CHERRY MOUNTAIN ESTATES TO THE PUBLIC

DEDICATION AND RESTRICTIONS

THE STATE OF TEXAS X

COUNTY OF GILLESPIE X

94005i

WHEREAS, MARVIN G. PIPKIN and DRU C. PIPKIN, are the owners of all tracts situated in CHERRY MOUNTAIN ESTATES, located in Gillespie County, Texas and being those two (2) tracts of land described in Warranty Deeds from L. R. FRENCH, JR. to MARVIN G. PIPKIN and wife, DRU C. PIPKIN, dated April 9, 1993, filed for record under Volume 246, Page 248, and Volume 246, Page 265 of the Real Property Records of Gillespie County, Texas;

WHEREAS, MARVIN G. PIPKIN and wife, DRU C. PIPKIN will convey the above described lands subject to certain protective covenants, reservations, conditions, restrictions and charges as hereinafter set forth;

NOW, THEREFORE, it is hereby declared that all of the above referred lands shall be held, sold and conveyed subject to the following restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the land and shall be binding on all parties having a right, title or interest in or to the above described lands or any part thereof, and their heirs, successors and assigns, and which restrictions, covenants and conditions shall inure to the benefit of each owner thereof, and any contract or deed which may hereafter be executed in connection with said lands or any part

thereof, shall be conclusively held to have been executed, delivered and accepted subject to the terms and conditions contained in this instrument, regardless of whether or not such terms and conditions are specifically set out in said contract or deed.

I.

DEFINITIONS

1.01. "Owner" shall refer to the record owner whether one or more persons or entity, of the fee simple title to any portion of the above described land, excluding however, those having any interest therein merely as security for the performance of an obligation.

1.02. "Tract" shall refer to any portion of the land, as owned by any owner.

II.

DEDICATION

2.01. MARVIN G. PIPKIN and DRU C. PIPKIN, hereby dedicate to the public for its use, the utility easements more specifically described on the plat of CHERRY MOUNTAIN ESTATES, found of record in Volume 2, Page 36 of the Plat Records of Gillespie County, Texas, for purposes of the installation and maintenance of electric, telephone, cable television, sewer and water utility lines. Such utility line easement incorporating the right to trim trees which at any time interfere or threaten to interfere with the maintenance of such lines, construct and reconstruct utility service lines of all types, whether buried or above ground,

together with the right of ingress to and egress from and across said premises to employees, contractors and subcontractors of the utilities owning such service lines.

III.

RESTRICTIONS

3.01. Use of Land: All tracts in the subdivision known as CHERRY MOUNTAIN ESTATES shall be used solely for residential and agriculture use as restricted and set forth below.

A. Residential structures shall be limited to one per tract. Other structures that are expressly permitted include servants quarters, guest quarters, art or craft studios, playhouses, patios, cabanas, porches, gazebos, swimming pools, tennis courts, incidental household storage buildings, stables, radio and television receiving antennas, dish-type receivers of satellite signals and solar collectors, all however, must be located within the minimum setback lines as set forth in Section D.

B. No dwelling house shall be moved onto any tract. All dwelling houses in this subdivision shall be constructed and erected on site. The relocation or reconstruction of a structure of historic quality and integrity, to be used as an accessory building as permitted in Section A, shall be permitted. No mobile home, travel home, or modular unit of any type, shall be used as a dwelling or accessory building on the property at any time.

C. Owner may store their personal travel trailer, motor home or other recreational vehicle on the property, so long as it is not used as a permanent residence and is not stored closer than the

minimum setback lines set forth in Section D.

D. The minimum setback building line from the street front property line shall be one hundred feet (100'). No structure of any type shall be nearer than one hundred feet (100') from the street front property line. The minimum setback building line from the rear or any side property line shall be thirty feet (30'). No building or structure (other than perimeter fencing) of any type shall be permitted nearer than thirty feet (30') to any side or rear property line.

