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CLARATION  
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COVENANTS  
AND  
RESTRICTIONS  
FOR  
BRUSHY  
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RANCH  
SUBDIVISION,  
UNIT 5

DECLARATION OF COVENANTS AND RESTRICTIONS  
FOR  
BRUSHY CREEK RANCH SUBDIVISION, UNIT 5

THIS IS A COMPREHENSIVE LEGAL DOCUMENT WHICH PROVIDES FOR THE  
IMPOSITION OF MANDATORY HOMEOWNER ASSESSMENTS.  
THIS DECLARATION IS BINDING UPON ALL FUTURE OWNERS  
IN THIS SUBDIVISION.

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**SUBDIVISION RESTRICTIONS  
BRUSHY CREEK RANCH SUBDIVISION**

**UNIT 5**

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 5, as shown by the plat thereof duly recorded in Volume 6, Page 309, of the Plat Records of Bandera County, Texas ("Unit 5" or "Property"); said Unit 5 being a part of the Brushy Creek Ranch Subdivision ("Subdivision").

WHEREAS, Developer desires to create in the Property a residential community with designated "Tracts" or "Lots" (i.e. numbered plots of land shown on the Unit 5 recorded plat) and "Common Areas" which will all be restricted according to a common plan as to use and permissible construction, so that all of the Property shall be benefited and each successive owner of all or any part of the Property shall be benefited by the preservation of the value, character and desirability of the Property; and

WHEREAS, Developer has deemed it desirable for the enforcement of the restrictions and covenants herein and the efficient preservation of the amenities in Unit 5 and the Subdivision, to create an Association (hereinafter defined) to which shall be delegated and assigned the power of administering and enforcing these restrictions, covenants, and assessments, including levying, collecting and disbursing the assessments for Unit 5 as well as those of the Subdivision; and

WHEREAS, there will be incorporated, one or more non-profit corporations created under the laws of the State of Texas, whose directors will establish by-laws by which said Association shall be governed through its Board of Directors, for the purpose of exercising the functions aforesaid; and

NOW, THEREFORE, Developer hereby acknowledges, declares and adopts the following restrictions and covenants (this "Declaration"), 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. No business or business activity, whether for profit or not, shall be permitted in or on any Tract, except that an

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Owner or occupant may conduct business activities that are merely incidental to the Owner's residential use within a dwelling so long as the business activity is not apparent from outside the dwelling, conforms with all zoning requirements and other restrictions applicable to the Tract, is consistent with the residential character of the Property, and does not constitute a nuisance or offensive use or threaten the security or safety of other residents of the Subdivision. 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 Owners (as hereinafter defined) in any Unit of Brushy Creek Ranch Subdivision. Any responsibility the Developer may have to perform the functions of 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 ("Committee Affidavit"), such Committee Affidavit stating that the Developer shall no longer act as the Committee 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 in the Committee Affidavit. The filing of such a Committee Affidavit shall neither dissolve the Committee, if one exists, nor abrogate its powers. After the filing of the Committee Affidavit, the Committee, if such shall be in existence, shall have the power to appoint new members to fill vacancies on the Committee unless the Association is incorporated, in which case the Board of Directors of such Association shall have the power to remove and appoint members of the Committee. As used in this Declaration, the term "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Tract within the Subdivision, excluding any interest merely as security for the performance of an obligation. As used in this Declaration, the term "Association" shall mean the Brushy Creek Ranch Owners Association, a to-be-formed Texas non-profit corporation, its successors, assigns or replacements, which will have jurisdiction over the Property and other land in the Subdivision.

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

3.1. Each building to be utilized as a 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 manufactured 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 residence 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 Tract 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 if such be in existence at the time).

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,

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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. Approval of plans and specifications shall not cover or include approval for any other purpose and specifically, but without limitation, shall not be construed as any representation as to or responsibility for the design or construction thereof.

**5. Setback Requirements.** No building or structure other than a fence shall be located nearer to any Subdivision road than one hundred (100) feet, or nearer to any side Tract line or rear Tract line than fifty (50) feet, except that on any Tract of less than four acres, namely, Unit 5 Tracts numbered 89, 90, 91, 92 and 93, the setback requirements shall be reduced to fifty (50) feet from any Subdivision road and twenty-five (25) feet from any side or rear Tract line. "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 Developer 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 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 (or the Association after Developer has filed the Committee Affidavit) shall have the right, but not

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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 (or the Association, as the case may be) recording with the County Clerk of Bandera County, Texas, Developer's (or the Association'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. Homeowners Association and Assessments.**

**10.1. Membership and Voting Rights.** Every Owner shall be a "Member" of the Association; provided, however, any person or entity holding an interest merely as security for the performance of an obligation shall not be an Owner nor a Member of the Association. Each Member shall be entitled to one vote for each Tract in which they hold the interest for membership. When more than one person or entity holds such interest or interests in any Tract, all such persons shall be Members but the vote for such Tract shall be exercised as they among themselves determine provided in no event shall more than one vote be cast with respect to any such Tract.

