

SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF SHADY HOLLOW ESTATES  
March 26, 1992

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#### **ARTICLE I DEFINITIONS**

The following words, when used in this Declaration, shall have the following meanings ( unless the context clearly indicates otherwise):

- a. ACC shall mean and refer to the Architectural Control Committee established in accordance with the provisions of Article VII hereof.

- b. Association shall mean and refer to Shady Hollow Estates Community Association, a Texas non-profit corporation, its successors and assigns.
- c. Board shall mean and refer to the Board of Directors of the Association.
- d. Common Area shall mean and refer to each of the greenbelt areas and landscape reserves established for the purpose of providing open space for recreational uses and for the purposes of establishing, operating and maintaining utilities and other facilities, all as shown on the plats of the Property filed of record in the Plat Records of Travis County, Texas.
- e. Owner shall mean and refer to the record owner(s), whether one or more persons or entities, of the fee simple title to the surface estate of any Tract within the property.
- f. Properties shall mean and refer to the Property.
- g. SHP shall mean and refer to Shady Hollow Partners, a Texas general partnership.
- h. Tract shall mean and refer to each numbered lot or plot of land shown on a recorded subdivision map or plat of the Property.

## **ARTICLE II**

### **COMMON AREA**

Section 1. The Association. The Association is hereby granted an easement and right-of-way in and to the Common Area for the purposes stated, in the definition of Common Area set forth herein above, subject to the other provisions of this Declaration.

Section 2. Owners' Easement of Enjoyment. Each and every owner shall have and is hereby expressly granted a perpetual and non-exclusive right and easement of use and enjoyment, for the purposes stated herein, in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Tract or part thereof, subject to the following rights and provisions:

- a. The right of the Association to make, publish, and enforce reasonable rules and regulations governing the use and enjoyment of the Common Area or any part thereof, all of which reasonable rules and regulations shall bind and benefit each owner;
- b. No Owner shall plant, place, fix, install or construct in, on, under or over or remove any vegetation, hedge, tree, shrub, fence, wall, structure or improvement from, or store any of his or its personal property in, on or under, or interfere with the free flow of pedestrian traffic on, over or along the Common Area or any part thereof without the express prior written consent of the Association. The Association may, without liability to the Owner or Owners thereof, remove anything placed in, or replace anything removed from, the Common Area in violation of the provisions of this sub-section and recover the cost of such removal or replacement from the Owner(s) responsible;

- c. The right and/or duty of SHP or the Association to construct private streets, trails, drainage structures, landscape areas, recreational facilities and other improvements within the Common Areas;
- d. The right of the Association to dedicate or transfer all or any part of its easement rights to the Common Area to any public agency, authority or utility; and
- e. The right of the Association to suspend the voting rights in the Association of any Owner and the right of any Owner to use the Common Area for any period during which any assessment against such owner's land remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Associations.

Section 3. Delegation of Use. Any Owner or occupant may delegate his right and use and enjoyment of the Common Area and facilities to the members of his family, his tenants, contract purchasers, guests or invitees.

### **ARTICLE III EASEMENTS**

Section 1. Existing Easements. The Properties are subject to certain existing easements for streets and utilities which appear of record in the office of the Count Clerk of Travis County, Texas. All such recorded easements are incorporated herein by this reference, and the title conveyed to any Tract shall be subject thereto, whether or not so provided in the deed conveying same. SHP's title to any utility lines, facilities and appurtenances within the easements shall not pass to the purchaser of any Tract but shall remain with SHP and may be given, sold, or leased by, SHP to any public authority, utility company or holder of a public franchise at any time thereafter.

Section 2. New Easements. SHP hereby reserves the right to dedicate, convey or otherwise create by instrument or plat filed for record in the office of the County Clerk of Travis County; Texas other easements upon, across, over, and under all of the Properties for ingress and egress in connection with installing, operating, replacing, repairing and maintaining all utilities. Upon the installation or construction of such utilities, the Property affected thereby shall, as soon as is practicable, be restored to its prior condition. Notwithstanding anything contained in this paragraph to the contrary, no sewer, electrical, water, gas, or communication lines or other utility appurtenances may be installed or relocated on the Properties until approved by SHP or the Association.

