

**DECLARATION
OF
COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS
PERSIMMON HILL SUBDIVISION**

STATE OF TEXAS §
 §
COUNTY OF COMAL §

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, BULVERDE OAKS, LTD. ("Developer") is the owner of a 44.4 acre tract of land located in Comal County, Texas, which has been subdivided and platted of record as PERSIMMON HILL SUBDIVISION, Unit 1, in Volume 10, Page 262 of the Map and Plat Records of Comal County, Texas, which 44.4 acre tract is referred to herein as "Unit 1"; and

WHEREAS, Unit 1 comes out of a 360.55 acre, more or less, tract of land owned by Developer, parts of which Developer subsequently may subdivide and plat of record as additional units within the Persimmon Hill Subdivision, such 360.55 acre tract of land being more particularly described in that certain Special Warranty Deed to Bulverde Oaks, Ltd., dated May 27, 1993, and recorded in Volume 890, at Pages 0094-0096 of the Official Public Records of Comal County, Texas; and

WHEREAS, it is the desire and intention of the Developer to restrict not only Unit 1, but also any and all of the remainder of the above described 360.55 acres which is subjected to this Declaration of Covenants, Conditions, Easements and Restrictions (the "Declaration") by virtue of a duly recorded plat in accordance with the terms hereof (Unit 1, together with any and all parts of the 360.55 acres which subsequently are subdivided and annexed hereto, being hereinafter referred to as the "Subdivision");

WHEREAS, it is the desire and intention of the Developer that all of the Subdivision shall be restricted according to a common plan as to use and permissible construction, so that all of the Subdivision shall be benefitted and each successive owner of all or any part of the Subdivision shall be benefitted by the preservation of the value, character and desirability of the Subdivision;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and expressly for the benefit of and to bind the Developer, its successors and assigns, and in order to create and carry out a general and uniform plan for the development, improvement and use of lots within the Subdivision, the Developer hereby declares that all of the Subdivision shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions:

1. Scope of Restrictions: The covenants, conditions, restrictions and easements herein set forth shall constitute COVENANTS RUNNING WITH THE LAND and shall be binding upon Developer, its successors and assigns, and upon all persons or entities acquiring an individual lot or lots or all or any portion of the Subdivision, whether by purchase, descent, devise, gift or otherwise, and each such person or entity, by the acceptance of title to any of the Subdivision, shall thereby agree and covenant to abide by the covenants, conditions, easements and restrictions set forth herein and to perform the covenants hereby imposed on owners of the lots within the Subdivision.

2. Annexation: From time to time the Developer may wish to subdivide additional land within the above described 360.55 acres. Such subdivided lands may be annexed to this Subdivision by the Developer. The annexation shall be evidenced simply by identifying the land to be annexed as PERSIMMON HILL SUBDIVISION, Unit ____ (with the appropriate unit number being inserted) on the Plat which is recorded in Comal County. Any of the 360.55 acres which is platted of record under the name "Persimmon Hill" shall thereby be annexed to this Subdivision and shall thereby be subjected to the terms of this Declaration.

3. Residential Use: All lots within the Subdivision are hereby restricted exclusively to single-family residential use. No structures shall be erected, placed or maintained on any lot other than a conventionally constructed single-family private residence with such accessory structures and buildings as a barn, garage, cabana, guest house and/or servant's quarters; provided, however, no such accessory structures and buildings may be constructed until the residence has been completed. Not more than one single-family residence may be erected on a lot. The term "conventionally constructed single-family private residences" shall exclude specifically mobile homes, house trailers, modular homes and move-on homes. Recreational vehicles are permitted to be kept on the lot after construction of the residence, however, if such vehicles are screened from view of neighbors and from the street and are stored behind the set-back lines. This covenant shall not prevent Developer from erecting and maintaining such temporary structures as are customary in connection with a sales program in residential subdivisions. As used in this Declaration, the term "lot" refers to any numbered plot of land shown upon a recorded plat of any portion of the Subdivision and to any smaller parcel(s) into which such a lot may be divided in the future in accordance with the terms hereof.

4. Restriction on Further Subdivision: No lot shall be re-subdivided or conveyed or encumbered in any size less than the full dimensions shown on the originally recorded plat of each respective unit of the Subdivision, unless the specific approval of the below-described Architectural Control Committee (the "Committee") has been obtained.

