

Smoky Hollow
Covenants, Conditions and Restrictions

* * * * *

Recitals

A Smoky Hollow, LLC ("**the LLC**" or "**Developer**") is the owner of the following described property (the "Property"):

AS DEPICTED ON THE ATTACHED EXHIBIT "A" AND DESCRIBED ON EXHIBIT "A-1",
INCORPORATED FULLY.

B Developer intends for the Property to be developed as a single-family residential subdivision. Developer declares that the Property is to be held, sold and conveyed subject to the easements, restrictions, covenants and conditions herein which:

- (1) are for the purpose of establishing a general scheme for the development of the Property and for the purpose of enhancing and protecting the value, attractiveness and desirability of lots within the Property;
- (2) run with title to the Property and are binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, and,
- (3) inure to the benefit of each owner of the Property

Declaration

Now, therefore, Developer adopts the above Recitals and adopts, establishes, and imposes the following covenants, conditions, and restrictions upon the Property and declares that the Property will be held, owned, leased, transferred, sold, conveyed, used and occupied subject to such covenants, conditions, liens and restrictions.

Article 1

Restrictions on Use of Lots

- 1.1 Residential Use. All lots shall be used for single family residential purposes.
- 1.2 Restrictions and Re-subdivision. No lot may be subdivided.
- 1.3 Composite Building Site. Any owner of one or more adjoining lots may consolidate such lots into a single building site. Owners of three adjoining lots may consolidate such lots into one or two separate building sites. The side lot setback for such building site will be measured from the exterior of the combined lots.

1.4 Temporary Structures. (1) No structure of a temporary character may be used as a residence, outbuilding or barn, or no motor boat, truck, horse trailer, motor home, tent, shack, basement, garage, or other outbuilding of a junky character erected or placed on the tract shall at any time be used either temporarily or permanently. No garage, outbuilding, barn or servant's house shall be erected on any lot in the above said addition with a roof or outside wall made of used material of brick or frame material different than is used on the dwelling and left in an unfinished condition. The architectural design of any garage, outbuilding, barn, or servant's house shall be the same as the dwelling, except with the prior written consent of the said The Developer, or its successors or assigns. (2) a builder or contractor may have a temporary construction trailer on a lot during construction on that lot.

1.5 New Construction. No prefabricated structure or any type of building may be moved onto a lot and all structures on a lot must be constructed on the building site, except for new pre-built buildings such as "Morgan" storage sheds and barns and other new pre-built buildings for nonresidential purposes which may only be placed on the lot after completion of construction of the primary residence.

1.6 Septic Systems. Except as provided in Section 2.9 below, no open cesspools, outside toilets, or privies will ever be permitted to be erected, constructed, or maintained upon any lot. Metal, concrete, or manufactured septic tanks with adequate subterranean field tile according to all applicable county and regulatory requirements and standards must be installed to service each residence. The septic system must be constructed so that there is no damage to the underground water.

1.7 Driveways. All driveways must be either pavement or concrete.

1.8 Commercial Vehicles. Commercial vehicles shall not be parked overnight in front of residences or on any public or private road except for temporary deliveries.

1.9 Vehicles. No automobile, van, pickup truck, truck, boat, trailer, marine craft, hovercraft, aircraft, recreational vehicle, pickup camper, travel trailer, motor home, camper body, tractor, or similar vehicle or equipment may be parked for storage in the street or in any driveway or front yard of any residence on the Property, nor may any such vehicle or equipment be parked for storage in the side or rear yard of any residence if it is highly visible from the street. No such vehicle or equipment may be used as a residence or office temporarily or permanently. This restriction does not apply to any vehicle, machinery, or equipment temporarily parked and used for the construction, maintenance, or repair of a residence in the immediate vicinity. Only passenger automobiles, passenger vans, and pickup trucks that are in operating condition, have current license plates and inspection stickers, and are in regular use as motor vehicles on the streets and highways of the State of Texas may be temporarily parked in the driveway or in front of the primary residence where visible from the street.

1.10 Prohibited Animals. No swine, cattle, bees, sheep, goats, guinea fowl, ducks, geese, chickens, turkeys, ostriches, emus, skunks, or any similar animal may be raised, bred, or kept on any lot. A maximum of two (2) horses are allowed on Lots 74-83 only. Animals are not to be raised, bred, or kept for commercial purposes. No pet may be kept on a lot that interferes with the quietude, health, or safety of the community.

