

84449

SUBDIVISION RESTRICTIONS
BRUSHY CREEK RANCH SUBDIVISION

UNIT 2

THE STATE OF TEXAS
 COUNTY OF BANDERA

KNOW ALL MEN BY THESE PRESENTS:

Brushy Creek Joint Venture (hereinafter referred to, together with its successors, assigns, and/or designees, as "Developer") is the owner of Brushy Creek Ranch Subdivision, Unit 2, as shown by the plat thereof duly recorded in Volume 6, Page 213, of the Plat Records of Bandera County, Texas. Developer hereby acknowledges, declares and adopts the following restrictions and covenants, which are hereby impressed on all of said property, and which shall run with the land.

1. Use. All tracts are restricted to use for single family residential purposes only, and no building shall be erected or maintained thereon other than a private residence, a tool storage building or workshop, and a private garage or barn, for the sole, non-commercial use of the purchaser of the tract. No garage, barn or storage building shall at any time be used as a dwelling, temporarily or permanently. This restriction is subject to the following:

1.1. Camping shall be permitted on all tracts for no more than 14 days out of any 30 day period.

1.2. Developer may, on any tract and/or tracts then owned by Developer, construct, maintain, use and allow to be used by others, parks, fishing piers, playgrounds, community center buildings, sales offices, water wells and related pumping, storage, operation and maintenance facilities, and the like, and numbered paragraphs 2, 3 and 4 hereof shall not apply thereto.

2. Architectural Control Committee. There may be established an Architectural Control Committee (hereinafter referred to as the "Committee") composed of three (3) members. The Committee shall be appointed by the Developer, but the Developer shall perform all functions of the Committee until such time as a Committee is appointed. The persons appointed must be the same persons appointed to the Architectural Control Committee for Brushy Creek Ranch Subdivision, Unit 1, but may be land owners in any Unit of Brushy Creek Ranch Subdivision. Any responsibility the Developer may have to perform the functions of

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the Committee, and to appoint members of the Committee, shall cease when at least two-thirds of the tracts in Brushy Creek Ranch Subdivision have been sold *and* the Developer files a declaration of such fact in the Official Public Records of Real Property of Bandera County, Texas, stating that the Developer shall no longer act and setting forth the names and last known addresses of the members of the Committee, if any. If no Committee exists, that fact shall be stated. The filing of such a declaration shall neither dissolve the Committee, if one exists, nor abrogate its powers. After the filing of the Declaration, the Committee, if such shall be in existence, shall have the power to appoint new members to fill vacancies on the Committee unless a "property owners association" in which all property owners in Brushy Creek Ranch Subdivision, regardless of the Unit, are members is incorporated, in which case such association shall have the power to appoint members of the Committee.

3. Construction. Subject to the provisions of paragraphs 1.1 and 1.2 hereof:

3.1. Each residence shall contain a minimum floor area of 1,000 square feet exclusive of porches, stoops, carports, patios and garages.

3.2. Manufactured homes will be permitted provided that each such home is a double-wide with a minimum width of 24 feet, was manufactured no more than five (5) years prior to the date it is placed on the property, is completely underpinned with rock or concrete plaster in a neat and workmanlike manner within thirty (30) days from the time the home is placed on the tract, and conforms to all other requirements set forth herein. Manufactured housing which does not meet the above requirements shall be permitted as a temporary dwelling for tract owners during construction of a house on the same tract (or on an adjacent tract, if under the same ownership), provided that:

3.2.1. the temporary dwelling is not visible from any subdivision road;

3.2.2. the temporary dwelling does not remain on the property for more than one year; and

3.2.3. the tract owner is in compliance with all other restrictions set forth herein.

3.3. No tar paper type roof or siding materials will be used on any structure.

3.4. The exterior of all buildings must be painted or stained, except where the exterior is of rock or brick.

3.5. All buildings and structures shall be completely underskirted with no piers or pilings exposed to view.

3.6. No natural drainage shall be altered, nor shall any drainage ditch, culvert, or drainage structure of any kind be installed or altered, nor shall any curb or other such impediment to the free flow of water be installed or altered, without prior written consent of the Developer or the Committee.

