PROTECTIVE COVENANTS AND CONDITIONS

of

BERGEN WALD ESTATES.

THE STATE OF TEXAS, )

COUNTY OF GILLESPIE. ) WHEREAS, Marvin Prochnow, hereinafter, called "Developer", is the record owner of all of the tracts and parcels of land shown upon that certain map or plat filed for record in Volume 1, at page 16 of the Map and Plat Records of Gillespie County, Texas, on the 12 day of July, 1973, to which reference is hereby made for all purposes; and

WHEREAS, these Restrictions, Covenants and Conditions are established for the purpose of creating and carrying out a uniform plan for the improvement, development and sale of BERGEN WALD ESTATES:

NOW, THEREFORE, Marvin Prochnow does hereby dedicate the land described on the aforesaid Map and Plat of Bergen Wald Estates on file with the County Clerk of Gillespie County, Texas, to which reference is hereby made for all purposes, and agrees that said land is held and shall hereafter be conveyed subject to the following Restrictions, Protective Covenants and Conditions:

1. PURPOSE AND EXTENT OF RESTRICTIONS, PROTECTIVE COVENANTS AND CONDITIONS. These restrictions, covenants and conditions are established for the purpose set forth above and for the further purpose of preserving the natural beauty and propagating the wildlife on the land, all for the mutual benefit of the owners of same. Said Restrictions, Covenants and Conditions shall, as hereafter provided, be construed as covenants running with said land and binding upon the Developer, his heirs, executors, administrators, and assigns, all owners or purchasers of said property, their heirs, successors, executors, administrators and assigns, as provided herein.

2. DEFINITIONS. In construing these Restrictions, Covenants and Conditions the following words shall have the following meaning:

A. "Developer" shall mean and refer to Marvin Prochnow, his heirs, executors, administrators and assigns.

B. "Original Plat" shall mean and refer to the aforesaid Plat filed for record in Volume 1 at page 16 of the Map and Plat Records of Gillespie County, Texas on the 12 day of July, A. D. 1973, designating Bergen Wald Estates.

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

D. "Residence" shall mean and refer to a permanent structure erected on a tract for use as a single family dwelling or a duplex apartment so arranged as to house no more than two families.

E. "Committee" shall mean a group of four people who will rule on road maintenance, lake maintenance and park maintenance and any assessments connected therewith. The developer and three resident tract owners selected by the developer will compose the "committee".

VOL 901 PAGE 088

3. USE OF TRACTS. Lot 1A as shown on the original plat may be used for the purpose of conducting a grocery store or an establishment of the type commonly known as an Ice House or Drive-In-Grocery conditioned however that no such establishment shall be permitted to have any alcoholic beverage license permitting consumption of any alcoholic beverages on the premises.

All other tracts as shown on the original plat, or the improvements erected thereon, shall be used for family residence purposes, being limited to either a single family residence or what is commonly known as a duplex in which no more than two families may reside, with the usual and customary assessory buildings, such as, but not limited to, garage, guest cottage and servants' quarters. No tract, Excepting Lot 1A, shall be used for any commercial purpose, except that nothing herein shall be construed to prevent an Owner from rendering professional services of a purely personal nature as long as such services do not attribute to the tract any appearance of a commercial or non-residential use.

4. COMMON AREAS. The common areas consisting of the lake, park area and private roads as shown by the original plat, owned or controlled by the Developer and the Committee shall be maintained and governed by the Developer and the Committee in a manner consistent with the purposes herein set forth and in conformity with the terms and provisions hereof.

5. SIZE OF BUILDING AND STRUCTURES: No dwelling house may be erected upon any tract in this subdivision which contains less than 1400 square feet of living area, exclusive of garage, carports and porches.

The exterior of buildings shall be completed not later than twelve (12) months after laying the foundation of the buildings. No building shall be occupied or used until the exterior thereof shall be completely finished, nor shall any such building be occupied or used until connected to a septic tank or other disposal system approved by the County and/or State Health Department.

6. MOBILE HOMES AND TRAVEL TRAILERS. No mobile home, travel trailer or trailer house of any description shall be used upon any of the tracts within this subdivision as a dwelling or other permanent purpose at any time. Individual owners may store upon their property any such mobile home, travel trailer or trailer house owned by them, so long as it is not used for dwelling purposes.

7. SET BACK REQUIREMENTS AND FENCING. No building or other structure shall be erected on any tracts nearer than thirty feet from any street, nor within ten feet of any side property line, nor closer than ten feet from any rear property line. No fence shall be over six (6) feet in height.

8. ANIMALS AND HUNTING. No swine or other noxious or offensive animal shall be kept upon any tract. Commercial production of livestock, poultry and horses shall not be permitted. All livestock (meaning horses, cattle and sheep) as well as household pets, shall be sheltered, shall be restrained by fence enclosures or leash, and the areas containing the same, shall be kept clean at all times.

Hunting shall be by the use of shotguns only, provided however, that no shotgun shell slugs or single ball shot shell shall be used. Personal safety and preservation of wildlife and the safety of owners of the neighboring tracts shall be of prime consideration. Subleasing for hunting is specifically forbidden.

