

**DECLARATION
OF
COVENANTS, CONDITIONS, EASEMENTS & RESTRICTIONS**

ELM CREEK RANCH

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS

COUNTY OF HAYS

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Blackberry Investments, LLC, a Texas limited liability company, (hereinafter the "Declarant"), being the owner of the legal and equitable title in and to the following described real property lying and being situated in the County of Hays and the State of Texas and being more particularly described as follows, to-wit.

Lots 1 through 19, ELM CREEK RANCH, a subdivision of record according to the map or plat of record in Volume 7, Page 83, Plat Records of Hays County, Texas, (an individual lot hereinafter referred to as a "lot" and the property as a whole hereinafter referred to as the "Subdivision"),

Declarant does hereby declare and impose upon the Subdivision the following covenants, conditions, easements, and restrictions for the purpose of carrying out a uniform plan for the development of a quality residential neighborhood. The covenants, conditions, easements, and restrictions of this declaration (hereinafter the "Declaration") shall apply to and become a part of all legal instruments whereby title or possession to any lot in the Subdivision is hereafter conveyed or transferred, such covenants, conditions, easements, restrictions, and limitations to run with the land and to be binding upon and inure to the benefit of all parties, now or hereafter, owning or using the above-described property or any portion thereof, their heirs, executors, administrators, successors, and assigns.

ARTICLE 1

RESTRICTIONS

- 1 01 Residential Use All lots are hereby restricted exclusively to single-family residential use. No structures shall be erected, placed or maintained on any lot other than a single-family residence with such accessory structures and buildings such as a storage building, workshop, garage, guest house and servant's quarters. No more than one single-family residence may be constructed or placed on a lot. The term "single-family residence" shall include site built homes, single or double wide mobile homes, manufactured homes, modular homes and move-on homes. Any mobile home, manufactured home or modular home shall be no more than 5 years old when placed on any lot within the subdivision. The Declarant, in its sole discretion, may allow variances to the age of any home

depending on the home's condition. Any mobile home, manufactured home or modular home shall be placed on a permanent foundation, according to State of Texas law, and skirted with rock, brick or plaster or other material specifically approved by Declarant within 60 days of the date of delivery to the Subdivision lot. All permanent, habitable structures and manufactured homes are required to have their own independent water meter from Goforth Water Supply Corp. No sharing of water meters will be permitted.

- 1.02 Size and Specifications. No building, structure or other improvement, specifically including single or double wide mobile homes, manufactured homes, modular homes and move-on homes, 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 Declarant. A residence may not be lived in or occupied until the residence is fully complete. Any single-family residence, as defined in Paragraph 1.01, constructed on any lot within the Subdivision shall have not less than 1,000 square feet of heated and air-conditioned space, exclusive of basements, garages, and porches.

1.03 Setback Requirements and Front and Rear Building Lines.

- a. Setback Requirements. Residences, garages, or any other building of any kind constructed on any lot shall have a front building line set back 35 feet from the front property line. The residences, garages, or any other buildings of any kind shall be set back 16 feet from any side property line and 16 feet from any rear property line. In the case of corner lots, construction of improvements shall also be subject to a side set back line 16 feet from the property line adjacent to the side street. Variations from these setback requirements may be granted in individual cases where tract size or topography make these requirements impractical, but any such variation must have the prior written approval of the Declarant.
- b. Front Building Line: The front building line is that line parallel to the front property line, and the side property line if a corner lot, which intersects the most forward projection of the actual residence constructed on any lot, including roofs, decks, porches and garages.
- c. Rear Building Line: The rear building line is that line parallel to the front property line, and side property line if a corner lot, which intersects the rear-most projection of the actual residence constructed on any lot, including roofs, decks, porches, and garages. All storage sheds, portable buildings, animal pens, animal houses, and any other such structures shall be located behind the rear building line.

- 1.04 Driveways. All lot owners must install a driveway, and the driveway must be either concrete, asphalt pavement, brick/concrete pavers, gravel or crushed limestone. These driveways include any and all entrances to homes or improvements off the county roads and shared access driveways that have already been installed. The driveway must be

completed before occupying the residence. Permits for driveways and culverts must be obtained from Hays County before any driveway is constructed.

1 05 Shared Access Driveways.

