

Item: **ELM CREEK**

(Category: RESTRICTIONS)

Volume 350, Page 754, Real Property Records of Kerr County, Texas; Volume 5, Page 182, Plat Records of Kerr County, Texas; (For Lots 11-15, Blk. 2, Tract C add Volume 350, Page 763, Real 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.

Item: **ELM CREEK**

(Category: Subdivisions)

- a. Sewer Easement to the City of Kerrville, dated February 24, 1969, recorded in Volume 5, Page 657, Easement Records of Kerr County, Texas. (As per Lots 22-29, Blk 1, Tr. A & Lots 7-19, Blk. 3, Tr. B only)
- b. Easements retained in the Restrictions, dated November 3, 1985, recorded in Volume 350, Page 754, Real Property Records of Kerr County, Texas.
- c. Easements per the Plat recorded in Volume 5, Page 182, Plat Records of Kerr County, Texas.
- d. Annual assessments and/or current maintenance charges as set forth in instrument dated November 8, 1985, recorded in Volume 350, Page 763, Real Property Records of Kerr County, Texas. (As per Lots 11-15, Blk. 2 only)
- e. Any visible and/or apparent roadways or easements over or across the subject property.
- f. Rights of Parties in Possession. (AS PER OWNER POLICY ONLY)

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

OF

VOL. 350 PAGE 754

10304

ELM CREEK

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

THAT WHEREAS, KERRVILLE 26.5 LTD., a Texas limited partnership, acting herein by and through its duly authorized general partner (hereinafter referred to as the "Declarant") is the owner of certain real property (hereinafter referred to as "the Lots") more fully described as follows:

Lots 1-28, both inclusive, in Block 1, Lots 1-16, both inclusive, in Block 2, and Lots 1-19, both inclusive, in Block 3, of Elm Creek according to the Plat of same (herein "Plat") appearing of record in Vol. 5, Page 182 of the Plat Records of Kerr County, Texas, to which instrument and its records reference is herein made for all purposes: and

WHEREAS, it is deemed to be in the best interest of Declarant and the persons who may purchase the Lots from Declarant that there be established and maintained a uniform plan for the improvement and maintenance of the Lots in the subdivision and the common facilities as hereinafter enumerated;

NOW, THEREFORE, it is hereby declared that all of the Lots described above shall be held, transferred, conveyed, improved and occupied in accordance with the covenants, conditions and easements as hereinafter set forth, and the Lots shall be subject to the restrictions set forth herein which shall run with the Lots and be binding on all parties having any interest therein.

ARTICLE I

No structure shall be erected, placed, altered or permitted to remain on any of the Lots other than one detached one-story, one and one-half story, split-level or two-story family dwelling.

A private garage, servant's quarters, storage room or utility room shall be erected on any of the Lots only after or simultaneous with the erection of a dwelling thereon. No such garage, servant's quarters or other accessory building shall be more than one story in height. At the time of the erection of a dwelling on any Lot, an enclosed garage (with closeable doors) either detached or attached to the main residence building sufficient to store two cars shall be permanently erected thereon. Such garage shall be maintained as such and no such garage shall be permanently closed in, altered or remodeled so that it is not available for the storage of two cars therein, in connection with the residential use of such property.

ARTICLE II

No building shall be erected, placed, or altered on any Lot until the building plans and specifications and a plat showing the location of such building shall have been approved in writing as to quality of workmanship and material conformity and harmony of external design with existing structures in the subdivision, and as to location of the building with respect to topography and finished elevation by an Architectural Control Committee (herein "Committee") composed of Owen Graham and John B. Wallace of Kerrville, Texas, or by a representative designated by a majority of the members of the Committee. In the event the Committee or its designated representative fails to approve or disapprove such plans, specifications and locations within thirty (30) days after such plans and specifications have been submitted to it, or in the event if no suit to enjoin the erection of such building or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this covenant shall be deemed to have been fully complied with. The powers and duties of the Committee and of its designated representative and the requirements of this covenant shall cease on and after May 1, 2010, provided, however, that at any time, the

then record owners of majority of the Lots covered hereby shall have the power through a duly recorded written instrument to remove any committee member or members and replace them with other members, or to withdraw from the Committee any of its powers and duties, or to extend the powers and duties of the Committee. The Committee shall not be entitled to any compensation for services performed pursuant to this covenant.