Section 3. Easement for the Association, etc. An easement is hereby granted to the Association, SHP, the ACC and their respective officers, agents, employees and management personnel to enter upon any Tract to render service or perform any of their respective functions hereunder.

Section 4. No Right to Grant Easement. No Owner shall grant any easement on, over, under or across any Tract without the prior written approval of SHP or the Association, and any attempt to make such a grant shall be of no force or effect.

## **ARTICLE IV**

### **SHADY HOLLOW ESTATE COMMUNITY ASSOCIATION**

Section 1. Organization and Purposes. The Association is or shall be formed, organized and operated as a non-profit corporation under the laws of the State of Texas. The purposes of the Association are or shall be stated in its Articles of Incorporation and include the enforcement of this Declaration.

Section 2. Board of Directors. The Association shall act through a five (5) member Board of Directors, which shall manage the affairs of the Association. The respective term of each of the present members of the Board shall expire on December 31, 1992. Thereafter, the directors shall be classified with respect to the time for which they hold office by dividing them into two (2) classes, the first class consisting of two (2) directors and the other consisting of three (3) directors. Each director of the Association shall hold office until his successor shall be duly elected. At the first annual meeting of the Association after December 31, 1992, the first class of directors shall be elected for a term of one (1) year and the directors of the second class shall be elected for a term of two (2) years; and at each annual meeting thereafter the successors to the class of directors whose term shall expire that year shall be elected to hold office for the term of two (2) years, so that the term of office of one class of directors shall expire in each year.

Section 3. Membership and Voting Rights. Each owner, whether one or more persons or entities, shall, upon and by virtue of becoming an Owner, become a member ("Member") of the Association and shall remain a Member until such time as his ownership or fee simple title to the surface estate of any tract terminates for any reason, whereupon his membership in the Association shall automatically terminate. The Association shall have a single class of membership.

By virtue of such membership, each owner shall have one (1) vote for each Tract owned by him within the Properties.

When more than one owner holds an interest in any land, all such persons or entities shall determine among themselves how the vote for such land shall be exercised, but in no event shall more votes be cast than the number that are attributable to such land. Votes may be cast in person or by duly authorized proxy. Any Owner who is delinquent in the payment of any assessment as hereinafter set forth shall not be entitled to vote during any period in which any such assessment is delinquent. Such Members that are entitled to cast a majority of all votes that are eligible to be cast shall constitute a quorum.

## **ARTICLE V**

### **ASSESSMENTS**

Section 1. Purpose. The assessments provided for herein shall be used exclusively to enforce the provisions contained in this Declaration and to promote the health, safety, welfare and enjoyment of the Owners, residents of the Properties, and in particular for services and facilities devoted to this purpose, including by way of illustration, but not limited to, the lighting, sweeping, landscaping,

mowing and/or maintenance of public streets, esplanades, areas adjacent to the public streets, entry markers and signage within or for the properties.

Section 2. The Amount of Annual Assessments. The annual assessments provided for herein are to provide the funds reasonably anticipated to be needed for the purpose stated in Section 1 of this article, including reasonable reserves thereof. Each year the Board by majority vote of a quorum present at a meeting called to act on such matter, or by unanimous written consent, shall set the annual assessment for each Tract for the succeeding calendar year. In the event the Board shall fail to set the annual assessment for any calendar year, the assessment for such calendar year shall be the assessment in effect for the preceding calendar year.

Section 3. 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 for the purpose of financing, in whole or in part, the cost of any construction, repair or replacement of the improvements contained within the Common Area, including fixtures and personal property related thereon, provided that any such assessment shall have been approved by a vote of two-thirds of the Members of the Association.

Section 4. Commencement Date and Due Date for Annual Assessments. The annual Assessment provided for herein shall commence on the date fixed by the Board of Directors. The Assessments for each calendar year shall be due and payable to the Association in advance on each year, or in equal monthly, quarterly or semi-annual installments over such year, at the election of the Association.

