

11/21/04
8/31/04
3260 (10)

**DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR WILLOW CREEK ESTATES
SECTIONS 11 AND 12**

WILLOW REALTY PARTNERS, LIMITED, a Texas limited partnership, acting herein by and through TEXAS REALTY/RETAIL PARTNERS, INC., a Texas Corporation, its General Partner (the "Declarant") is the owner of WILLOW CREEK ESTATES, Sections 11 and 12, being out of the property described as follows:

Section 11: Being 71.88 acres of land, more or less, out of the T. J. CHAMBERS LEAGUE, Abstract No. 2 and the JOHN WILLIAMS SURVEY, Abstract 471, in Hays County, Texas, the being the same real property which has been subdivided and platted into 5 Blocks containing 58 residential lots, known as WILLOW CREEK ESTATES, Section 11, the plat of which is recorded in Volume 12, pages 40-43, of the Plat Records of Hays County, Texas;

Section 12: Being 52.48 acres of land, more or less, out of the T. J. CHAMBERS LEAGUE, Abstract No. 2 and the JOHN WILLIAMS SURVEY, Abstract 471, in Hays County, Texas, and being the same real property which has been subdivided and platted into 4 Blocks containing 31 residential lots, known as WILLOW CREEK ESTATES, Section 12 the plat of which is recorded in Volume 12, pages 44-47, of the Plat Records of Hays County, Texas

Declarant will convey the Lots, subject to certain protective covenants, conditions, restrictions, liens, and charges as hereinafter set forth

PART 1. DEFINITIONS

1. "Property" means that certain 71.88 acres of land, more or less, out of the T. J. CHAMBERS LEAGUE, Abstract No. 2 and the JOHN WILLIAMS SURVEY, Abstract 471, in Hays County, Texas, which has been subdivided and platted into 5 Blocks containing 58 Lots, streets and common areas known as WILLOW CREEK ESTATES, Section 11, as described above, and that certain 52.48 acres of land, more or less, out of the T. J. CHAMBERS LEAGUE, Abstract No. 2 and the JOHN WILLIAMS SURVEY, Abstract 471, in Hays County, Texas, which has been subdivided and platted into 4 Blocks containing 31 Lots, streets and common areas known as WILLOW CREEK ESTATES, Section 12, as described above.

2. "Subdivision" means the platted subdivision of WILLOW CREEK ESTATES, Section 11, the plat of which is recorded in Volume 12, pages 40-43, of the Plat Records of Hays

County, Texas, and the platted subdivision of WILLOW CREEK ESTATES, Section 12, the plat of which is recorded in Volume 12, pages 44-47 of the Plat Records of Hays County, Texas.

Bk Vol Pg
04025229 OPR 2533 721

3 "Association" means The Willow Creek Estates, Sections 11 and 12 Owners's Association, organized by Declarant, which will be the agency to maintain the architectural control and maintenance of common areas within the Subdivision.

3 "Lot" means all lots in the subdivision.

4 "Ridge Lots" means Lots 417 through 425 in Block A and Lots 413 through 416 in Block B of Willow Creek Estates, Section 11.

5 "Plans and Specifications" means any and all documents designed to guide or control the construction of any improvements, including those describing location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, specification on all exterior building products and construction techniques, samples of exterior colors, plans for utility service, and any additional documentation or information reasonably requested by the Architectural Control Committee.

PART 2. LAND USE RESTRICTIONS

Declarant hereby declares that the Lots described above shall be held, sold, and conveyed subject to the following restrictions, covenants, liens and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and each Lot and shall be binding on all parties having any right, title or interest in or to the 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;

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, mercantile or professional purposes, or for ingress and egress to adjoining property.
2. No structure shall be placed or erected on any Lot on the Subdivision or be allowed to remain on any Lot in the Subdivision, other than one single family residence ("Residence") 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 similar structures designed to be incidental to residential use. No portable out building shall be allowed.
3. No Residence may be constructed on the Ridge Lots that contains less than 2,500 square feet of living space, exclusive of attached carports, garages, and covered porches. No Residence may be constructed on any other Lot that contains less than 1,800 square feet of living space, exclusive of garages, and covered porches. Each Residence must have a garage with minimum space for two (2) full size vehicles, which may be attached or