ARTICLE III

The minimum floor area of the main structure of dwellings erected, placed or permitted to remain on any Lot shall be 900 square feet. The outer walls of the main residence building constructed on any of such Lots shall be at least seventy-five (75) per cent by area composed of rock, brick or stucco; the other walls of the garage and servant's quarters whether detached or attached to the main residence, shall be of the same construction as the outer walls of such residence building. All footings, piers and foundations of the main residence on any such Lot shall be concrete or masonry construction.

ARTICLE IV

Any buildings on the Lots shall be located on the Lot to comply with the setback layout plan filed with the City of Kerrville. For the purpose of this covenant, eaves, steps or open porches shall not be considered a part of the building; provided, however, this shall not be construed to permit an encroachment on another lot or on a side street (except as herein otherwise specifically provided). It will be the duty of the Architectural Control Committee to secure waivers of City setback requirements when necessary or possible to preserve natural landscaping, and the Architectural Control Committee is herein given authority to approve any such waiver on any such Lot.

ARTICLE V

(A) Easement for Drainage, Maintenance, and Overhang. It is contemplated that buildings throughout the Lots shall be constructed directly on Lot lines (i.e., with no setback, except

that no exterior sidewall shall be placed closer than ten (10) feet to the exterior sidewall of a previously constructed residence) and in certain instances, water from roof eaves of such buildings will necessarily drain upon adjoining Lots. There are hereby created drainage easements throughout the properties, for the benefit of each such Lot, upon, across, in and over each adjoining Lot to carry runoff water from the buildings of the nature described above, and the owners of Lots adjoining such buildings shall not interfere with or inhibit in any way the flow of water through said easements.

Each owner of a Lot shall possess an easement over and across any portion of a Lot abutting said owner's Lot within five (5) feet of owner's residence for the purpose of roof overhang and repairing, maintaining and restoring the exterior walls, foundation and/or roof of such residence, provided however, such rights shall be exercised only after prior notice to the owner of such abutting Lot and following the exercise of such right, the owner of such residence shall restore the area covered by such easement to its prior condition insofar as possible. In no event shall materials or equipment be stored upon the easement area. No structure shall be built on the easement created by this paragraph.

For purposes of this Declaration, the term "Owner" shall mean and refer to the person or persons, entity or entities, who either own of record fee simple title to a Lot, or have entered as an original party, successor or assignee into a Contract of Purchase and Sale for a Lot with Declarant; the term "Owner" to exclude any person or entity having an interest in a Lot merely as security for the performance of an obligation; the term "Owner" to include Declarant if Declarant is a record owner of fee simple title to a Lot, but only if, with respect to such Lot, Declarant has not entered into any Contract of Purchase and Sale.

(B) Sidewalls. In instances where a sidewall of a residence is placed on the Lot line (i.e., no side setback), it shall be

prohibited to have any openings in said wall. No doors, windows, mechanical or electrical equipment, garage or dryer vents shall be placed in or on said wall. Said sidewall shall be 100% Brick, Rock or Stucco.

ARTICLE VI

All driveways shall be on the zero Lot side of the dwelling. Driveways and garage location may vary upon approval of the Architectural Control Committee when proposed relocation will add to the neighborhood appearance.

ARTICLE VII

All driveways on the Lots shall be surfaced with concrete. All aprons shall be surfaced with concrete. No boats, trailer, or camper mobile home or motor home or trailer shall be parked for storage in the driveway or yard in front of the front wall line of the respective structure. No antennas, other than television antennas, are to be erected on the premises or rooftops of a single family residence. No towers for antennas are to be erected on any such lot or rooftop.

ARTICLE VIII

No Lot, as that term is defined herein, may be re-subdivided by the owner.

ARTICLE IX

On all Lots backing up to property not located on the Plat, each owner, at time of building construction, shall erect a six (6) foot, privacy, wood fence and such fence shall be in accordance with the Zoning Requirements of the City of Kerrville.