Section 5. Unimproved Portions of the Properties owned by SHP. On the first day of each calendar year commencing January 1, 1992, SHP shall pay an annual assessment in the amount of Twenty-five Dollars (\$25.00) with respect to each Tract owned by SHP on the first day of each calendar year which is not improved with a permanent residence. Except as provided in this Section 5, no other assessments, annual, special or otherwise, shall be assessed or levied against any Tract owned by SHP which is not improved with a permanent residence.

Section 6. Duty of Association. It is understood that the judgment of the Association of the allocation and expenditure of funds received by it through the annual assessments shall be final. Neither the Association, the Board nor any member of the Board shall have any liability to any person or entity for any action or inaction so long as the Association and the Board exercise reasonable judgment in good faith. The enumeration of services for, which the annual assessment may be expended is not intended to and does not create any obligation on the part of the Association or the Board to furnish any of such services except to the extent funds adequate to pay for such services are actually received by the Association.

Section 7. Effect on Non-Payment of Assessments; Remedies of Association. If an assessment is not paid on the date when it is due and payable as specified herein, then such assessment shall be delinquent and shall, together with interest thereon, attorney's fees, court cost and other costs of collection thereof, be secured by a continuing lien on the Tract in respect of which such delinquent assessment is owed and shall also be the personal obligation of the Owner of such Tract. If the assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest from the due date until paid at the maximum rate of interest permitted by applicable Texas or

federal law, whichever permits the higher lawful rate (or if there is no such maximum, then the rate of twenty-five percent (25%) per annum), and the Association may bring an action at law against the owner personally obligated to pay the same or may foreclose the lien against the Tract and thereafter, at its option recover the deficiency, if any, from such owner.

Section 8. Lien to Secure Assessments; Subordination of Lien to certain Mortgages. The annual Assessment on each Tract shall be secured by a separate, valid and subsisting lien, which is hereby created and fixed upon and against said Tract and all improvements thereon, for the benefit of the Association and all other owners and shall be prior and superior to all other liens, except that the same shall be subordinate and inferior to (a) all liens for taxes, or special, assessments levied by Travis County or the State of Texas, or by any political subdivision or special district thereof, and (b) all liens, including but not limited to, vendor's liens, deed of trust, mortgages and other security instruments which secure any loan for part of the purchase price for the Tract and/or the cost of improvements thereon and which are filed for record prior to the date the annual assessment becomes due and payable. The voluntary sale or conveyance of any Tract shall not free any Tract from the liens securing assessments assessed against such Tract; provided, however a foreclosure of said prior liens shall free any Tract from the liens securing assessments due prior to said foreclosure sale (or deed in lieu thereof). No sale or transfer of a Tract shall relieve the personal obligation of the owner of the Tract to pay assessments thereafter becoming due and payable on from the lien securing the same.

## **ARTICLE VI**

### **ARCHITECTURAL CONTROL COMMITTEE**

Section 1. Approval of Plans. All construction and development in the Properties shall be subject to the approval of the ACC. No building, structure, fence, wall, walk, interior road, parking facilities, landscaping, exterior lighting, sign or other improvement shall be commenced, erected, constructed, placed or maintained upon the properties, nor shall any exterior addition to or change or alteration therein be made until the detailed plans and specifications thereof, including, but not limited to, site layout, building location, building materials, colors, elevations, signs, landscaping, internal drainage, off-street vehicular parking, vehicular access and flow, exterior illumination and underground utilities, shall have been submitted to and approved in writing by the ACC as to compliance with this Declaration, minimum structural and mechanical standards, and location and situation on the Tract, harmony of exterior design and location in relation to property lines, building lines, easements, grades, surrounding structures, walks, and topography (including the orientation of the front and rear of any such building with respect to the property lines). The ACC, in its discretion, may require that it be furnished with such structural, mechanical, electrical and/or, plumbing details of the proposed improvements or alterations thereto as it deems necessary. The ACC shall approve or disapprove of such plans and specifications in the ordinary course of its business within seven (7) days after said plans and specifications have been submitted to it. In the event the ACC fails to approve or disapprove such plans and specifications within fourteen (14) days after said plans and specifications have been submitted to it, approval will not be required and the provisions of this section will be deemed to have been fully complied with; provided,

