

BURNEY OAK ESTATES

RESTRICTIONS

Volume 222, Page 93 and Volume 248, Page 315, Deed Records of Kerr County, Texas; Volume 1660, Page 269, Official Property Records of Kerr County, Texas, BUT OMITTING ANY COVENANT OR RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

OTHER EXCEPTIONS

- Easement dated January 8, 1945 to L.C.R.A., recorded in Volume 75, Page 235, Deed Records of Kerr County, Texas. (Lots 1-5, 22-29 & 40 in Sur. 64)
- Road and Utility Easements as per the Plat recorded in Volume 4, Page 149, Plat Records of Kerr County, Texas.
- Mineral reservation by Grantor, as described in instrument from {PR,"insert Grantor name for mineral reservation",ST1,6} to {PR,"insert Grantee name for mineral reservation",ST1,6}, dated {PR,"insert date of mineral reservation",DT2,6}, recorded in Volume {PR,"insert volume number of mineral reservation",IN1,6}, Page {PR,"insert page number of mineral reservation",IN1,6}, {PR,"Type of Records",ST1,6} Records of Kerr County, Texas, reference to which instrument is here made for all purposes, together with all rights, expressed or implied in and to the property covered by this policy arising out of or connected with said interests and conveyance. Title to said interest not checked subsequent to date of aforesaid instrument.
- Any visible and/or apparent roadways or easements over or across the subject property.
- Rights of Parties in Possession. (AS PER OWNER POLICY ONLY)

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONSBURNEY OAK ESTATES

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF KERR §

WHEREAS, Declarant is the owner of certain real property described in Deed from Betty Burney Mosty Hall, et al, to Grady Tuck, Jr., Trustee, and appearing of record in Volume 211, at Page 657, of the Kerr County Deed Records, which property has been subdivided into various parcels as shown by Plat of Burney Oak Estates, dated December 28, 1978, and appearing of record in Volume 4, at Page 149, of the Kerr County Plat Records, reference to which is hereby made for all purposes; and

WHEREAS, it is deemed to be to the best interest of Declarant and of the persons who may purchase lots described in and covered by said plat that there be established and maintained a uniform plan for the improvement and maintenance of lots in the subdivision;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Declarant hereby declares that the property described in the Plat of Burney Oak Estates, shall be held, transferred, sold and conveyed, improved, and occupied subject to the covenants, conditions, restrictions, and easements as hereinafter set forth, which shall run with the property and be binding on all parties having any interest therein.

ARTICLE I

DEFINITIONS

Section 1: "Declarant" shall mean and refer to Grady Tuck, Jr., Trustee.

Section 2: "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

Section 3: "Lot" shall mean and refer to those tracts of land shown on the Plat of said Burney Oak Estates.

Section 4: "Owner" shall mean (a) the person or persons holding a fee simple title interest in a lot; or (b) the purchasers under an installment sales contract from an owner.

ARTICLE II
RESTRICTIONS

In order to carry out a general plan of development of Burney Oak Estates, a subdivision of Kerr County, Texas, and in order to promote the construction of desirable residences, insure harmony in the character of such buildings in connection therewith, maintain the suitability of said Burney Oak Estates, for private residential purposes, to carry out a general plan for the protection, benefit, use, recreation and convenience of each and every owner or purchaser of a part of the land therein, and to enhance the value of said land located in said Burney Oak Estates, all sales of lots shall be subject to the restrictions and conditions upon the premises as follows, to-wit:

FIRST: That these restrictions and covenants are hereby declared to be covenants running with the land for a period of thirty (30) years.

SECOND: No part of said land shall be used for any commercial purpose, except that nothing herein shall be construed to prevent the owner from rendering professional services of a purely personal nature as long as such services do not attribute to the property or any part thereof any appearance of a commercial use.

THIRD: No portion of said land may be subdivided into lots or parcels of less than one-half (1/2) acre of land.