ARTICLE X

No fence, or wall, or hedge shall be erected, placed or altered on any Lot nearer to the front street than the setback line of the respective Lot, except that retaining walls of not over six (6) inches above grade shall be permitted; and no such fence or wall shall exceed six (6) feet in height above ground level.

ARTICLE XI

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At the time of building construction each owner shall construct a four (4) foot sidewalk per the specifications of the City of Kerrville.

ARTICLE XII

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No boats, trailer, mobile homes or motor homes of any character shall be parked or permitted to remain on any Lot nearer to the front street than the front wall line of the respective house, and violation of this provision is hereby declared to be an annoyance or nuisance to the neighborhood. The Committee may determine noxiousness or offensiveness and its decision shall be conclusive on all parties.

ARTICLE XIII

No building previously constructed elsewhere shall be moved onto any Lot. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot any time as a residence, either temporarily or permanently.

ARTICLE XIV

No sign or advertising devise may be displayed on any Lot except in the event of sale. There may be one (1) for sale sign containing no more than five (5) square feet.

ARTICLE XV

No animal, livestock or poultry of any kind shall be raised, bred or kept on any such lot except for cats, dogs or other household pets, provided that they are not kept, bred or maintained for any commercial purposes.

ARTICLE XVI

No trash, ashes or any other refuse may be thrown or dumped on any vacant Lot.

Grass, weeds and vegetation on each Lot sold shall be kept mowed at regular intervals so as to maintain the same in a neat and attractive manner. Trees, shrubs, vines and plants which die shall be promptly removed from the Lot. Until a residence is built on a Lot, Declarant, may at its option, have the grass, weeds and vegetation cut when and as often as the same is necessary in its judgment and have dead trees, shrubs and plants removed from the Lot and the owner of such Lot shall be obligated to reimburse Declarant for the cost of such work.

ARTICLE XVIII

The foregoing covenants are made and adopted to run with the land and shall be binding upon the undersigned and all parties and persons claiming through and under it until May 1, 2010, at which time said covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the then record owners of the Lots covered hereby has been recorded agreeing to change said covenants in whole or in part.

ARTICLE XIX

If the parties hereto, or any of them, or their successors or assigns, shall violate or attempt to violate any of the covenants herein contained, it shall be lawful for Declarant, its successors and assigns, or any person or persons owning any Lots covered hereby to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from so doing or to recover damages for such violation.

ARTICLE XX

The invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Declarant
herein, has hereunto caused this instrument to be executed this
8 day of November, 1985.

KERRVILLE 26.5 LTD., a Limited Partnership

By: John B. Wallace, General Partner
JOHN B. WALLACE, General Partner

STATE OF TEXAS

COUNTY OF KERR

This instrument was acknowledged before me on the 8 day of
November, 1985, by JOHN B. WALLACE, general partner
on behalf of KERRVILLE 26.5 LTD., a limited partnership.

Mark I. Andrews

Notary Public in and for The State of Texas
My Commission Expires: 6/9/89
Mark I. Andrews



FILED FOR RECORD

at 3:38 o'clock P.M.

NOV 8 1985

PATRICIA DYE
Clerk County Court, Kerr County, Texas
By Sammie C. Huston Deputy

FILED FOR RECORD
at <u>3:38</u> o'clock <u>P.M.</u>
NOV 8 1985
PATRICIA DYE Clerk County Court, Kerr County, Texas By <u>Dominic C. Hueter</u> Deputy
RETURN TO: MARK T. ANDREWS ATTORNEY AT LAW 500 MAIN, SUITE A KERRVILLE, TEXAS 78028

led for record November 8, 1985 at 3:38 o'clock P.M.
Recorded November 15, 1985
PATRICIA DYE, Clerk By Dominic J. Henderson Deputy

10305

ROAD MAINTENANCE DECLARATION VOL. 350 PAGE 763

STATE OF TEXAS

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KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF KERR

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WHEREAS, KERRVILLE 26.5 LTD, a Texas limited partnership (herein "Declarant") is the owner of Lots 11, 12, 13, 14, and 15, Block 2 of Elm Creek Subdivision (herein "Lots"), a subdivision of Kerr County, Texas, according to the plat thereof (herein "Plat") recorded in Vol. 5, Page 182 of the Plat Records of Kerr County, Texas; and

WHEREAS, the Lots are serviced by a "private drive" (herein "private drive") as shown and delineated on the Plat; and

WHEREAS, it is deemed to be in the best interest of "Declarant" and of the persons who may purchase Lots from "Declarant" that there be established and maintained a plan for the ongoing maintenance of the private drive;

NOW THEREFORE, it is hereby declared that all of the Lots described above shall be held, transferred, conveyed, improved and occupied subject to the covenants, conditions and restrictions set forth herein which shall run with the Lots and be binding on all parties having any interest therein.

