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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

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THIS DECLARATION, made on the date hereinafter set forth by SHADOWBRIAR, a joint venture composed of LANDMARK PROPERTIES-TEXAS, INC. and Texas S&L Corporation both Texas corporations (hereinafter referred to as "Declarant"), acting herein by and through its hereunto duly authorized officers as follows:

W I T N E S S E T H:

WHEREAS, Declarant is the owner of that certain 58.4891 acre tract of land situated in Harris County, Texas, which is more particularly described as:

- Lots One (1) through Ten (10), both inclusive in Block One (1);
- Lots One (1) through Sixteen (16), both inclusive in Block Two (2);
- Lots One (1) through Forty-two (42), both inclusive in Block Three (3);
- Lots One (1) through Ten (10), both inclusive in Block Four (4);
- Lots One (1) through Thirteen (13), both inclusive in Block Five (5);
- Lots One (1) through Ninety-six (96), both inclusive in Block Six (6);
- Lots One (1) through Twenty-Three (23), both inclusive in Block Seven (7); and
- the 0.8597 Acre Tract described as a "Reserve for Recreational Purposes Only";

All of said lots and Reserve being in Shadowbriar, Section One according to map or plat thereof recorded in Volume 257, Page 53, Map Records of Harris County, Texas.

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and Declarant desires to impose upon such properties the covenants, conditions and restrictions herein set forth;

NOW, THEREFORE, Declarant hereby declares that all the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall constitute covenants running with, the real property and shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof and the Shadowbriar Community Association, Inc.

ARTICLE I.

DEFINITIONS

Section 1. "Association" shall mean and refer to Shadowbriar Community Association, Inc., its successors and assigns. The Association has the power to collect and disburse those maintenance assessments as described in Article IV.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those persons or entities having such interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to: (a) that certain real property first hereinabove described as Shadowbriar, Section One; (b) adjacent tracts of land (extending southward from Section One of Shadowbriar to Westheimer Road) which may be developed by the Declarant or its successors and assigns as additional sections of the Shadowbriar subdivision, and (c) such other real property which may hereafter be brought within the jurisdiction of the Association or this Declaration.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 5. "Common Area" shall mean all real property owned or to be owned by the Association for the common use and benefit of the Owners, including without limitation the following tract:

A 0.8597 acre tract described as "Reserve for Recreational Purposes Only" on the plat of Shadowbriar, Section One, as described in a plat of record in Volume 257, page 53 of the Map Records of Harris County, Texas.

Declarant has the right and option (but not the obligation) to establish, set aside or convey additional real property to the Association for recreational purposes. The Common Area shall exist for the benefit of the residents of Section One of Shadowbriar as well as for the future residents of the land situated between Section One of Shadowbriar and Westheimer Road. The Common Area construction on the above-described tract is expected to be completed by the Declarant prior to completion and occupancy of the first residential dwelling within the Properties. Title to the Common Area will be conveyed by the Declarant to the Association at any time prior to the tenth (10th) anniversary of the date of recordation for this Declaration.

Section 6. "Declarant" shall mean and refer to not only Shadowbriar, a joint venture, but also to such of its successors or assigns (whether immediate or remote), as successor developer of all or a substantial portion of the Lots in the undeveloped stage, but shall not include any purchaser of one or more developed Lots. For the purposes of this Declaration, "developed Lot" shall mean a Lot with the street on which it faces opened and improved and with utilities installed and ready to furnish utility service to such Lot, and "undeveloped Lot" is any Lot which is not a developed Lot.

ARTICLE II.

USE RESTRICTIONS

Section 1. Single Family Residential Construction. No building shall be erected, altered or permitted to remain on any Lot other than one detached single-family residential dwelling not to exceed two and one-half (2-1/2) stories in height, a private garage for not more than three (3) cars and bona fide servants'

quarters, which quarters shall not exceed the main dwelling in height and which may be occupied only by a member of the family occupying the main residence or by domestic servants employed on the premises. Carports will not be allowed unless specifically approved by the Architectural Control Committee.