Shared Access Driveway No. 1 is used to access only lots 17, 18 and 19
 Shared Access Driveway No. 2 is used to access only lots 12, 13 and 14
 Shared Access Driveway No. 3 is used to access only lots 8, 9 and 10
 Shared Access Driveway No. 4 is used to access only lots 4, 5 and 6

The above shared access driveways will be constructed and maintained as private driveways. Hays County will not maintain these driveways outside of the County's right-of-way. The responsibility for maintenance of each driveway belongs solely to the lot owners utilizing each driveway, and the cost of maintaining each driveway, including labor and materials, will be allocated among those lot owners according to the following chart.

Tract No	Shared Access Driveway No	% Cost of Driveway Maintenance
17	1	32%
18	1	34%
19	1	34%
12	2	20%
13	2	40%
14	2	40%
8	3	20%
9	3	40%
10	3	40%
4	4	20%
5	4	40%
6	4	40%

1 06 Quality Workmanship and Maintenance: All improvements and structures including but not limited to homes, garages, fences, storage buildings, and other improvements shall be constructed of quality, new material and in a workmanlike manner. Such improvements shall be maintained and situated so that their appearance will not be detrimental to the Subdivision. All improvements shall be kept weatherproofed by painting or such other method as may be necessary and appropriate, and none of the improvements shall be allowed to deteriorate.

1 07 Rubbish and Debris: No rubbish or debris or any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants. Refuse, garbage and trash shall be kept at all

times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view.

- 1 08 Easements. Easements are hereby reserved and dedicated over and across a 30 foot strip along front, 10 feet along each side lot line, and 10 feet along the rear lot line for the purpose of installing, maintaining and repairing, electric power, gas, telephone, water, cable, community mailbox station, 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 company entering into and upon the Property for such purposes, without the necessity of any further grant of such easement rights to such companies. Any lot owner installing a fence or other improvement within the area encumbered by the easement does so at his own risk. If two or more lots are consolidated into a building site in conformity with the provisions of paragraph nine (9), these easement provisions and the setback provisions in paragraph three (3) shall be applied to such resultant building site as if it were one original platted lot.
- 1.09 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 in the Subdivision plat covering that particular lot as recorded in Volume 7, Page 83, Hays County Plat Records.
- 1 10 Restriction on Further Subdivision. There shall be no dividing, subdividing, or re-subdividing allowed of any of the lots in the Subdivision into smaller lots or tracts. All lots in the Subdivision will remain the size platted on the Subdivision plat, except that any person owning two or more adjoining lots may consolidate such lots into a single building site.
- 1 11 Sewage. Wastewater and sewage shall be disposed of by means of sanitary sewer systems or similar approved means of sanitary sewage disposal which meet the requirements of and are approved by all governmental authorities having jurisdiction thereof. No residence shall be used until sanitary sewage disposal facilities complying with this paragraph have been completely built and approved by the governmental authority. The sanitary sewage facility on each lot will be designed by a registered professional engineer or licensed sanitarian in accordance with the Texas Natural Resource Conservation Commission On-Site Sewage Facility Rules. Sanitary sewage facilities are restricted to aerobic systems or other systems approved by Hays County only. No septic system will be located within any designated drainage easement or flood plain unless specifically approved by Hays County.
- 1 12 Drainage Structures, Ditches, and Stock Tanks. Drainage structures under private driveways shall be constructed at lot owner's expense in accordance with Hays County regulations and recorded plat specifications. Drainage structures must be completed before house construction begins. Natural drainage and detention facilities shall not be

altered, constructed, or changed without prior written approval from the Declarant and appropriate government agencies.

- 1 13 Trash Disposal: No lot shall ever be used for or maintained as a dumping ground for rubbish or debris or junk. Each homeowner must have trash removal service and trash, garbage or other wastes shall not be permitted except in sanitary containers. All incinerators or cans or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition beside or behind the residence. Cut or trimmed brush on occupied or non-occupied lots must be disposed of within 30 days of cutting. Construction of a house may not begin until an enclosed trash receptacle and portable toilet are available on-site. It is the owner's responsibility to that construction debris is contained and properly disposed of
- 1 14 Nuisances: No noxious, noisy, 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. Any determination by the Declarant that an activity is noxious, noisy, offensive, undesirable or immoral shall be final and binding on all parties
- 1 15 Unused Vehicles. The placement of junked, abandoned, wrecked, or non-operating items of any kind such as motor vehicles, boats, or other equipment or materials shall not be permitted on any lot in the Subdivision. The repairing of motor vehicles, boats or any other items of a mechanic nature shall not be permitted on any lot in the Subdivision, except within a garage or other comparable enclosed structure. Any vehicles on the property must have a current state registration and current license plate
- 1 16 Boats and Trailers: No boats, boat trailers, travel trailers, trailers of any kind, campers, recreational vehicles, motor homes, tractors, vehicles, and other equipment or other similar property shall be allowed on any lot unless such items are regularly and frequently used by the lot owner, neat in appearance, well-maintained, and stored behind the rear building line. None of the above-mentioned items are allowed on any lot until the residence is completed and occupied.
- 1 17 Temporary Structures. No structure or improvement of a temporary character, travel trailer, recreational vehicle, tent, camper, shack, garage, barn or other outbuilding shall at any time be used as a residence or dwelling.
- 1 18 Animals: Dogs, cats or other household pets, not to exceed a total of four in number (exclusive of unweaned offspring) per residence, may be kept so long as they are not kept, bred or maintained for any commercial purpose. Livestock, including cattle, horses, sheep, goats, ducks, geese, and chickens are allowed subject to limitations in the following chart