E. Only those home occupations that comply with the following limitations shall be permitted:

(i) The home occupation shall be conducted entirely within a dwelling unit which is the bona fide residence of the practitioner(s), or entirely within only one accessory building, limited to fifteen hundred (1500) square feet, (not including a carport);

(ii) No person other than a family member who resides in the dwelling unit shall participate in the home occupation on the premises;

(iii) The residential character of the tract and dwelling shall be maintained. Neither the interior nor the exterior of the dwelling shall be structurally altered so as to require compliance with any applicable nonresidential construction codes to accommodate the home occupation. No additional buildings shall be added on the property to accommodate the home occupation;

(iv) The home occupation shall not generate customer

related vehicular traffic;

(v) No direct selling of merchandise shall occur on the premises;

(vi) No equipment or materials associated with the home occupation shall be displayed or stored where visible from anywhere off the premises;

(vii) The occupation shall not produce external noise, vibration, smoke, dust, odor, heat, glare, fumes, electrical interference, or waste run-off outside the dwelling unit or on the property surrounding the dwelling unit;

(viii) No vehicle used in connection with the home occupation which requires a commercial driver's license to operate shall be parked on the premises or on any public road adjacent to the property;

(ix) The home occupation shall not be advertised by any signs on the premises, nor shall the street address of the home occupation be advertised through signs, billboards, television, radio, newspapers, or other forms of direct advertising;

(x) The following businesses or occupations are expressly prohibited as home occupations: animal hospitals, animal breeding, clinics, hospitals, contractor yards, dancing schools, junk yards, restaurants, rental outlets, vehicle repair shops or massage parlors.

F. Cottage industries that include artisans, artists, painters, photographers, musicians, writers, computer programmers, wood, metal or glass sculptor or fabricators, and other non-

offensive activities shall be permitted.

G. No industrial pursuit or enterprise shall be permitted to be conducted on the tract. Industrial pursuit or enterprise shall mean engaging in the manufacture or assembly of goods or processing of raw materials unserviceable in their natural state (other than cottage industry pursuits described above), and shall be inclusive of, but not exclusive of auto painting and repair, heavy machinery operation or storage (other than tractors for agriculture use), welding or machine shop, concrete products manufacture. Agriculture use is declared not to be an industrial pursuit or enterprise.

H. Dogs, cats, domestic pets, livestock or animals other than swine may be kept on any tract provided they do not constitute a commercial livestock feeding or breeding operation, provided they are confined to owner's respective tract at all times, and they are not offensive to adjacent landowners by smell, sight, sound or otherwise.

3.02. Construction Requirements:

A. No single family dwelling house which contains less than 2000 square feet combined living area and attached enclosed garage area, exclusive of porches, breezeways, carports or basements may be erected on any tract. Said dwelling shall contain a minimum of 1600 square feet of living area. The minimum square footage of living area shall be that area which is heated and cooled. Multiple story dwellings must contain not less than 2000 square feet of combined living area and attached enclosed garages on its

ground floor. The living area on its ground floor shall be a minimum of 1200 square feet.

B. New construction materials (except for used brick, stone, historic logs, timbers, beams, iron, or aged pine) shall be used in constructing any structures situated on a tract.

C. The roofing material utilized on the roof of any residential dwelling or accessory building shall be of high quality including composition shingle of architectural quality, cedar shingle, cedar shake, standing seam metal and all other high quality tile roofing material including, but not limited to, clay, slate, concrete or fiberglass.

D. The exterior of any building shall be completed not later than ten (10) months after laying the foundation of that respective building.

3.03. Other Restrictions.

A. No abandoned or inoperative automobiles, equipment or junk shall be permitted on the subject premises or upon any road adjoining said premises.

B. No noxious or offensive activity shall be permitted on any tract, nor shall anything be done thereon which shall be an annoyance or nuisance to the neighborhood. Owners are to keep said property clean and neat in appearance and free of litter at all times. No disposal of any kind shall be allowed that would pollute any stream or body of water, or which would be unsightly, offensive or otherwise adversely affect the natural beauty and value of subject property and adjoining properties.