1.11 Outdoor Pets. No more than two outdoor pets are permitted on each lot. Pets must be restrained or confined on the back of the lot or within the residence unless the pet is properly supervised and leashed and does not create a threat or a nuisance. It is the pet owner's responsibility to keep the lot reasonably clean and free of pet debris. All pets must be properly tagged for identification and vaccinated against rabies. Dog owners must keep the dogs from excessive barking so as not to disturb other lot owners. All pets must be properly supervised.

1.12 Uncontrolled Animals. If an owner violates the provisions of Section 1.10 or 1.11 above (e.g., failing to control barking dogs) Developer or any other owner may recover from the violating owner responsible attorney's fees and court costs incurred in enforcing the provisions of Section 1.10 and 1.11 above.

1.13 Trash Containers. The owner of each lot must contract with a trash removal company to place a dumpster on the lot for trash. The dumpster must be at least 4 feet tall with the capacity to place at least 1-1/2 yards (the "Approved Container"). The Approved Container must be located on the owner's lot and not on the public streets or rights-of-way.

1.14 Junk/Trash. No junk, dead tree limbs, rubbish, or as a site for the accumulation of unsightly materials of any kind, including but not limited to broken or rusty equipment, disassembled or inoperative vehicles, and discarded appliances and furniture is allowed on any lot. Trash, garbage, and other waste may not be kept on any lot. If trash, garbage, waste or debris will not fit into the Approved Container, it must be temporarily contained out of site from public view until it can fit into the Approved Containers or completely removed from the lot and not stored on any portion of the lot.

1.15 Prohibited Activities. No lot or improvement may be used for retail or manufacturing purposes of any kind. No noxious or offensive activity may be undertaken on the Property and nothing may be done which is or may become an annoyance or nuisance to the Property or to any lot within the Property. Nothing in this Section 1.15 prohibits an owner's use of a residence for quiet, inoffensive activities such as home office, tutoring, or giving music or art lessons so long as such activities do not materially increase the number of cars parked on a lot or street or interfere with another owner's use of streets or easements, or the use and enjoyment of his or her residence and yard.

1.16 Motorcycles. No motorcycles or all-terrain vehicles may be operated on any lot in a manner that unreasonably interferes with the use and quiet enjoyment of owners of their homes and lots.

1.17 Signs. No sign of any kind may be displayed to the public view on any lot except (1) one sign of not more than twelve square feet in total surface area advertising the residence for rent or sale, (2) signs used by a builder during construction and sales periods, (3) signs used by Developer to advertise the Property during development. Political signs may not exceed nine square feet in total surface area and may not be displayed for more than 30 days before a national, state, or local election day. Political signs must be removed within two days after such election.

1.18 No Fires. Except within fireplaces in the residence and except for outdoor cooking equipment and fire pits, no burning of anything is permitted on any lot.

1.19 Firearms. No firearms may be discharged on any of the Property except in self-defense and the use of a shotgun solely for the control of varmints and predator animals.

Article 2

Construction Procedures

2.1 Minimum Floor Area. The total air conditioned living area of the residence as measured to the outside of the exterior walls but exclusive of porches, garages, patios, basements, and detached buildings must be as follows:

Zone 1 Housing--at least 2000 square feet, but if the residence is two stories, there must be at least 1500 square feet on the ground floor. Includes Lots 1-59, 70-73, and 84-110

Zone 2 Housing--at least 2500 square feet on the ground floor. Includes Lots 60-69

Zone 3 Housing--at least 2000 square feet on the ground floor. Includes Lots 74-83

2.2 Setback Requirements. The placement of all buildings on a lot must be constructed so as to comply with this section. All outbuildings and other structures must be constructed behind the primary residence. The primary residence must be setback at least 50 feet from the closest edge of pavement. The primary residence and all outbuildings must have setbacks as follows:

- (a) side property line except on public street--5 foot minimum;
- (b) rear property line-5 foot minimum

2.3 Ground Elevation. All structures must be a minimum of 18 inches above natural ground.

2.4 Single Family. No more than one single family residence may be constructed on any lot; however, "mother-in-law" or "servants" quarters are permitted to be constructed in addition to the primary single family residence. Such secondary dwelling will not count toward the minimum footage for the primary residence. Such secondary dwelling must conform to the other building restrictions set forth herein except for the minimum square footage.