FOURTH: All buildings and structures in each portion of said land shall be of new construction. No unpainted sheet metal or fiberglass structures shall be placed on any portion of said property for use as an accessory building. No tent, housetrailer, or temporary structure of any character may be constructed, maintained or permitted to remain on any portion of said land.

FIFTH: In no event shall any structure used as a primary residential structure be constructed on the land having a living area of less than one thousand two hundred (1200) square feet, exclusive of porches, garages or other appendages.

SIXTH: Horses and cattle may be kept and maintained on said land in numbers not to exceed two (2) animal units per five (5) acres. No swine or any commercial livestock operation shall be permitted.

SEVENTH: No outside toilets will be permitted and no installation of any kind for disposal of sewage shall be allowed which would result in raw, treated, or untreated sewage or septic tank drainage or into the surface or water bodies of said land. All septic tanks shall be in compliance with all applicable governmental regulations.

ARTICLE III

GENERAL PROVISIONS

Section 1: Enforcement. Declarants, their heirs or assigns, or any owner shall have the rights to enforce this Declaration by any proceeding at law or in equity.

IN WITNESS WHEREOF, this Declaration has been executed on this the 9th day of June, A.D., 1979.

Grady Tuck, Jr.
GRADY TUCK, JR., TRUSTEE

THE STATE OF TEXAS §
 §
COUNTY OF KERR §

BEFORE ME, the undersigned authority, on this day personally appeared GRADY TUCK, JR., TRUSTEE, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 9th day of June, A.D., 1979.

My Commission Expires:

August 16, 1980

Ella Turner
NOTARY PUBLIC in and for
Kerr County, Texas

Ella Turner

793331

VOL. 222 PAGE 96

R

Restrictions

Burney Oak Estates

to

The Public

FILED FOR RECORD

1:45 o'clock P.M.

JUN 12 1979

Emmie M. Muenker
Clerk County Court, Kerr County, Texas

Patricia Dyer Deputy

Filed by & return to:
Joe Grady Tuck, Atty.

Filed for record June 12, 1979 at 1:45 o'clock P.M.
Recorded June 19, 1979
EMMIE M. MUENKER, Clerk

By Betty J. Dyer Deputy

DECLARATION ON RESTRICTIONS

BURNEY OAK ESTATES

VOL 248 PAGE 315

812684

W H E R E A S :

1. During the year 1978, the Owners and Developers of 33.6 acres of land in Kerr County, Texas, out of the William T. Crook Survey No. 63, Abstract 116, Kerr County, Texas, being the same land described in Deed recorded at Volume 211, Page 657, Deed Records of Kerr County, Texas, and now known as "Burney Oak Estates", according to the Plat thereof recorded at Volume 4, Page 149 of the Plat Records of Kerr County, Texas, applied to the City Council of the City of Kerrville to waive the requirements that the streets in the subdivision have curbs and gutters. A hearing was had before the City Council on October 24, 1978, and at such meeting it was represented to the Council that each parcel in the subdivision would contain five (5) or more acres. The waiver of the requirements was granted, and one of the reasons therefor was: "based on the size of the tracts in the development".

2. At the Planning and Zoning meeting of February 1, 1979, the same Developers and Owners requested that the final Plat of Burney Oak Estates be approved by the Commission. At that meeting a representative of the Owners and Developers stated:

"The lots in Burney Oak Estates would not, under any circumstances, be subdivided, which was the basis for the City Council waiving the requirements for curb and gutters."

The Planning and Zoning Commission approved the final Plat.

3. Thereafter, the Plat of Burney Oak Estates was recorded on February 2, 1979, at Volume 4, Page 149 of the Plat Records of Kerr County, Texas.

4. On or about June 9, 1979, the Owners and Developers of Burney Oak Estates filed for recording the "Declaration of Covenants, Conditions and Restrictions - Burney Oak Estates". Such Declaration was recorded at Volume 222, Page 93, Deed Records of Kerr County, Texas. Such provisions stated:

"No portion of said land may be subdivided into lots or parcels of less than 1/2 acre of land."