Section 2. Architectural Control. No buildings or improvements of any character shall be erected or placed, or the erection thereof begun, or changes made in the design thereof after original construction, on any Lot until the construction plans and specifications and a plot plan showing the location of the structure or improvements have been submitted to and approved in writing by the Architectural Control Committee as to compliance with these restrictions, quality of material, harmony of external design with existing and proposed structures and as to location with respect to topography and finish grade elevation. The Shadowbriar Joint Venture shall have and maintain the right to select and appoint from time to time and at any time the members of the Architectural Control Committee and such members shall serve at the pleasure of the Shadowbriar Joint Venture. The initial members of the Architectural Control Committee shall be: Paul A. Nelson, Eugene Ford and William Pace. If there exists at any time one or more vacancies in the Architectural Control Committee, the Shadowbriar Joint Venture may designate successor member(s) to fill such vacancy or vacancies.

The Architectural Control Committee and the individual members thereof shall not be liable for any act or omission in performing or purporting to perform the functions delegated hereunder. In the event the Committee fails to indicate its approval or disapproval within thirty (30) days after the receipt of the required documents, approval will not be required and the related covenants set out herein shall be deemed to have been fully satisfied. The Shadowbriar Joint Venture hereby retains the right to assign the membership selection, duties, powers and responsibilities of the Architectural Control Committee to the Shadowbriar Community Association, Inc. at any point in time deemed reasonable and appropriate by it but no later than the point in time when one

hundred percent (100%) of all Lots in Shadowbriar, (including Section One and all subsequent sections of Shadowbriar) are occupied by residents and the term "Architectural Control Committee" herein shall include the Association as such assignee. The approval or lack of disapproval by the Architectural Control Committee shall not be deemed to constitute any warranty or representation by such Committee including, without limitation, any warranty or representation relating to fitness, design or adequacy of the proposed construction or compliance with applicable statutes, codes and regulations.

Section 3. Minimum Square Footage Within Improvements. The living area on the ground floor of the main residential structure (exclusive of porches, garages and servants' quarters) shall be not less than one thousand six hundred (1,600) square feet for a one-story dwelling nor less than one thousand two hundred (1,200) square feet for a dwelling of more than one story. The total living area for a multi-story dwelling shall be not less than two thousand two hundred (2,200) square feet. The Architectural Control Committee, at its sole discretion, is hereby permitted to approve deviations in any building area herein prescribed in instances where such deviation would result in a more beneficial use of the Lot. Such approvals must be granted in writing and when given will become part of these restrictions to the extent of the particular Lot involved.

Section 4. Exterior Materials. The exterior materials of the main residential structure and any attached garage and servants' quarters shall be not less than fifty-one percent (51%) masonry, unless otherwise approved by the Architectural Control Committee.

Section 5. Location of the Improvements Upon the Lot. No building or other improvement shall be located on any Lot nearer to the front lot line or nearer to the street side line than the minimum building setback line shown on the recorded plat. Subject to the provisions of Section 6, no building shall be located nearer than five (5) feet to an interior Lot line, except that a garage or other permitted accessory building located sixty (60) feet or more from the front lot line may be located a minimum

distance of three (3) feet from an interior Lot line. No garage located closer than sixty (60) feet to the front property line shall face or open at less than a ninety degree (90°) angle to the front property line. For the purposes of this covenant and restriction, eaves, steps and unroofed terraces shall not be considered as part of a building, provided, however, that this provision shall not be construed to permit any portion of the construction on a Lot to encroach upon another Lot.

Section 6. Composite Building Site. Any Owner of one or more adjoining and contiguous Lots (or portions thereof) may consolidate such Lots or portions thereof into one single-family residence building site, with the privilege of placing or constructing improvements on such site, in which case setback lines shall be measured from the resulting side property lines rather than from the Lot lines shown on the recorded plat. Any such composite building site must have frontage at the building setback line of not less than the minimum frontage of Lots in the same block.