2.5 Codes. All structures must, at all times, comply with building codes, as they may hereafter become effective and as amended.

2.6 Exterior Walls. Every primary residence and garage must be of such construction that 85% of the exterior walls shall be of masonry-stucco, rock, or brick construction, which brick, rock, or masonry-stucco shall extend below the finish ground level. Neither exposed concrete blocks nor shingle siding shall be used for any part of the exterior wall construction of any residence, garage, or mother-in-law or servant's quarters. All fireplace chimneys shall be of brick, rock, or masonry-stucco construction. There shall be no open eaves.

2.7 Roof Pitch. All roofs must have a minimum pitch of 7 and 12.

2.8 Roof Materials. Roof colors must consist of black, charcoal, or other similar dark colors. All roofs having composition shingles must be laminated shingles with at least a 25-year warranty by the

manufacturer. Clay tile and other high quality roofing material may be used with prior approval by Developer.

2.9 Portable Sanitary Systems. During construction on any lot, each builder must provide a portable sanitary system for use by contractors, subcontractors, and their employees until construction is completed. The portable sanitary system must be located at the rear of the lot and must be timely serviced and cleaned to prevent odors.

2.10 Construction Debris. During construction on a lot, the builder must put all construction trash which is susceptible to being blown from the construction site in a container to prevent trash from blowing off of the construction site. The container must be emptied periodically so there is always room for trash. Builders must prevent, to the extent possible, construction trash from blowing out of the container and off the construction site. Each lot owner is responsible for the control of and the disposal of left over construction material and construction debris. No construction material or construction debris may be dumped on any of the Property except on the building site and must be periodically removed so that the building site is cleaned of construction material and debris.

2.11 Fences. Any fences to be used on exterior and interior lot lines shall be of a height, material and design which are in keeping with the architecture of other improvements on the lot and must be approved by the Developer, its successors or assigns.

2.12 Completion of the Residence. All primary residences and other structure must be completed within 12 months after construction commences.

Article 3

Architectural Control

3.1 Authority. No residence, building, greenhouse, gazebo, fence, wall, driveway or other structure may be commenced, erected, placed, maintained, altered, reroofed, or replaced, or the exterior stained, painted, or repainted until all colors, plans, and specifications, and a plot plan (collectively "Building Plan") have been submitted to and approved in writing by Developer. If the exterior color scheme is not being changed from the color scheme previously approved by the Developer, it will not be necessary to obtain approval from Developer. Developer may refuse to approve a Building Plan which may, in the reasonable opinion of Developer, adversely affect the enjoyment of owners or the general value of lots. In considering the harmony of external design between existing structures and the Building Plan, Developer will consider only the general appearance of the proposed building as can be determined from exterior elevations on submitted plans.

3.2 Plan Submittal. A complete copy of the Building Plan must be submitted in duplicate to Developer or its designee either by (i) certified mail, return receipt requested or (ii) personal delivery, but personal delivery will not be valid unless receipt of the Building Plan is acknowledged in writing by Developer or its designee. The Building Plan must be submitted at least 15 days before commencement of staining or painting or commencement of construction of the improvements (e.g. site preparation, dirt work, or foundation preparation) or reroofing. The Building Plan must-if at all possible-show the nature, kind, shape, height, materials, exterior color scheme, and location of all improvements, including but not limited to elevations and floor plans on each structure to be built, square footage, roof pitch, and percentage brick or other material to be used on exterior. The Building Plan must specify building

location on the lot. Sample of proposed construction materials must be delivered to Developer upon request.

3.3 Multiple Submissions of Building Plan. If the Building Plan submitted to Developer does not include all the information required in Section 3.2 at the first submittal, the remaining information must be submitted to Developer within 45 days after the date of the first submittal. If all the information required in Section 3.2 is not included in the Building Plan submitted to Developer the second time, no future submittal of the Building Plan will be considered or approved unless the person submitting the Building Plan pays Developer a nonrefundable submission fee as established by Developer which may not exceed \$250.00 per submission.