3.7. No building exceeding two (2) stories in height shall be erected or placed on any tract.

4. **Approval of Plans.** No building, fence or other structure or improvement shall be erected, placed or altered on any tract until two (2) copies of the construction plans and specifications including, without limitation, specification of all exterior and roofing materials, including color of paint or stain, and a plan showing the proposed location of the structure in relation to streets, roads and tract boundary lines have been submitted to and approved in writing by the Committee. If such construction, placement or alteration is not commenced within twelve (12) months of such approval, the approval shall be null and void unless an extension is granted in writing. In determining whether or not to approve the plans and specifications for construction, the Committee shall take into account whether or not the plans and specifications conform to the requirements of these restrictions and shall impose such requirements as are reasonable and necessary to: protect the owners of tracts in the Brushy Creek Ranch Subdivision against such improper use of the land as will decrease the value of property in the subdivision; preserve, so far as is practical, the natural beauty of the property; guard against the erection thereon of poorly designed or proportioned structures and structures built of improper or unsuitable materials; obtain harmonious architectural schemes; insure the highest and best development of the property; encourage and secure the erection of attractive homes upon the property, with appropriate locations thereof on the tracts; secure and maintain property setbacks from streets and adequate free spaces between structures; regulate, and/or participate in regulation of, use of park areas; and, in general, provide adequately for a high quality of improvements on said property and thereby enhance the value of investments made by purchasers of tracts therein.

5. **Setback Requirements.** No building or structure other than a fence shall be located nearer to the side street line than fifty (50) feet or nearer to the side tract line or rear tract line than fifty (50) feet. No building or structure other than a fence shall be located nearer to the front tract line than one hundred (100) feet. "Side tract line" and "rear tract line", as used in this paragraph, in respect to any two or more contiguous whole and/or fractional tracts owned by (and/or under contract to be conveyed by the undersigned to) the same owner and used as a single building site, shall mean the two outermost side tract boundaries and the rear boundary farthest from the front boundary considering said contiguous whole and/or fractional tracts as one tract.

6. **Livestock.** No livestock shall be permitted other than one (1) head per acre. All livestock and dogs must be kept in a fenced area on the owner's property, and all dogs must be vaccinated against rabies once per year. No swine may be kept on any tract. No poultry may be kept except for personal use of the owner.

7. **Easements.** Easements are reserved on all tracts along and within ten (10) feet of all road rights-of-way and all boundary lines of tracts. These easements are to allow utilities and their employees to install and maintain equipment

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necessary to furnish residents of Brushy Creek Ranch Subdivision with electricity, telephone and drainage, and should they become available, water, cable television, gas, sanitary sewers and any other utilities. Employees of these utilities will also be allowed to trim any vegetation within these easements which interferes or may interfere with any operation or maintenance of their lines.

8. Sewage. No outside toilet or privy shall be erected or maintained on any tract. The materials installed in, and the means and methods of assembly of, all sanitary plumbing shall conform to the requirements of the Health Department of the State of Texas and the local authorities having jurisdiction. A septic tank system or other private sewage facility may be constructed only if it complies with the requirements of the Health Department of the State of Texas and is inspected and approved by the Bandera County inspector.

9. Property Appearance. Any building, structure, or improvement commenced upon any tract shall be completed as to exterior finish and appearance within six (6) months from the commencement date. No tract or portion of any tract shall be used as a dumping ground for rubbish or trash, nor for storage of items or materials (except during construction of a building), and all tracts shall be kept clean and free of any boxes, rubbish, trash or other debris. No refrigerators or other large appliances shall be placed outdoors, and no inoperative motor vehicle or vehicle without current license and inspection sticker shall be placed on or allowed to remain on any tract. Developer shall have the right, but not the requirement, to enter the property where a violation exists under this paragraph and remove the incomplete structure or other items and/or clean the tract at the expense of the offending party. This cost and expense plus interest at the maximum lawful rate shall be secured by a lien on the tract so involved upon Developer recording with the County Clerk of Bandera County, Texas, Developer's certificate to such effect and certifying the amount of such cost and expense. Said lien shall be junior and subordinate to any lien securing purchase money or improvement loans on said tract.

10. Assessments. Subject to the remaining provisions of this paragraph, an assessment is hereby made of \$9.50 per month on each tract in Brushy Creek Ranch Subdivision, Unit Two. Such assessment may be used for the construction, reconstruction, improvement, and maintenance of roads and streets, parks, gates and other improvements in Brushy Creek Ranch Subdivision, and for the enforcement of these subdivision restrictions. Said assessment shall accrue from the date of closing of the sale of a tract from Developer.