however that the failure of the ACC to approve or disapprove such plans and specifications within such fourteen (14) day period shall not operate to permit any structure or other improvement to be commenced, erected, placed, constructed or maintained on any portion of the Properties in a manner inconsistent with any one or more provisions of this Declaration. Without limitation of the power herein granted, the ACC shall have the right to specify a limited number of acceptable exterior materials and/or finishes that may be used in the construction, alteration or repair of any improvement on any Tract. It also shall have the right to specify requirements for each Tract with respect to (i) the location, height and extent of fences, walls, or other screening devices, and (ii) the orientation of the structure with respect to access and major entry and frontage. The ACC shall have full power and authority to reject any plans and specifications that do not comply with the restrictions herein imposed or meet its minimum construction or architectural design requirements or that might not be compatible, in the sole discretion of the ACC, with the design or overall character and aesthetics of the Shady Hollow Estates project. The ACC shall have the right to require a reasonable submission fee for each set of plans and specifications submitted for its review. The ACC shall also be entitled to hire an architect to assist in the review of plans and specifications. The fees and expenses of such architect shall be paid by such owner seeking approval of plans and specifications.

Section 2. Composition of ACC. The ACC shall be composed of five (5) persons and commencing as of the effective date hereof, such persons shall be William F. Burrow, Jr. ('Burrow'), Ralph E. Reed ('Reed'), Silvestre Garza, Jr. ('Garza'), J. Lewis Hubbard ('Hubbard') and Joe Christian (Burrow, Reed and Garza are sometimes hereinafter referred to collectively as the 'SHP ACC Members'). For so long as SHP owns any of the Tracts, SHP shall have the sole right to remove, replace and/or appoint successors for any or all of the SHP ACC Members; the Board shall have the right to remove and replace any other member of the ACC at any time, with or without cause. At such time as SHP no longer owns any of the Tracts, the Board shall have the right to remove and replace any member of the ACC, including, without limitation, the SHP Members. Each member of the ACC shall hold such position until his successor has been duly appointed. The SHP ACC Members shall hold such position for a term of five (5) years commencing the date hereof and Hubbard and Christian shall be members of the ACC for a term of two (2) years commencing the date hereof. Thereafter, the successors to each member of the ACC whose term expires in a given year shall be appointed for a term of two (2) years. A vote of the majority of the members of the ACC shall be required for any action or decision of, and shall be sufficient to bind, the ACC; provided, however, at such time that SHP owns less than fifty (50) of the Tracts, all decisions of the ACC pertaining to Tracts which are not owned by SHP or which have not been owned by SHP for at least one (1) year, shall be made by the unanimous vote of the members of the ACC other than the SHP ACC Members. The address of the ACC shall be c/o Dick Clark Architecture, 2306 Lake Austin Boulevard, Austin, Texas 78703, or place as may from time to time be designated by the ACC by written instrument recorded in the Real Estate Records of Travis county, Texas.

## **ARTICLE VII**

### **LAND USE, CONSTRUCTION STANDARDS AND RESTRICTIONS**



Section 1, Permitted Uses. No building shall be erected, altered, or permitted to remain on any Tract other than one detached single family dwelling used for residential purposes only, and not to exceed two (2) stories in height. Each, such dwelling on a platted Tract shall have an attached or detached garage for two (2) or more cars. As used herein, the term 'residential purposes' shall be construed to prohibit mobile homes or trailers from being placed on the Tracts, or the use of such Tracts for garage apartments or apartment houses, and no Tract shall be used for business or professional purposes of any kind, nor for any commercial or manufacturing purposes, except for the construction of any model homes or sales offices in connection with the construction and sale of houses on the Tracts. No building of any kind, with the exception of lawn storage or children's playhouses shall ever be moved onto any Tract, it being the intention that only new construction shall be placed and erected thereon.