3.4 Approval Procedure. When the Building Plan meets the approval of Developer, Developer will sign and mark "APPROVED" on one Building Plan and return it to the person furnishing the Building Plan and will sign and retain the duplicate Building Plan. If not approved by Developer, the Building Plan will be returned and marked "NOT APPROVED" and will be accompanied by a statement of the reasons for disapproval signed by a representative of Developer. Any exterior modification of an approved Building Plan must again be submitted to Developer. Developer's approval or disapproval, as required herein, must be in writing. Oral statements about the Building Plan will not be binding upon Developer. If Developer fails to approve or disapprove the Building Plan within 15 days after the date of submission of all information required, written approval of the proposal will not be required and compliance with the Article 3 will be deemed to have been completed. In case of a dispute about whether Developer responded within the required time period, the person submitting the Building Plan will have the burden of establishing the date Developer received it.

3.5 Standards. Developer will have sole discretion with respect to taste, design, exterior color, and all standards specified herein. One objective of Developer is to prevent the building of unusual, radical, curious, bizarre, peculiar, or irregular structures on the Property. Developer, from time to time, may publish and promulgate bulletins regarding architectural standards which shall be fair, reasonable, and uniformly applied and will carry forward the spirit and intention of this document.

3.6 Rules and Regulations. Developer may promulgate and enforce reasonable rules and regulations to carry out its architectural control duties or conduct its proceedings, including the formation of guidelines to govern construction and maintenance of improvements and for the establishment and collection of a reasonable fee for performance of its architectural control duties and functions. Developer may, in its sole discretion, change the guidelines in any manner to supplement, amend, delete, modify, or abandon the guidelines as it deems reasonable.

3.7 Intentionally Omitted.

3.8 Architectural Deviation. Developer may, at its sole discretion, permit reasonable modifications of and deviations from any of the requirements of this document or its rules and regulations relating to the type, kind, quantity, or quality of the building materials to be used in the construction of any building or improvement on any lot and the size and location of any such building or improvement when, in Developer's sole judgment, such modifications and deviations will be in harmony with existing structures and will not materially detract from the aesthetic appearance of the Property and its improvements as a whole. Developer may require the submission to it of such documents and items as it deems appropriate in connection with its consideration of a request for a variance.

3.9 Liability Limitation of Developer. Developer and the officers, directors, agents, employees, shareholders, and attorneys of Developer have no liability for decisions made by Developer so long as such decisions are made in good faith and are not arbitrary or capricious. Any errors in or omissions from the Building Plan will be the responsibility of the owner of the lot. Developer has no obligation to check for errors in or omissions from the Building Plan or to check the Building Plan for compliance with the general provisions of this document, State or Federal statutes or the common law, setback for lot lines, building lines, easements, or any other matters.

3.10 Architectural Control Termination. Developer's rights and obligations under this Article 3 will automatically terminate on December 30, 2027 unless Developer files in the Official Public Records of Randall County, Texas a notice of extension of the architectural control, but in any event, such extension shall not extend beyond December 30, 2032.

Article 4

Landscaping

4.1 Yard Requirements. Owner must install an underground sprinkler system, lay sod and plant and maintain a minimum of two trees with a base trunk circumference of at least 2 inches before closing on residence. Such yard and irrigated landscaping in the front of each residence must extend to the roadway and be a minimum of the width of the house identified in Section 5.3 hereof, and all maintenance and upkeep obligations related to the yard shall extend to such roadway.

4.2 Maintenance of Landscaping. The owner of each lot must mow at regular intervals grass, weeds and vegetation to keep the lot in neat and attractive condition.

4.3 Surface Water. No obstruction, diversion, bridging, or confining of the surface water is allowed on any lot if it causes damage to other lots.

4.4 Weeds. Bindweeds must be killed at owner's expense. Unsightly growth of grass or weeds is prohibited.

Article 5

Easements

5.1 Sanitary Control Easement. A sanitary control easement is created on the plat of the Property around each approved water well location with a 100 foot radius within which no sub-surface sewerage system may be constructed. Conversely, no water well location will be approved that is closer than 100 feet to a sub-surface sewerage system. The water well location will be a minimum of 50 feet from any Property line.