- detached. Garages must correspond in style, color and architecture to the main residence. All entry drives from the street must be paved from the street pavement line with asphalt, concrete or other masonry materials. Garages visible from the street are encouraged to have side-entries.
- 4 No existing structure shall be moved upon, or allowed to remain upon, any Lot in the Subdivision. All Residences and out buildings shall be constructed on site and no modular, prefabricated or pre-built exterior or interior walls, or wall sections shall be permitted
 - 5 No mobile home, house trailer, motor home, tent, shack, garage, temporary structure or other out building shall be used for residential purposes or as a Residence. No motor home, boat, truck, commercial vehicle, travel trailer, or similar vehicle may be parked on any unpaved portion of a Lot at any time, nor in a driveway or street for more than 72 hours. A motor home, boat or travel trailer may be permanently housed on a Lot, but only if it is in a covered garage of adequate size so that it is not visible from any street or other Lot
 - 6 No noxious or other offensive activity shall be carried on or conducted on the Property or on any Lot, nor shall any activity be engaged in on the Property or on any Lot that is an annoyance or nuisance to other Lot owners.
 - 7 No Lot shall be subdivided, or resubdivided so as to create an additional lot.
 8. 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 household pets are not kept in such numbers as to constitute an annoyance or nuisance to other Lot owners.
 9. No Lot shall be used as a dumping ground for rubbish, and no trash, garbage or waste material shall be kept on the premises except in sanitary containers. No burning of such materials on any Lot is permitted. All containers 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 other Lot owners. No garbage cans or containers shall be allowed to remain at curbside or within view of other Lots except on days scheduled for garbage collection.
 - 10 No oil, drilling, refining, or mining operation of any kind shall be permitted on the Property. No oil or gas well, derrick, tank, tunnel, shaft or excavation of any kind shall be permitted on any Lot
 - 11 Setback lines for the construction of improvements are set out on the recorded plat of the Subdivision. All improvements shall be constructed so as not to protrude or encroach beyond the setback lines. Any person owning adjoining Lots in the Subdivision, and

desiring to erect a Residence partly on one Lot and partly on another Lot, may do so subject to any required governmental approval, and no building setback line restrictions will be applicable to the platted lot line dividing the combined Lots owned by the same person. The building setback restrictions contained herein apply not only to Residences, but also to garages, water wells, servants quarters, and other out buildings. Fences constructed closer than 40 feet to any front lot line or higher than 6 feet 6 inches must first be approved by the Architectural Control Committee, and in the event of approval, no set back line restrictions as to such fence will be applicable. Where Lots are located adjacent to areas open to public use, the finished side of the fence must face the public use. No pipe or chain link fences shall be allowed in the Subdivision.

- 12 Easements created for the purpose of providing for drainage or for the purpose of enabling the owners of Lots in the Subdivision to receive utility services are identified on the recorded Plat of the Subdivision, and no use may be made of any property contained within the easement that would interfere with the design or use of the easement for utility or drainage purposes. No structure of any kind may be placed or maintained in any inundation easement affecting a Lot
- 13 No Lot shall ever be used as an entrance into or an exit from adjoining property, unless for the purpose of access to adjoining property owned or sold by Declarant.
- 14 All septic tanks and drain fields shall strictly comply with all laws and regulations of all governmental authorities. No septic tank or drain field shall be located such that the effluent therefrom will drain onto any other Lot owned by another Lot owner.
- 15 No building shall be constructed within the Subdivision, or allowed to remain within the Subdivision, unless the plans and specifications for the construction are approved by the Architectural Control Committee pursuant to the procedures set out in Part 3, below.
- 16 Swimming pools and spas must be constructed within the setback lines of each Lot. Above-ground swimming pools are strictly prohibited. All pools and spas must be concealed from view from the front street (and side street if applicable) either by a wood fence or dense shrubbery along a wrought iron fence.
17. Owners shall be required to landscape the Lot within 30 days after completion of improvements. The Architectural Control Committee will review and approve in writing the design and implementation of all landscaping improvements, which improvements will take into account the natural beauty of the Texas Hill Country. Lot owners will be encouraged first to limit the amount of natural vegetation that is destroyed and second to restore the disturbed areas in a manner that is compatible with the natural vegetation. This provision is not intended to prohibit the removal of cedar, mesquite, hackberry, persimmon or other non-hardwood vegetation.

- 18 Subject to the Telecommunications Act of 1996 and applicable rules of the Federal Communications Commission, no owner may erect or maintain a television or radio receiving or transmitting antenna, satellite dish or similar apparatus upon any portion of the residence that is visible from the street abutting the front of the house unless this restriction would (i) prevent or unreasonable delay antenna installation, maintenance or use; (ii) unreasonable increase the cost of antenna installation, maintenance or use; or (iii) preclude reception of acceptable quality signals.
- 19 In the event an owner of any Lot shall fail to maintain the Lot in a neat, orderly manner, clear of weeds, brush and other unsightly growth in such a condition as to present an attractive appearance, the Association shall have the right, acting through its agents or employees, to enter upon the Lot and to repair, clear, maintain and restore the Lot at the expense of the owner, without liability to the owner for damage in trespass or otherwise.
- 20 Unless expressly waived in writing by the Architectural Control Committee, 75% of the exterior of a Residence and garage on Ridge Lots, and 60% of the exterior of a Residence and garage on non-Ridge Lots must be of masonry construction. "Masonry" includes stone, brick and plaster, but not prefabricated concrete siding products.