Section 7. Utility Easements. Easements for installation and maintenance of utilities are reserved as shown and provided for on the recorded plat and by separate easement instruments executed or to be executed by Declarant and no structure of any kind shall be erected upon any of said easements. Neither Declarant nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees or servants to shrubbery, trees, flowers or improvements of the Owner located on the land within or affected by said easements.

Section 8. Prohibition of Trade and Offensive Activities. No activity, whether for profit or not, shall be conducted on any Lot which is not related to single-family residential purposes. No noxious or offensive activity of any sort shall be permitted nor shall anything be done on any Lot which may be or become an annoyance or a nuisance to the neighborhood.

Section 9. Use of Temporary Structures. No structures of a temporary character, mobile home, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence. Temporary sales offices may be maintained on one or more Lots by individuals or entities engaged in the construction and sale of residential dwellings. Portable buildings used for accessory or storage purposes shall be limited to not more than eight (8) feet in height and shall be subject to approval of the Architectural Control Committee. Temporary structures may be used to store construction materials and for related purposes during the initial construction of residential dwellings. Such structures shall be inconspicuous and sightly and shall be removed immediately after completion of construction.

Section 10. Storage of Automobiles, Boats, Trailers and Other Vehicles. No boat, trailers, boats, travel trailers, inoperative automobiles, campers, or vehicles of any kind other than operable, conventional automobiles shall be semi-permanently, regularly, frequently or permanently stored in the public street right-of-way or on driveways. Storage of such items and vehicles must be screened from public view, either within the garage or behind a fence which encloses the rear of the Lot.

Section 11. Mineral Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall any wells, tanks, tunnels, mineral excavation, or shafts be permitted upon or in any Lot. No derrick or other structures designed for the use of boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.

Section 12. Animal Husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other common household pets of the domestic variety may be kept, provided that they are not kept, bred or maintained for commercial purposes and provided that no more than two (2) of each type animal is kept.

Section 13. Walls, Fences and Hedges. No walls, fence or hedge in excess of three (3) feet in height shall be erected or maintained nearer to the front Lot line than the walls of the dwelling existing on such Lot. No side or rear fence, wall or hedge shall be more than six (6) feet in height. No chain link type of fence construction will be permitted on any Lot. Any wall, fence or hedge erected on a Lot by Declarant, or its assigns, shall pass ownership with title to the Lot and it shall be the Owner's responsibility to maintain said wall, fence or hedge thereafter.

Section 14. Visual Obstruction at the Intersection of Public Streets. No object or thing which obstructs sight lines at elevations between two (2) and six (6) feet above the surface of the streets within the triangular area formed by the intersecting street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street property lines or extensions thereof shall be placed, planted or permitted to remain on any corner Lots.

Section 15. Lot Maintenance. The Owner or occupants of each Lot shall at all times keep all weeds and grass thereon cut in a sanitary, healthful and attractive manner and shall in no event use any Lot for storage of material and equipment except for normal residential requirements and except during the initial construction of residential dwellings within the subdivision. The accumulation of garbage, trash or rubbish of any kind, or the burning (except as permitted by law) of any such materials is prohibited. In the event of default on the part of the Owner or occupant of any Lot in observing the above requirements or any of them, with such default continuing after ten (10) days' written notice thereof, Declarant, or its assigns, may (but not being under any duty to so do and without liability to Owner or occupant in trespass or otherwise) enter upon said Lot, and cause to be cut such weeds and grass and cause to be removed such garbage, trash

and rubbish or do any other thing necessary to assure compliance with these restrictions and to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the reasonable cost of such work. The Owner or occupant, as the case may be, agrees by the purchase, acquisition or occupation of the Lot to pay such statement immediately upon receipt thereof.

Section 16. Storage and Disposal of Garbage and Refuse. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste materials shall not be kept except in sanitary containers constructed of metal, plastic or masonry materials with sanitary covers or lids. Equipment for the storage or disposal of such waste materials shall be kept in clean and sanitary condition. No Lot shall be used for the open storage of materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected upon any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without undue delay until completion and thereafter shall either be removed from the Lot or stored in a suitable enclosure on the Lot.