Section 2. Construction standards. The construction, remodeling or alteration of any building or other structure within the Properties shall meet the standards set fourth in this Declaration and those of any governmental authority with jurisdiction over the Properties in effect during the year(s) of construction and shall otherwise comply with all applicable laws, ordinances, and governmental regulations. No building shall be covered with sheet or corrugated aluminum, corrugated fiberglass, asbestos, iron or steel. Further, buildings shall only be constructed out of brick, exposed aggregate concrete, wood, glass, and such other materials as are approved by the ACC. The roof of any building may be constructed with asphalt composition shingles or ceramic tile of such weight and quality as are approved by the ACC.

Section 3. Setbacks. No building shall be located on any Tract nearer to the front or rear lot line nearer to the street side line than the minimum building set-back line shown on the recorded subdivision map or plat of the Property. There shall be a building setback of ten (10) feet between Tracts, or between a Tract and a potential Tract within the Property.

In the event of any conflict between the building setback lines provided for herein and those shown and provided for on any recorded plat, the setback line which (of the conflicting setback lines) provided, for a greater setback, shall control and be the setback line which the owner of the Tract affected thereby must honor.

The ACC reserves the right during its review of construction plans for any Tract to relax setback requirements on such Tract where necessary or desirable, in its sole discretion, to accomplish a more effective and compatible land utilization.

If adjoining Tracts are owned by the same owner, the side and/or back setbacks common to the contiguous Tracts may be waived by the ACC at its discretion.

Section 4. Size. The square foot area of the main structure of any one-story residential unit constructed after the date hereof, exclusive of open porches and garages, shall not be less than 2,500 square feet. The square foot area of the first floor of the main structure of any two-story residential unit constructed after the date hereof, exclusive of open porches and garages, shall not be less than 1,250 square feet and the total square foot area of any such two-story residence shall not be less than 2,500 square feet, exclusive of open porches and garages. For the purposes of computing square feet requirements contained herein, all measurements shall be from the outside of the exterior walls of the structure.

Section 5. Parking. The number and type of parking spaces and the location thereof within the Tract shall be approved by the ACC prior to the construction of any improvement on the Tract, but in no event shall be less than two spaces for each residential unit. The door of the garage on any Tract shall not face the front property line of such Tract. The driveway servicing all residences shall be constructed of a concrete based product and shall not be constructed of asphalt.

Section 6. Landscaping.

- a. All open, unpaved space, including, but not limited to, the front, side and rear building setback area on each Tract, shall be planted and landscaped by the owner thereof in accordance with plans submitted to and approved by the ACC.
- b. No owner shall plant, place, fix, install or construct, on, under or over or remove any tree (unless less than six inches caliper, measured twelve inches above the ground), shrub, fence, wall, structure or improvement from, or store any of his personal property in, on or under, or interfere with the free flow of pedestrian traffic on, over or along any building setback area or any part thereof without the written consent of the ACC having first been obtained.

Section 7. Screening and Appearance.

- a. Screening. No boats, trailers, campers, horse trailers, buses, inoperative vehicles of any kind, camping rigs, boat riggings or other vehicles or associated equipment of a recreational or commercial nature shall be parked or stored permanently or semi-permanently on any Tract unless properly screened from public view in a manner approved in writing by the ACC. In addition, pool service equipment, lawn sprinkler equipment, trash containers, air conditioner units and satellite dishes shall all be properly screened from public view in a manner approved in writing by the ACC. Once the written approval of the ACC has been obtained, the screening required and approved by the ACC must continue to exist and be maintained in a sound and slightly condition for so long as screening shall be required under the terms hereof.
- b. Grading and Drainage. Surface drainage for each Tract shall be in accordance with all governmental drainage requirements. Care shall be taken not to cause drainage to adjacent properties during construction or after completion of any project within the Properties. Grading of the construction site shall be within the Properties. Grading of the construction site shall be done to the maximum practicable extent without damaging existing trees. Further, all driveway aprons and approaches crossing any drainage easement along the front property line of any Tract shall be constructed in accordance with the construction details provided by the ACC.
- c. Underground Facilities. No pipe, conduit, cable or line of water, gas, sewage, drainage, steam, communication, electricity or any other energy or service shall be installed or maintained (outside of any building) above the surface of the ground within any Tract, unless otherwise approved in writing by the ACC.