ARTICLE I

DEFINITIONS

(1): "Association" shall mean and refer to The Road Maintenance Association, and its successors and assigns.

(2): "Declaration" shall mean and refer to this Road Maintenance Declaration.

(3): "Lot" shall mean any of the Lots described above, being Lots 11, 12, 13, 14, and 15, Block 2, of Elm Creek Subdivision according to the plat thereof recorded in Vol. 5, Page 182 of the Plat Records of Kerr County, Texas.

(4): "Owner" shall mean and refer to the person or persons, entity or entities, who either own of record fee simple title to a Lot, or have entered as an original party, successor or assignee into a Contract of Purchase and Sale for a Lot with Declarant; the term "Owner" to exclude any person or entity having an interest in a Lot merely as security for the performance of an obligation; the term "Owner" to include Declarant if Declarant is a record owner of fee simple title to a Lot, but only if, with respect to such Lot, Declarant has not entered in to any Contract of Purchase and Sale. The Association, under no circumstances, shall be deemed an Owner pursuant hereto.

ARTICLE II

MEMBERSHIP

Every person or entity who is a record owner of a fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be members of the Association; provided however, the foregoing does not include those persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. All present or future owners are subject to the terms of this Declaration and mere acquisition of any Lot will signify that this Declaration is accepted, ratified, and will be complied with.

ARTICLE III

VOTING RIGHTS

Each member of the Association shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any portion of the property, all such persons shall be members, provided, however, the vote for each such Lot so owned shall be exercised as they among themselves determine, but

in no event shall more than one (1) vote be cast with respect to any such jointly owned Lot.

ARTICLE IV

POWERS AND DUTIES OF THE ASSOCIATION

The Road Maintenance Association shall have the following powers and duties, whenever, in the exercise of its discretion, it may deem them necessary and advisable.

(1) To enforce this Declaration either in its own name or in the name of any owner of a Lot.

(2) To repair and maintain the property owned by the Association, being the private drive.

(3) To borrow money by and through the Board of Directors, providing the borrowing of funds is approved and sanctioned by a majority of the membership at a meeting called for the purpose of such determination.

(4) The Association shall have the right to expend its funds for the above mentioned purposes only.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

(1) Creation of the Personal Obligation of Assessments. By purchase of a Lot which is subject to these covenants, conditions, and restrictions, each member is deemed to covenant and agree to pay to the Association annual assessments or charges. These assessments are to be made as set forth herein and in the By-Laws of the Association. Each such assessment, together with such interest, costs, and reasonable attorney's fees shall be the personal obligation of the person who was the owner of such property at the time when the assessment was due.

(2) Purpose of Assessments. The purpose of the assessments levied by the Association shall be used exclusively by it to enforce these covenants, conditions, and restrictions and for the purposes of exercising those powers and duties conferred upon the Association by Article IV above.

(3) Uniform Rate. The assessments shall be fixed at a uniform rate for all Lots, as determined by the Board of Directors, and shall be collected on an annual basis.

(4) Non-Payment of Assessments-Remedies of the Association. Assessments shall be due and payable on or before the 1st day of January of each calendar year. If not paid within thirty (30) days of such due date, the assessment shall bear interest at the rate of ten percent (10%) per annum; and the Association may bring an action at law against the owner personally obligated to pay the assessment, and the interest, costs and reasonable attorney's fees of any such action shall be recoverable or otherwise added to the amount of such assessment. Any Owner failing to pay the assessment shall forfeit all right to use the property owned by the Association until such assessment has been paid. The specific remedies referred to herein shall not preclude the Association from exercising any other remedies which may legally exist and such remedies shall be considered as cumulative.