PART 3. ARCHITECTURAL CONTROL

1. Purpose The purpose of these covenants regarding architectural control is to provide a method and agency to develop and maintain architectural control, and maintenance of any private road and common area entry within the Subdivision.
2. Membership The record owner of each Lot within the Subdivision, to which these covenants apply 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.
3. 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 provided the assessments against such Lot are current to within 30 days of the assessment date. 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.
4. Architectural Control Committee An Architectural Control Committee shall be designated and composed of the three (3) directors of the Association who shall be elected by a majority vote of the Association at its annual meeting to be held in January of each calendar year, at a time and place designated by the directors upon 20 days written notice. In addition one (1) alternate director shall be chosen to act in case of absence or abstention of one (1) or more directors

5 Approval of Plans and Specifications No building, fence, wall, or other structure shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to, or change or alteration therein, be made until the Plans and Specifications have been submitted to, and approved in writing by two-thirds of the Architectural Control Committee as to harmony of the exterior and location in relation to surrounding structures and topography. The Architectural Control Committee is specifically authorized to review the Plans and Specifications 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 make minor revisions the Plans and Specifications in order to preserve the natural beauty of the Subdivision. The Texas Hill Country is a unique place; although it appears rugged it is actually very fragile and requires attention to massing, texture, color, height, materials and landscape in order to create a residential structure compatible with the natural environment as well as the ability to provide the Owner with a comfortable, attractive residential environment

6 Failure to Committee to Act In the event that any application to the Architectural Control Committee is not approved or disapproved within 30 days following the date of submission, then it shall be deemed to be approved, no further action shall be needed.

PART 4 COVENANTS FOR MAINTENANCE ASSESSMENTS

1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Subdivision and for the improvement and maintenance of fences, lighting and other common improvements within the Subdivision.

3 Maximum Annual Assessment. Beginning January 1 of the year immediately following the conveyance of the first Ridge Lot to an owner, the maximum annual assessment shall be \$75 per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Ridge Lot to an owner, the maximum annual assessment may be increased each year not

more than 25% above the maximum assessment for the previous year without a vote of the membership

(b) From and after January 1 of the year immediately following the conveyance of the first Ridge Lot to an owner, the maximum annual assessment may be increased above 25% by a vote of two-thirds of the members who are voting in person or by proxy, at a meeting duly called for this purpose.

4 Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the streets, landscaping, and common area improvements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose

5 Notice and Quorum for Any Action Authorized Under Paragraphs 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor, more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 60% of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting

6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Ridge Lots and may be collected on a monthly, quarterly or annual basis as fixed by the Association

7 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Ridge Lots on the first day of January, 2005. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. The due dates shall be established by the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within 30 days after the due date shall bear interest from the due date at the rate of 18% percent per annum or the maximum legal rate, whichever is greater. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien

against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the streets or by abandonment of his or her Lot. Any Lot owner who is more than 30 days delinquent in payment of assessments shall have no voting rights until such delinquency is cured.

9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

10. Assessments for Non-Ridge Lots. Nothing contained herein is intended to preclude the Association from voting to implement assessments on non-Ridge Lots, however any assessments must be uniform as to the non-Ridge Lots.

PART 5 GENERAL PROVISIONS

1. Duration. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2025, at which time the covenants shall automatically be extended for successive periods of 10 years unless an instrument signed by the majority of the then owners of the Lots revising such covenants in whole or in part has been recorded in the Official Public Records of Hays County, Texas.

2. 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, or in the Restrictions, it shall be lawful for the Association or the Declarant to enforce these Covenants or the Restrictions, or if the Association or Declarant shall fail to do so after 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 or Restrictions. The failure of the owner or tenant to perform his or her obligation hereunder would result in irreparable damage to the Declarant and other owners of Lots in the Subdivision; thus the breach of any provision of this Declaration or the Restrictions 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 without the proof of any specific damages. 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.

3. Partial Invalidity. In the event any of the foregoing covenants, conditions, restrictions, reservations or charges are held invalid or unenforceable by a court of competent jurisdiction, it shall not affect the validity and enforceability of the other covenants, conditions, restrictions, 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.