Section 17. Air Conditioning Units. No window or wall-type air conditioners shall be permitted to be used, erected, placed or maintained in or on any building in any part of the Properties which would be visible from the street.

Section 18. Easements. Declarant hereby reserves the right to dedicate, convey or reserve easements over, on, or under any part of the land within the Properties for streets and/or for electric light and power, telephone, natural gas, water, sanitary sewer, storm sewer, cable television and other utility lines and facilities.

Section 19. Visual Screening on Lots. The drying of clothes in public view is prohibited, and the Owner or occupants of any Lot at the intersection of streets or adjacent to parks, playgrounds, or other facilities where the rear yard or portion of the Lot is visible to the public shall construct and maintain a drying yard or other suitable enclosure to screen drying clothes from public view. Similarly, all yard equipment, woodpiles, or storage piles shall be kept screened by a service yard or other similar facility so as to conceal them from view of neighboring Lots, streets or other property.

Section 20. Signs, Advertisements, and Billboards. No sign, advertisement, billboard or advertising structure of any kind shall be placed, maintained or displayed to the public view on any Lot except one sign for each building site of not more than five (5) square feet advertising the property for sale or rent. Declarant or its assigns shall have the right to remove any prohibited sign, advertisement, billboard or structure placed on any Lots in contravention of these restrictions, and in doing so shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal. Declarant or its assigns may maintain in or upon such portions of the Properties as Declarant may determine facilities (including without limitation offices, storage areas, model units and signs) deemed necessary or convenient.

Section 21. Roofing Material. The roofs of all buildings (including any garage or servants' quarters) shall be constructed or covered with wood shingles; any other type of roofing material may be permitted only at the sole discretion of the Architectural Control Committee upon written request.

Section 22. Maximum Height of Antennae. No electronic antenna or device of any type other than an antenna for receiving normal television signals shall be erected, constructed, placed or permitted to remain on any Lot, house, or building. A television

antenna may be attached to a house provided, however, such antenna must be located to the rear of the roof ridge line, gable or center line of the principal dwelling. A freestanding antenna must be attached to and located behind the rear wall of the main residential structure. No antenna, either freestanding or attached, shall be permitted to extend more than ten (10) feet above the roof of the main residential structure on the Lot or to be erected on a wooden pole.

Section 23. Sidewalks. Before the dwelling unit is completed and occupied, the Lot Owner shall construct a concrete sidewalk four (4) feet in width parallel to the street curb four (4) feet back from the street curb and shall extend it from property line to property line. Owners of corner lots shall install such a sidewalk both parallel to the front lot line and parallel to the side street lot line. Such sidewalks shall comply with any and all Federal, State and County regulations respecting construction and/or specifications.

Section 24. Underground Electric Service. To the extent permitted by the electric company, an underground electric distribution system will be installed within the Properties to service Lots in Shadowbriar; some Lots along the northern and western perimeter of the subdivision may have overhead service prescribed by the electric company. The Owner of each Lot served by underground electric service shall, at his own cost, furnish, install, own and maintain (in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on the Lot's residential structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company at the property line of each Lot. The electric company furnishing service shall make the necessary connections at

said point of attachment and at the meter. In addition, the Owner of each such Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For so long as underground service is maintained within the Properties and unless otherwise directed by the electric company, the underground electric service to each Lot therein shall be uniform in character and exclusively of the type known as single phase, 120/240 volt, three wire, 60 cycle, alternating current.

