly reserved unto DEVELOPERS, their heirs, successors, and assigns, the following lands:

A. Fee title to a buffer strip of land, as same is shown on the recorded plat of PENSON POINT SUBDIVISION running from the southwest corner of Lot 44 eastward to the MATCH MARK on sheet 2 of said plat, and

B. Fee title to a buffer strip of land, as same is shown on the recorded plat of PENSON POINT SUBDIVISION running along the back edge of Lots 23A, 23, 22, 21, 20, 19, and the indicated portion of 18.

DEVELOPERS own, and are retaining for their personal use, a tract of land contiguous to PENSON POINT SUBDIVISION, a part of which is the strip of land (road) between Lots 16 and 17 of said Subdivision. DEVELOPERS hereby reserve the common use of the fifteen foot (15') utility easement running from FARM ROAD NO. 515 along the eastern right-of-way of PENSON OAKS DRIVE to the southwest corner of Lot 17, then along the southern and eastern lines of Lot 17, to the land retained by DEVELOPERS, as same is shown on the recorded plat of PENSON POINT SUBDIVISION. DEVELOPERS also reserve the common use of the right-of-way for PENSON OAKS DRIVE to allow egress and ingress to their retained land, for themselves, their heirs, successors and assigns, as well as their guests, invitees, and licensees.

DEVELOPERS hereby reserve all mineral rights which they own in, on, or under any lands in PENSON POINT SUBDIVISION, including but not limited to oil, gas, coal, uranium, gravel, etc...

26. Additional Areas. The above identified lands comprising PENSON POINT SUBDIVISION, are further restricted to admit, annex, or incorporate into said Subdivision and utilize its name and the general and common benefits arising from these restrictions and covenants only those lands which may be designated by DEVELOPERS, or their heirs or assigns. All such annexed land shall be subject to equal restrictions to those contained in this instrument, wherever applicable, which will promulgate the general and common plan for the orderly development of the Subdivision as a whole, including any annexed lands.

27. No Mining Operations. There shall be no mining operations within PENSON POINT SUBDIVISION. This mining prohibition includes but is not limited to operations to mine oil, gas, coal, sulphur, uranium, or gravel.

28. Consolidation of Lots. In the event that any person or persons acquire ownership of two (2) or more contiguous Lots within PENSON POINT SUBDIVISION, and are desirous of erecting a single family dwelling encompassing two (2) or more of such contiguous Lots, then and in that event, upon submission and approval of the plans and specifications by the Architectural Control Committee, the five foot (5') utility easement along the Lot sides (paragraph 21) and the side set-back requirements (paragraph 5) shall be ameliorated to the extent that no Lot line interior to such "Consolidated Lot" shall retain the burdens of same. Likewise, a Lot or Lots so consolidated shall be treated as one Lot for purposes of the maintenance fee specified hereinafter as well as for all voting purposes embraced herein. It is expressly provided that to qualify hereunder as a "Consolidated Lot" the group of contiguous Lots must be permanently limited to one residence.

29. Signs. No sign of any kind shall be kept or displayed to the public view (except by DEVELOPERS or their assigns) other than name and street number signs; provided, however, that this covenant shall not apply to those Lots reserved for business use, and provided, further, that the Architectural Control Committee or its assigns may grant permission in writing to Lot owners for the displaying of approved signs offering such Lot for sale. The Architectural Control Committee or its assigns can remove any sign violating this provision without consent of the landowner and without any liability for such action.

30. Annual Maintenance Charges and Assessments. Each Lot in PENSON POINT SUBDIVISION shall be subject to an advance annual maintenance charge of one hundred dollars (\$100.00) per Lot, to be paid between the 1st and 10th of January of the year for which said maintenance charge is due. The maintenance charge shall be secured by a lien upon said Lots and is to be paid annually to the Architectural Control Committee or its successors or assigns at the First National Bank of Quitman, Texas, as Trustee and depository of such funds. The party or parties who hold record title to any Lot or Lots as of January 1 of any calendar year, shall be the party(s) responsible for payment of the charge for said calendar year. Such funds shall be used for the maintenance and upkeep of the streets and common use areas in said Subdivision and for such other purposes as may be deemed necessary or desirable by the Architectural Control Committee or its successors or assigns to maintain or improve the Subdivision in the manner which it considers to be of the greatest general benefit to the owners and occupants of this Subdivision. Said maintenance charge shall continue for the duration of these restrictions.

It is specifically provided that no annual maintenance charge shall be due or payable prior to January 1, 1987.

