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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS

THE STATE OF TEXAS    ↓  
                                  ↓    KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF HAYS       ↓

THAT HERETOFORE, S. & S. LAND AND CATTLE COMPANY, did execute and file for record a document entitled Declaration of Covenants, Conditions and Restrictions, said document being of record in Volume \_\_\_\_\_ page \_\_\_\_\_ Deed Records, of Hays County, Texas. said aforesaid document being in error, now therefore for the purpose of correcting of said document and in substitution thereof S. & S. LAND AND CATTLE COMPANY, declares as follows:

\_\_\_\_\_ acres out of the T. J. Chambers Survey.  
A complete metes and bounds description of which is attached hereto and expressly incorporated herein as "Exhibit A."

This being the same real property which has been subdivided and platted as Willow Creek Estates Phase 2, a plat of which is recorded in Volume 1, Page \_\_\_\_\_, of the Hays County Plat Records, reference to which is here made for all relevant, legal and descriptive purposes; and

WHEREAS, the Declarant will convey the above described properties, subject to certain protective covenants, conditions, restrictions, liens, and charges as hereinafter set forth;

NOW, THEREFORE, it is hereby declared that all of the property described above 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 real property and shall be binding on all parties having any 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;

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1. All lots shall be used for single family residential purposes only, and no lot, or any part thereof, shall be used for any business, commercial, trade, merchantile or professional purpose.
2. No noxious or other offensive activity shall be carried on or conducted on any lot in the subdivision, nor shall any activity be engaged in on any lot in the subdivision that is an annoyance or nuisance to owners of the subdivision.
3. No structure shall be erected on any lot in the subdivision, or be allowed to remain on any lot in the subdivision, other than one single family dwelling unit not to exceed two (2) stories in height, although each owner shall have the right to erect out buildings incidental to residential use of a lot, such as garage, carport, servant quarters and other structures designed to be incidental to residential use.
4. No lot shall be subdivided, or resubdivided.
5. No poultry, rabbits, pigeons, dogs, cats or other animals shall be raised, bred or kept on any lot, except that a lot owner may keep cats, dogs or other household pets, so long as no such household pets are kept in such numbers as to constitute an annoyance or nuisance to owners of other lots.
6. No lot shall be maintained as a dumping ground for rubbish, and no trash, garbage or other waste material shall be kept on the premises except in sanitary containers. All incinerators and other equipment for the storage and/or disposal of waste material shall be kept in a clean, sightly and sanitary condition, so that the same will not constitute an annoyance or nuisance to owners of any portion of the subdivision.
7. No mobile home, house trailer, tent, shack, garage or other out building or other facility(other than servants quarters) shall be used for residential purposes.
8. No existing dwelling house, situated outside of the subdivision, shall be moved upon, or allowed to remain upon, any lot in the subdivision.
9. No oil drilling, refining, or mining operation of any kind shall be permitted on the premises, or any part thereof, shall any oil well, tank, tunnel or mineral excavation or shaft be permitted on any lot. No derrick or other structure for mineral or gas operations shall be permitted on the premises, or any part thereof.
10. No dwelling house having less than 1,800 square feet of floor space, exclusive of attached carport, garage and porches, may be elected on any lot in the subdivision, in the case of a two story dwelling house, the ground floor must contain a minimum of 1,400 square feet of floor space, exclusive of attached garage, carport and porches.

11. No dwelling shall be constructed nearer than twenty-five (25) feet to any lot line. Any person owning more than one lot in the subdivision, and desiring to erect a dwelling house partly on one lot and partly on another lot, may do so, and no building set-back line restrictions will be applicable to the line dividing two lots owned by the same person; however, no dwelling house shall be constructed nearer than twenty-five (25) feet to any lot line. These building set-back restrictions contained herein apply not only to dwelling houses, but also to garages, water wells, servants quarters and other out buildings. fences constructed closer than twenty-five feet (25) to any front lot line must be approved by the Architectural Control Committee, in the case of which approval, no set back line restrictions will be applicable.

12. The easement created for the purpose of enabling the owners of lots in the subdivision to receive utility services are located on the map or plat of the subdivision, as aforesaid, and no use may be made of the property comprising said easement that would interfere with the use of said easements for utility purposes.