The electric company has installed or will install the underground electric distribution system within the Properties at no cost to Declarant (except for certain conduits, where applicable) upon Declarant's representation that the Properties are being developed for single-family dwellings and/or townhouses of the usual and customary type constructed and designed to be permanently located upon the Lot where originally situated and built for sale to bona fide purchasers (such category of dwelling and/or townhouses expressly excludes, without limitation, mobile homes and duplexes). Therefore, should the plans of Lot Owners within the Properties be changed so that dwellings of a different type may (if otherwise permitted) be constructed, the electric company shall not be obligated to provide electric service to any Lot where a dwelling of a different type is located unless (a) Declarant has paid to the electric company an amount representing the excess in cost of the underground distribution system for the Properties over the cost of equivalent overhead facilities to serve the Properties, or (b) the Owner of each affected Lot, or the applicant for service, shall pay to the electric company the sum of: (1) \$1.75 per front Lot foot [it having been agreed that such amount reasonably represents the excess in cost of the underground distribution system to serve such Lot over the cost of equivalent overhead facilities to serve such Lot], plus (2) the cost of rearranging and adding any electric

facilities serving such Lot, if determined by the electric company to be necessary.

ARTICLE III.

SHADOWBRIAR COMMUNITY ASSOCIATION, INC.

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

CLASS A. Class A members shall be all Owners, (excluding the Declarant and other Class B Members) and they shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they may determine, but in no event shall more than one vote be cast with respect to any Lot.

CLASS B. The Class B member(s) shall be Declarant and its successors or assigns if such successors or assigns should acquire (by vesting of fee simple title or as a contract vendee) more than one developed Lot from Declarant for the purpose of constructing single family residential dwellings thereon. The Declarant shall be entitled to six (6) votes for each Lot in which it has a fee simple, lien or contract interest; each of the remaining Class B Members shall be entitled to one (1) vote for each Lot in which a fee simple or contract interest is held. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (1) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
- (2) on January 1, 1990.

ARTICLE IV.

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Declarant, in the case of each Lot within the Properties, 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, shall be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements or for repayment of funds borrowed and used in payment of capital improvements. Such assessments shall 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 each Lot and shall be a continuing lien upon the Lot 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 the Lot at the time when the assessment fell due. Appropriate recitations in the deed conveying each Lot will evidence the retention of a vendor's lien by Declarant for the purpose of securing payment of said charge which may be assigned to the Shadowbriar Community Association, Inc. without recourse on Declarant in any manner for the payment on said charge and indebtedness.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Two Hundred Dollars (\$200.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot in Shadowbriar to

an Owner, the maximum annual assessment may be increased each year by an amount equal to not more than thirty percent (30%) 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 Lot to an Owner, the maximum annual assessment may be increased to an amount in excess of thirty percent (30%) of the maximum assessment for the previous year by an affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for such purpose.

(c) The Board of Directors of the Association may fix the actual annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments 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 or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be mailed (by U.S. first class mail) to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present at any such meeting, the

meeting shall be adjourned but another meeting may be called subject to the same notice requirement, but the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum applicable in the case of the preceding meeting to each class of membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment. All Lots in Shadowbriar, Section One, shall commence to bear their applicable maintenance fund assessments simultaneously and Lots in Shadowbriar, Section One, owned by Declarant are not exempt from assessment. Lots which are occupied by residents shall be subject to the annual assessment determined by the Board of Directors in accordance with the provisions of Sections 3 and 7 hereof. Lots in Shadowbriar, Section One, which are not occupied by a resident and which are owned by Declarant, or by a builder or a building company or in which a builder or building company has a contract interest shall be assessed at the rate of one-half (1/2) of the annual assessment above. The rate of assessment for an individual Lot, within a calendar year, can change as the character of ownership and the status of occupancy by a resident changes, and the applicable assessment for such Lot shall be prorated according to the rate applicable during each type of ownership.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots in Shadowbriar, Section One on January 1, 1979. The Board of Directors of the Association shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be mailed (by U.S. first class mail) to every Owner subject thereto. The payment dates shall be established by the Board of Directors. 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 and the amount of any delinquencies. The Association shall not be required to obtain a request for such certificate signed by the Owner but may deliver such certificate to any party who in the Association's judgment has a legitimate reason for requesting same.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid at the rate of ten percent (10%) per annum. The Association may bring action at law against the Owner personally obligated to pay the assessment, or foreclose the lien against the Lot involved. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 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 existing at any time upon the particular Lot involved. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure (whether by exercise of power of sale or otherwise) 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 assessment thereafter becoming due or from the lien thereof, but such lien shall exist as, and constitute, a separate and distinct charge and lien on each Lot.