5. Set-back Lines: No structure shall be located on any lot nearer than seventy-five feet (75') to any front or rear boundary line nor nearer than fifty feet (50') to any side lot line; except that if a residence is constructed on a homesite consisting of more than one lot, the combined area shall be considered as one lot for purposes of this provision. In the event a lot is re-subdivided or conveyed or encumbered in a size less than the full dimensions shown on the originally recorded plat of the Subdivision unit in which the lot is located, these set-back lines shall apply to each of the smaller lots. These set-back lines may be relaxed by the Committee, if, in its sole discretion, the prescribed distances are not feasible and the set-back lines may be reduced without adversely affecting the neighbors or the integrity of the Subdivision.

6. Size: No residence erected on a lot shall have a living area of less than 1650 square feet of living area, exclusive of porches, garages or other appendages.

7. Utility Easements: Perpetual easements are hereby reserved and dedicated over and across the streets in the Subdivision and over and across a twenty foot (20') strip along each side, front and rear lot line for the purpose of installing, maintaining and repairing, or conveying to proper parties so that they might install, maintain and repair electric power, gas, telephone, drainage and/or any other similar utility lines, facilities, and services for the lots in the Subdivision. The easements reserved and dedicated hereby shall be for the general benefit of the Subdivision. These easements shall inure to the benefit of, and may be used by, any public or private utility company entering into and upon the Subdivision for such purposes, without the necessity of any further grant of such easement rights to such utility companies. If any platted lot is re-subdivided into any size less than its full dimensions as shown on the originally recorded plat covering that lot, each such smaller lot shall be subject to similar twenty foot (20') utility easements immediately within and adjacent to its perimeter. The Developer is in no way obligated to install any such utilities.

8. Platted Easements: In addition to those set forth in this Declaration, each lot shall be subject to all easements, set-back lines, covenants and restrictions set forth on the recorded plat covering that particular lot.

9. Sight Lines: No shrub, tree, fence or wall that obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be constructed, planted or permitted to remain on any lot corner within the triangular area formed by the curb lines of such intersecting streets, or the extensions thereof, and a line connecting such curb line at points twenty-five feet (25') back from their intersection. The same sight line limitation shall apply on any lot within ten feet (10') of the intersection of a street curb line and the edge of a driveway or alley. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a height of more than six feet (6')

above ground level.

10. Sewerage: No outside toilets shall be used, constructed or permitted. No installation of any kind for disposal of sewerage shall be constructed or maintained which would result in treated or untreated sewerage or septic tank drainage being drained onto or into the surface of any part of the Subdivision, or onto or into any body of water located on the Subdivision. No means of sewerage disposal may be installed, used or maintained except a septic tank, or a similar or improved means of sanitary sewerage disposal, which meets the requirements of and is approved by all governmental authorities having jurisdiction thereof. No structure placed upon a lot shall be used until sanitary sewerage disposal facilities complying with this paragraph have been completely finished. The Committee shall have the right to specify the location, orientation and drainage field of any such means of sanitary sewerage disposal, subject to the approval of all governmental authorities having jurisdiction thereof.

11. Appearance: All improvements shall be maintained in a neat and orderly manner and their appearances, both before, during and after construction, shall be subject to the review and approval of the Committee. In the event an owner of a lot should fail to maintain the premises and improvements situated thereon in a neat and orderly manner, Developer and/or the Committee shall have the right (and each is hereby granted a license for this purpose), but not the obligation, through its agents and/or employees to enter upon the lot and to repair, maintain and restore the lot and exterior of the buildings and any other improvements erected thereon to a neat and orderly manner, all at the expense of the owner of such lot.

12. Hunting and Firearms: No hunting, including, but not limited to, bow hunting, shall take place within the Subdivision. No firearms may be discharged thereon at any time.

13. Nuisances: No noxious, offensive, undesirable, unlawful or immoral activity shall be conducted on any lot, nor shall anything be done or permitted to be done thereon which may be or become a nuisance or annoyance to the owners of adjacent lots or to the Subdivision as a whole. Any determination by the Committee that an activity is noxious, offensive, undesirable or immoral shall be final and binding on all parties.