(5) What Constitutes Notice. A written or printed notice thereof, deposited in the United States Post Office with postage thereon prepaid and addressed to the respective owners at the last address listed with the Association, shall be deemed to be sufficient and proper notice for this purpose or for any other purpose of this Declaration, when notices are required.

(6) Lien on Lots. The assessment shall become a lien on the Lots as soon as it is due and payable as above set forth. In the event of failure of any of the owners to pay the assessment on or before the first day of February of each year beginning February 1, 1986, then such assessment shall bear interest at the rate of ten percent (10%) per annum from the first day of January, but if the assessment is paid on or before the first day of February, then no interest shall be charged.

(7) When Delinquent. On or after the first day of February of each year, beginning February 1, 1986, the assessment shall become delinquent and payment of both principal and interest may be enforced as a lien on the Lot or Lots that are delinquent in proceedings in any court in Kerr County, Texas, having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the Association to bring suits to enforce such liens before the expiration thereof. The Association may at its discretion file certificates of non-payment of assessment in the Deed of Trust Records of Kerr County, Texas, whenever any such assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the owner or owners of the property described therein a fee of \$10.00 which fee is hereby declared to be a lien upon the Lot or Lots so described in said certificate and shall be collectable in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon.

(8) Termination of Liens. Such liens shall continue for a period of four years from the date of delinquency and no longer, unless within such time, suit shall have been instituted for the collection of the assessment in which case the lien shall continue until the termination of the suit, and until the sale of the Lot under execution of the judgement establishing same.

ARTICLE VI

OWNER'S EASEMENTS OF ENJOYMENT

Every owner shall have a right and easement of enjoyment in and to the property owned by the Association, which right and easement shall be appurtenant to and pass with the title to every Lot. Provided, however, such right and easement shall be subject to any restrictions established by the Association and its Board of Directors and each owner's use and enjoyment of the property owned by the Association shall not interfere with the rights and enjoyment of other owners to use and enjoy the same.

NO CITY RESPONSIBILITY

The City of Kerrville shall never be responsible for the maintenance or repair of the private drive.

ARTICLE VIII

COVENANTS RUNNING WITH THE LAND

These restrictions, covenants, and conditions are hereby declared to be covenants running with the land and shall be fully binding upon all persons acquiring a Lot whether by descent, devise, purchase, assignment, contract or otherwise, and any person by the acceptance of title to any Lot or entering into any contract for the purchase of same shall thereby agree and covenant to abide by and fully perform all of the foregoing restrictions, covenants and conditions.

ARTICLE IX

TERMINATION

This Declaration may be terminated and all of the Lots thereby released from the covenants, conditions, and restrictions contained therein upon the occurrence of the following::

(1) agreement to terminate by a majority of the owners of the Lots, and

(2) acceptance by the City of Kerrville of all responsibilities of maintenance and repair of the private drive.

ARTICLE X

TEMPORARY TRUSTEE

Prior to the actual organization or incorporation of the Association contemplated by the terms of this Declaration, Declarant shall have the right at its option to perform the duties, assume the obligations, levy and collect the assessments, and otherwise exercise the powers herein given to the Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant
herein, has hereunto caused this instrument to be executed this
8 day of November, 1985.

KERRVILLE 26.5 LTD., a Limited Partnership

By: *John B. Wallace*
JOHN B. WALLACE, General Partner

STATE OF TEXAS
COUNTY OF KERR

This instrument was acknowledged before me on the 8 day of
November, 1985, by JOHN B. WALLACE, general partner
on behalf of KERRVILLE 26.5 LTD., a limited partnership.



Mark I. Andrews
Notary Public in and for The State of Texas
My Commission Expires: 6/9/89
Mark I. Andrews

FILED FOR RECORD
at 3:38 PM
NOV 8 1985
PATRICIA DYE
Notary Public, Kerr County, Texas
Patricia C. Dye

FILED FOR RECORD

NOV 8 1985

PATRICIA DYE

Clerk County Court, Bexar County, Texas

Patricia C. Dye

Return to:
MARK T. ANDREWS

ATTORNEY AT LAW

300 MAIN, SUITE A
KERRVILLE, TEXAS 78601