Section 8. Nuisances or Illegal Activities. No illegal, noxious or offensive activity of any kind shall be conducted on any portion of the Properties, and the ACC shall have the exclusive and final

determination as to what activity constitutes a noxious or offensive activity. No uses shall be permitted which is offensive by reason of odor, fumes, vibrations, dust, smoke, radiation, noise or pollution, or that is hazardous by reason of excessive danger of fire or explosion, or that will cause or produce a nuisances as to any other portion of the Properties.

Section 9. Temporary Structures. No temporary building or structure other than construction offices and structures for related purposes during the construction period for improvements on the Tract shall be installed or maintained on any Tract without the written approval of the ACC. All temporary structures used for the construction purposes must receive approval by the ACC with regard to location and appearance and must be removed promptly upon completion of construction. No persons shall be allowed to reside or stay overnight in any temporary structure.

Section 10. Exterior Illumination. Exterior illumination, if such is to be provided, shall be designed to light only buildings, parking areas and walkways and shall not reduce glare on adjacent streets or Tracts. Poles supporting light fixtures are to be composed of anodized aluminum, wood or other materials approved by the ACC. All security and service lighting shall be pole mounted fixtures, and no flashing, blinking or strobe lights are permitted. All ground level flood lighting fixtures shall be depressed or screened from public view in a manner approved in writing by the ACC.

Section 11. Maintenance of Building Sites and Improvements. Each owner shall have the responsibility to keep the premises, buildings, improvements, appurtenances and landscaping located on this Tract (including, without limitation, the portion(s) of such Tract which are within public or private easement(s)) in a well maintained, safe, clean and attractive condition at all times.

Section 12. Animal Husbandry. No animals, livestock, or poultry of any kind can be raised, bred or kept on any Tract/or anywhere within the Properties, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No more than a total of three (3) dogs and/or cats over the age of six (6) months shall be kept on any Tract, subject to rules and regulations adopted by the ACC. All dogs must be under active restraint when off the premises of its Owner. The cost to the Association for the enforcement of this Section 12 shall be charged to the owner of such animal or the owner of the relevant Tract (if the animal belongs to a tenant, guest or invitee) as a fine which shall be added to liens and remedies for collection thereof. If all charges are not paid, the Association shall be authorized to dispose of the animal in any manner in which the Association shall deem fit.

Section 13. Signage. No sign of any kind shall be displayed to the public view or any Tract except each Owner may place one sign of not more than four (4) square feet on his Tract for the purpose of advertising such Tract for sale or rent; provided, however, SHP and any other person or entity engaged in the construction and sale of residences within the Property shall have the right, during the construction and sales period, to construct and maintain signs so long as such signs style, size and design are approved by the ACC.

Section 14. Antennas. Without the prior written authorization of the ACC, no television or radio antennas or satellite dishes of any kind shall be placed, allowed or maintained on any Tract or any portion of the exterior of any improvements to any Tract.

Section 15. Fences. Any fences, wall, hedge or other similar structure or improvement shall be approved by the ACC with respect to location, height, type, and material, and shall at all times be kept in good order and repair. No fences, wall or hedge shall be built or maintained forward of the front lot line of any structure constructed on any Tract and no barbed wire or chain linked fence shall be permitted.

Section 16. Oil, Gas and Mining Operations; Water Wells. No oil or gas exploration, drilling or development operations or oil or gas refining, quarrying or mining operations of any kind shall be permitted upon or within any portion of the Properties, nor shall oil wells, water wells, tanks, tunnels, mineral excavations or shafts be permitted upon or within any portion of the Properties. No derrick or other structure designed for the boring for oil or natural gas or for water shall be erected, maintained or permitted upon any portion of the Properties.

Section 17. Exterior Surfaces. The exterior surfaces of all residences constructed on the Tracts after the date hereof shall be constructed of at least seventy-five (75%) brick or masonry, exclusive of the roof, eaves, soffits, windows and trim; provided, however, the use of stucco will be permitted only with the prior written consent of the ACC.