KNOW THEREFORE ALL MEN BY THESE PRESENTS, that it is hereby declared by the City of Kerrville and all persons should take notice, that the Plat of Burney Oak Estates was approved pursuant to the express representation and agreement that no lot would ever be less than five (5) acres. Therefore, insofar as the said recorded Restrictions of Burney Oak Estates indicate or imply that the five (5) or more acre tracts may be subdivided into lesser size tracts, then said Covenants and Restrictions are erroneous. Thus, any provisions in any restrictions pertaining to resubdivision of a lot is as follows:

"No lot may be subdivided without the prior written recorded consent of the City Council of the City of Kerrville."

SIGNED this the 20th day of May, 1981, pursuant to resolution of the City Council of the City of Kerrville, adopted April 28, 1981.

ATTEST:

Sheila L. Brand
Sheila L. Brand
City Clerk

H. Lee Jennings
H. LEE JENNINGS, Mayor

THE STATE OF TEXAS I
COUNTY OF KERR I

On this day, H. LEE JENNINGS, the Mayor of the City of Kerrville, appeared before me and acknowledged that he executed the foregoing for the purposes and consideration therein expressed, in the capacity therein stated, and pursuant to valid resolution of the City Council adopted on April 28, 1981.

Given under my hand and seal of office this the 20th day of May, 1981.

Bonnie Logan
Notary Public in and for
Kerr County, Texas
Bonnie Logan
Notary Public
My Commission Expires 10-9-84

812684

VOL 248 PAGE 317

Declaration of Restriction

*Burnay Oak Estate
to
The Public*

FILED FOR RECORD

at 3:10 o'clock P.M.

MAY 21 1981

EMMIE M. MUENKER

Clerk County Court, West County, Texas
By [Signature] Deputy

Return to

Tom Terrell

Filed for record May 21, 1981 at 3:10 o'clock P.M.

Recorded May 26, 1981

EMMIE M. MUENKER, Clerk

By Betty J. Seavey Deputy

**CERTIFICATE OF THE AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF BURNEY OAK ESTATES**

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF KERR §

THAT WHEREAS, the undersigned is the property owners association (the "Association") for the subdivision known as Burney Oak Estates (the "Subdivision"), located in Kerr County, Texas, the plat of which is recorded in Volume 4, Page 149, Plat Records of Kerr County, Texas, to which instrument and its record reference is herein made for all purposes; and

WHEREAS, the original Subdivision restrictions are found in a Declaration of Covenants, Conditions and Restrictions dated June 9, 1979, recorded in Volume 222, Page 93, Deed Records of Kerr County, Texas, as amended by a Declaration on Restrictions of Burney Oak Estates dated May 20, 1981, recorded in Volume 248, Page 315, Deed Records of Kerr County, Texas (the "Restrictions");

WHEREAS, the Restrictions are scheduled to expire on June 9, 2009, and no provision of the Restrictions allows for the extension and/or amendment of such restrictions;

WHEREAS, the Subdivision is located in a county with a population of less than 65,000, and the Association submitted a draft of the Amended and Restated Declaration of Covenants, Conditions and Restrictions to the owners of the lots of the Subdivision in accordance with Chapter 211 of the Texas Property Code; and

WHEREAS, the undersigned certifies that the requisite number of lot owners voted to adopt the draft of the Amended and Restated Declaration of Covenants, Conditions and Restrictions, pursuant to Section 211.004 of the Texas Property Code; and

WHEREAS, because of the complaints of a few of the lot owners, the Board of Directors of the Association has agreed to remove all of the language pertaining to the Association and its right to enforce the new restrictions.

NOW, THEREFORE, it is hereby declared that the Restrictions are amended and restated as set forth in the attachment hereto.

EXECUTED this 20th day of February, 2008.