9. SANITATION AND SEWERAGE. No outside toilets will be permitted and no installation of any kind of disposal of sewage shall be allowed where the probability would exist that raw, treated or untreated sewage or septic tank drainage would escape into the ditches or gullies and subsequently into wells and/or other water bodies. All sewage systems must be constructed and installed in accordance with State, County and Municipal (if any) health and sanitation statutes, rules and regulations. Lateral drain lines or tanks shall be no closer than 10 feet to adjacent property lines.

VOL 106 PAGE 881

No trash shall be dumped into creeks, common areas, roadways and/or gullies or ditches, or be placed in the proximity thereto so that any such debris would wash into the common lake area or adjacent property. Owners are to keep said property clean and neat in appearance at all times, and shall not carry on any noxious or offensive activity or do anything which may be or become an annoyance or nuisance to the neighborhood.

10. RE-SUBDIVIDING. No tract or lot as shown by the original plat may be re-subdivided by the owner without the consent of the Developer within 15 years from the date hereof. After 15 years from the date hereof, any such tract or lot may be re-subdivided by consent of the majority of the land owners within the subdivision.

11. TRACTS BORDERING LAKE. All tracts bordering the lake shall have exclusive rights to control the property from their normal high water lot line to the waters edge, as the level of the water varies with the seasons.

12. LAKE AREA, PARK AREA AND ROADS. The lake area, park area and roads designated on the original plat as private roads, shall be owned in common by the developer and the lot owners, with each lot owner to have a 1/100th interest in such areas, and shall be controlled by the "Committee" as set forth herein.

13. COVENANTS RUNNING WITH THE LAND. These restrictions and covenants are hereby declared to be covenants running with the land and shall be fully binding upon all persons acquiring property in said subdivision whether by descent, devise, purchase, assignment, contract or otherwise, and any person by the acceptance of title to any tract, or parcel of land or entering into a contract for the purchase of same shall thereby agree and covenant to abide by, and fully perform all the foregoing restrictions, covenants and conditions. These covenants shall be binding for a period of 15 years from the date they are filed for record in the Deed Records of Gillespie County, Texas, unless changed or amended as provided herein. Said covenants shall be automatically extended, upon the expiration of such term for successive periods of ten years each.

The record owners of legal title of fifty-one (51%) percent of the tracts as shown by the Deed Records of Gillespie County, Texas may amend or change said covenants in whole or in part at any time. Any change or amendment shall be set forth and evidenced by a successor instrument bearing the signatures of the requisite number of record owners and the recording of same in the office of the County Clerk of Gillespie County, Texas. A copy of any change or amendment to these Restrictions or Covenants and Conditions shall be forwarded by prepaid mail to all owners by the Developer. Failure to furnish said copy shall not affect the validity of such change or amendment.

14. SEPARABILITY OF TERMS AND PROVISIONS. If any term or provision of this instrument, or the application thereof shall be held invalid, all other terms and provisions of this instrument, or the application thereof shall not be affected thereby, nor shall any failure of the Developer or Tract owner to seek enforcement of any term or provision constitute a waiver of any right to do so in the future or the validity or enforceability of such term or provision.

15. ENFORCEMENT. The Developer and every other person, firm or corporation hereinafter having any right, title or interest in any tract or parcel of land in this subdivision shall have the right to prevent the violation of any of said restrictions by injunction or other lawful procedure and to recover any damages resulting from such violations. Damages for the purpose of this paragraph shall include court costs and necessary attorney fees.

16. INTERPRETATIONS. The right is expressly reserved to the Developer and his heirs and assigns, to interpret any and all conditions, limitations and restrictions contained in these restrictions but such right shall be without prejudice to the rights of enforcement prescribed in paragraph "15" above.

106 882

17. ABATEMENT AND REMOVAL OF VIOLATION. Violation of any restriction or condition or breach of any covenant herein contained shall give the Developer or his agents, in addition to all other remedies, the right to enter upon the land, and to abate and remove the violation at the expense of the Owners and the Developer or his agents shall not thereby be deemed guilty of any manner of trespass for such entry, abatement or removal.

VOL 106 PAGE 883

18. EASEMENTS. Perpetual easements are reserved along and within 10 feet on either side of all property lines in this developement, excepting Tract Nos. 11 and 26, for the installation and maintenance of electric, telephone and utility lines, and to trim trees which at any time interfere or threaten to interefere with the maintenance of such lines, with the right of ingress to and egress from and across said premises to employees of utilities owning said lines. As to Tract Nos. 9 and 11, said electric, telephone and utility easement shall cover a width of 30 feet.

It is understood and agreed that it shall not be considered a violation of the provisions of this easement if wires or cables carried by such pole lines pass over some portion of said tracts not within the width areas herein prescribed, as long as such lines do not prevent the construction of buildings on any tracts in this development.

EXECUTED this the 12th day of July, A. D. 1973

Marvin Prochnow

Marvin Prochnow, Developer

THE STATE OF TEXAS, )
COUNTY OF GILLESPIE. )

BEFORE me, the undersigned authority, on this day personally appeared Marvin Prochnow, 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.

Given under my hand and seal of office on this the 12th day of July, A. D. 1973.

Pat Dooley (Pat Dooley)

Notary Public in and for Gillespie County, Texas.