045399

PATRICK W. SMITH TO THE PUBLIC

THE STATE OF TEXAS,
GILLESPIE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS;

THAT WHEREAS, PATRICK W. SMITH, herein after called "SMITH" is the record owner of that certain tract or parcel of land, being known and described as "THE SETTLEMENT" subdivision in Fredericksburg, Gillespie County, Texas as more particularly described in the plat thereof found of record in Vol. 3, Page 135, of the Plat Records of Gillespie County, Texas, hereinafter called the property;

WHEREAS, SMITH will hold, sell and convey the above described Property subject to certain protective covenants, reservations, conditions, restrictions and charges as hereafter set forth:

NOW, THEREFORE, It is hereby declared that all the above referred to Property 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 the right, title or interest in or to the above described Property 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 Property, 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 entities, of the fee simple title to any portion of the above described Property, excluding however, those having any interest therein nearly as security for the performance of an obligation.

1.02. - "Tract" or "Lot" shall refer to any portion of the Property, as owned by any Owner.

1.03 - "Developer" shall refer to Patrick W. Smith.

II.

RESTRICTIONS

1. All lots and every part thereof are restricted to single family residential uses exclusively and none of said property shall be used for business or commercial purposes, however, guesthouses used for guesthouse services or bed and breakfast services are allowed. .

2. No dwelling house shall be constructed upon any lot in this addition, which contains less than 1200 square feet of living area, exclusive of garages, carports and porches, and all dwelling houses shall be designed and built to have an appearance that it was built in the early days of the existence of Texas "Early Fredericksburg". All plans, specifications and exterior applications shall be approved by Developer prior to any construction taking place, which approval shall not be unreasonably withheld.

3. No swine or any other animals or poultry that are noxious or offensive shall be kept upon any lot or portions thereof.

4. Every dwelling constructed upon said property shall be provided with sanitary, indoor plumbing and no permanent outdoor privies shall be permitted.

5. No trailer, trailer house, modular home, tent, shack, garage apartment or servant's quarters shall ever be used as a dwelling, temporary or permanent, in evasion of these restrictive covenants and conditions.

6. No shack, trailer, trailer house, modular home, or tent shall ever be placed upon any of said property for dwelling or any other permanent purpose, except that trailers belonging to individual owners of said property may be stored upon the premises provided they are not used for dwelling purposes.

7. No dwelling house or other structures shall be moved upon the premises from outside said addition, except with the express consent Developer.

8. All restrictive covenants and conditions herein shall apply to future remodeling of buildings and to rebuilding in case of destruction by fire or the elements.

9. All fences, walls, hedges and shrubs shall be subject to Developer approval.

10. No dwelling shall be erected or placed on any lot on which the lot width is less than 70 feet at the minimum building set back line.

11. No noxious or offensive activity shall be carried upon any lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood such as a secondary business as auto mechanic or repair shop.

12. No sign of any kind shall be displayed to the public view on any lot except one professional sign or one sign indicating the location of a guesthouse of not more than one square foot; one sign of not more than five square feet advertising the property for sale or rent, or signs used by a builders to advertise the property during the construction and sales period. The developer may erect a sign of larger size in conformance with city ordinance to advertise the development as long as there remains any unsold lots in the development.

13. No inoperative vehicles shall remain parked on the premises, in streets or in alleys, for longer than thirty (30) days.

14. All boats, boat trailers, stock trailers, 18 wheelers, tractor trailer trucks, or trailers of any kind, and all vehicles having a load capacity of greater than one (1) ton, shall be parked on the property of the lot owner, and shall not be parked on any street or alley.

15. All outbuildings such as tool sheds, storage houses, trailer ports, shall be approved by Developer prior to construction.

16. No residence shall be occupied until construction of the interior and exterior of the residence is completed.

17. Each owner of a lot in the subdivision shall keep said property clean and neat in appearance and free of litter at all times, including the occasional mowing of grass and weeds which shall enhance the beauty of the subdivision and act as a fire protection measure.

18. Property owners shall not dump any litter, any household garbage, refuse or dead animals into Town Creek, which runs along the western and northern sides of this subdivision.

19. All construction or remodeling on a residence and garage shall be completed within six (6) months of the day such construction begins.

20. Developer may at its sole discretion enforce these restrictions but is under no obligation to do so.

21. The covenants and conditions set forth above shall be covenants running with the title of any lot or division of any lot.

22. No one shall interfere with any natural drainage pattern or constructed drainage system established by the development by altering any slopes, constructing or destroying any retaining wall or obstructing or changing the contour of any channel, swale, or embankment, or taking any other action which will or is likely to retard, change, or interfere with drainage or create erosion within this area.

23. Lots Nos. 1 and 19 are burdened with and are sold subject to the entry fence to the subdivision. The owners of Lot Nos. 1 and 19 are required to maintain the portion of the subdivision entry fence on the lot. The fence may not be altered without the consent of Developer. Developer also reserves a ten foot (10') easement for purposes of maintenance of the fence on each side of the fence on Lots Nos. 1 and 19.

24. These restrictive covenants and conditions may be amended by Developer until all lots in The Settlement have been sold and conveyed by Developer.

The above listed restrictions, protective covenants and conditions and any amendments thereto shall be binding upon and inure to the benefit of all parties and all persons claiming under the Owner until April 1, 2034.

If any term or provision of this instrument or the application thereof shall be held to be invalid, all other terms and provisions of this instrument or the application thereof shall not be affected thereby, nor shall any failure of the Owner 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.

The Owner and every other person, firm, or corporation hereinafter having any right, title, or interest in any tract or parcel of land the subject of these restrictions shall have the right to enforce, by any proceeding at law or in equity, all 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's fees.

Owner as used in these restrictions shall refer to PATRICK W. SMITH his heirs, successors, and assigns.

Executed this 23rd day of September, 2004 by PATRICK W. SMITH.

PATRICK W. SMITH

THE STATE OF TEXAS, }

COUNTY OF GILLESPIE. }

The above instrument was acknowledged before me on the 23rd day of September 2004, by PATRICK W. SMITH.

LORETTA LEISCHNER
Notary Public
STATE OF TEXAS
My Comm. Exp. 09/09/07

Notary Public, State of Texas

AFTER RECORDING RETURN TO:

DOOLEY, HOERSTER & SIONE, L.L.P.
520 W. Main St.
Fredericksburg, Texas 78624

PREPARED IN THE LAW OFFICE OF:

LL/re354

045399 DH

FILED
AT 10:16 O'CLOCK A M
ON THE 23rd DAY OF Sept
A.D., 2004.

MARY LYNN RUSCHE
COUNTY CLERK
GILLESPIE COUNTY, TEXAS

BY: Karon Cain
DEPUTY

STATE OF TEXAS
COUNTY OF GILLESPIE
I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Volume and Page of the Official Public Records of Gillespie County, Texas.

VOL. 569 PAGES 301-306
RECORDED 9-24-2004
MARY LYNN RUSCHE
County Clerk
Gillespie County, Texas

BY: Betty Crenwelge
DEPUTY
Betty Crenwelge