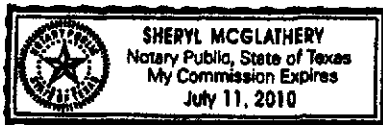
BURNEY OAK ESTATES PROPERTY OWNER'S
ASSOCIATION

By: _____

J. Dale Denais
J. Dale Denais, President

STATE OF TEXAS §
 §
COUNTY OF KERR §

This instrument was acknowledged before me this 20th day of February, 2008, by J. Dale Denais, President of Burney Oak Estates Property Owners Association.



Sheryl McGlathery
Notary Public, State of Texas

✓ After recording return to:
John W. Carlson, P.C.
Attorney at Law
260 Thompson Drive, Suite 7
Kerrville, Texas 78028

FILED FOR RECORD
at 4:30 o'clock P.M

FEB 22 2008

JANNETT PIEPER
Jannett Pieper
Clerk County Court, Kerr County, Texas
Deputy

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF BURNEY OAK ESTATES**

1. Definitions.

- (a) "Subdivision" shall mean and refer to Burney Oak Estates, the plat of which is dated December 28, 1978, and recorded in Volume 4, Page 149, Plat Records of Kerr County, Texas.
- (b) "Declaration" shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions.
- (c) "Lot" shall mean and refer to those tracts of land shown on the plat of the Subdivision.
- (d) "Owner" shall mean (i) the person or persons holding a fee simple title interest in a Lot, or (ii) the purchasers under an installment sales contract from an owner.

2. Non-Commercial Use. No part of the Subdivision shall be used for any commercial purpose, except that nothing herein shall be construed to prevent the owner from rendering professional services of a purely personal nature, as long as such services do not attribute to the Subdivision or any part thereof any appearance of a commercial use.

3. Subdividing. No portion of the Subdivision may be subdivided into lots or parcels of less than five (5) acres of land.

4. Construction of Buildings and Other Structures. All buildings and structures in each portion of said land shall be of new construction. No modular or manufactured home shall be placed or constructed on any portion of the Subdivision. No unpainted sheet metal or fiberglass structures shall be placed on any portion of the Subdivision for use as an accessory building. No tent, housetrailer, or temporary structure of any character may be constructed, maintained or permitted to remain on any portion of the Subdivision.

5. Size of Building and Structures. In no event shall any structure used as a primary residential structure be constructed on any part of the Subdivision having a living area of less than 1,200 square feet, exclusive of porches, garages or other appendages.

6. Animals. Horses and cattle may be kept and maintained on said land in numbers not to exceed a total of two (2) animals per five (5) acres. No swine or any commercial livestock operation shall be permitted.

7. Sanitation and Sewage. The installation and maintenance of any system to dispose of raw sewage on any part of the Subdivision shall be in accordance with the regulations established by the State of Texas and Kerr County.

8. Disabled Vehicles. Vehicles which are disabled, not currently licensed or registered, or are otherwise inoperable may not be stored in view on any part of the Subdivision.

9. Covenants Running with the Land. These restrictions and covenants are hereby declared to be covenants running with the Subdivision for an initial period of twenty-five (25) years from the date of this document and shall be fully binding upon all persons acquiring said land or any part thereof within said twenty-five (25) year period, whether by descent, devise, purchase, assignment, contract or otherwise. Any person by the acceptance of title to any portion of the Subdivision or entering into a contract for the purchase of the same shall thereby agree and covenant to abide by and fully perform all of the foregoing restrictions and covenants.

After the initial twenty-five year (25) period, these restrictions shall be automatically extended for successive periods of ten (10) years unless amended or revoked by a two-thirds (2/3) supermajority of the Owners of the Lots in the Subdivision. For purposes of determining such a supermajority, each Lot shall be entitled to one (1) vote, notwithstanding any co-ownership.