14. Garbage and Trash Disposal: No trash, garbage, construction debris, rubbish, abandoned or junk cars or other refuse may be dumped, disposed of or maintained on any lot, vacant or otherwise. Any temporary trash, garbage and other waste shall be kept in a clean, sanitary and sightly condition. No refuse shall be burned on any lot during construction of improvements, or at any other times, except in a safe incinerator; and unless so burned, all refuse shall be removed by the lot owner. All incinerators or other equipment for the temporary storage and disposal of such material shall be kept in a clean and sanitary condition.

15. Storage of Building Materials: No building materials of any kind shall be placed or stored upon any lot except during construction; and then such materials shall be placed within the property lines of the lot on which the improvements are to be erected. All such building and construction materials must be removed within ninety (90) days of occupancy of the structure.

16. Animals: Livestock and normal household pets may be kept on a lot, with the exception of poultry and swine. This exclusion of poultry and swine, however, does not apply to "Vietnamese Pot Belly Pigs" which are kept by the lot owner strictly as pets, nor to raising "ratitae" (emus, rheas, and ostriches). Any animal or poultry raised for an FFA, 4-H or similar organization or for a school project, however, may be bred and kept on a lot, if first approved in writing by the Committee. However, no animals nor poultry may be kept on a lot unless they are restricted to the lots of their owners by fences or other enclosures or restraints and not allowed to run at large; nor may they be kept if they become offensive or a nuisance by virtue of their numbers, sight, odor or noise. If a question arises as to whether an animal or poultry (individually or considered together) is offensive or a nuisance, the Architectural Control Committee shall make the determination and its determination shall be final and binding on all parties. It is specifically understood and agreed that the

owners of any livestock, pets or ratitae kept on any lot, shall be strictly liable for any damages done to the property or person of any third party by such livestock, pets or ratitae which may occur outside the lot's fence lines.

17. Signs: No signs or advertisements may be displayed on any lot except to advertise its sale. No more than one sign advertising a lot for sale shall be displayed on any one lot and such sign shall be no larger than five square feet (5').

18. Oil, Gas and Mineral Development: No oil or gas drilling, exploration or development operations, oil or gas refining or treatment, quarrying or mining operations of any kind shall be permitted on a lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any lot. No derrick or other structure designed for use in boring for oil, natural gas or other minerals shall be erected, maintained or permitted on any lot.

19. Caves and Sinkholes: NATURAL CAVES AND SINKHOLES MAY OCCUR ON SOME OF THE LOTS IN THE SUBDIVISION. EACH PROSPECTIVE LOT OWNER SHOULD PERSONALLY INSPECT THE LOT IN WHICH HE IS INTERESTED TO ASSURE HIMSELF OF THE LOCATION OF ANY SUCH CAVES AND/OR SINKHOLES WHICH MAY BE LOCATED THEREON.

20. Culverts. The headwalls of any culvert which is constructed adjacent to the public road to provide access between the lot and such public road shall be of concrete or masonry.

21. Architectural Control Committee: All improvements on each lot shall be subject to the review of an Architectural Control Committee (hereinafter referred to as the "Committee") as follows:

a. The initial member of the Committee shall be James Ritchie McCulloch, III, currently of San Antonio, Texas. The Committee may designate a representative to act for it at any time or for any period. In the event of the death or resignation of any member of the Committee, the remaining member(s) may act without filling the vacancy or shall have full authority to designate a successor. Neither the member(s) of the Committee, nor its designated representative, shall be entitled to any compensation for services performed hereunder. In the event of the death or resignation of all member(s) of the Committee prior to the appointment of a successor, a new Committee of not less than three nor more than five persons shall be appointed to exercise the powers herein defined, such appointment to be evidenced by a duly recorded instrument executed by the owners of fifty-one percent (51%) or more of the Subdivision (by area).

b. No building, structure, fence, wall, well, septic tank system or other improvement shall be commenced, erected, placed or maintained on any lot, nor shall any addition to or change or alteration therein be made, until the construction plans and specifications, and a plot plan showing the location of all such structures and all appurtenances thereto, have been submitted to and approved by the Committee as to compliance with quality of workmanship and materials, harmony of external design with existing structures and the general plan of development, and as to location with respect to property lines, building lines, easements, existing and proposed water wells and septic tank systems, topography and finish grade elevation.

c. Construction plans and specifications submitted to the Committee shall be in such form as it may require and shall include, at a minimum, plans of all floors and levels involved, elevations of all sides of the proposed structure, a section through the structure to explain the relationship of the floor levels and stairs, notes or specifications describing the materials to be used on the exterior and location of the proposed improvements or alterations thereto on the lot.