ARTICLE V.

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to

enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend the voting rights and use of the recreation facility by an Owner during:

(i) any period during which any assessment against his Lot remains unpaid; and (ii) a period not to exceed sixty (60) days for each infraction of the Association's published rules and regulations.

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of the members agreeing to such dedication or transfer has been recorded in the Public Records of Real Property of Harris County, Texas.

(d) The right of the Association to collect and disburse those funds as set forth in Article IV.

Section 4. Delegation of Use. Any Owner may delegate (in accordance with the Bylaws of the Shadowbriar Community Association, Inc.) his right of enjoyment of the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside on the Owner's Lot.

Section 5. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each. This Declaration may be amended during the first twenty (20) year period by an instrument signed by those Owners owning not less than ninety percent (90%) of the Lots within the Properties and thereafter by an instrument signed by those Owners owning not less than seventy-five percent (75%) of the Lots within the Properties. No person shall be charged with notice of or inquiry with respect to any amendment until and unless it has been filed for record in the Official Public Records of Real Property of Harris County, Texas.

Section 6. Annexation. Notwithstanding any other provisions of this Declaration to the contrary, and without the consent, vote or approval of the persons or entities who are then members of the Association and/or Owners of Lots under this Declaration, or anyone else, Declarant shall have the right and option (but not the obligation or duty), at any time or from time to time between the recordation date of this Declaration and December 31, 1990, to file for record in the Office of the County Clerk of Harris County, Texas, an amendment to this Declaration which:

(a) specifically expands the definition of "Properties" herein so that it covers and includes not only the subdivision plat(s) then covered by said definition but also the recorded plat(s) of one or more additional sections of the Shadowbriar subdivision;

(b) specifically expands the definition of "Lots" in Article I, Section 4 hereof so that it covers and includes not only the Lots then covered by said definition but also (i) the numbered Lots shown on the plat(s) of said additional sections of the Shadowbriar subdivision and/or (ii) one or more tracts described by metes and bounds in said Amendment

and designated therein as residential lots. After the filing for record of any such Amendment, the provisions of Article I, Section 4 hereof shall apply not only to the Lots to which such provisions previously applied but also to the Lots which become such pursuant to such Amendment;

(c) makes such additional Lots subject to the reservations, covenants, obligations, assessments, liens, terms and provisions set forth in this Declaration, except that said Amendment may alter, amend, change or delete such of the reservations, covenants, obligations, assessments, liens, terms and provisions herein as to such additional Lots, as Declarant deems reasonable or desirable, including but not limited to allowing such additional Lots to be used for single-family townhome residences or patio homes but expressly excluding, however, apartments, townhomes, condominiums and other types of development or construction involving more than ten (10) dwelling units per acre;

(d) grants to such additional Lots and the Owners thereof the benefits of this Declaration and correspondingly subjects such additional Lots and the Owners thereof to the duties and burden of this Declaration;

(e) sets forth any additional restrictions which Declarant wishes to impose on said additional Lots; and

(f) specifically expands the definition of the "Common Area" to include additional site locations containing amenities or recreational items for the benefit of the Owners of the entire Shadowbriar subdivision.

With respect to any and all of the rights, powers, abilities and options of the Declarant herein and with respect to any and all parcels of real property situated between Section One of Shadowbriar and Westheimer Road, the Shadowbriar Joint Venture shall be permitted to:

(i) sell all or any portion of the undeveloped real property to one or more other developers, each of whom shall accede to the Declarant's right to annex such property to the scheme of this Declaration; and

(ii) develop all or any portion of the undeveloped real property and annex such property to the scheme of this Declaration.