10. Enforcement. Any Owner shall have the right to enforce this Declaration by any proceeding at law or in equity.

Provisions herein which restrict the sale, rental or use of the described property because of color or race is invalid and unenforceable under Federal Law.
THE STATE OF TEXAS }
COUNTY OF KERR }
I hereby certify that this instrument was FILED in the File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records of Kerr County, Texas on

FEB 22 2008



Janet Lipson
COUNTY CLERK, KERR COUNTY, TEXAS

**CERTIFICATE OF THE AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS OF BURNEY OAK ESTATES**

THE STATE OF TEXAS
COUNTY OF KERR

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WHEREAS, the original Subdivision restrictions are found in a Declaration of Covenants, Conditions and Restrictions dated June 9, 1979, recorded in Volume 222, Page 93, Deed Records of Kerr County, Texas, as amended by a Declaration on Restrictions of Burney Oak Estates dated May 20, 1981, recorded in Volume 248, Page 315, Deed Records of Kerr County, Texas (the "Restrictions");

WHEREAS, the Restrictions are scheduled to expire on June 9, 2009, and no provision of the Restrictions allows for the extension and/or amendment of such restrictions;

WHEREAS, the Subdivision is located in a county with a population of less than 65,000, and the Association submitted a draft of the Amended and Restated Declaration of Covenants, Conditions and Restrictions to the owners of the lots of the Subdivision in accordance with Chapter 211 of the Texas Property Code; and

WHEREAS, the undersigned certifies that the requisite number of lot owners voted to adopt the draft of the Amended and Restated Declaration of Covenants, Conditions and Restrictions, pursuant to Section 211.004 of the Texas Property Code; and

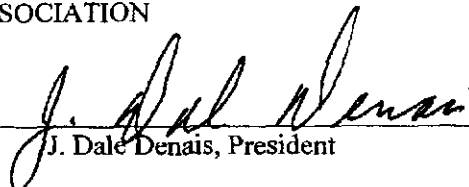
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EXECUTED this 20th day of February, 2008.

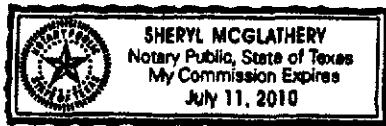
BURNEY OAK ESTATES PROPERTY OWNER'S
ASSOCIATION

By: _____


J. Dale Denais, President

STATE OF TEXAS §
 §
COUNTY OF KERR §

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Sheryl McGlathery
Notary Public, State of Texas

✓ After recording return to:
John W. Carlson, P.C.
Attorney at Law
260 Thompson Drive, Suite 7
Kerrville, Texas 78028

FILED FOR RECORD
at 4:30 o'clock P M

FEB 22 2008

JANNETT PIEPER
Clerk County Court, Kerr County, Texas
Jannett Pieper Deputy

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9. Covenants Running with the Land. These restrictions and covenants are hereby declared to be covenants running with the Subdivision for an initial period of twenty-five (25) years from the date of this document and shall be fully binding upon all persons acquiring said land or any part thereof within said twenty-five (25) year period, whether by descent, devise, purchase, assignment, contract or otherwise. Any person by the acceptance of title to any portion of the Subdivision or entering into a contract for the purchase of the same shall thereby agree and covenant to abide by and fully perform all of the foregoing restrictions and covenants.

After the initial twenty-five year (25) period, these restrictions shall be automatically extended for successive periods of ten (10) years unless amended or revoked by a two-thirds (2/3) supermajority of the Owners of the Lots in the Subdivision. For purposes of determining such a supermajority, each Lot shall be entitled to one (1) vote, notwithstanding any co-ownership.

10. Enforcement. Any Owner shall have the right to enforce this Declaration by any proceeding at law or in equity.

Provisions herein which restrict the sale, rental or use of the described property because of color or race is invalid and unenforceable under Federal Law.
THE STATE OF TEXAS }
COUNTY OF KERR
I hereby certify that this instrument was FILED in the File Number Sequence on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records of Kerr County, Texas on

FEB 22 2008



Janet Rippe
COUNTY CLERK, KERR COUNTY, TEXAS