d. The Committee's approval or disapproval or other action

as required in these covenants shall be by majority vote, shall be evidenced in writing and shall be delivered in person or by registered or certified letter addressed to the requesting party at an address which must be supplied with the submission. In the event the Committee should fail to approve or disapprove the plans, specifications and plot plans within ninety (90) days after they have been submitted to it, it will be presumed that the same have been approved, provided the same were submitted to the Committee in writing by certified mail, return receipt requested, with an address provided to which the reply should be mailed. The judgment of the Committee in the exercises of its discretion in this respect shall be final and conclusive. Under no circumstances shall the Committee or any of its members be subject, jointly or severally, to any suit by anyone for money damages or otherwise.

e. Plans for fencing must be submitted to the Committee for approval or disapproval. Chain link fencing may be used for enclosures within the lot's property lines, provided such chain link fence does not encroach upon the front, back or side set-back lines. No chain-link fence shall be allowed or approved which is located on the perimeter of a lot or which encroaches upon the lot's front, back or side set-back lines.

f. Construction of any structure approved by the Committee shall commence within six (6) months of such approval; and the completion of such construction must be accomplished within nine (9) months of the commencement of such construction.

22. Enforcement: Developer, its successors and assigns, shall have the right, but not the obligation, to enforce observance and performance of the restrictions, easements, covenants and conditions contained herein and, in order to prevent a breach or to enforce the observance or performance of same, shall have the right, in addition to all other legal remedies provided herein or by law, to an injunction, either prohibitive or mandatory. The Committee, as well as the owner of any lot or lots in the Subdivision, likewise shall have the right either to prevent a breach of any such restriction or covenant or to enforce the performance thereof. Acquiescence in any violation shall not be deemed a waiver of the right to enforce against the violator or others the conditions so violated or any other conditions.

23. Limitations of Liability: Neither the Developer, nor the Architectural Control Committee, nor any member of such Committee, shall be liable in damages or otherwise to anyone submitting plans, specifications and plot plans for approval or to any owner of a lot in the Subdivision by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans, specifications, plot plans or other matters submitted to it or arising out of any other action taken or not taken by them, jointly or severally, pursuant to the provisions of this Declaration.

24. Partial Invalidity: Invalidation of any of these covenants, conditions, easements or restrictions (by court judgment or otherwise) shall not affect, in any way, the validity of all other covenants, conditions, easements and restrictions contained herein.

25. Laws and Regulations: All owners of any lots within the Subdivision shall at all times comply with all applicable laws, regulations and ordinances of municipal, county, state, federal or other governmental authorities.

26. Texas Veterans Land Board: It is anticipated that some of the lots within the Subdivision shall be sold to veterans through the Texas Veterans Land Board Program. Notwithstanding anything to the contrary contained herein, these restrictions shall not, and shall not be construed to, prevent the Texas Veterans Land Board from deeding one acre to a veteran for a homesite in order that he might construct a residence thereon. Nor shall these restrictions be construed to charge or assess any fees to the Texas Veterans Land Board. (Notice : Any lot which has less than 30 feet of frontage on a county road will not be eligible for subdivision according to current Comal County Subdivision Rules and Regulations, for those Regulations currently require a lane not less than 40' wide to provide

access to the county road.)

27. Duration: These covenants, conditions, easements and restrictions shall run with the land and shall be binding upon and against the Subdivision for a period of twenty (20) years from the date of recordation, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the then owners of seventy-five percent (75%) of the Subdivision (by area) has been recorded agreeing to change said covenants in whole or in part. No such agreement to change shall be effective unless made and recorded within three months immediately prior to the date the covenants otherwise would be automatically extended.

IN WITNESS WHEREOF the undersigned have executed this instrument as of the ____ day of June, 1993.

BULVERDE OAKS, LTD.

By: _____
James Ritchie McCulloch, III
General Partner

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on June ____, 1993, by JAMES RITCHIE MC CULLOCH, III, General Partner of BULVERDE OAKS, LTD., a Texas Limited Partnership, on its behalf.

Notary Public in and for the
State of Texas

UPON RECORDATION, PLEASE
RETURN TO:

Luralee H. Wallace
1724 Milam Building
115 E. Travis St.
San Antonio, TX 78205