<u>Animal Type</u>	<u>Number Allowed per Acre</u>
Cows or Horses	1
Sheep or Goats	3

Fouls	3
Chickens	3

No pigs, hogs, or swine are allowed under any condition. No pets or animals may 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, (individually or considered together) is offensive or a nuisance, the Declarant shall make the determination and its determination shall be final and binding on all parties.

- 1.19 Animal Containment: All animals shall be contained within the lot lines either by fence, leash, or other comparable device. Animals shall not be allowed outside an owners lot. Any pen, corral, hutch, structure or enclosure of any kind must be constructed of new material, must be attractive in appearance in keeping with the general standard of improvement in the Subdivision, and must be at all times kept neat and clean in appearance, consistent with the requirements herein specified for other improvements in the Subdivision. All such improvements must be located behind the residence, and not closer than twenty (20') feet to the side and rear property lines.
- 1.20 Fences: The plans for all fencing must be approved in advance by the Declarant before installation of the fencing can begin. Fences can be constructed of wire, pipe, chain-link, wood, or masonry. All fence lines must be mowed and kept clean of weeds, trash and garbage at all times. All fences must be maintained to prevent sagging and deterioration. According to regulations of the City of Austin, no fences of any kind or character shall be constructed over or across any drainage easement or flood plain.
- 1.21 Signs. Except for one sign of not more than six square feet advertising the property for sale or for rent, no signs of any kind shall be displayed to the public view from any lot, save and except any signs used by the Declarant to advertise the lots in the subdivision for sale.
- 1.22 Antennae. All satellite dish receivers larger than three feet (3') in diameter must receive prior written approval of the Declarant as to size and location.
- 1.23 Hunting and Firearms: Hunting, trapping and discharge of firearms are expressly prohibited within the Subdivision.
- 1.24 Clothes Drying Facilities: Outside clothes lines or other facilities for drying or airing clothes outside the residence are not permitted.
- 1.25 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 any 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.

- 1 26 Rights of Declarant: The Declarant or its agents shall have the right to use any unsold lot for a sales office location or any other purpose that Declarant deems necessary
- 1 27 Parking. Streets shall not be used for parking except for emergency parking of vehicles. No continuous parking of automobiles or any other type of vehicle will be permitted on any street or road right-of-way in the Subdivision at any time
- 1 28 Utility Connections. Within one (1) year of the purchase date of a lot, the lot owner will obtain all necessary permits and install all sewage disposal systems, water meters, water lines, and electric connections to the lot unless the Declarant has granted, in writing, a variance or extension of this time period to the lot owner
- 1 29 Lot Maintenance. All lot owners must maintain their lots. Lot maintenance may include, but is not limited to, cutting grass and removing trash from the lot. If the lot owner is not diligent in performing this duty, the Declarant has the right to give the lot owner a thirty (30) day written notice to complete its lot maintenance. If the lot owner does not complete this task within the required time frame, the Declarant has the right to contract with a service company to perform the lot maintenance and charge the lot owner a reasonable fee for this service