13. No lot shall even be used as an entrance into or exit from adjoining property, unless for the purpose of access to adjoining property owned or sold by S. & S. Land and Cattle Company, Handler Smith, or Colleen Smith Shelton.

14. All septic tanks and drain fields shall comply in all things with all laws and regulations of all governmental authority. No septic tank or drain field shall be so located that the effluent therefrom will drain on to the land of another lot owner.

15. No dwelling house which is constructed with modular, prefabricated or pre-built exterior or interior walls, or wall sections, shall be permitted in the subdivision.

16. No building shall be constructed within the subdivision, or allowed to remain within the subdivision, unless, (1) more than 50% of all exterior walls and wall sections are constructed of brick or rock, or (2) if any building is to be constructed with exterior walls and wall sections of 50% or less brick or rock construction, then the plans and specifications for the construction must be approved by architectural control committee, set up under Declaration of Covenants, which is of record in the Hays County Deed Records, and a copy of which is attached hereto, and expressly incorporated herein for all legal and descriptive purposes.

17. That a minimum thickness of six (6) inches of topsoil will be required on all regularly maintained yard areas.

18. Only "pellet type" lawn fertilizer may be used on any lots; in the subdivision.

EXECUTED this 26<sup>th</sup> day of October A. D. 1978.

S. & S. LAND AND CATTLE COMPANY

ATTEST:

Karen Smith  
Karen Smith  
Secretary

Howard R. Shelton

Howard R. Shelton

By Handler Smith  
Handler Smith, Agent and Attorney  
in fact

Colleen Smith Shelton

By Handler Smith  
Handler Smith, Agent and  
Attorney-in-Fact

THE STATE OF TEXAS |

COUNTY OF HAYS |

BEFORE ME, the undersigned authority, on this day personally appeared Handler Smith, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same as the act and deed of S. & S. Land and Cattle Company, and as the President thereof, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 26<sup>th</sup> day of October A. D. 1978.

Mary J. Ewing  
Notary Public, Hays County, Texas

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THE STATE OF TEXAS ↓

COUNTY OF HAYS ↓

BEFORE ME, the undersigned authority, on this day personally appeared Handler Smith, 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 this 23<sup>rd</sup> day of October A. D. 1978.

*Mary J. Corning*  
\_\_\_\_\_  
Notary Public, Hays County, Texas.

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*Handwritten notes*  
78 OCT 27 AM 11 39  
HAYS COUNTY TEXAS

STATE OF TEXAS }  
COUNTY OF HAYS }

I hereby certify that this instrument was FILED on the date and at the time stamped herein by me and was duly RECORDED, in the Volume and Page of the named RECORDS of Hays County, Texas, as stamped herein by me, on



*Lynell B. Clayton*  
COUNTY CLERK  
HAYS COUNTY, TEXAS

DECLARATION OF COVENANTS

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On this 26 day of October, 1978, S&S LAND AND CATTLE COMPANY, a Texas Corporation, herein called "Developer", hereby declares that the land described below shall be held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens, herein called "covenants", by specifying and agreeing that this Declaration and the provisions hereof shall be and do constitute covenants to run with the land and shall be binding upon Developer, its successors and assigns and all subsequent owners of each lot; and the owners by their acceptance of their deeds for themselves, their heirs, executors, administrators, successors and assigns, covenant and agree to abide by the terms and conditions of this Declaration.

1. Land. Developer is the owner of real property located in Hays County, Texas (herein called the "Land"), more particularly described in the attached Exhibit "A" which is attached hereto and made a part hereof for all purposes.

2. Subdivision. Developer has subdivided the Land into lots according to the plat of record in Vol. 2 Pages 33 and 34, Hays County Plat and Deed Records.

3. Purpose. The purpose of these covenants is to provide a method and agency to develop and maintain the entrance and architectural control within the Subdivision, upon the easements as platted.

4. Association. Developer has organized Willow Creek Estates Phase II Owner's Association (herein called "Association"), a non-profit Texas Corporation, which will be the agency to maintain the entrance and architectural control within the subdivision, upon the easements, as platted, and in general out of these covenants.