5.2 Utility Easements. Electrical easements to Xcel Energy and gas easements to Atmos Energy are recorded in the Official Public Records of Randall County, Texas.

5.3 Roadway. The roadway depicted on the recorded plat shall be for ingress to and egress from all lots in the Property and to/from any adjacent property Developer may now own or hereafter acquire.

Article 6

General Provisions

6.1 Deviations. Developer may, at its sole discretion, permit reasonable modifications of and deviations from any of the requirements of this document and the building requirements when, in Developer's sole judgment, such modification or deviations will not materially change the general scheme of the development to the Property. Developer, its officers, directors, agents, employees, shareholders, and attorneys will have no liability for decisions made by Developer approving such modifications or deviations.

6.2 Recorded Plat. All dedications, limitations, restrictions, and reservations shown on the Plat are incorporated herein and will be construed as being adapted in each contract, deed, or conveyance executed or to be executed by Developer or its assigns, whether specifically referred to therein or not.

6.3 Maintenance of Improvements. Each lot owner must:

- (a) maintain the exterior of the residence, buildings, fences, walls, and other improvements on the owner's lot in good condition and repair;
- (b) replace worn and rotten materials;
- (c) regularly repaint or re-stain all exterior painted and stained surfaces; and,
- (d) not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, sidewalks, driveways, parking areas, or other exterior portions of the improvements to deteriorate.
- (e) water yards to prevent landscape from dying and replace any dead landscaping

6.4 Term. This document will run with and bind title to the Property and will remain in full force and effect for 30 years after this document is recorded in the Official Public Records of Randall County, Texas. This document will thereafter extend automatically for successive periods of 10 years unless amended as provided in Section 6.10 below.

6.5 Severability. If any condition, covenant, or restriction herein contained is invalid--which invalidity will not be presumed until it is determined by the final non-appealable judgment or final non-appealable order of a court of competent jurisdiction--such invalidity will not affect any other condition, covenant, or restriction, each will remain in full force and effect.

6.6 Binding Effect. Each of the conditions, covenants, restrictions, and agreements herein contained is made for the mutual benefit of, and is binding upon, each person acquiring any part of the

Property. This instrument, when executed, will be filed for record in the Official Public Records of Randall County, Texas, so that each owner or purchaser of any portion of the Property is on notice of the conditions, covenants, restrictions, and agreements herein contained.

6.7 Enforcement. Developer and the owner of any lot have the right to have this document faithfully carried out and performed with reference to each lot, together with the right to bring any suit or undertake any legal process that may be proper to enforce the performance thereof and to recover damages. Subject to the provisions of Article 3 and Section 6.1 above, the owner of each lot has the right to have this document strictly construed and applies to all lots whether owned by Developer, its successors and assigns, or other, regardless as to whether or not reference to this document is made in the document conveying the lot to the owner. Failure to enforce this document will not be deemed a waiver of the right to do so thereafter.

6.8 Address for Plan Submission. Any plan submission, notice, or correspondence to Developer must be made at the following address:

Smoky Hollow, LLC
Ty and/or Cresha Roberts
PO Box 755
Canyon TX 79015

6.9 Change of Address. Developer may change its address for notice and plan submission by recording a notice of change of address in the Official Public Records of Randall County, Texas.

6.10 Amendment. The owners of legal title to at least 51.0% of the lots included in the Property may amend the covenants, conditions, and restrictions set forth herein by recording an instrument containing such amendments, except that for 15 years following the recording of this document, no such amendment will be valid or effective without the joinder of Developer. Developer will be under no obligation to consent to any amendment of this document.

6.11 Assignability. Developer and its successors and assigns may assign Developer's rights, privileges, duties, and obligations hereunder by documents signed by Developer or its successors or assigns specifically assigning its rights, privileges, duties, and obligations hereunder, which documents must be recorded in the Official Public Records of Randall County, Texas.

6.12 Approvals. All consents and other evidences of approval by Developer must be in writing and signed by Developer before they are binding.

6.13 Attorney's Fees. If attorney's fees are incurred for the enforcement of this document, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs from the party against whom enforcement was successfully sought.

6.14 Time. Time is of the essence.

6.15 Gender. When the context requires, the singular number includes the plural, the plural the singular, and the use of any gender includes all genders.