10.1 Lien Securing Assessment. Such assessment shall be and is hereby secured by a lien on each tract hereunder and shall be payable to Brushy Creek Ranch Owners Association, a Texas non-profit corporation (hereinafter referred to as the "Association"), its successors and assigns, the owner of said assessment funds, on September 30 of each year commencing in 1993, at which date in the year 1993 and in successive years said assessment lien shall conclusively be deemed to have attached. There shall

be no lien securing said assessment until September 30 of each year. Said assessment lien shall be junior and subordinate to any lien which may be placed on any tract or any portion thereof to secure any loan for financing improvements on said tract, and/or any purchase money loan for any tract. No assessment shall be made against Developer for unsold tracts owned by it at any time, whether or not such tracts have been previously sold and the contract canceled or otherwise terminated.

10.2 Payment of Assessment. Property Owners may pay by monthly check due the first day of each month, or by one check covering the entire following year, due September 30. Buyers who are paying monthly on a mortgage held by Developer may pay in conjunction with, and on the same day each month as, their monthly mortgage payments (one check covering both amounts is acceptable). Developer will remit all such sums received by it to the Association.

10.3 Changes in Assessment. At any time and from time to time, the Association may, by majority vote of its entire Board of Directors plus a majority of votes cast at a meeting of the members of the Association duly convened, increase or decrease such assessment, provided that prior written notice of the meeting is mailed to each Association member at the most recent address shown for such member on the records of the Association, stating either the exact amount or the maximum amount of the increase to be voted on at the meeting. However, until such time as Developer has transferred title to at least 50% of the tracts in all units of Brushy Creek Ranch Subdivision, including all future units as mentioned in Paragraph 21 hereof, or sooner if Developer so notifies the Association, Developer shall have sole responsibility for the setting, collecting, managing and disbursing of these funds.

11. Common Areas. The "Common Areas" shall include all real property and improvements thereon, including roads, designated as such on the original plat and/or any other or subsequent plat filed of record, including all property acquired or owned by, or under the control and jurisdiction of, the Association for the common use and enjoyment of its members.

The Common Areas shall be maintained and governed by the Association in a manner consistent with the purposes of the Association as set forth in its bylaws and in conformity with the terms and provisions hereof. Subject to the provisions hereof, every member and every tenant of a member who resides on a tract, and each individual who resides with or is a guest of either of them on such tract shall have a right and easement of use and enjoyment in and to the Common Areas and such easement shall be appurtenant to and shall pass with title to each tract; provided, however, that such easements shall not give any such person the right to make alterations, additions or improvements to the Common Areas. The rights and easements created hereby shall be subject to the following:

11.1 The right of the Board of Directors of the Association to prescribe regulations governing the use, operation and maintenance of the Common Areas, including limiting the number of guests per member, and to make reasonable assessments for the control, maintenance and upkeep of the Common Areas within limits established under its bylaws.

11.2 The right of the Association, as provided for in its bylaws, to suspend voting rights for any period during which an assessment against a tract remains unpaid, and for a period not to exceed sixty (60) days for an infraction of its rules and regulations. Each member shall be liable to the Association for any damage to the Common Areas caused by the negligence or willful misconduct of a member of his or her family, a guest, lessee or invitee, to the extent that such damage is not covered by insurance. Members and their family members, guests, lessees and invitees shall use the Common Areas according to established rules and regulations and at their own risk.

11.3 The right of the Association to dedicate or transfer all or any part of the Common Areas to any agency, authority or utility for such purposes and upon such conditions as the Board of Directors of the Association may determine, subject to the affirmative vote of two thirds (2/3) of the members present or represented by proxy at a meeting at which a quorum is present and which has been duly called and held for that purpose.

12. **Firearms and Hunting.** No hunting or discharging of firearms shall be permitted on any tract or any part of Brushy Creek Ranch Subdivision, Unit 2.

13. **Subdividing of Tracts.** No tract may be subdivided without the consent of the Developer, which consent may be granted or withheld at the sole discretion of the Developer. No tract or any part of a tract shall be used for a street, access road or public thoroughfare without the prior written consent of the Developer.