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5. Membership. The record owner of each lot to which this Declaration applies shall be a member of the Association. The membership shall be appurtenant to and may not be separated from the ownership of any lot. Record ownership of a lot shall be the sole qualification for being a member of the Association.

6. Voting. The Association shall have a single class of voting membership which shall be the owners of lots within the subdivision. Members shall be entitled to one vote for each lot owned. When more than one person owns a lot, all are members of the Association and the one vote for each lot shall be cast as the owners determine among themselves.

7. General Provisions.

a. Duration. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until October 26, 1998. at which time said covenants shall automatically be extended for successive periods of ten years unless an instrument signed by the majority of the then owners of the lots has been recorded, agreeing to change such covenants in whole or in part.

b. Enforcement. If the owners of any lot or their heirs, executors, administrators, successors, assigns or tenants shall violate or attempt to violate any of the covenants set forth in this Declaration, it shall be lawful for the Association or the Developer, or if the Association or Developer shall fail to do so after sixty (60) days' written notice from a person owning any lot encumbered by this Declaration, then for any such owner to prosecute any proceedings against the person or persons violating or attempting to violate any such covenants. The failure of the owner or tenant to perform his obligation hereunder would result in irreparable damage to the Developer

and other owners of lots in the subdivision; thus the breach of any provision of this Declaration may not only give rise to an action for damages at law but also may be enjoined by an action for specific performance in equity in any court of competent jurisdiction. In the event enforcement actions are instituted and the enforcing party recovers, then in addition to the remedies specified above, court costs and reasonable attorney's fees shall be assessed against the violator.

c. Severance. In the event any of the foregoing covenants, conditions, restrictions, reservations or charges is held invalid or unenforceable by a court of competent jurisdiction, it shall not effect the validity and enforceability of the other covenants, conditions, restrictions, reservations or charges. If one of the foregoing is subject to more than one interpretation, the interpretation which more clearly reflects the intent hereof shall be enforced.

d. Divestiture by Developer. Notwithstanding any other provisions of these covenants, the Developer shall cease to vote any lots which the Developer may still own, in the election of the Directors controlling the Association, within three (3) years of the date of the first sale of any lot in the subdivision or when thirty (30%) percent of the lots are sold, whichever occurs first.

#### ARCHITECTURAL CONTROL

(1) Architectural Control Committee. An Architectural Control Committee shall be designated and composed of the three (3) directors of the association.

(2) Approval of Plans and Specifications . No building fence, wall, or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to, or change or alteration therein, be made, until the plans and specifications showing the nature, kind, shape,



height, materials, and location of the same shall have been submitted to, and unanimously approved in writing by, the Architectural Control Committee as to harmony of external and location in relation to surrounding structures and topography. The Architectural Control Committee is specifically authorized to review all building plans to determine whether or not adequate provisions have been made to save as many trees as possible and preserve the natural state of the land, and if necessary, the Architectural Control Committee may require the owner of a Lot to revise such building plans in order to preverse the natural beauty of the Subdivision.

(3) Failure of Committee to Act. In the event that any plans and specifications for a period of thirty (30) days following such submission, approval by the Committee shall not be required, and full compliance with this Article shall be deemed to have been had.

EXECUTED this 26 day of October, A.D. 1978.

S&S LAND AND CATTLE COMPANY

By Handler Smith  
Handler Smith, President

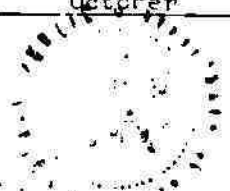
ATTEST:

Karen Smith  
Karen Smith, Secretary

THE STATE OF TEXAS }  
COUNTY OF HAYS }

BEFORE ME, the undersigned authority, on this day personally Handler Smith known to me to be the person whose name is subscribed to the foregoing instrument as President of S&S LAND AND CATTLE COMPANY and acknowledged to me that he executed the same in such capacity and as the act and deed of said corporation for the purposes and considerations therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 26 DAY OF October A.D. 1978.



Mary J. Ewing  
Notary Public, Hays County, Texas