**10.2. Board of Directors.** The Board of Directors of the Association shall have the authority and duties set forth in the Articles and Bylaws of the Association and shall have the power to promulgate reasonable policies, rules and regulations concerning enforcement of the covenants and restrictions contained in this Declaration, or any amendments thereto, concerning the Common Areas or fines for violations of any restrictions or rules and regulations. The Association, through the Board of Directors and its authorized agents, shall have the authority, but not the obligation, to obtain insurance related to the Common Areas as it deems advisable with the premiums for such to be payable from the assessments.

**10.3. Assessments.**

**10.3.1. Assessment.** Subject to the remaining provisions of this Section 10.3, an assessment is hereby made of \$9.50 per month on each Tract in Brushy Creek Ranch Subdivision, Unit Five. 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.

**10.3.2. Lien Securing Assessment.** Each Owner of any tract other than Developer, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association assessments. Such assessments shall be and is hereby secured by a continuing lien on each Tract against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be and remain the personal obligation of the Owner of such Tract at the time the obligation accrued.

The annual assessments shall be payable to Brushy Creek Ranch Owners Association, its successors and assigns, the owner of said assessment funds, on September 30 of each year commencing in 2002, at which date in the year 2002 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.

**10.3.3. Payment of Assessment.** Property Owners may pay the assessment 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.

**10.3.4. 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, 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 and gates, 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 exempt from the assessment and lien created herein.

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 non-exclusive 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

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improvements to the Common Areas. The rights and easements created hereby shall be subject to the rights and easements created in favor of others as provided for in the Subdivision Plat or in this Declaration and 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. 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 Association shall have the right 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.

13. **Subdividing of Tracts.** No Tract may be subdivided without the consent of the Developer (or the Association after Developer has filed a Committee Affidavit), which consent may be granted or withheld at the sole discretion of the Developer (or the Association). 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 (or the Association after Developer has filed a Committee Affidavit).

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 except voting as an Owner in Association matters and governed by all obligations of ownership as set forth herein; provided, however, Owners of such rented Tracts shall continue to be liable for compliance with all obligations 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 as 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. There shall not be maintained any plants, animals, device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, emits foul or obnoxious odors or causes noises that disturb the peace and quiet of the surrounding Tracts or Common Areas or are of a nature as may diminish or destroy the enjoyment of the Property.

**19. Prior Development.** Unit 5 is the fifth of five units that together comprise the "Subdivision" which is 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, 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 in Unit 5. Any change or amendment shall be set forth in a document bearing the signatures of the requisite number of Tract Owners in Unit 5, 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 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 or the Association, nor the members of the Committee or the Board of Directors of the Association or its officers, 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 any 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.

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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.

24. **Compliance with Laws.** At all times, each Owner shall comply with all applicable federal, state, county, and municipal laws, ordinances, rules and regulations with respect to the use, occupancy, and condition of their Tract(s) and any improvements thereon. If any provision(s) contained in this Declaration or amendment thereto is found to violate any law, then the provision(s) shall be interpreted to be as restrictive as possible to preserve as much of the original provision(s) as allowed by law.

EXECUTED on May 10, 2002.

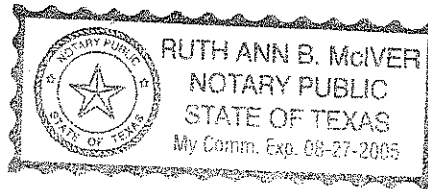
BRUSHY CREEK JOINT VENTURE

By: *Kelly M. Ranson*  
 Kelly M. Ranson  
 Managing Partner

STATE OF TEXAS  
 COUNTY OF BEXAR

This instrument was acknowledged before me on May 10, 2002 by Kelly M. Ranson, Managing Partner, on behalf of Brushy Creek Joint Venture, a partnership.

*Ruth Ann B. McIVER*  
 Notary Public, State of Texas.



AFTER RECORDING, PLEASE RETURN TO:

Brushy Creek Joint Venture  
 c/o Kelly M. Ranson  
 P. O. Box 90010  
 San Antonio TX 78209-9010

Beverly Bates,  
 Bexar County Clerk

Filed for Record in:  
 Bexar County  
 On: May 10, 2002 at 04:07PM  
 Recording  
 AS 2  
 Document Number: 0130728  
 Amount: 27.00  
 Receipt Number - 27046  
 by  
 Patty Hoaglin  
 Any provision herein which purports the sale, rental or use of the described real property because of color of page is invalid and unenforceable under Federal Law.  
 STATE OF TEXAS  
 COUNTY OF BEXAR  
 I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded in the volume and page of the record records of:  
 Bexar County  
 as stamped hereon by me.  
 May 10, 2002