ARTICLE 2

GENERAL

- 2 01 Enforcement. Declarant, and any person owning any interest in any of the lots in said Subdivision, including mortgage interest, may enforce these restrictions through a proceeding at law or in equity against the person or persons violating or attempting to violate any covenant, condition, restriction, or limitation, either to prevent or to correct such violation, or to recover damages, or to obtain other relief for such violation. All expenses, including a reasonable attorney fee, shall be recovered from anyone violating these restrictions by the party bringing the suit.
- 2 02 Limitations of Liability. The Declarant shall not be liable in damages or otherwise to any owner of any lot within the subdivision by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with. (a) the approval or disapproval, or failure to approve or to disapprove any plans, specifications, or plot plans, (b) the enforcement of, or the failure to enforce, the covenants, conditions, easements and restrictions of this Declaration, or (c) any other action taken or not taken pursuant to the provisions of this Declaration.
- 2 03 Partial Invalidity. If any portion of this Declaration is declared illegal, invalid, or unenforceable by law or court order, such action shall not affect the validity of any other provision hereof. Failure to enforce any one or more provisions hereof shall not constitute a waiver thereof as to future enforcement and shall not serve to invalidate any other provision of this Declaration

2 04 Duration. These covenants, conditions, easements and restrictions shall run with the land and shall be binding upon and against the Property for a period of twenty-five (25) 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%) or more of the Property (by lot) 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 (3) months immediately prior to the date the covenants otherwise would be automatically extended

2 05 Amendment

a. This Declaration may be amended by Declarant so long as Declarant owns a majority of the lots in the Subdivision. No amendment by Declarant shall be effective until there has been recorded in the Official Records of Hays County, Texas, an instrument executed and acknowledged by Declarant in setting forth the amendment, and an instrument executed and acknowledged by the President of the Association certifying that Declarant had the requisite number of votes

b. In addition to the method provided in paragraph 4.05(a), this Declaration may be amended by the recording in the Official Records of Hays County, Texas, of an instrument executed and acknowledged by the President of the Association setting forth the amendment and certifying that such amendment has been approved by owners entitled to cast at least eighty percent (80%) of the number of votes entitled to be cast, pursuant to paragraph 2 03

2 06 Assignment of Declarant: Notwithstanding anything in this Declaration to the contrary, Declarant may assign, in whole or in part, any of its privileges, exemptions, rights and duties under this Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder. Such assignment shall be evidenced by a written instrument, executed by Declarant and the assignee, and recorded in the Official Records of Hays County, Texas. In the event of any partial assignment by Declarant of any of its privileges, exemptions, rights and duties under this Declaration, Declarant shall continue to remain responsible and liable for all its obligations and duties under this Declaration until such time as Declarant has completed a full assignment of all of its privileges, exemptions, rights and duties under this Declaration to any other person or entity.

2 07 No Warranty of Enforceability: While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any owner acquiring a lot in reliance on one or more of such restrictive covenants, terms or provisions shall assume all risks of the validity and enforceability thereof and by acquiring the lot, agrees to hold Declarant harmless therefrom

2.08 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the Subdivision, and of promoting and effectuating the fundamental concepts of the Subdivision set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas

2.09 Exemption of Declarant; Utility Easements

a Without in any way limiting the generality of the preceding sentence, this Declaration shall not prevent or limit the right of Declarant to excavate and grade, to construct and alter drainage patterns and facilities, to construct any and all other types of improvements, sales and leasing offices and similar facilities, and to post signs incidental to construction, sales and leasing anywhere within the Property.

b. Declarant reserves the right to locate, construct, erect and maintain, or cause to be located, constructed, erected and maintained in and on any areas owned by Declarant, pipelines, conduits, wires and any improvements relating to a public utility function with the right of access to the same at any time for the purposes of repair and maintenance.

2.10 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.

2.11 Title: The Association shall accept delivery of any deed or bill of sale executed by Declarant conveying property within the Subdivision, or addition thereto, to the Association

IN WITNESS WHEREOF BLACKBERRY INVESTMENTS, LLC has caused this document to be executed by its duly authorized officer this the 30th day of November, 2004.

BLACKBERRY INVESTMENTS, LLC
a Texas limited liability company

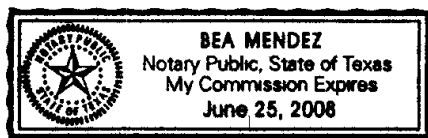
By: 

Its: Manager

STATE OF TEXAS

COUNTY OF TRAVIS

This instrument was acknowledged before me this 30 day of November, 2004 by
Stewart Pate, Managing Member of BLACKBERRY
INVESTMENTS, LLC, a Texas limited liability company, on behalf of said company



Bea Mendez
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING RETURN TO.

Blackberry Investments, LLC
6201 Guadalupe Street
Austin, Texas 78752

Filed for Record in:
Hays County
On: Nov 30, 2004 at 03:16P
Document Number: 04034199
Amount: 32.00
Receipt Number - 114092
By,
Rebecca Hall, Deputy
Lee Carlisle, County Clerk
Hays County