Section 18. Roof. The slope of any roof on a residence constructed on a Tract after the date hereof shall not increase in height by less than six (6) feet per each twelve (12) linear feet.

Section 19. Mailboxes. The mailboxes serving residences constructed on the Tracts after the date hereof shall be constructed with brick or masonry which matches the brick or masonry on the exterior of the residence of such Tract.

Section 20. Swimming Pools. The location and design of any swimming pool on a Tract shall be subjected to the prior written approval of the ACC. All pools shall be completely fenced with safety latches on all gates. Water in the pool shall be treated and maintained so as to provide a satisfactory bacterial and physical quality. All pools shall comply with all safety and maintenance standards and regulations (i) required or imposed by the State of Texas or (ii) required or imposed by the City of Austin with respect to pools within the City of Austin (even though the Property is not within the City of Austin).

Section 21. Right of the Developer, the ACC and/or the Association to Perform Work or Act. In the event of default on the part of any Owner in observing any of the requirements set out in Section 1 through 20 of this Article VII, the ACC and/or the Association shall have the right to enter upon such Owner's Tract through its agents, without liability to Owner (or any lessee, tenant, invitee, customer, or licensee of such Owner) for trespass or otherwise, and to cause to be done any work or act necessary to secure compliance with these protective covenants and requirements, and may charge such Owner for the cost of any such work or act. As a condition precedent to exercising the rights given to the ACC and/or the Association under Section 21, the ACC or the Association shall give the Owner written notice specifying with particularity the nature of the work or act which the ACC or the Association considers necessary and such Owner shall have a period of fifteen (15) days after receipt of such written notice within which to commence such work or act. If such Owner timely commences such work or act and prosecutes same with due diligence until completion, the ACC and the Association shall not have any right to enter upon such Owner's property for the purpose of performing the same. The cost of any such work or act performed by the

ACC and/or the Association shall be assessed against such owner's Property upon which such work or act is done. Each owner shall be deemed to have agreed to pay for such work or act performed by the ACC or the Association within ten (10) days after receipt of a statement covering such work or act. The amount due shall be the personal obligation of said Owner, and together with interest thereon accrued at the maximum lawful rate permitted by applicable Texas or federal law, whichever permits the higher lawful rate (or if there is no such maximum, then at the rate of twenty-five percent (25%) per annum), from due date hereunder until paid, shall be collectible by the ACC or the Association, as the case may be, in an appropriate action at law or in equity, and shall be secured by a valid and subsisting lien, hereby created and fixed, on such Owner's Tract and all improvements thereon. The lien hereby created shall be subordinate and inferior to (a) all liens for taxes of special assessments levied by Travis County or the State of Texas, or by any political subdivision or special district thereof, and (b) all liens, including but not limited to, vendor's liens, deeds of trust, mortgages and other security instruments which secure any loan for any part of the purchase price of the Tract and/or the cost of improvements thereon and which are filed for record prior to the date payment to the ACC or the Association for any such work or act becomes due and payable. However, a foreclosure of said prior liens shall not free any Tract from the liens securing any amount thereafter becoming due and owing to the ACC or the Association under the Section 21, nor shall the personal liability of the owner of the Tract be extinguished by such foreclosure.

Section 22. Exempt Property. Notwithstanding any provisions herein to the contrary, the Common Area shall not be subject to or burdened by building and use restrictions set forth in this Article, except to the extent the same are made specifically applicable to the Common Area.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

Section 1. Duration. This Declaration shall be binding on the Property and the owners, and shall insure to the benefit of and be enforceable by the Association or the owner of any land subject to this Declaration and their respective legal representatives, heirs, successors and assigns, for the term commencing on the effective date hereof and ending twenty (20) years after such effective date, and shall be automatically renewed and extended for successive periods of ten (10) years each, unless this Declaration is amended or terminated in the manner provided in this Section 1 of Article VIII. Except as otherwise stated in Section 2 of this Article VIII, this Declaration may be amended or terminated only by an instrument executed by the President and Secretary of the Association; provided, however, the President and the Secretary of the Association shall execute such instrument only after it has been authorized and proved by two-thirds (2/3) vote of a quorum of the Members present at a meeting of the Members called to act on such matters. Notwithstanding the foregoing, for so long as SHP owns' any of the Tracts, the following sections of this Declaration may not be amended without the prior written consent of SHP: (i) Article III; (ii) Section 3 of Article IV; (iii) Section 5 of Article 5; (iv) Article VI; (v) Article VII; and (vi) Sections 1, 3 and 5 of Article VIII. No such amendment shall be construed or applied to prohibit the continuing or continuous use of a Tract for a purpose for which it was being used in compliance with this Declaration before such amendment.