14. **Mineral Development.** No mineral development of any kind shall be permitted on any tract. This includes, but is not limited to, oil or gas drilling, refining or storage, quarrying or mining in any form. No oil wells or tanks, no tunnels, shafts or other excavations shall be permitted. No derrick or other structure designed for use in boring for any mineral shall be erected or maintained on any tract, nor shall any exploratory work be conducted on, above, or below any tract.

15. **Renting.** The renting of any residence shall be limited to single family residential use only, and the renters shall be entitled to all benefits and governed by all obligations of ownership as set forth herein.

16. **Parking.** Parking of any car, boat, trailer, or other vehicle shall at no time be permitted within the right-of-way of any subdivision road. Each tract owner shall provide adequate parking within his tract for his vehicles and well as those of his family and guests.

17. Signs. No sign shall be erected or maintained upon any tract, except for one "For Sale" sign not to exceed five (5) square feet in size, or such signs as Developer may erect in connection with developing and marketing the property.

18. Nuisances. No unlawful, noxious or offensive activities shall be conducted on any tract, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

19. Future Development. Additional units may be created and annexed to the Subdivision. These additional units may comprise any and all portions of that certain 396.965 acre tract of land conveyed by Deed from Thomas C. Musgrave III, et al, to Kelly M. Ranson, Trustee, recorded in Volume 275, Pages 939-945 of the Deed Records of Bandera County, Texas.

20. Amendments and Variances. These restrictions may be amended or changed, in whole or in part, at any time, by a vote of two-thirds of the total tract owners. Any change or amendment shall be set forth in a document bearing the signatures of the requisite number of tract owners, and such document shall be recorded in the Deed Records of Bandera County, Texas.

21. Enforcement. Subject to the provisions of the last sentence of this paragraph, if any person or entity, as defined hereinafter, whether or not lawfully in possession of any real property hereunder, shall either violate or attempt to violate any restriction or provision herein or suffer to be violated (with respect to the real property in which such person or entity has rights other than the rights granted by this sentence) any restriction or provision herein, it shall be lawful for Bandera County, and/or any person or entity, as defined hereinafter, possessing rights with respect to any real property hereunder, to prosecute any proceeding at law or in equity against any such person or entity violating, attempting to violate and/or suffering to be violated any restriction or provision herein to prevent such violation, recover damages or other dues for such violation, and recover court costs and reasonable attorney's fees incurred in such proceedings. "Person or entity", as used in this paragraph shall include, but shall not be limited to, all owners and purchasers of any real property hereunder, as well as all heirs, devisees, assignees, legal representatives and other persons or entities who acquire any of the rights (with respect to the real property hereunder) of the owner or purchaser of any real property hereunder. Notwithstanding any other provisions hereof, Developer shall neither be liable nor be subject to any proceeding at law or in equity on account of any violation or attempted violation of any restriction or provision herein which occurs during such time as there is in force a contract to purchase the property where such violation or attempted violation takes place. Neither Developer, nor the Committee, nor the members of the Committee, shall have any liability or responsibility at law or in equity because of the enforcement of, or because of the failure to enforce, these restrictions.


22. Severability. Invalidation of nay one or more of these covenants and restrictions by judgment of any court shall in no way affect any of the other

covenants, restrictions and provisions herein contained, which shall remain in full force and effect.

23. Headings. All paragraph headings used herein are for convenience only and shall have no effect on the meaning of any of the restrictions, covenants or conditions contained herein.

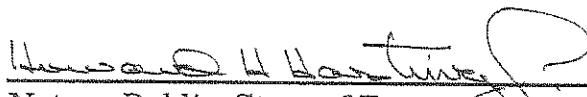
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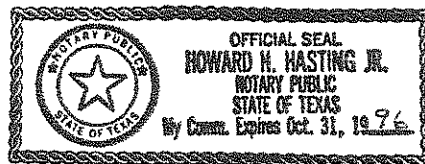
BRUSHY CREEK JOINT VENTURE

By: 
Kelly M. Ranson
Manager

STATE OF TEXAS
COUNTY OF BEXAR

This instrument was acknowledged before me on July 28, 1993, by Kelly M. Ranson, Manager, on behalf of Brushy Creek Joint Venture, a partnership.


Notary Public, State of Texas.



AFTER RECORDING, PLEASE RETURN TO:

Brushy Creek Joint Venture
In Care Of: Mr. Kelly M. Ranson
115 E. Travis, Suite 1032
San Antonio, Texas 78205-1606

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