The Architectural Control Committee shall have a power of assessment for the purpose of meeting any extraordinary maintenance expense (in excess of the total of the maintenance charge fund) or for improvements to the common use areas or for any other reason which will promote the recreation, health, safety and welfare of the residents of the Subdivision. However, such assessment shall require affirmative vote of seventy percent (70%) of the then record Lot owners in PENSON POINT SUBDIVISION, at a meeting to be called by the Architectural Control Committee with a minimum of fifteen (15) days written notice. Said assessment shall be secured by a lien against the Lot against which it is assessed.

It is specifically provided that the lien securing any assessment or maintenance charge provided for herein, shall be subordinate to the lien of any



mortgage and any renewals and extensions thereof, if all assessments or charges applicable to the premises covered by such mortgage, and all payments thereon, are current at the time of execution of such mortgage.

It is further provided that all unimproved Lots owned by DEVELOPERS shall be free of any annual maintenance fee charge until such time as any particular Lot is sold by DEVELOPERS for individual use. Sale at one time of all or substantially all of the developed Lots owned by DEVELOPERS within the Subdivision shall not constitute a sale to the individual user so as to commence the application of the provision for the annual maintenance charge with respect to such Lots. Any sale by DEVELOPERS to a person, firm or corporation engaged primarily in the residential construction business shall not constitute a sale for individual use until such time as such Lot is again sold for individual use or actually occupied as a residence.

It is further provided that DEVELOPERS shall be responsible for the upkeep and maintenance of all roads and common use areas within PENSON POINT SUBDIVISION for a period of one (1) year from the date this instrument is executed and recorded. Any improvements to the Subdivision within said period shall not be the responsibility of DEVELOPERS and shall require an assessment as hereinabove provided.

31. Exterior Maintenance. In the event that the owner of any Lot shall allow same to become unkept and uncared for, or the buildings thereon to become unsightly or in a state of disrepair, exterior maintenance upon such Lot and structure thereon in the nature of mowing, trimming trees, shrubs, hedges and lawns, and painting and repairing structures may be performed by the Architectural Control Committee (or its designee). In the event such becomes necessary, the Committee shall give to any owner of such Lot notice in writing of the need for such maintenance, and of the intention of the Committee to perform such maintenance should owner fail to perform it within fifteen (15) days of the receipt of such notice. The cost of such exterior maintenance so performed by the Committee shall be assessed against the Lot on which such maintenance is done and shall become a lien thereon upon the filing of a statement of facts by the Committee in the Deed Records of the county in which the land is located asserting a lien under this provision.

32. Modifications. These covenants are to run with the land and shall be binding on all parties claiming under them and shall not be altered, changed, amended, or revoked in whole or in part, except, however, they may be changed, altered, amended or revoked in whole or in part by petition of the record owners of at least eighty percent (80%) of the residential Lots.

33. Savings Clause & Waiver. Invalidation of any of these covenants by

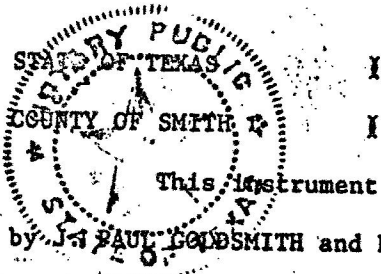
Judgement or Court Order shall in no wise effect the validity of any other of these covenants. Further, failure to enforce these restrictions against any violation hereof shall in no way be deemed a waiver of the right to enforce the other provisions hereof or be deemed a waiver of the right to enforce identical subsequent violations.

34. Liability. Neither DEVELOPERS, nor the Architectural Control Committee, nor the members of said Committee, shall have any liability or responsibility at law or in equity on account of the enforcement of, or on account of the failure to enforce these restrictions.

EXECUTED this 20<sup>th</sup> day of MAY A.D. 1986.

J. Paul Goldsmith  
J. PAUL GOLDSMITH

Neta Rae Goldsmith  
NETA RAE GOLDSMITH



This instrument was acknowledged before me on May 20, 1986 by J. PAUL GOLDSMITH and NETA RAE GOLDSMITH as husband and wife.

My Commission Expires: 2-18-89.

Kathleen McOher  
NOTARY PUBLIC IN AND FOR THE  
STATE OF T E X A S

Kathleen McOher (PRINT)

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FILED FOR RECORD THE 5TH DAY OF JUNE A.D. 1986 AT 11:48 O'CLOCK AM M.  
RECORDED THE 16th DAY OF JUNE A.D. 1986 AT 2:15 O'CLOCK PM M.  
BY Martha Kelly MARTHA R. BRIDGES, COUNTY CLERK WOOD COUNTY, TEXAS  
DEPUTY