Section 2. Amendments by the Association. The Association shall have, and hereby reserves, the right, at any time and from time to time, without the joinder of consent of any other party, to amend this Declaration by an instrument executed by the Association and filed for record in the office of the County Clerk of Travis County, Texas for the purpose of correcting any typographical or grammatical error, ambiguity or inconsistency appearing herein, provided that any such amendment shall be consistent with and in furtherance of the general plan of development as evidenced by this Declaration and shall not impair or affect the vested property or other rights of any owner of lien holder.

Section 3. Re-subdivision. No Tract shall be further subdivided or separated into smaller Tracts or parcels by any owner, other than SHP as provided below. SHP reserves the right to change boundary lines on Tracts owned by SHP and re-subdivide Tracts owned by SHP at any time and from time to time; provided, that the total number of Tracts will not increase.

Section 4. Enforcement. The ACC, the Association or any owner (at such owner's expense) shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions, reservations, liens, charges, assessments and provisions set out in this Declaration; provided, however that the failure of such party to take any action upon a breach of or default under any provision contained in this Declaration shall not render such party liable in any manner for such failure, and shall not be deemed a waiver of the right to take action if such breach or default continues, or to take action upon any subsequent breach or default hereunder

Section 5. SHP, Association and ACC not Liable for Damages. Neither SHP, representatives designated by SHP to act for it under this Declaration, successors and assigns of SHP, officers and directors of the Association nor members of the ACC shall be liable in damages to any Owner, to any lessee, tenant or other occupant of any land or improvement covered by this Declaration or to anyone else in connection with the exercise or failure to exercise the powers, duties and authorities set forth in this Declaration, by reason of mistake in judgment, negligence or nonfeasance. Every person who submits plans and specifications for approval pursuant hereto agrees, by submission thereof, and every owner, lessee or tenant of any of the property subject hereto agrees, by acquiring title thereto or a leasehold interest therein, that he will not bring any action or suit against any of said persons or parties to recover any such damages.

Section 6. Interpretation. If this Declaration, or any word, clause, sentence, paragraph, or other part hereof, shall be susceptible to more than one interpretation, then the interpretation which is most nearly in accordance with the general purpose and objectives of this Declaration shall govern.

Section 7. Omissions. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect of any other word, clause, sentence, or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

Section 8. Notices. Any notice required to be sent to any owner or Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as the Owner or Member on the record of the ACC or the Association, as the case may be, at the time of such mailing.

Section 9. Gender and Grammar. The singular, whatever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.

Section 10. Severability. Invalidation of any one or more of the covenants, restrictions, conditions, or provisions contained in this Declaration, or any part thereof, shall not affect any of the other covenants, restrictions, conditions, or provisions thereof, which shall remain in full force and effect.

Section 11. Prior Declarations Superseded. The Original Declaration, the Amended Declaration and any and all other declarations or restrictions affecting all or any part of the Property are hereby amended, restated, superseded and replaced in their entirety by this Declaration.

Section 12. Amendment of Articles and Incorporation and Bylaws. In that this Declaration has been approved by the requisite number of Owners, the Bylaws and Articles of incorporation of the Association are hereby amended, to the extent necessary, so as to be consistent in all respect with the terms of this Declaration.

Section 13. Approval by the Association. The President and Secretary execute this Declaration herein below to affirm that the terms of this Declaration have been authorized and approved in accordance with Article IX, Section 1 of the Original Declaration and Article IX, Section 1 of the Amended Declaration.