C. No garbage or refuse shall be burned or buried on any tract. The burning of limbs, brush, trees and building debris, in connection with the clearing of any tract in preparation for construction and landscaping and maintenance of tracts shall be permitted.

D. No re-subdivision shall be permitted within thirty (30) years from the date hereof.

E. No hunting shall be allowed on any tract or any prolonged or consistent discharge of firearms, such as skeet or trap.

F. No building shall be occupied until the exterior thereof shall be completely finished and connected to a septic tank or other disposal system approved by the county and/or State Health Department or other governing body. All septic tanks shall be required to follow those requirements in place by the governing body at such time of installation.

G. No mineral exploration or commercial surface excavation of any type shall be allowed on any tract.

H. Tract owners shall not alter the natural drainage of surface water over and across the tract.

I. All side and rear perimeter fences to be erected on any tract shall be of quality material and completed, both in regard to quality and appearance, in a workmanlike manner.

J. All fencing fronting Cherry Mountain Loop shall be constructed of cedar rail similar in appearance to the cedar rail fence located at the entrance to the subdivision at the intersection of U.S. Highway 87 and Cherry Moutain Loop. All

upright posts shall have minimum tops of four inches (4") in diameter, and spaced at intervals of eight (8') to ten (10') feet. All rails shall have minimum diameters of three inches (3") and shall be of the identical height and spaced in the same manner as the cedar rail fence located at the entrance to the subdivision.

All fencing adjacent to the entry driveway extending into each tract shall consist of cedar rail as above described, or cedar rail using different configurations, or vertical cedar pickets.

All gates incorporated into the entry driveway, shall be constructed of either cedar rail, cedar picket, rough sawn boards, or iron (except aluminum). Paint treatment used within the entrance area should consist of colors that are suitable to and compatible with the natural landscape.

Bright colors, including but not limited to, red, orange, yellow, etc. may not be used in the entrance area.

K. On site water systems and sewage disposal systems shall be located, constructed and equipped in compliance with Texas State Health Department requirements and any other applicable governmental laws, rules or regulations.

L. Tracts twenty-five (25) and twenty-six (26) shall have no access to, or ingress and egress from U.S. Highway 87. Access to these two (2) tracts shall be limited to Cherry Mountain Loop.

IV.

GENERAL PROVISIONS

4.01. MARVIN G. PIPKIN and DRU C. PIPKIN, or any Owner shall have the right to enforce, by any proceeding at law or in equity,

all restrictions, covenants and conditions now or hereafter imposed by the provisions of this instrument. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

4.02. Invalidation of any one of the covenants or restrictions, contained herein, by judgment or court order shall in no way affect any other provision, and all other provisions shall remain in full force and effect.

4.03. The covenants, conditions and restrictions of this instrument shall run with and bind the land and shall inure to the benefit of, and be enforceable by MARVIN G. PIPKIN and DRU C. PIPKIN or the Owner of any tract subject to this instrument, and their respective legal representatives, heirs, successors and assigns, and shall be effective until December 27, 2023, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless amended as provided herein. The covenants, conditions and restrictions contained in this instrument may be amended at any time after December 27, 2023, by an instrument signed by MARVIN G. PIPKIN and DRU C. PIPKIN (unless such requirement is released or waived by appropriate document filed of record in the Real Property Records of Gillespie County, Texas) and not less than the Owners of sixty-six and two-thirds percent (66.666%) of the tracts within the subdivision. No amendment shall be effective until duly recorded in the Deed Records of Gillespie County, Texas, nor until the approval of any governmental regulatory body, which may be then

required, shall have been obtained.

EXECUTED this 27 day of December, 1993.

MARVIN G. PIPKIN

DRU C. PIPKIN

THE STATE OF TEXAS X

COUNTY OF Bexar X

This instrument was acknowledged before me on this the 27th day of December, 1993, by MARVIN G. PIPKIN and DRU C. PIPKIN.

GLENDA LIBAL
NOTARY PUBLIC
State of Texas
Comm. Exp. 05-21-96

Notary Public in and for
the State of Texas
My Commission Expires: _____

Stamped or printed name of notary