Each amendment to this Declaration shall be executed by Declarant but if Declarant is not the Owner of some or all of the additional Lots or property added by the Amendment, then the Amendment shall also be executed by the Owner(s) of such of the additional Lots and properties added by that Amendment as are not owned by the Declarant. Each such amendment shall be effective as an Amendment to this Declaration from and after the date it is filed for record in the Office of the County Clerk of Harris County, Texas, and all rights and obligations accruing therefrom shall commence and be measured as of and from said filing date.

Section 7. No Obligation as to Adjacent Property. The Subdivision is part of a larger tract or block of land (extending southward from Section One of Shadowbriar to Westheimer Road) which is now or may hereafter be owned by Declarant. While Declarant may subdivide other portions of said property now owned or hereafter acquired, or may subject the same to a declaration such as this Declaration, Declarant shall have no obligation to do so, and if Declarant elects to do so, any subdivision plat or declaration executed by Declarant with respect to any of its other property may be the same as or similar or dissimilar to any subdivision plat covering the Subdivision, or any part thereof, or to this Declaration. Any advertisement, preliminary plan, drawing or other writing showing or referring to any other property shall not be binding on the Declarant unless and until such plan, drawing or other writing is duly executed by Declarant and recorded by Declarant in the Map Records of the Official Public Records of Real Property of Harris County, Texas, and shall then only be binding as to the property actually within the boundary of the property intended by the Declarant to be included therein. However, the Common Area facilities available for the residents of Section One

of Shadowbriar may likewise be available for any and all of the residents of the land extending southward from Section One of Shadowbriar to Westheimer Road in accordance with amendments, supplements or expansions to this Declaration.

Section 8. Power of Attorney. Each and every Owner hereby makes, constitutes and appoints Declarant as their true and lawful attorney in fact for them and in their name, place and stead and for their use and benefit:

(a) to exercise, do, or perform any act, right, power duty or obligation whatsoever in connection with, arising out of, or relating to any matter whatsoever involving this Declaration and the Properties;

(b) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract, or abandon the terms within this Declaration, or any part hereof, with such clause(s), recital(s), covenant(s), agreement(s), and restriction(s) as Declarant shall deem necessary, proper and expedient under the circumstances and conditions as may be then existing;

(c) to sign, execute, acknowledge, deliver and record any and all instruments which modify, amend, change, enlarge, contract or abandon the subdivision plat of the Properties, or any part thereof, with any easements and rights-of-way to be therein contained as the Declarant shall deem necessary, proper and expedient under the conditions as may then be existing.

The rights, powers and authorities of said attorney in fact to exercise any and all of the rights and powers herein granted shall commence and be in full force upon recordation of this Declaration in the Harris County Clerk's Office and shall remain in full force and effect thereafter until the tenth (10th) anniversary of the recordation of this Declaration.

Section 9. Waivers. Each Owner acquiring any Lot from Declarant, its successors or assigns, by accepting title to said

Lot in the condition it is in at the time of such acquisition, waives, releases and renounces any and all claims, rights, demands and causes of action arising out of or connected with the condition or location of said Lot or the merchantability thereof or its fitness for a particular purpose, or any damage caused in whole or part by flooding, earthquake or other natural phenomena.

DATED this 1st day of August, 1978.

ATTEST:

By: Ray Satery
(Assistant) Secretary
Ray Satery

ATTEST:

By: Jicki Simpson
(Assistant) Secretary
Jicki Simpson

SHADOWBRIAR, A JOINT VENTURE

LANDMARK PROPERTIES-TEXAS, INC

By: Vernon S. Smith
President
Vernon S. Smith

Texas S&L Corporation

By: Michael E. Buguoi
President
Michael E. Buguoi

3rd

RECORDER'S MEMORANDUM

ALL BLACKOUTS, ADDITIONS AND CHANGES WERE PRESENT AT THE TIME THE INSTRUMENT WAS FILED AND RECORDED.

